ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

Regular Session, 2020
First Extraordinary Session, 2019
Second Extraordinary Session, 2019

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WEST VIRGINIA HOUSE OF DELEGATES

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SPEAKER OF THE HOUSE

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FOREWORD

These volumes contain the Acts of the Second Regular Session of the 84th Legislature, 2020, and the First and Second Extraordinary Sessions of the 84th Legislature, 2019.

Second Regular Session, 2020

The Second Regular Session of the 84th Legislature convened on January 8, 2020. The Constitutional sixty-day limit on the duration of the session was March 7, 2020. The Governor issued a proclamation on March 4, 2020, extending the session for a period not to exceed one day for the purpose of considering the Budget Bill. The House of Delegates adjourned *sine die* at midnight on March 7, 2020 and the session ended when the Senate adjourned *sine die* at 12:03 a.m. on March 8, 2020.

Bills totaling 2,389 were introduced in the two houses during the session (1,533 House, of which 557 were carryover bills from the 2019 Regular Session, and 856 Senate). The Legislature passed 356 bills, 188 House and 168 Senate.

The Governor vetoed 6 bills (**Com. Sub. for H. B. 2086**, Uniform Real Property Electronic Recording Act; **H. B. 4159**, Relating to the manufacture and sale of hard cider; **Com. Sub. for H. B. 4395**, Removing the requirement that a veterinarian access and report to the controlled substance monitoring database; **Com. Sub. for H. B. 4573**, Relating to Medicaid subrogation liens of the Department of Health and Human Resources; **Com. Sub. for S. B. 163**, Relating to municipal or county taxation of hotel rooms booked through marketplace facilitator; and **Com. Sub. for S. B. 692**, Clarifying persons indicted or charged jointly for felony offense can move to have separate trial.) Of the vetoed bills, the Legislature amended and again passed **Com. Sub. for H. B. 2086**, Uniform Real Property Electronic Recording Act, leaving a net total of 351 bills, 185 House and 166 Senate, which became law.

There were 210 Concurrent Resolutions introduced during the session, 144 House and 66 Senate, of which 62 House and 19 Senate were adopted. Forty House Joint Resolutions and 9 Senate Joint Resolutions were introduced, proposing

amendments to the State Constitution, none of which were adopted. The House introduced 18 House Resolutions and the Senate introduced 80 Senate Resolutions, of which 8 House and 80 Senate were adopted.

First Extraordinary Session, 2019

The Proclamation calling the Legislature into Extraordinary Session upon adjournment *sine die* of the 2019 Regular Session, contained 2 items for consideration. Subsequent amended proclamations increased the total to 50 items for consideration.

The Legislature introduced 165 bills during the Extraordinary Session, 107 House Bills, and 58 Senate Bills. The Legislature passed 47 bills, 25 House and 22 Senate.

The Governor approved 46 bills and 1 bill, due to action not being taken before the constitutional deadline, is considered as having become law without his signature (**Com. Sub. for H. B. 193**, Relating to a statewide school personnel job bank), leaving a total of 47 bills, 25 House and 22 Senate, which became law.

There were 5 House Concurrent Resolutions introduced and 3 adopted, **H. C. R. 101**, Authorizing adjournments of the Senate and House of Delegates; **H. C. R. 104**, Providing for the issuance of not to exceed $600 million of bonds pursuant to the Roads to Prosperity Amendment of 2017; and **H. C. R. 105**, Providing for the issuance of not to exceed $200 million of bonds after July 1, 2020 pursuant to the Roads to Prosperity Amendment of 2017. One House Joint Resolution was introduced, and one Senate Joint Resolution was introduced, proposing amendments to the State Constitution, none of which were adopted. The House introduced 1 House Resolution, and the Senate introduced 8 Senate Resolutions, of which 1 House and 8 Senate were adopted.

The House adjourned *sine die* on July 23, 2019, and the Senate adjourned *sine die*, ending the First Extraordinary Session, on September 23, 2019.

Second Extraordinary Session, 2019

The Proclamation calling the Legislature into Extraordinary Session on November 18, 2019, contained 4 items for consideration.

The Legislature introduced 6 bills during the Extraordinary Session, 3 House Bills and 3 Senate Bills. The Legislature passed 3 Senate bills.

The Governor approved 2 bills (**S. B. 2002**, Limiting ability to expunge DUI offenses to those offenses which expungement complies with federal law; and **S. B. 2003**, Supplementing, amending, decreasing, and increasing existing appropriations to DOH for fiscal year ending June 30, 2020) and 1 bill became law without his signature (**S. B. 2001**, Extending tax credits for certain tourism development projects), leaving a total of 3 Senate bills which became law.

There was 1 House Concurrent Resolution introduced and adopted, **H. C. R. 201**, Authorizing adjournments of the Senate and House of Delegates. The Senate introduced and adopted 4 Senate Resolutions.

The Senate adjourned *sine die* on November 19, 2019, and the House adjourned *sine die*, ending the Second Extraordinary Session, on December 16, 2019.

STEPHEN J. HARRISON

Clerk of the House and
Keeper of the Rolls.

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REGULAR SESSION, 2020

OFFICERS

Speaker: Roger Hanshaw - Wallback
Clerk: Stephen J. Harrison - Cross Lanes
Sergeant-at-Arms: [1]Marshall Clay - Fayetteville
Doorkeeper: Robert Stewart - Cross Lanes

Name	District	City	Occupation	Term
Anderson, Bill (R)	8th	Williamstown	Educator	71st - 84th
Angelucci, Michael (D)	50th	Farmington	Administrator	84th
Atkinson III, Martin "Rick" (R)	11th	Reedy	Director of Sales	82nd - 84th
Azinger, Tom (R)	10th	Vienna	Retired Insurance Agent	72nd - 81st; 84th
[2]Barnhart, Trenton (R)	7th	St. Marys	Community Banker	Appt. Sept. 17, 2019, 84th
Barrett, Jason (D)	61st	Martinsburg	Restaurant owner	81st; 83rd - 84th
[3]Bartlett, T. Kevan (R)	39th	Sissonville	Minister	Appt. Oct. 21, 2019, 84th
Bates, Mick (D)	30th	Beckley	Physical therapist/Small Business Owner	82nd - 84th
Bibby, Tom (R)	62nd	Falling Waters	Retired, U.S. Air Force	84th
Boggs, Brent (D)	34th	Gassaway	Railroad Engineer	73rd - 84th
Brown, Nathan (D)	20th	Williamson	Attorney	84th
Brown, Sammi (D)	65th	Charles Town	Community Organizer/Consultant	84th
Butler, Jim (R)	14th	Henderson	Excavating Contractor	81st - 84th
Byrd, Andrew (D)	35th	South Charleston	Attorney/Small Business Owner	82nd - 84th
Cadle, Scott (R)	13th	Letart	Trucking/Excavating	81st - 82nd; 84th
Campbell, Jeff (D)	42nd	Lewisburg	Teacher/Broadcaster	Appt. Oct. 30, 2017, 83rd; 84th
Canestraro, Joe (D)	4th	Benwood	Lawyer	83rd - 84th
Capito, Moore (R)	35th	Charleston	Attorney	83rd - 84th
Caputo, Mike (D)	50th	Rivesville	UMWA, District 31 Vice President	73rd - 84th
Cooper, Roy (R)	28th	Wayside	Retired U.S. Navy	81st - 84th
Cowles, Daryl (R)	58th	Berkeley Springs	Businessman	78th - 84th
Criss, Vernon (R)	10th	Parkersburg	Executive	69th; 83rd - 84th
Dean, Mark (R)	21st	Verner	Principal	83rd - 84th
Diserio, Phillip W. (D)	2nd	Follansbee	Retired Electrician	81st; 83rd - 84th
Doyle, John (D)	67th	Shepherdstown	Realtor	66th; 71st - 80th; 84th
Ellington, Joe (R)	27th	Princeton	Physician	80th - 84th
Espinosa, Paul (R)	66th	Charles Town	Public Affairs Manager	81st - 84th
Estep-Burton, Amanda (D)	36th	South Charleston	Banker	84th
Evans, Ed (D)	26th	Welch	Retired Science Teacher	83rd - 84th
Fast, Tom (R)	32nd	Fayetteville	Attorney	82nd - 84th
Fleischauer, Barbara Evans (D)	51st	Morgantown	Attorney/Small Business Owner	72nd - 76th;78th - 84th
Fluharty, Shawn (D)	3rd	Wheeling	Attorney	82nd - 84th
Foster, Geoff (R)	15th	Winfield	Construction Supply	82nd - 84th
Graves, Dianna (R)	38th	Cross Lanes	Auditor	Appt. Sept. 19, 2017, 83rd; 84th
Hamrick, Danny (R)	48th	Lost Creek	Consulting, Media Production	81st - 84th
Hanna, Caleb (R)	44th	Richwood	Full-time student	84th
Hansen, Evan (D)	51st	Morgantown	President, Downstream Strategies	84th
Hanshaw, Roger (R)	33rd	Wallback	Attorney	82nd - 84th
Hardy, John (R)	63rd	Shepherdstown	Businessman	84th
Hartman, William G. (D)	43rd	Elkins	Retired Independent Insurance Agent	76th - 84th
Hicks, Kenneth P. (D)	19th	Kenova	Attorney	82nd - 84th
Higginbotham, Joshua (R)	13th	Poca	Author	83rd - 84th
Hill, Jordan C. (R)	41st	Summersville	Human Resources	82nd - 84th
Hornbuckle, Sean (D)	16th	Huntington	Financial Services Broker	82nd - 84th
Hott II, John Paul (R)	54th	Petersburg	Insurance/Disposal Service	84th
Householder, Eric L. (R)	64th	Martinsburg	Small Business Owner	80th - 84th
Howell, Gary G. (R)	56th	Keyser	Small Business Owner	80th - 84th
Jeffries, Dean (R)	40th	Elkview	Insurance Agent	Appt. Sept. 5, 2018, 83rd; 84th
Jeffries, Joe (R)	22nd	Culloden	Maintenance Manager	84th
Jennings, D. "Buck" Rolland (R)	53rd	Thornton	Self-Employed	Appt. Oct. 10, 2017, 83rd; 84th
Kelly, David (R)	6th	Sistersville	Pastor	84th
Kelly, John R. (R)	10th	Parkersburg	Retired, Chemical Industry	82nd - 84th
Kessinger, Kayla (R)	32nd	Mount Hope	Director of Human Resources	82nd - 84th

Kump, Larry D. (R)	59th	Falling Waters	Retired Public Administrator	80th - 81st; 84th
Lavender-Bowe, Cindy (D)	42nd	Lewisburg	Small Business Owner	84th
Linville, Daniel (R)	16th	Milton	Information Technology Director	Appt. Aug. 1, 2018, 83rd; 84th
[4]Little, Chuck (R)	9th	Davisville	Investigator	Appt. May 20, 2019, 84th
Longstreth, Linda (D)	50th	Fairmont	Administrator	77th - 84th
Lovejoy, Chad (D)	17th	Huntington	Attorney	83rd - 84th
Mandt, John F. (R)	16th	Huntington	Businessman	84th
Martin, Carl "Robbie" (R)	45th	Buckhannon	Business Owner	84th
Martin, Patrick S. (R)	46th	Weston	Business Owner	83rd - 84th
Maynard, Zack (R)	22nd	Harts	Self Employed	83rd - 84th
McGeehan, Pat (R)	1st	Chester	Business Sales/Author	79th; 82nd - 84th
Miley, Timothy (D)	48th	Bridgeport	Attorney	77th - 84th
Miller, Rodney (D)	23rd	Madison	Retired Sheriff/Executive Director Sheriff's Assn.	83rd - 84th
Nelson, Eric Jr. (R)	35th	Charleston	Businessman	80th - 84th
Pack, Jeffrey (R)	28th	Cool Ridge	Pest Control Technician	Appt. Jan. 10, 2018, 83rd; 84th
Paynter, Tony (R)	25th	Hanover	Truck Driver	83rd - 84th
Pethtel, Dave (D)	5th	Hundred	Educator	69th - 71st; 74th - 84th
Phillips, Chris (R)	47th	Buckhannon	President, CGP Foods, Inc.	84th
Porterfield, Eric (R)	27th	Princeton	Evangelist/Missionary	84th
Pushkin, Mike (D)	37th	Charleston	Taxi Driver/Musician	82nd - 84th
Pyles, Rodney A. (D)	51st	Morgantown	Retired	83rd - 84th
Queen, Ben (R)	48th	Bridgeport	Media Entrepreneur/Photography	83rd - 84th
Robinson, Andrew (D)	36th	Charleston	Real Estate Appraiser/Broker	83rd - 84th
Rodighiero, Ralph (D)	24th	Logan	UPS Driver	78th - 80th; 82nd - 84th
Rohrbach, Matthew (R)	17th	Huntington	Physician	82nd - 84th
Rowan, Ruth (R)	57th	Points	Retired Educator	77th - 84th
Rowe, Larry L. (D)	36th	Charleston	Attorney	73rd - 74th (House); 75th - 76th (Senate); 82nd - 84th (House)
Shott, John (R)	27th	Bluefield	Attorney	79th (Appt. to Senate May 19 and resigned from House May 20, 2010); 81st - 84th (House)
Skaff, Doug Jr. (D)	35th	South Charleston	Business Owner/Commercial Developer	79th - 81st; 84th
Sponaugle, Isaac (D)	55th	Franklin	Attorney	81st - 84th
Staggers, Margaret Anne (D)	32nd	Fayetteville	Emergency Physician/Paramedic	79th-81st; 84th
Steele, Brandon (R)	29th	Beckley	Attorney	84th
Storch, Erikka (R)	3rd	Wheeling	Financial Officer	80th - 84th
Summers, Amy (R)	49th	Flemington	Registered Nurse	82nd - 84th
Swartzmiller, Randy (D)	1st	Chester	Regulatory Compliance Management	75th - 81st; 84th
Sypolt, Terri Funk (R)	52nd	Kingwood	Assessor	83rd - 84th
Thompson, Cody H. (D)	43rd	Elkins	Educator	84th
Thompson, Robert (D)	19th	Wayne	Teacher	83rd - 84th
Tomblin, Tim (D)	24th	Logan	Self-Employed	84th
Toney, Christopher Wayne (R)	31st	Beckley	School Bus Operator	84th
Walker, Danielle (D)	51st	Morgantown	Direct Care Worker	84th
Waxman, Terry (R)	48th	Bridgeport	Homemaker	82nd; 84th
Westfall, Steve (R)	12th	Ripley	Insurance Agent	81st - 84th
Williams, John (D)	51st	Morgantown	Insurance Sales	83rd - 84th
[5]Wilson, S. Marshall (I)	60th	Gerrardstown	Author/Army Officer	83rd - 84th
Worrell, Evan (R)	18th	Barboursville	Healthcare Data Analytics	84th
Zukoff, Lisa (D)	4th	Moundsville	Business Owner	84th

[1]Sergeant-at-Arms Anne Lieberman resigned March 1, 2019, and Marshall Clay was elected to fill the vacancy on June 18, 2019.
[2]Jason Harshbarger resigned August 30, 2019. Trenton Barnhart appointed to fill the unexpired term on September 17, 2019.
[3]Sharon Malcolm died September 30, 2019. T. Kevan Bartlett appointed to fill the unexpired term on October 21, 2019.
[4]Ray Hollen resigned May 12, 2019. Charles F. Little appointed to fill the unexpired term on May 20, 2019.
[5]Delegate S. Marshall Wilson switched from Republican to Independent on December 17, 2019.

MEMBERS OF THE SENATE

REGULAR SESSION, 2020

OFFICERS

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

Name	District	City	Occupation	Term
Azinger, Michael T. (R)	3rd	Vienna	Manager	82nd (House); 83rd - 84th
Baldwin, Stephen (D)	10th	Ronceverte	Minister	83rd (House); Appt. Oct. 16, 2017, 83rd; 84th
Beach, Robert D. (D)	13th	Morgantown		Appt. April 24, 1998, 73rd (House); 75th - 79th (House); 80th- 84th
Blair, Craig (R)	15th	Martinsburg	Businessman	76th - 79th (House);81st - 84th
Boley, Donna J. (R)	3rd	St. Marys	Retired	Appt. May 14, 1985, 67th; 68th - 84th
Carmichael, Mitch (R)	4th	Ripley	Sales Director	75th - 80th (House);81st - 84th
Clements, Charles H. (R)	2nd	New Martinsville	Retired	77th (House); Appt. Jan. 28, 2017, 83rd; 84th
Cline, Sue (R)	9th	Brenton	Real Estate Agent	Appt. Jan. 22, 2016, 82nd; 83rd - 84th
Facemire, Douglas E. (D)	12th	Sutton	Owner, Grocery Chain	79th - 84th
Hamilton, Bill (R)	11th	Upshur	Retired	76th-83rd (House); 84th
Hardesty, Paul (D)	7th	Holden	Businessman	Appt. Jan. 17, 2019, 84th
Ihlenfeld, William (D)	1st	Wheeling	U.S. Attorney	84th
Jeffries, Glenn D. (D)	8th	Red House	Businessman	83rd - 84th
Lindsay, Richard D. (D)	8th	Charleston	Attorney	84th
Mann, Kenny (R)	10th	Greenville	Funeral Director	83rd - 84th
Maroney, Michael J. (R)	2nd	Glen Dale	Physician	83rd - 84th
Maynard, Mark R. (R)	6th	Genoa	Automobile Dealer	82nd - 84th
Palumbo, Corey (D)	17th	Charleston	Attorney	79th - 78th (House); 79th - 84th
[1]Pitsenbarger, John R. (R)	11th	Mt. Nebo	Farm Owner/Operator	Appt. Oct. 17, 2019, 84th
Plymale, Robert H. (D)	5th	Huntington	Businessman	71st - 84th
Prezioso, Roman W. Jr. (D)	13th	Fairmont	Administrator	69th - 73rd (House);73rd - 84th
Roberts, Rollan (R)	9th	Raleigh	Minister	84th
Romano, Michael J. (D)	12th	Clarksburg	Attorney/CPA	82nd - 84th
Rucker, Patricia Puertas (R)	16th	Harpers Ferry	Home Schooling Mother	83rd - 84th
Smith, Randy E. (R)	14th	Davis	Coal Miner	81st - 82nd (House);83rd - 84th
Stollings, Ron D. (D)	7th	Madison	Physician	78th - 84th
Swope, Chandler (R)	6th	Mercer	Retired	83rd - 84th
Sypolt, Dave (R)	14th	Kingwood	Professional Land Surveyor	78th - 84th
Takubo, Tom (R)	17th	Charleston	Physician	82nd - 84th
Tarr, Eric J. (R)	4th	Putnam		84th
Trump IV, Charles S. (R)	15th	Berkeley Springs	Attorney	71st - 77th (House); 82nd - 84th
Unger II, John R. (D)	16th	Martinsburg	Businessman/Economic Development	74th - 84th
Weld, Ryan W. (R)	1st	Wellsburg	Attorney	82nd (House); 83rd - 84th
Woelfel, Michael A. (D)	5th	Huntington	Lawyer	82nd - 84th

[1]Gregory Boso resigned September 26, 2019. John "J. R." Pitsenbarger appointed to fill the vacancy on October 17, 2019.

COMMITTEES OF THE HOUSE OF DELEGATES
(As of January 8, 2020)

STANDING

AGRICULTURE AND NATURAL RESOURCES

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

BANKING AND INSURANCE

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

EDUCATION

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

ENERGY

Anderson (*Chair*), J. Kelly (*Vice Chair*), Evans (*Minority Chair*), Pethtel (*Minority Vice Chair*), Azinger, Cadle, Graves, Higginbotham, Hott, J. Jeffries, Kessinger, P. Martin, Maynard, Nelson, Porterfield, Westfall, Boggs, Caputo, Diserio, Hansen, Hartman, Hicks, Miley and Tomblin.

ENROLLED BILLS

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

FINANCE

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

FIRE DEPARTMENTS AND EMERGENCY MEDICAL SERVICES

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

GOVERNMENT ORGANIZATION

Howell (*Chair*), C. Martin (*Vice Chair*), Pyles (*Minority Chair*), Diserio (*Minority Vice Chair*), Azinger, Barnhart, Cadle, Hamrick, Hott, D. Jeffries, J. Jeffries, Kump, Little, Porterfield, Sypolt, Wilson, Worrell, Angelucci, Caputo, Hansen, Hicks, Staggers, Swartzmiller, Tomblin and Walker.

HEALTH AND HUMAN RESOURCES

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

INDUSTRY AND LABOR

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

INTERSTATE COOPERATION

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

JUDICIARY

Shott (*Chair*), Capito (*Vice Chair*), Fleischauer (*Minority Chair*), Fluharty (*Minority Vice Chair*), Bibby, Fast, Foster, D. Kelly, Kessinger, Kump, Mandt, Nelson, Phillips, Queen, Steele, Waxman, Westfall, N. Brown, S. Brown, Byrd, Canestraro, Lovejoy, Miller, Pushkin and Robinson.

PENSIONS AND RETIREMENT

Graves (*Chair*), Nelson (*Vice Chair*), Pethtel (*Minority Chair*), Evans (*Minority Vice Chair*), Anderson, McGeehan and Pack.

POLITICAL SUBDIVISIONS

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

PREVENTION AND TREATMENT OF SUBSTANCE ABUSE

Rohrbach (*Chair*), Kessinger (*Vice Chair*), Robinson (*Minority Chair*), Walker (*Minority Vice Chair*), Bartlett, Ellington, Hanna, D. Kelly, Mandt, Hornbuckle and Pushkin.

RULE-MAKING REVIEW

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

RULES

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

SENIOR, CHILDREN, AND FAMILY ISSUES

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

SMALL BUSINESS, ENTREPRENEURSHIP AND ECONOMIC DEVELOPMENT

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

TECHNOLOGY AND INFRASTRUCTURE

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

VETERANS' AFFAIRS AND HOMELAND SECURITY

Bibby (*Chair, Veterans' Affairs*), Jennings (*Chair, Homeland Security*), Butler (*Vice Chair, Veterans' Affairs*), Steele (*Vice Chair, Homeland Security*), Longstreth (*Minority Chair, Veterans' Affairs*), Canestraro (*Minority Chair, Homeland Security*), Byrd (*Minority Vice Chair, Veterans' Affairs*), Swartzmiller (*Minority Vice Chair, Homeland Security*), Bartlett, Cooper, Higginbotham, D. Kelly, J. Kelly, Little, Rowan, Sypolt, Toney, Wilson, Worrell, Angelucci, Campbell, Fleischauer, Pethtel, Pushkin and Staggers.

COMMITTEES OF THE SENATE
(As of January 8, 2020)

STANDING

AGRICULTURE AND RURAL DEVELOPMENT

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

BANKING AND INSURANCE

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

CONFIRMATIONS

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

ECONOMIC DEVELOPMENT

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

EDUCATION

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

ENERGY, INDUSTRY AND MINING

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

ENROLLED BILLS

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

FINANCE

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

GOVERNMENT ORGANIZATION

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

HEALTH AND HUMAN RESOURCES

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

INTERSTATE COOPERATION

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

JUDICIARY

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

MILITARY

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

NATURAL RESOURCES

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

PENSIONS

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

RULES

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

TRANSPORTATION AND INFRASTRUCTURE

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

WORKFORCE

Roberts (*Chair*), Weld (*Vice Chair*), Boley, Maroney, Rucker, Smith, Tarr, Baldwin, Beach, Jeffries, and Stollings.

SELECT

SELECT COMMITTEE ON CHILDREN AND FAMILIES

Takubo (*Chair*), Weld (*Vice Chair*), Cline, Pitsenbarger, Roberts, Rucker, Hardesty, Prezioso, and Stollings.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND REGULAR SESSION, 2020

CHAPTER 1

(Com. Sub. for S. B. 670 - By Senator Weld)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §56-3-33 of the Code of West Virginia, 1931, as amended, relating to amending the manner of service of process on nonresident persons or corporate entities.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. WRITS, PROCESS, AND ORDER OF PUBLICATION.

§56-3-33. Actions by or against nonresident persons having certain contacts with this state; authorizing Secretary of State to receive process; bond and fees; service of process; definitions; retroactive application.

(a) The engaging by a nonresident, or by his or her duly authorized agent, in any one or more of the acts specified in subdivisions (1) through (7), inclusive, of this subsection shall be considered equivalent to an appointment by a nonresident of the Secretary of State, or his or her successor in office, to be his or her true and lawful attorney upon whom may be served all lawful process in any action or proceeding against him or her, in any circuit court in this state, including an action or proceeding brought by a

nonresident plaintiff or plaintiffs, for a cause of action arising from, or growing out of, such act or acts, and the engaging in such act or acts shall be a signification of such nonresident's agreement that any such process against him or her, which is served in the manner hereinafter provided, shall be of the same legal force and validity as though such nonresident were personally served with a summons and complaint within this state:

(1) Transacting any business in this state;

(2) Contracting to supply services or things in this state;

(3) Causing tortious injury by an act or omission in this state;

(4) Causing tortious injury in this state by an act or omission outside this state if he or she regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(5) Causing injury in this state to any person by breach of warranty expressly or impliedly made in the sale of goods outside this state when he or she might reasonably have expected the person to use, consume, or be affected by the goods in this state: *Provided*, That he or she also regularly does or solicits business, or engages in any other persistent course of conduct, or derives substantial revenue from goods used or consumed or services rendered in this state;

(6) Having an interest in, using, or possessing real property in this state; or

(7) Contracting to insure any person, property, or risk located within this state at the time of contracting.

(b) When jurisdiction over a nonresident is based solely upon the provisions of this section, only a cause of action arising from or growing out of one or more of the acts specified in subdivisions (1) through (7), inclusive,

subsection (a) of this section may be asserted against him or her.

(c) Service shall be made:

By leaving the original and two copies of both the summons and the complaint, and the fee required by §59-1-2 of this code with the Secretary of State, or in his or her office, and this service shall be sufficient upon the nonresident: *Provided*, That notice of the service and a copy of the summons and complaint shall forthwith be sent by registered or certified mail, return receipt requested, by a means which may include electronic issuance and acceptance of electronic return receipts, by the Secretary of State to the defendant at his or her nonresident address and the defendant's return receipt signed by himself or herself or his or her duly authorized agent or the registered or certified mail so sent by the Secretary of State which is refused by the addressee and which registered or certified mail is returned to the Secretary of State, or to his or her office, showing thereon the stamp of the post-office department that delivery has been refused. After receiving verification from the United States Postal Service that acceptance of process, notice, or demand has been signed, the Secretary of State shall notify the clerk's office of the court from which the process, notice, or demand was issued by a means which may include electronic notification. If the process, notice, or demand was refused or undeliverable by the United States Postal Service, the Secretary of State shall create a preservation duplicate from which a reproduction of the stored record may be retrieved which truly and accurately depicts the image of the original record. The Secretary of State may destroy or otherwise dispose of the original returned or undeliverable mail. Written notice of the action by the Secretary of State must then be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the clerk's office of the court from which the process, notice, or demand was issued. If any defendant served with summons and complaint fails to appear and

defend within 30 days of service, judgment by default may be rendered against him or her at any time thereafter. The court may order such continuances as may be reasonable to afford the defendant opportunity to defend the action or proceeding. If the certified mail was returned by the United States Postal Service as unclaimed, unable to forward, or with any other notation other than "accepted" or "refused", notice may be served as follows:

(1) In any manner accepted as service within the domiciled state of the nonresident, or otherwise; or

(2) In any manner otherwise permitted by sections 4(d)(7) or (8) of the West Virginia Rules of Civil Procedure for corporations and any way permitted by section 4(c) of the West Virginia Rules of Civil Procedure for individuals or noncorporate entities.

(d) The fee remitted to the Secretary of State at the time of service shall be taxed in the costs of the action or proceeding. The Secretary of State shall keep a record in his or her office of all such process and the day and hour of service thereof.

(e) The following words and phrases, when used in this section, shall for the purpose of this section and unless a different intent be apparent from the context, have the following meanings:

(1) "Duly authorized agent" means and includes among others a person who, at the direction of or with the knowledge or acquiescence of a nonresident, engages in such act or acts and includes among others a member of the family of the nonresident or a person who, at the residence, place of business, or post office of the nonresident, usually receives and receipts for mail addressed to the nonresident.

(2) "Nonresident" means any person, other than voluntary unincorporated associations, who is not a resident of this state or a resident who has moved from this state

subsequent to engaging in such act or acts, and among others includes a nonresident firm, partnership, or corporation or a firm, partnership, or corporation which has moved from this state subsequent to any of said such act or acts.

(3) "Nonresident plaintiff or plaintiffs" means a nonresident of this state who institutes an action or proceeding in a circuit court in this state having jurisdiction against a nonresident of this state pursuant to the provisions of this section.

(f) The provision for service of process herein is cumulative and nothing herein contained may be construed as a bar to the plaintiff in any action or proceeding from having process in such action served in any other mode or manner provided by the law of this state or by the law of the place in which the service is made for service in that place in an action in any of its courts of general jurisdiction.

(g) This section may not be retroactive and the provisions hereof may not be available to a plaintiff in a cause of action arising from or growing out of any of the acts occurring prior to the effective date of this section.

CHAPTER 2

(H. B. 4559 - By Delegates Shott, Byrd, Pushkin, S. Brown, Fast, Steele and N. Brown)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §55-2-15 of the Code of West Virginia, 1931, as amended, relating to extending the limitation on civil actions against the perpetrator of sexual

assault or sexual abuse upon a minor; adding any person or organization which aided, abetted, or concealed the sexual assault or abuse to the extended statute of limitations; allowing victims to initiate actions for sexual assault or sexual abuse against perpetrators only within four years of discovery regardless of age; and clarifying effect of 2020 amendments as to possible actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. LIMITATIONS OF ACTIONS AND SUITS.

§55-2-15. Special and general savings as to persons under disability.

(a) A personal action for damages resulting from sexual assault or sexual abuse of a person who was an infant at the time of the act or acts alleged, shall be brought against the perpetrator of the sexual assault or sexual abuse, within 18 years after reaching the age of majority, or within four years after discovery of the sexual assault or sexual abuse, whichever is longer. A personal action for damages resulting from sexual assault or sexual abuse of a person who was an infant at the time of the act or acts alleged shall be brought against a person or entity which aided, abetted, or concealed the sexual assault or sexual abuse within 18 years after reaching the age of majority.

(b) If any person to whom the right accrues to bring any personal action other than an action described in subsection (a) of this section, suit, or scire facias, or any bill to repeal a grant, shall be, at the time the same accrues, an infant or insane, the same may be brought within the like number of years after his or her becoming of full age or sane that is allowed to a person having no such impediment to bring the same after the right accrues, or after such acknowledgment as is mentioned in §55-2-8 of this code, except that it shall in no case be brought after 20 years from the time when the right accrues.

(c) The amendments to this section enacted during the 2020 Regular Session of the Legislature are intended to extend the statute of limitations for all actions whether or not an earlier established period of limitation has expired.

CHAPTER 3

(Com. Sub. for S. B. 491 - By Senators Sypolt, Smith, Rucker, Beach, Baldwin, Jeffries and Pitsenbarger)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §19-16-1, §19-16-2, §19-16-3, §19-16-4, §19-16-5, and §19-16-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §19-16-3b, §19-16-5a, and §19-16-9, all relating to the Seed Certification Program within the Department of Agriculture; defining terms; adding flower seed requirements; adding labeling requirements for seed; adding labeling requirements for interstate shipping; authorizing legislative rules for penalties; updating certificate of registration requirements; requiring quarterly tonnage fees and reports for seed; requiring monthly reports for seed potatoes; requiring record retention; updating prohibitions for labeling; setting forth label, signage, and other requirements for noncommercial seed sharing; updating duties and authority of commissioner; authorizing inspections of seed conditioning facilities, issuance of permits, and establishment of fees; and providing for penalties for labeling deficiencies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA SEED LAW.

§19-16-1. Definitions.

"Advertisement" means all representations, other than those on the label, disseminated in any manner or by any means, relating to seed within the scope of this article.

"Agricultural seed" includes forage seeds (grasses and legumes), tobacco, soybeans, cereal, oil, fiber, and other kinds of crop seeds commonly recognized within this state as agricultural seeds, lawn and turf seeds, and combinations of those seeds, and may include noxious weed seeds when the commissioner determines that the seed is being used as agricultural seed.

"Blend" means seed consisting of more than one variety of a kind, each in excess of five percent by weight of the whole.

"Brand" means word/words, name, symbol, number, mark, design, unique design, or any combination which identifies seed of one entity from seed of another.

"Bulk" means seed when loose in vehicles of transportation or in storage, or in retail displays and not in seed bags or other containers.

"Certifying agency" means: (1) An agency authorized under the laws of a state, territory, or possession to officially certify seed and which has standards and procedures approved by the United States Secretary of Agriculture to assure the genetic purity and identity of the seed certified; or (2) an agency of a foreign country determined by the United States Secretary of Agriculture to adhere to procedures and standards for seed certification comparable to those adhered to generally by seed certifying agencies under subdivision (1) of this subsection.

"Coated" means a seed unit covered with any substance which changes the size, shape, or weight of original seed. Seeds coated with ingredients such as, but not limited to, rhizobia, dyes, and pesticides are not considered coated seeds.

"Commissioner" refers to the Commissioner of Agriculture of the State of West Virginia or a duly authorized employee.

"Complete record" means any and all information which relates to the origin, treatment, germination, purity, kind, and variety of each lot of agricultural seed sold in this state, or which relates to the treatment, germination, kind, and variety of each lot of vegetable, or tree and shrub seed sold in this state. The information shall include seed samples and records of declarations, labels, purchases, sales, conditioning, bulking, treatment, handling, storage, analyses, tests, and examinations.

"Conditioning" means drying, cleaning, scarifying, and other operations which may change the purity or germination of the seed and require the seed lot to be retested to determine the label information.

"Dealer" means any person who exclusively sells, exposes for sale, offers for sale, exchanges, or barters seed for sowing purposes within this state to the ultimate consumer.

"Distinct" means that the variety can be differentiated by one or more identifiable morphological, physiological, or other characteristics from all other varieties of public knowledge.

"Distribute" means to offer for sale, sell, expose for sale, exchange, or barter seed for sowing purposes within the state.

"Distributor" means any person who sells, exposes for sale, offers for sale, exchanges, barters, gives, parcels out, allots, shares, or dispenses a seed for sowing purposes within the state.

"Dormant" means viable seed, excluding hard seed, which fails to germinate when provided the specified germination conditions for the kind of seed in question.

"Flower seeds" includes seeds of herbaceous plants grown for their blooms, ornamental foliage, or other ornamental parts, and commonly known and sold under the name of flower or wildflower seeds in this state.

"Genuine growers declaration" means a statement signed by the grower which gives for each lot of seed the lot number, kind, variety (if known), origin, weight, year of production, date of shipment, and to whom the shipment was made.

"Germination" means the emergence and development from the seed embryo of those essential structures which, for the kind of seed in question, are indicative of the ability to produce a normal plant under favorable conditions.

"Hard seeds" means seeds which remain hard at the end of the prescribed test period because they have not absorbed water due to an impermeable seed coat.

"Hermetically sealed" means a container that is designed and intended to be secure against the entry of microorganisms and thereby to maintain the commercial sterility of its contents after processing.

"Hybrid" means the first generation seed of a cross produced by controlling the pollination and by combining: (1) Two or more inbred lines; (2) one inbred or a single cross with an open-pollinated variety; or (3) two varieties or species, except open-pollinated varieties of corn (Zea mays). The second generation of subsequent generations from the crosses shall not be regarded as hybrids. Hybrid designations shall be treated as variety names.

"Inert matter" means all matter not seed, which includes, but is not limited to, broken seeds, sterile florets, chaff, fungus bodies, and stones, as determined by methods defined by rule.

"Introduced wildflower" means kinds, or the types and varieties derived from those kinds that are not indigenous to North America.

"Kind" means one or more related species or subspecies which singly or collectively is known by one common name, for example, corn, oats, alfalfa, and timothy.

"Labeling" includes a tag or other device attached to or written, stamped, or printed on any container or accompanying any lot of bulk seeds purporting to set forth the information required on the seed label by this act, and it may include any other information relating to the labeled seed.

"Lot" means a definite quantity of seed identified by a lot number, code number, or other mark, every portion or bag of which is uniform within recognized tolerances for the factors which appear on the label.

"Mixture", "mix", or "mixed" means seed consisting of more than one kind or variety, each present in excess of five percent by weight of the whole. A mixture of varieties of a single kind may be labeled as a blend.

"Mulch" means a protective covering of any suitable substance placed with seed which acts to retain sufficient moisture to support seed germination and sustain early seedling growth, and aid in the prevention of the evaporation of soil moisture, the control of weeds, and the prevention of erosion.

"Native wildflower" means kinds or the types and varieties derived from those kinds that are indigenous to North America.

"Noxious weed seeds" includes prohibited noxious weed seeds, restricted noxious weed seeds, and undesirable grass seed.

"Off type" means any seed or plant not a part of the variety in that it deviates in one or more characteristics from the variety as described and may include: A seed or plant of another variety; a seed or plant not necessarily any variety; a seed or plant resulting from cross-pollination by another kind or variety; a seed or plant resulting from uncontrolled self-pollination during production of hybrid seed; or segregates from any of the off types set forth in this subsection.

"Official sample" means any sample of seed taken by the commissioner in accordance with the provisions of this article and rules promulgated under this article.

"Origin", for an indigenous stand of trees, means the area on which the trees are growing; for a nonindigenous stand, it is the place from which the seeds or plants were originally introduced.

"Other crop seed" means seed of plants grown as crops (other than the kind or variety included in the pure seed) as determined by methods defined by rule.

"Person" means an individual, partnership, corporation, company, association, receiver, trustee, agent, fiduciary, firm, or any group of organized persons, whether incorporated or not.

"Prohibited noxious weed seeds" means those weed seeds which are prohibited from being present in agricultural, vegetable, or tree and shrub seed, and are the seeds of weeds which are highly destructive and difficult to control by good cultural practices and the use of herbicides.

"Pure live seed" means the product of the percent of germination, plus hard or dormant seed, multiplied by the percent of pure seed divided by 100, where the result is expressed as a whole number.

"Pure seed" means seed exclusive of inert matter and all other seeds not of the seed being considered as determined by methods defined by rule.

"Purity" means the name or names of the kind, type, or variety and the percentage or percentages thereof; the percentage of other agricultural seed or crop seed; the percentage of weed seeds, including noxious weed seeds; the percentage of inert matter; and the names of the noxious weed seeds and the rate of occurrence of each.

"Registrant" means any person who registers as a seedsman in order to distribute seed for sowing purposes within the state.

"Restricted noxious weed seeds" means those weed seeds which are objectionable in agricultural crops, lawns, and gardens of this state, but which can be controlled by good cultural practices or the use of herbicides.

"Seed potato" refers to vegetatively propagated tubers used or intended to be used for potato production which must grade equal to or better than the minimum requirements of U.S. No. 1, from the standpoint of physical defects, size, or disease, and must be certified by an official certifying agency.

"Sell-by date" means the last date that the seed may legally be sold in the state.

"Seizure" means a legal process carried out by court order against a definite amount of seed.

"Stable" means that the variety will remain unchanged in its essential and distinctive characteristics and its uniformity when reproduced or reconstituted as required by the different categories of varieties.

"Stop sale or embargo" means an administrative order, provided by this article, restraining the sale, use, disposition, and movement of a definite amount of seed.

"Test date" means the month and year in which the germination test was completed.

"Total viable" means the sum of percentage germination plus dormant plus hard seeds.

"Treated" means that the seed has received an application of a substance, or that it has been subjected to a process for which a claim is made. For label, shall be the commonly accepted coined, chemical (generic), biological, or abbreviated chemical name.

"Tree and shrub seeds" includes seeds of woody plants commonly known and sold as tree and shrub seeds in this state.

"Tree seed collector's declaration" means a statement, signed by a grower or person having knowledge of the place of collection, giving, for a lot of seed, the lot number, common or scientific name of the species (and subspecies, if appropriate), origin, elevation, and quantity of tree and shrub seed.

"Type" means a group of varieties so nearly similar that the individual varieties cannot be clearly differentiated, except under special conditions.

"Undesirable grass seeds" means seeds of grass species declared to be restricted noxious weed seed when found in lawn and turf seed.

"Uniform" means that the variations in essential and distinctive characteristics are describable.

"Variant" means any seed or plant which: (1) Is distinct within the variety but occurs naturally in the variety; (2) is stable and predictable with a degree of reliability comparable to other varieties of the same kind, within recognized tolerances, when the variety is reproduced or reconstituted; and (3) was originally a part of the variety as released. A variant is not an off-type.

"Variety" means a subdivision of a kind which is distinct, uniform, and stable.

"Vegetable or herb seeds" includes the seeds of those crops which are grown in gardens or on truck farms and are generally known and sold under the name of vegetable or herb seeds in this state.

"Weed seed" means the seeds of all plants generally recognized as weeds within this state, as determined by methods defined by rule, and includes the categories of prohibited noxious weed seeds and restricted noxious weed seeds.

§19-16-2. Label requirements for agricultural crops, lawn and turf, vegetable, tree and shrub, flower seeds, and seed potatoes.

(a) Each container of agricultural, vegetable, or flower seeds which is distributed or transported within this state for sowing purposes shall bear on the container, or have attached to the container in a conspicuous place, a plainly written or printed label or tag in the English language.

(b) For all treated agricultural, vegetable, or flower seeds (for which a separate label may be used) the label shall include the following:

(1) A word or statement indicating that the seed has been treated;

(2) The commonly accepted coined, chemical, biological, or abbreviated chemical (generic) name of the applied substance or description of the process used;

(3) A caution statement, such as "do not use for food, feed, or oil purposes", if the substance in the amount present with the seed is harmful to humans or other vertebrate animals. The caution for toxic substances shall be a poison statement or symbol, or both a poison statement and symbol; and

(4) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed is treated with an inoculant.

(c) For agricultural seeds, except for grass seed mixtures, seed sold on a pure live seed basis, or for hybrids which contain less than 95 percent hybrid seed, the label shall include the following:

(1) The commonly accepted name of the kind and variety for each agricultural seed component present in excess of five percent of the whole and the percentage by weight of each in order of its predominance. Hybrids shall be labeled as hybrids;

(2) The lot number or other lot identification;

(3) The origin (state or foreign country), if known, of alfalfa, red clover, and field corn (except hybrid corn). If the origin is unknown, that fact shall be stated;

(4) The percentage by weight of all weed seeds;

(5) The name and rate of occurrence per pound or ounce of each kind of restricted noxious weed seed or undesirable grass seed present. The name and approximate number of each kind of noxious weed seed: (A) Per ounce in Agrostis spp., Poa spp., Rhodes grass, Bermuda grass, timothy, orchard grass, fescues, alsike and white clover, reed canary grass, Dallas grass, ryegrass, foxtail millet, alfalfa, red clover, sweet clovers, lespedezas, smooth brome, crimson clover, Brassica spp., flax, Agropyron spp., and other agricultural seeds of similar size and weight, or mixtures within this group; and (B) per pound in Sudan grass, wheat, oats, rye, barley, buckwheat, sorghums, vetches, and other agricultural seeds of a size and weight similar to or greater than those within this group, or any mixtures within this group;

(6) The percentage by weight of agricultural seeds (which may be designated as "crop seeds") other than those required to be named on the label;

(7) The percentage by weight of inert matter;

(8) For each named agricultural seed:

(A) The percentage of germination, exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages; and

(D) If the registrant chooses, the "total germination and hard seed";

(9) The name and address of the person who labeled the seed, or who distributes the seed within this state; and

(10) The total of subdivisions (1), (4), (6), and (7) of this subsection must equal 100 percent.

(d) For grass seed mixtures for lawn or turf purposes the label shall include the following:

(1) The word "mixed", "mixture", or "blend" with the name of the mixture or blend;

(2) The heading "Pure Seed" and "Germination", or "Germ" in the proper places;

(3) The commonly accepted name of kind, or kind and variety of each agricultural seed component in excess of five percent of the whole, and the percentage by weight of pure seed in order of its predominance and in columnar form;

(4) The percentage by weight of agricultural seed other than those required to be named on the label (which shall be designated as "crop seed");

(5) The percentage by weight of inert matter not to exceed 10 percent by weight, except that 15 percent inert matter is permitted in Kentucky Bluegrass labeled without a variety name. Except for coating material, fertilizer, and mulch, as provided by subdivision three, subsection (e) of this section, foreign material not common to grass seed shall not be added;

(6) The percentage by weight of all weed seeds. Maximum weed seed content may not exceed one half of one percent by weight;

(7) Noxious weed seeds and undesirable grass seed that are required to be labeled by rule and listed under the heading "Noxious Weed Seeds" or "Undesirable Grass Seed". Undesirable grass seed may not exceed 0.5 percent by weight;

(8) For each agricultural seed named under subdivision (3) of this subsection:

(A) The percentage of germination, exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages. The most recent available chronological test date shall be used; and

(D) When only one test date is listed for the entire mixture, the listed test date shall be the oldest chronological test date of the components;

(9) The name and address of the person who labeled the seed, or who distributes the seed within the state.

(10) The total of subdivisions (3), (4), (5), and (6) of this subsection must total 100 percent.

(e) For agricultural seeds that are coated, the label shall include the following:

(1) The percentage by weight of pure seeds with coating material removed;

(2) The percentage by weight of coating material;

(3) The percentage by weight of inert material exclusive of coating material;

(4) Percentage of germination, to be determined on 400 pellets with or without seeds; and

(5) In addition to the provisions of this subsection, the labeling of coated seed shall comply with the requirements of subsections (b), (c), and (d) of this section.

(f) For vegetable seeds in packets as prepared for use in home gardens or household plantings; or in preplanted containers, mats, tapes, or other planting devices, the label shall include the following:

(1) The name of kind and variety of seed;

(2) The lot number or other lot identification;

(3) One of the following:

(A) The calendar month and year the germination test was completed and the statement "Sell by", which date may be no more than 12 months from the date of the test, exclusive of the month of the test;

(B) The year for which the seed was packed for sale, noted by the statement "Packed for" or "Sell by" which blank shall be filled by the calendar year; or

(C) The percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have

been completed within 12 months exclusive of the month of the test; and

(4) The name and address of the person who labeled the seed or who distributes the seed for sale within this state.

(g) For seeds which germinate less than the standard as established by rule promulgated under this article, the label shall include the following:

(1) The percentage of germination, exclusive of hard seed;

(2) The percentage of hard seed, if present; and

(3) The words "Germination Below Standard" in not less than eight-point type.

(h) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to include the minimum number of seeds in the container.

(i) For vegetable seeds in containers other than packets prepared for use in home gardens or household plantings, and other than preplanted containers, mats, tapes, or other planting devices, the label shall include the following:

(1) The name of each kind and variety present in excess of five percent and the percentage by weight of each in order of its predominance;

(2) The lot number or other lot identification;

(3) For each named vegetable seed:

(A) The percentage germination exclusive of hard seed;

(B) The percentage of hard seed, if present;

(C) The calendar month and year the test was completed to determine the percentages; and

(D) If the registrant chooses, the "total germination and hard seed";

(4) The name and address of the person who labeled the seed, or who distributes the seed within this state.

(j) For flower seeds in packets prepared for use in home gardens or household plantings or flower seeds in preplanted containers, mats, tapes, or other planting devices:

(1) For all kinds of flower seeds:

(A) The name of the kind and variety, or a statement of type and performance characteristics as prescribed in the rules and regulations promulgated under the provisions of this article;

(B) One of the following:

(i) The calendar month and year the germination test was completed and the statement "Sell by", which date may be no more than 12 months from the date of the test, exclusive of the month of the test;

(ii) The year for which the seed was packed for sale, noted by the statement "Packed for" or "Sell by", which blank shall be filled by the calendar year; or

(iii) The percentage germination and the calendar month and year the test was completed to determine such percentage, provided that the germination test must have been completed within 12 months exclusive of the month of the test; and

(C) The name and address of the person who labeled said seed, or who sells, offers, or exposes said seed for sale within this state.

(2) For seeds of those kinds for which standard testing procedures are prescribed and which germinate less than the germination standard last established under the provisions of this article:

(A) The percentage of germination exclusive of hard seeds;

(B) The percentage of hard or dormant seed, if present; and

(C) The words "Below Standard", in not less than eight-point type.

(3) For seeds placed in a germination medium, mat, tape, or other device in such a way as to make it difficult to determine the quantity of seed without removing the seeds from the medium, mat, tape, or device, a statement to indicate the minimum number of seeds in the container.

(k) For flower seeds in containers other than those contained in subsection (j) of this section:

(1) The name of the kind and variety or a statement of type and performance characteristics as prescribed in rules and regulations promulgated under the provisions of this article, and for wildflowers, the genus, species, and subspecies, if appropriate.

(2) The lot number or other lot identification.

(3) For wildflower seed only with a pure seed percentage of less than 90 percent:

(A) The percentage by weight of each component listed in order of their predominance;

(B) The percentage by weight of weed seed, if present; and

(C) The percentage by weight of inert matter.

(4) For those kinds of seed for which standard testing procedures are prescribed:

(A) The percentage germination exclusive of hard or dormant seed;

(B) The percentage of hard or dormant seed, if present; and

(C) The calendar month and year that the test was completed to determine such percentages.

(5) For those kinds of seed for which standard testing procedures are not available, the year of production or collection.

(6) The name and address of the person who labeled the seed or who sells, offers, or exposes the seed for sale within this state.

(l) For agricultural seeds sold on a pure live seed basis in accordance with the rules promulgated pursuant to this article, each container must bear a label containing the information required by subsection (c) of this section, except that:

(1) The label need not show:

(A) The percentage by weight of each agricultural seed component, as required by subdivision (1), subsection (c) of this section; or

(B) The percentage by weight of inert matter, as required by subdivision (7), subsection (c) of this section; and

(2) The label must show for each named agricultural seed, instead of the information required by subdivision (8), section (c) of this section:

(A) The percentage of pure live seed determined in accordance with rules; and

(B) The calendar month and year in which the test determining the percentage of live seed was completed.

(m) For agricultural and vegetable hybrid seed which contain less than 95 percent hybrid seed, the label shall include the following:

(1) The kind or variety which must be labeled as "hybrid";

(2) The percent which is hybrid, labeled parenthetically in direct association following named variety, such as, Comet (85 percent Hybrid); and

(3) Varieties in which the pure seed contain less than 75 percent hybrid seed which shall not be labeled as hybrids.

(n) For combination mulch, seed, and fertilizer products the label shall include the following:

(1) The word "combination" followed by the words "mulch — seed — fertilizer (if appropriate)" on the upper 30 percent of the principal display panel. The word "combination" must be the largest and most conspicuous type on the container, equal to or larger than the product name. The words "mulch — seed — fertilizer" shall be no smaller than one-half the size of the word "combination" and in close proximity to the word "combination". These products shall contain a minimum of 70 percent mulch; and

(2) For agricultural, lawn, and turf seeds placed in a germination medium, mat, tape, or other device or mixed with mulch:

(A) The product name;

(B) The lot number;

(C) The percentage by weight of pure seed of each kind and variety named which may be less than five percent of the whole;

(D) The percentage by weight of other crop seeds;

(E) The percentage by weight of inert matter which shall not be less than 70 percent;

(F) The percentage by weight of weed seeds;

(G) The name and number of noxious weed seeds per pound or ounce, if present;

(H) The percentage of germination (and hard seed if appropriate) of each kind or kind and variety named and date of test;

(I) The name and address of the person who labeled the seed, or who distributes the seed within this state; and

(J) The totals of paragraphs (C), (D), (E), and (F) of this subdivision must total 100 percent.

(o) The labeling requirements for agricultural, vegetable, and flower seeds shall be considered to have been met if the seed is weighed from a properly labeled bulk container in the presence of the purchaser.

(p) Once a dealer has broken the seal on a container of seed for any reason, the dealer is fully responsible for its contents, including the guarantees for purity, germination rate, and anything else pertaining to the integrity of the opened seed container.

(q) For combination products containing seed and granular fertilizer:

(1) The word “combination” followed by the words “seed-fertilizer” must appear on the upper 30 percent of the principal display panel. The word “combination” must be the largest and most conspicuous type on the container, equal to or larger than the product name. The word “seed-fertilizer” shall be no smaller than one-half the size of the

word "combination" and in close proximity to the word "combination".

(2) On the analysis label, the percentage by weight of the fertilizer in the container shall be listed on a separate line as a component of the inert matter.

(r) Label requirements for tree and shrub seeds:

Each container of tree and shrub seed which is distributed or transported within this state for sowing purposes shall bear on the container or have attached on the container in a conspicuous place a plainly written or printed statement on the label or tag in the English language, giving the information required under this subsection. The statement may not be modified or denied in the labeling or on another label attached to the container — except that labeling of seed supplied under a contractual agreement may be by invoice accompanying the shipment or by an analysis tag attached to the invoice, if each bag or other container is clearly identified by a lot number stenciled on the container, or if the seed is in bulk. Each bag or container that is not identified shall carry complete labeling.

(1) For all treated tree and shrub seeds as defined in this article (for which a separate label may be used):

(A) A word or statement indicating that the seed has been treated;

(B) The commonly accepted coined, chemical, biological, or abbreviated chemical (generic) name of the applied substance or description of the process used;

(C) A caution statement, such as "Do not use for food, feed or oil purposes", if the substance in the amount present with the seed may be harmful to humans or other vertebrate animals. The caution for mercurials and similarly toxic substances shall be a poison statement and symbol; and

(D) The date beyond which the inoculant is not to be considered effective (date of expiration), if the seed has been treated with an inoculant;

(2) For all tree and shrub seeds subject to the article:

(A) The common name of the species of seed (and subspecies, if appropriate);

(B) The scientific name of the genus and species (and subspecies, if appropriate);

(C) The lot number or other lot identification; and

(D) Their origin:

(i) For seed collected from a predominantly indigenous stand, the area of collection given by latitude and longitude, or geographic description, or political subdivision such as state or county;

(ii) For seed collected from other than a predominantly indigenous stand, the area of collection and the origin of the stand or the statement "Origin not Indigenous";

(E) The elevation or the upper and lower limits of elevations within which the seed was collected;

(F) The purity as a percentage of pure seed by weight;

(G) For those species for which standard germination testing procedures are prescribed by the commissioner, the following:

(i) Percentage germination exclusive of hard seed;

(ii) Percentage of hard seed, if present;

(iii) The calendar month and year test was completed to determine such percentages; or

(iv) In lieu of subparagraphs (i), (ii), and (iii) of this paragraph, the seed may be labeled "Test is in process, results will be supplied upon request";

(H) For those species for which standard germination testing procedures have not been prescribed by the commissioner, the calendar year in which the seed was collected;

(I) The name and address of the person who labeled the seed or who distributes the seed within this state.

(s) Label requirements for seed potatoes:

The following information shall appear on each label attached to a bag or container of certified seed potato:

(A) The name of the person or agency certifying such seed potato;

(B) The name of the official state or governmental agency making the inspection upon which the certification is made; and

(C) The name and address or identification number of the grower of such seed potatoes.

(t) *Required labeling for interstate shipping.* – The full name and address of the interstate shipper shall appear upon the label. If the name and address of the interstate shipper are not shown upon the label, an AMS number identifying the interstate shipper shall be shown, along with the full name and address of the consignee.

§19-16-3. Certificate of registration; seed fees; payment of fees; disposition of funds.

(a) No person may distribute any agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes without a valid certificate of registration issued by the commissioner. Application forms shall be provided by the commissioner

and the application fee shall be set forth in a legislative rule. Each certificate of registration expires on December 31 following the next date of issue. A dealer may not be required to register, if he or she can prove that the person he or she is obtaining the seed from has a valid certificate of registration.

(b) A person shall apply for a certificate of registration at least 15 days prior to the expiration of the current registration; or at least 15 days prior to the date that the person intends to engage in business in this state. Each application shall be accompanied by the required application fee. The commissioner shall add a penalty to the fee for each registration, as set forth in legislative rules, that is not applied for or renewed within the time limit.

(c) Certificates of registration are not transferable with respect to persons or locations.

(d) The commissioner may refuse to grant, or may suspend or revoke, a certificate of registration when it is determined that the applicant or registrant has violated the provisions of this article or any rule promulgated under this article: *Provided*, That the applicant or registrant may request a hearing prior to the denial of the application or suspension or revocation of the registration.

(e) Each person who holds a valid certificate of registration is required to pay a tonnage fee on seed sold in this state and shall report to the commissioner the net pounds or kilograms of seeds distributed and sold by kind or variety, except for seed potatoes, on a quarterly basis. Each report shall be filed under oath and is due before the last day of January, April, July, and October of each year for the preceding three-month period. He or she shall pay the tonnage fee according to the fee schedule for agriculture, vegetable, tree and shrub, and flower seeds as set by legislative rules. The commissioner may add a penalty, as set forth in legislative rules, to the tonnage fee for each tonnage report that is not filed on time.

(f) Persons distributing vegetable and flower seeds packaged in containers of eight ounces or 226.8 grams or less and sold from display units are exempt from reporting poundage and paying a poundage fee: *Provided*, That a seed stamp be purchased from the commissioner, at the rate set by legislative rules, and placed in a conspicuous place on each display unit.

(g) Persons first distributing seed potatoes into West Virginia trade channels shall report to the commissioner the net pounds or kilograms of seed potatoes distributed monthly in arrears: *Provided*, That payments for the previous month shall be made not later than the 15th day of the following month, as set by legislative rules.

(h) A person who holds a valid certificate of registration shall keep accurate records, as may be necessary or required by the commissioner, to indicate the pounds of agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes distributed in this state.

(i) All fees and penalties collected under the provisions of this article shall be deposited with the State Treasurer in a special revenue account. These moneys shall be expended by the Commissioner of Agriculture for inspection, sampling, analysis, and other expenses necessary for the administration of this article.

§19-16-3b. Records.

Each person whose name appears on the label as handling agricultural, vegetable, tree and shrub, or flower seeds subject to this article shall keep, for a period of two years, complete records of each lot of agricultural, vegetable, tree and shrub, or flower seeds handled, and shall keep for one year a file sample of each lot of seed after final disposition of said lot. All such records and samples shall be accessible for inspection by the commissioner during customary business hours.

§19-16-4. Prohibitions.

(a) It is unlawful for any person to distribute or transport for sale any agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes within this state:

(1) Which have not been tested to determine germination rates as required under §19-16-2 of this code;

(2) Which is not labeled in accordance with the provisions of this article or has false or misleading labeling;

(3) Which has been the subject of false or misleading advertisement;

(4) Which consists of or contains prohibited noxious weed seeds, subject to tolerances and methods of determination as prescribed by rules promulgated under this article;

(5) Which consists of or contains restricted noxious weed seeds per pound or ounce in excess of the number prescribed by rules promulgated under this article, or in excess of the number declared on the label attached to the container of the seed or associated with seed;

(6) Which contains more than two and one-half percent by weight of all weed seeds;

(7) If any labeling, advertising, or other representation subject to this article represents the seed to be certified seed or any class thereof unless:

(A) It has been determined by a seed certifying agency that the seed conformed to standards of purity and identity as to kind, species (and subspecies, if appropriate), or variety, and also that tree seed was found to be of the origin and elevation claimed, in compliance with the rules of that agency pertaining to the seed; and

(B) That the seed bears an official label issued for that seed by a seed certifying agency certifying that the seed is of a specified class and a specified kind, species (and subspecies, if appropriate), or variety;

(8) Labeled with a variety name but not certified by an official seed certifying agency when it is a variety for which a U. S. certificate of plant variety protection under the Plant Variety Protection Act specifies sale only as a class of certified seed: *Provided*, That seed from a certified lot may be labeled as to variety name when used in a mixture by, or with the approval of, the owner of the variety.

(b) It is unlawful for any person within this state:

(1) To detach, alter, deface, or destroy any label provided for in this article or the rules promulgated under this article, or to alter or substitute seed in a manner that may defeat the purpose of this article;

(2) To use relabeling stickers without having both the calendar month and year the germination test was completed, the sell-by date, and the lot number that matches the existing, original lot number: *Provided*, That relabeling may not occur more than one time;

(3) To disseminate any false or misleading advertisement concerning seeds subject to this article in any manner or by any means;

(4) To interfere with the commissioner's official duties;

(5) To fail to comply with a "stop sale or embargo" order or to move or otherwise handle or dispose of any lot of seed held under a "stop sale or embargo" order or tags attached to the lot of seed, unless released by the commissioner, and for the purpose specified by the commissioner;

(6) To use the word "trace" or the phrase "contains < 0.01 percent" as a substitute for any statement which is required;

(7) To use the word "type" in any labeling in connection with the name of any agricultural seed variety;

(8) To distribute or knowingly use any agricultural, vegetable, tree and shrub, or flower seed that is misbranded;

(9) To misbrand any agricultural, vegetable, tree and shrub, or flower seed or seed potato. An agricultural, vegetable, flower, or tree and shrub seed, or seed potato is misbranded:

(A) If its label or labeling is false or misleading;

(B) If it is not labeled as required by this article;

(C) If any word, statement or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use; and

(D) If any damage or inferiority has been concealed;

(10) To distribute or knowingly use any agricultural, vegetable, or tree and shrub seed or seed potato that has not had an accurate statement of poundage reported to the commissioner in the previous reporting period;

(11) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of agricultural, vegetable, flower, or tree and shrub seed, or seed potatoes; or

(12) To falsify any laboratory reports regarding seed distributed within this state.

§19-16-5. Exemptions.

(a) The provisions of §19-16-2, §19-16-3, §19-16-4, and §19-16-8 of this code do not apply:

(1) To seed or grain not intended for sowing purposes;

(2) To seed in storage, or seed being transported or consigned to a cleaning or conditioning establishment for cleaning or conditioning: *Provided*, That the invoice, label or labeling accompanying any shipment of the seed bears the statement "seeds for conditioning"; and that any label or labeling or other representation which may be made with respect to the uncleaned or unconditioned seed is subject to this article; or

(3) To any carrier in respect to any seed transported or delivered for transportation in the ordinary course of its business as a carrier: *Provided*, That the carrier is not engaged in producing, conditioning, or marketing seeds subject to the provisions of this article.

(b) No person is subject to the penalties of this article for having sold or offered for sale seeds subject to provisions of this article which were incorrectly labeled or represented as to kind, species (and subspecies, if appropriate), variety, type, or origin, elevation, and year of collection (if required), which cannot be identified by examination, unless he or she has failed to obtain an invoice, genuine grower's or tree seed collector's declaration, or other labeling information and to take such other precautions as may be reasonable to ensure the identity to be that which is stated. A genuine grower's declaration of variety shall affirm that the grower holds records of proof concerning parent seed, such as invoice and labels.

(c) The provisions of §19-16-2 and §19-16-3 of this code do not apply to tree seed produced by the consumer.

§19-16-5a. Label, signage, and other requirements for noncommercial seed sharing.

(a) Each container of agricultural, vegetable, and flower seeds distributed for sowing purposes in a noncommercial setting shall bear thereon or have attached thereto in a conspicuous place a plainly written or printed label or tag in the English language, conveying the following information:

(1) The name of the species or commonly accepted name of kind, or kind and variety of each agricultural seed component present. Hybrids shall be labeled as hybrids;

(2) A word or statement indicating if the seed has been treated and, if treated, must be labeled in accordance with applicable state and federal laws;

(3) Some form of reference identification that provides traceability. Retention of posterity file samples are not required;

(4) Name and city or address of the noncommercial seed sharing entity; and

(5) The calendar month and year the seed was donated.

(b) The seed shall be free of foreign material, other than coatings or treatments, including germination medium, mulch, fertilizer, preplanted containers, mats, tapes, or other planting devices.

(c) No distributed container shall hold more than eight ounces of agricultural seed or four ounces of vegetable or flower seed.

(d) Germination and purity analysis is not required, however if a germination or purity percentage is noted on the label, it must be noted whether or not the analysis was performed according to the AOSA rules for testing seed.

(e) At each location involved with noncommercial seed sharing a legible and visible sign shall state that the seeds

being distributed may not meet germination or varietal purity standards prescribed by the state seed law. The sign must also state that patented seed or varieties protected by the Plant Variety Protection Act will not be accepted or distributed without permission of the certificate holder.

§19-16-6. Duties and authority of Commissioner of Agriculture.

The commissioner may:

(a) Establish by legislative rule germination standards for agricultural, vegetable, tree and shrub, or flower seeds;

(b) Enter and inspect, during reasonable hours, any location where agricultural, vegetable, tree and shrub, or flower seeds, or seed potatoes for sowing purposes are manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of seed are kept. This inspection shall include, but is not limited to, examining, photographing, verifying, copying, and auditing records as is necessary to determine compliance with this article, labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of agricultural, vegetable, tree and shrub seeds or seed potatoes;

(c) Open, examine, sample, and test agricultural, vegetable, tree and shrub, or flower seed, or seed potatoes, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of seeds used for sowing purposes;

(d) Issue certificates of registration pursuant to this article;

(e) Refuse applications for registration, or suspend or revoke registrations as provided in this article;

(f) Issue “stop sale or embargo” orders as provided in this article;

(g) Condemn and confiscate any agricultural, vegetable, tree and shrub, or flower seed, or seed potato that is not brought into compliance with this article;

(h) Collect fees and penalties and expend moneys under the terms of this article;

(i) Conduct sampling in accordance with the official methods as established by the Association of American Seed Control Officials, the United States Department of Agriculture, or the Association of Official Seed Analysts;

(j) Conduct hearings as provided by this article;

(k) Assess civil penalties and refer violations to a court of competent jurisdiction;

(l) Obtain court orders directing any person refusing to submit to inspection, sampling and auditing to submit;

(m) Establish and maintain seed testing facilities; establish reasonable fees for the tests; incur expenses; and conduct tests in accordance with the Association of Official Seed Analysts;

(n) Be guided by the analytical results of the official sample when determining whether the agricultural, vegetable, tree and shrub, or flower seed is deficient in any component;

(o) Report the analytical results on all official deficient samples to the registrant, dealer, purchaser if known and or the distributor;

(p) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the registrant;

(q) Publish and distribute annually a composite report containing: (1) The sales of agricultural, vegetable, tree and shrub, or flower seed, and seed potatoes during the preceding period; (2) the results of analysis of official

samples as compared with the guarantee on the label; (3) the firms responsible for the product; and (4) such other data the commissioner considers necessary: *Provided*, That the information on production and use provided does not disclose the operations of any person;

(r) Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations in order to carry out the purpose and provisions of this article;

(s) Establish fees by legislative rule;

(t) Propose rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code;

(u) Promulgate emergency rules within 90 days of the passage of this bill into law; and

(v) Inspect and approve seed conditioning facilities in the state, issue permits, and establish fees.

§19-16-9. Deficiencies.

(a) If the analysis of a sample shows a deviation from the permitted analytical variation, the registrant or other responsible person shall be penalized according to legislative rule. Penalties for multiple deficiencies within a sample shall be incremental: *Provided*, That in no case shall the penalty exceed the retail value of the product.

(b) The penalty shall be assessed and collected from the person responsible for the labeling requirements of the seed. If seed is sampled in the hands of a consumer who purchased to plant and not to sell, the penalty shall be assessed to the seedsman or distributor, whichever is applicable. In no case shall the penalty assessed exceed the fair market value of the seed. The total amount of seed in each lot at the time of sampling shall be used to determine the penalty.

(c) All penalties assessed under this section shall be paid to the consumer of the lot of regulated product represented by the sample analyzed. If the consumer cannot be found or is unknown, the amount of the penalty shall be paid to the commissioner and deposited in the Department of Agriculture's fees account.

CHAPTER 4

(Com. Sub. for H. B. 4693 - By Delegates Pack, Steele, Cooper, Paynter, Summers and J. Jeffries)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §19-1-12 of the Code of West Virginia, 1931, as amended, relating to renaming the Veteran and Warriors to Agriculture Program to the Veterans and Heroes to Agriculture Program; renaming Veterans and Warriors to Agriculture fund; eliminating outdated language; and authorizing the Commissioner of Agriculture to expand the scope of the program to additional classes of persons.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-12. Veterans and Heroes to Agriculture Program and fund.

(a) *Legislative findings.* — West Virginians have a longstanding tradition of service in the armed forces of the United States. Many veterans suffer from physical and emotional afflictions and are often unable to find gainful employment upon returning from combat. Exploring opportunities to engage West Virginia's veterans in agriculture is beneficial to the health and welfare of

veterans, as well as to the future of West Virginia's agricultural economy.

(b) *Veterans and Heroes to Agriculture Program.* — The Department of Agriculture shall develop a Veterans and Heroes to Agriculture Program to integrate veterans into the field of agriculture, and support veterans currently working in agriculture. These programs may include, but are not limited to, using post-mine land for agricultural development, promoting high tunnel crops and production, expanding the apiary industry, developing cottage industries, exploring niche crops, raising more livestock, increasing the aquaculture industry and helping veterans promote their agricultural products through farmers markets and cooperatives. The department may call on the Department of Veterans' Assistance and the state's Adjutant General for assistance to recruit and train eligible veterans, and develop and support the program.

(c) *Veterans and Heroes to Agriculture Fund.* —The Veterans and Warriors to Agriculture Fund is continued, but is renamed the Veterans and Heroes to Agriculture Fund. The fund shall consist of income from leasing the department's property for the program, surplus funds which may be transferred from the fund created by §19-12A-6a, gifts, grants and donations, and legislative appropriations which may be made to support the program. Expenditures from the fund shall be used exclusively, in accordance with appropriations by the Legislature, to pay costs, fees and expenses necessary to administer the Veterans and Heroes to Agriculture Program.

(d) Notwithstanding any provision in this code to the contrary, should the Department of Agriculture deem it necessary to provide land for activities within this program, it is exempt from the purchasing requirements as they relate to the competitive leasing of state property.

(e) The commissioner may propose emergency or legislative rules for approval in accordance with the

provisions of §29A-3-1 *et seq.* to effectuate the provisions of this section.

(f) *Expansion of Veterans and Heroes to Agriculture Program.* — The Legislature finds that West Virginians also proudly answers the call to serve domestically in emergency response and law enforcement roles, including as police officers, sheriffs, firefighters, emergency medical technicians, and first responders. The Legislature further finds that farming, including growing corn, is a process that involves more than digging a hole, putting a seed in with dirt on top, and adding water. To that end, the commissioner is hereby authorized to expand the scope of the Veterans and Heroes to Agriculture Program to provide agriculture assistance and training to additional West Virginia heroes that will allow these brave individuals to continue to answer the call of duty by producing and providing fresh, healthy, and local food to their fellow West Virginians.

CHAPTER 5

(Com. Sub. for H. B. 3098 - By Delegates Williams, Lavender-Bowe, C. Thompson, Estep-Burton, Cooper, Campbell, Fluharty, Pushkin and Pyles)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-16-6 of the Code of West Virginia,1931, as amended; and to amend and reenact §60-4-2 of said code, all relating to permitting the issuance of multiple licenses for manufacturing alcoholic liquors and nonintoxicating beer; establishing requirements for licenses; and requiring full payment of all fees.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-6. License in one capacity only; no connection between different licensees; when brewer may act as distributor; credit and rebates proscribed; brewer, resident brewer, and brewpub requirements.

(a) A person shall not be licensed in more than one capacity under the terms of this article, and there shall be no connection whatsoever between any retailer, distributor, resident brewer, or brewer, and a person shall be interested, directly or indirectly, through the ownership of corporate stock, membership in a partnership, or in any other way in the business of a retailer, if the person is at the same time interested in the business of a brewer, resident brewer or distributor. A resident brewer may act as distributor in a limited capacity for his or her own product from the resident brewery or place of manufacture or bottling, but a resident brewer, is not permitted to act as a distributor as defined in §11-16-3 of this code: *Provided*, That nothing in this article may prevent a resident brewer from using the services of licensed distributors as specified in this article. A resident brewer or distributor may sell to a patron for personal use and not for resale, quantities of draught beer in original containers that are no larger in size than one-half barrel for off-premises consumption. A resident brewer who also has a brewpub license may sell nonintoxicating beer or nonintoxicating craft beer produced by the resident brewer in cans, bottles, or sealed growlers, pursuant to §11-16-6b of this code, for personal consumption off of the brewpub's licensed premises and not for resale.

(b) It is unlawful for any brewer, resident brewer, manufacturer, or distributor to assist any retailer or for any retailer to accept assistance from any brewer, manufacturer, or distributor, accept any gifts, loans, forebearance of money or property of any kind, nature, or description, or other thing of value, or give any rebates or discounts of any

kind whatsoever, except as permitted by rule, or order promulgated by the commissioner in accordance with this article.

(c) Notwithstanding subsections (a) and (b) of this section, a brewpub may offer for retail sale nonintoxicating beer or nonintoxicating craft beer so long as the sale of the nonintoxicating beer or nonintoxicating craft beer is limited to the brewpub's licensed premises, except as provided in §11-16-6b of this code.

(d) A brewer or resident brewer licensed under this section may also be licensed under §60-4-1 *et seq.* of this code: *Provided*, That the holder of the license meets all the requirements for the additional licenses required by the commissioner and pays all fees related to the license: *Provided, however*, That the licensee maintains all the rights and privileges associated with the license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 4. LICENSES.

§60-4-2. Licenses for manufacture.

(a) The commission may grant licenses for the manufacture of alcoholic liquors. Separate licenses shall be issued to the following classes of manufacturing establishments:

(1) Distilleries in which only alcoholic liquors other than wine or beer is manufactured;

(2) Wineries in which only wines are manufactured;

(3) Breweries in which beer is manufactured;

(4) Bottling plants in which beer only is bottled;

(5) Industrial plants in which alcohol is distilled, manufactured or otherwise produced for scientific, chemical, mechanical or industrial purposes;

(6) Farm wineries in which only wines are manufactured; and

(7) Mini-distilleries in which only alcoholic liquors other than wine, beer or nonintoxicating beer are manufactured.

(b) The commission may grant multiple licenses for the manufacture of alcoholic liquors or nonintoxicating beer to the same person or entity: *Provided*, That such licensure does not violate other provisions of this code, the licensee meets all requirements for the license established by the commissioner, and licensee submits the full payment of all fees required for licensure: *Provided, however*, That the licensee maintains all the rights and privileges associated with each license not violative of state or federal law.

CHAPTER 6

(Com. Sub. for H. B. 4388 - By Delegates Hamrick, J. Jeffries and C. Martin)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §11-16-2 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-18 and §11-16-22 of said code; to amend and reenact §60-2-15 of said code; to amend and reenact §60-8-23 of said code, all relating to removing restrictions on advertising, adding legislative findings; permitting equipment, fixtures, signs, services, and supplies by licensees; establishing furnishing,

selling, installing, or maintaining draught line equipment, supplies, and cleaning services to a licensed retailer; modifying restriction on brewers or distributors from sponsoring athletic events where majority of the athletes are minors; providing for cleaning of draught lines; providing for record keeping for draught line cleaning; modifying restrictions on equipment, fixtures, signs, and supplies; prohibiting for restricting false, misleading, or deceptive advertisement; prohibiting commissioner from restricting advertising media; and clarifying that exterior signs are governed by the Division of Highways.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-2. Declaration of legislative findings, policy and intent; construction.

It is hereby found by the Legislature and declared to be the policy of this state that it is in the public interest to regulate and control the manufacture, sale, distribution, transportation, storage, and consumption of the beverages regulated by this article within this state and that, therefore, the provisions of this article are a necessary, proper, and valid exercise of the police powers of this state and are intended for the protection of the public safety, welfare, health, peace and morals and are further intended to eliminate, or to minimize to the extent practicable, the evils attendant to the unregulated, unlicensed, and unlawful manufacture, sale, distribution, transportation, storage, and consumption of such beverages and are further intended to promote temperance in the use and consumption thereof. The Legislature further finds and declares that advertising is essential to the growth of business and job promotion within the state. In order to further these ends, the provisions of this article and of the rules promulgated pursuant thereto, shall be construed so that the accomplishment of these stated purposes may be effectuated.

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

(a) It is unlawful:

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

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

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

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may

accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

(5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to $25.00 per stock keeping unit, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas: *Provided however,* That, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services may be negotiated at no less than direct cost: *Provided further*, That a distributor may furnish, rent, or sell equipment, fixtures, signs, services, or supplies directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail under the conditions and within the limitations as prescribed herein. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events.

(6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless specifically authorized by the commissioner;

(7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;

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

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

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

(11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club

issued under the provisions of §60-7-1 *et seq.* of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

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

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

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

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

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

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

(18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or

upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

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

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

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be

punished for each offense by a fine of not less than $25, nor more than $500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

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

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

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

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold,

furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

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

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

§11-16-22. Powers of the commissioner; rules, or orders.

(a) In addition to all other powers conferred upon the commissioner and in order to effectively carry out the provisions, intent and purposes of this article, the

commissioner shall have the power and authority to adopt, promulgate, repeal, rescind and amend, in accordance with the provisions of chapter 29A of this code, rules, standards, requirements and orders, including, but not limited to, the following:

(1) Prescribing records and accounts, pertaining to the manufacture, distribution and sales of nonintoxicating beer, to be kept by the licensee and the form thereof;

(2) Requiring the reporting of such information by licensees as may be necessary for the effective administration of this article;

(3) Regulating the branding and labeling of packages, bottles or other containers in which nonintoxicating beer may be sold; and, in his or her discretion, requiring the collection of all taxes provided for under §11-16-13 of this code;

(4) Prohibiting shipment into the state and sale within the state of low grade or under-standard nonintoxicating beer;

(5) Referring to licenses and the issuance and revocation of the same;

(6) Establishing the suitability of businesses and locations for licensure, and requiring licensees to keep their places of business where nonintoxicating beer is sold at retail, and the equipment used in connection therewith, clean and in a sanitary condition;

(7) Restricting the content of advertising so as to prohibit false, misleading, or deceptive claims, depictions or descriptions of nonintoxicating beer being consumed irresponsibly or intemperately, or advertising presentations designed to appeal to persons below the legal drinking age: *Provided*, That the commissioner may not promulgate any rule which prohibits the advertising of a particular brand or

brands of nonintoxicating beer and the price thereof, which restricts or prohibits:

(A) The advertising medium or equipment used; or

(B) Signage except for exterior signage governed by §17-22-1 *et seq.* of this code.

(8) Wholesale prices or price changes, including, but not limited to, the regulation and extent, if any, of any temporary price markoff or markdown, temporary wholesale price change downward or price discount, sometimes referred to as "post downs" or as "posting down" or any other price change, the express purpose of which is to put into effect a temporary price reduction, as well as the duration of time during which such temporary price reduction is to remain in effect;

(9) Restrictions upon West Virginia distributors or other licensees with respect to the purchase of any nonintoxicating beer or malt coolers from manufacturers or brewers whether within or without the state who have failed to qualify for manufacture or shipment of any such product in the state; and

(10) Regulating, restricting or prohibiting a distributor from selling, offering for sale, distributing or delivering nonintoxicating beer to any retailer whose principal place of business, residence or licensed premises is located without or beyond the assigned territory of such distributor of such nonintoxicating beer.

(b) Any rule or order heretofore adopted by the commissioner and currently in effect upon the convening of the regular session of the Legislature held in the year one thousand nine hundred eighty-six shall remain in effect until changed by the commissioner in the manner prescribed by article three, chapter twenty-nine-a of this code, irrespective of whether specific authority for such currently effective rule existed prior to such date.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 2. ALCOHOL BEVERAGE CONTROL COMMISSIONER.

§60-2-15. Regulation of advertising.

The commission shall prescribe rules governing the advertising of alcoholic liquors in this state. The rules may only prohibit advertising that encourages intemperance, induces minors to purchase, or tends to deceive or misrepresent.

ARTICLE 8. SALE OF WINES.

§60-8-23. Duties and powers of commissioner; rules.

(a) The commissioner is authorized:

(1) To enforce the provisions of this article.

(2) To enter the premises of any licensee at reasonable times for the purpose of inspecting the premises and determining the compliance of the licensee with the provisions of this article and any rules promulgated by the commissioner.

(3) In addition to rules relating to the tax imposed by §60-8-4 of this code or otherwise authorized by this article, to promulgate reasonable rules as he or she deems necessary for the execution and enforcement of the provisions of this article, which may include, but shall not be limited to:

(A) The transport, use, handling, service and sale of wine;

(B) Establishing standards of identity, quality and purity to protect the public against wine containing deleterious, harmful or impure substances or elements and against spurious or imitation wines and wines unfit for human consumption; and

(C) Restricting the content of wine advertising so as to prohibit false or misleading claims, or depictions or descriptions of wine being consumed irresponsibly or immoderately, or advertising presentations designed to appeal to persons below the legal drinking age: *Provided*, That the commissioner shall not promulgate any rule which prohibits the advertising of a particular brand or brands of wine and the price thereof, or which prohibits or restricts the advertising medium used: *Provided, however*, That price shall not be advertised in a medium of electronic communication subject to the jurisdiction of the Federal Communications Commission.

(4) To issue subpoenas and subpoenas duces tecum for the purpose of conducting hearings under the provisions of §60-8-12 of this code, which subpoenas and subpoenas duces tecum shall be issued in the time, for the fees, and shall be enforced in the manner specified in §29A-5-1 of this code with like effect as if said section was set forth in extenso in this subdivision.

(b) The authority granted in this subsection and subsections (a) and (d) of this section may also be exercised by the duly authorized or designated agents of the commissioner.

(c) Except as may be in this article to the contrary, the commissioner shall not have authority by rule or otherwise to regulate markups, prices, discounts, allowances or other terms of sale at which wine may be purchased or sold by wine distributors or licensees authorized to sell wine at retail but nothing herein shall be deemed to authorize or permit any discriminatory practice prohibited by §60-8-31(a), of this code or any other discriminatory practice.

(d) All rules promulgated by the commissioner pursuant to this article shall be so promulgated in accordance with the provisions of chapter 29A of this code. The rules promulgated pursuant to the prior enactment of this article and not disapproved by the Legislature shall remain in full

force and effect to the extent that such rules are not abrogated and made null and void by the reenactment of the sections of this article during the regular session of the Legislature for 1986. Any rule which is inconsistent or contrary in any way to any provision of this article now or hereafter enacted are null and void.

CHAPTER 7

(H. B. 4524 - By Delegates Westfall, Hartman, Sponaugle, Barrett, Phillips, Storch, Fluharty and Steele)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-5-1, §60-5-2, §60-5-3, §60-5-4, §60-5-5, §60-5-6, §60-5-7, and §60-5-8, of the Code of West Virginia, 1931, as amended, and to further amend said code by adding thereto a new section, designated §60-5-9, all relating to the off-premises sale of alcoholic liquors generally; allowing the off-premises sale of alcoholic liquors in every county and municipality in the state; creating procedures for counties and municipalities which prohibited off-premises sale of alcoholic liquors prior to January 1, 2020 to hold a local option election to retain the prohibition; authorizing county commissions and governing bodies of municipalities to retain prohibition by a vote to do so without an election; requiring a vote to continue the prohibition or to order an election to occur on or before July 1, 2020; allowing counties and municipalities which prohibit the off premises sale of alcoholic liquors to hold a local option election to reconsider the action; allowing county commissions and governing bodies of municipalities to vote to maintain the prohibition as an alternative to holding a local option election, requiring

notice to commissioner of election results of the vote by July 1, 2020; and updating code language.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district or municipality.

A county or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county or municipality.

A local option election shall not be held within 60 days of a general or municipal election.

§60-5-2. Election called on petition of five percent of qualified voters.

The county commission, or the governing body of the municipality, shall call a special local option election upon the filing of a petition signed by not less than five percent of the qualified voters within the county or municipality.

§60-5-3. Form of petition.

The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (municipality) of_____, do hereby petition that a special election be held within the county (city, town) of _____ on the _____ day of _____, 20 ____, upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be (permitted) (prohibited) in _____?

Name Address Date

(Post office or street and number)

§60-5-4. Notice of election; when held; election officers.

The county commission or governing body of the municipality shall give notice of the special local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area in which the election is to be held. Such notice shall be so published within 14 consecutive days next preceding the election. The election shall be held not more than 90 nor less than 60 days from the filing of the petition. The regular election officers of the county or municipal corporation shall open the polls and conduct the election in the same manner provided for general elections.

§60-5-5. Form of ballot.

On the ballot shall be printed the following:

Shall the sale of alcoholic liquors for off-premises consumption under the West Virginia Alcohol Beverage Control Commissioner be permitted in _____?

□ Yes.

□ No.

(Place a cross mark in the square opposite your choice.)

§60-5-6. How election conducted and results certified.

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified

by the commissioners of election to the county commission of the county, or the governing body of the municipality. The county commission or governing body shall without delay certify the result of the election to the commissioner.

§60-5-7. Discontinuance of state stores and agencies in local option territory.

Within 30 days after a local option election in which a majority has voted No, the commissioner shall order the closing of all stores selling alcoholic liquor for off-premises consumption within the county, or municipality.

§60-5-8. When another election may be held.

When a local option election has been held in a county, or municipality, another such election may not be held for a period of two years.

§60-5-9. Allowing state-wide off premises of alcoholic liquors; exceptions; procedures.

(a) Effective July 1, 2020, the sale of alcoholic liquors for off-premises consumption is authorized in all counties and municipalities of the state.

(b) Notwithstanding the provisions of subsection (a) of this section, a county or municipality which prior to January 1, 2020, prohibited the sale of alcoholic liquors for off-premises consumption may, pursuant to this subsection, hold a local option election to maintain the prohibition against the sale of alcoholic liquors for off-premises consumption without the petition required by the provisions of §60-5-2 of this code, if it enters an order to hold a local option election on the issue on or before July 1, 2020, in which event the election shall be held concurrent with the 2020 general election. The county commission or municipality may require the state to reimburse it for the actual cost of conducting the local option election authorized by this subsection: *Provided*, That, as an alternative to the local option election authorized by this

subsection, the county commission or governing body of a municipality which prior to January 1, 2020, had prohibited the sale of alcoholic liquors for off-premises consumption may vote to maintain the prohibition and provide certification of the result of the vote to the commissioner on or before July 1, 2020.

(c) A county or municipality which prohibits the sale of alcoholic liquors for off-premises consumption pursuant to subsection (b) of this section may later reconsider its action using the procedures set forth in §60-5-1 *et seq.* of this code.

CHAPTER 8

(Com. Sub. for H. B. 4560 - By Delegates Hansen, Higginbotham, Skaff, Steele, Fleischauer, Walker, Pyles, Williams, Barrett, Canestraro and Pushkin)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-8-6b of the Code of West Virginia, 1931, as amended, relating to permitting licensed wine specialty shops to sell wine with a gift basket by telephonic, electronic, mobile, or web-based wine ordering; and establishing requirements for lawful delivery.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SALES OF WINES.

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

(a) A wine specialty shop with a current active license and in good standing with the commissioner may apply for the additional license privilege of delivering wine with a gift

basket, to the purchaser or other person designated by the purchaser, as provided in this section.

(b) The wine specialty shop:

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

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

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

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

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

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

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

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

(d) The wine delivered by the authority of this section may be ordered or purchased by telephonic, electronic, mobile, or web-based wine ordering when the purchaser is verified to be 21 years of age or older, and must be delivered by an officer or employee of the wine specialty shop licensee who is 21 years of age or older. If the person receiving the delivery is not the purchaser, the licensee must verify that the person receiving the wine is 21 years of age or older and not noticeably intoxicated prior to completing the delivery. Nonlicensed third parties may not deliver wine with a gift basket on behalf of a licensed wine specialty shop.

(e) Any vehicle delivering wine in a gift basket shall meet the permit requirements set forth in this chapter.

(f) The commissioner may propose rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to effectuate the purposes of this section.

CHAPTER 9

(H. B. 4697 - By Delegates Pushkin, Foster, Skaff, Howell, Pyles and Westfall)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-1-5b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §60-1-5d; to amend and reenact §60-4-3, §60-4-3a, and §60-4-15 of said code; and to

amend and reenact §60-6-1 and §60-6-2 of said code, all relating to distilleries generally and micro-distilleries particularly; defining micro-distillery; establishing a production limit for a micro-distillery; establishing limits on sales of alcoholic liquors manufactured by a micro-distillery; establishing a license fee for micro-distilleries; subjecting micro-distilleries to the same requirements and restrictions applicable to distilleries and mini-distilleries; and correcting an incorrect gallonage limit for mini-distilleries.

Be it enacted by the Legislature of West Virginia:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5b. Mini-distilleries defined.

1 For the purpose of this chapter: "Mini-distillery" means an
2 establishment where in any year no more than 50,000 gallons
3 of alcoholic liquor is manufactured with no less than 25% of
4 raw agricultural products being produced by the owner of the
5 mini-distillery on the premises of that establishment, and no
6 more than 25% of raw agricultural products originating from
7 any source outside this state: *Provided*, That the maximum
8 allotted production amounts shall not exceed the annual
9 incremental production limitations provided for pursuant to
10 section three-a of this article.

§60-1-5d Micro-distilleries defined.

1 For the purposes of Chapter 60 of this code "Micro-
2 distillery" means an establishment where in any one year no
3 more than 10,000 gallons of alcoholic liquor is
4 manufactured and no more than 25% of raw agricultural
5 products used in production may originate from outside this
6 state is used in distillation.

§60-4-3. To whom licensed manufacturer may sell.

1 A person who is licensed to manufacture alcoholic
2 liquors in this state may sell liquors in this state only to the

West Virginia Alcohol Beverage Control Commissioner and to wholesalers and retailers licensed as provided in this chapter: *Provided*, That a holder of a winery or a farm winery license may sell wines and a holder of a distillery, mini-distillery, or micro-distillery license may sell alcoholic liquors manufactured by it in this state in accordance with the provisions of §60-6-2 of this code. Hours of retail sale by a winery or a farm winery or distillery, mini-distillery or micro-distillery are subject to regulation by the commissioner. A winery, distillery, farm winery, or mini-distillery may sell and ship alcoholic liquors outside of the state subject to provisions of this chapter.

§60-4-3a. Distillery and mini-distillery license to manufacture and sell.

(a) *Sales of liquor.* — An operator of a distillery, mini-distillery, or micro-distillery may offer liquor for retail sale to customers from the distillery, mini-distillery, or micro-distillery for consumption off premises only. Except for free complimentary samples offered pursuant to §60-6-1 of this code, customers are prohibited from consuming any liquor on the premises of the distillery, mini-distillery, or micro-distillery: *Provided*, That a licensed distillery, mini-distillery, or micro-distillery may offer complimentary samples per this subsection of alcoholic liquors manufactured by that licensed distillery, mini-distillery, or micro-distillery for consumption on the premises only on Sundays beginning at 10:00 a.m. in any county in which the same has been approved as provided for in §7-1-3pp of this code.

(b) *Retail sales.* — Every licensed distillery, mini-distillery, or micro-distillery shall comply with the provisions of sections nine, eleven, thirteen, sixteen, seventeen, eighteen, nineteen, twenty-two, twenty-three, twenty-four, twenty-five and twenty-six, article three-a of this chapter and the provisions of articles three and four of this chapter applicable to liquor retailers and distillers.

(c) *Payment of taxes and fees.* — The distillery, mini-distillery, or micro-distillery shall pay all taxes and fees required of licensed retailers and meet applicable licensing provisions as required by this chapter and by rule of the commissioner, except for payments of the wholesale markup percentage and the handling fee provided by rule of the commissioner: *Provided*, That all liquor for sale to customers from the distillery, mini-distillery, or micro-distillery for off-premises consumption shall be subject of a five percent wholesale markup fee and an 80 cents per case bailment fee to be paid to the commissioner: *Provided, however*, That no liquor sold by the distillery, mini-distillery, or micro-distillery shall be priced less than the price set by the commissioner pursuant §60-3A-17 of this code.

(d) *Payments to market zone retailers.* — Each distillery, mini-distillery, or micro-distillery shall submit to the commissioner two percent of the gross sales price of each retail liquor sale for the value of all sales at the distillery, mini-distillery, or micro-distillery each month. This collection shall be distributed by the commissioner, at least quarterly, to each market zone retailer located in the distillery, mini-distillery, or micro-distillery's market zone, proportionate to each market zone retailer's annual gross prior years pretax value sales. The maximum amount of market zone payments that a distillery, mini-distillery, or micro-distillery shall be required to submit to the commissioner is $15,000 per annum.

(e) *Limitations on licensees.* — No distillery, mini-distillery, or micro-distillery may sell more than 3,000 gallons of product at the distillery, mini-distillery, or micro-distillery location the initial two years of licensure. The distillery, mini-distillery, or micro-distillery may increase sales at the distillery, mini-distillery, micro-distillery location by 2,000 gallons following the initial 24 month period of licensure and may increase sales at the distillery, mini-distillery, or micro-distillery location each subsequent

24 month period by 2,000 gallons, not to exceed 10,000 gallons a year of total sales at the distillery, mini-distillery, or micro-distillery location. No licensed mini-distillery may produce more than 50,000 gallons per calendar year at the mini-distillery location. No licensed micro-distillery may produce more than 10,000 gallons per calendar year at the micro-distillery location. No more than one distillery or mini-distillery license may be issued to a single person or entity and no person may hold both a distillery and a mini-distillery license.

§60-4-15. Amount of license fees.

A person to whom a license is issued under the provisions of this chapter shall pay annually to the commissioner a license fee as follows, for:

(1) Distilleries, $1,500;

(2) Wineries, $1,500;

(3) Breweries, $1,500;

(4) Bottling plants, $100;

(5) Wholesale druggists, $50;

(6) Institutions, $10;

(7) Industrial use, $50;

(8) Industrial plants producing alcohol, $250;

(9) Retail druggists, $10;

(10) Farm wineries, $50;

(11) Mini-distilleries, $50;

(12) Micro-distillers, $750.

ARTICLE 6. MISCELLANEOUS PROVISIONS.

§60-6-1. When lawful to possess, use or serve alcoholic liquors.

The provisions of this chapter may not prevent:

(1) A person from keeping and possessing alcoholic liquors in his or her residence for the personal use of himself or herself, his or her family, his or her employee, or his or her guests if the alcoholic liquors have been lawfully acquired by him or her;

(2) A person, his or her family, or employee from giving or serving such alcoholic liquors to guests in the residence, when the gift or service is not for the purpose of evading the provisions of this chapter;

(3) The holder of a winery or a farm winery license from serving complimentary samples of its wine in moderate quantities for tasting on the winery or the farm winery premises; and

(4) The holder of a distillery, mini-distillery, or a micro-distillery license from serving complimentary samples of its alcoholic liquor in moderate quantities for tasting on the distillery, mini-distillery, or micro-distillery premises.

§60-6-2. When lawful to manufacture and sell wine and cider.

The provisions of this chapter may not prevent:

(1) A person from manufacturing wine at his or her residence for consumption at his or her residence as permitted by §60-6-1 of this code.

(2) A person from manufacturing and selling unfermented cider;

(3) A person from manufacturing and selling cider made from apples produced by him or her within this state to persons holding distillery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(4) A person from manufacturing and selling wine made from fruit produced by him or her within this state to persons holding winery licenses, if the manufacture and sale is under the supervision and regulation of the commissioner;

(5) The holder of a winery or a farm winery license from selling wine for off-premises consumption sold at retail at the winery or the farm winery, as provided in §60-3B-4 of this code, or for any other person who is licensed under this chapter to sell wine as a wine supplier or distributor; and

(6) The holder of a distillery, mini-distillery, or micro-distillery license from selling alcoholic liquor for off-premises consumption sold at retail at the distillery, mini-distillery, or micro-distillery, as provided in §60-3A-4 of this code.

CHAPTER 10

(H. B. 4882 - By Delegates Espinosa, Barrett, Cowles, Hardy, Sponaugle, Williams and Householder)

[Passed March 2, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60-8-3 of the Code of West Virginia, 1931, as amended, relating to unlicensed wineries not currently licensed or located in West Virginia temporarily authorizing limited sampling and temporarily authorizing the limited sale of wine for off-premises consumption at certain fairs and festivals and at certain one-day special licensed nonprofit events in a very limited capacity, per event, per year, in hopes that such wineries would eventually obtain a permanent winery or farm winery license in West Virginia.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. SALE OF WINES.

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

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

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

(1) One hundred fifty dollars per year for a supplier's license;

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

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

(4) Two hundred fifty dollars per year for a wine specialty shop license, in addition to any other licensing fees

paid by a winery or retailer holding a license. Except for the amount of the license fee and the restriction to sales of winery or farm winery wines, a winery, or farm winery acting as a wine specialty shop retailer is subject to all other provisions of this article which are applicable to a wine specialty shop retailer as defined in §60-8-2 of this code;

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

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

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

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

(9) One hundred fifty dollars per year for a wine sampling license issued for a wine specialty shop under subsection (n) of this section;

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

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

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

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

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

(e) No retailer may be licensed as a Class A retail dealer in nonintoxicating beer as provided by §11-16-1 *et seq.* of this code: *Provided*, That a delicatessen, a caterer, or party supply store which is a grocery store as defined in §60-8-2 of this code and which is licensed as a Class A retail dealer in nonintoxicating beer may be a retailer under this article: *Provided, however*, That any delicatessen, caterer, or party supply store licensed in both capacities must maintain average monthly sales exclusive of sales of wine and nonintoxicating beer which exceed the average monthly sales of nonintoxicating beer.

(f) A wine specialty shop under this article may also hold a wine tasting license authorizing the retailer to serve complimentary samples of wine in moderate quantities for tasting. Such wine specialty shop shall organize a wine taster's club, which has at least 50 duly elected or approved dues-paying members in good standing. Such club shall meet on the wine specialty shop's premises not more than one time per week and shall either meet at a time when the premises are closed to the general public or shall meet in a separate segregated facility on the premises to which the general public is not admitted. Attendance at tastings shall be limited to duly elected or approved dues-paying members and their guests.

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

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

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

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

(4) A festival or fair license may be issued to a "wine club" as defined in this subdivision for a license fee of $250. The festival or fair committee or the governing body shall designate a person to organize a club under a name which includes the name of the festival or fair and the words "wine club". The license shall be issued in the name of the wine club. A licensee may not commence the sale of wine as provided in this subdivision until the wine club has at least 50 dues-paying members who have been enrolled, and to whom membership cards have been issued. Thereafter, new members may be enrolled and issued membership cards at any time during the period for which the license is issued. A wine club licensed under the provisions of this subdivision may sell wine only to its members, and in portions not to exceed eight ounces per serving. The sales shall take place on premises or in an area cordoned or segregated so as to be closed to the general public, and the general public shall not be admitted to the premises or area. A wine club licensee under the provisions of this subdivision may serve complimentary samples of wine in moderate quantities for tasting. A wine club may not make wine purchases from a direct shipper where the wine may be consumed on the licensed premises of any Class A private wine retail license or private club. A wine club which violates the provisions of this subdivision is subject to the penalties in this article.

(5) A licensed winery or farm winery approved to participate in a festival or fair under the provisions of this section and the licensee holding the license, or the licensed winery or farm winery approved to attend a licensed festival or fair, is subject to all other provisions of this article and the rules and orders of the commissioner relating to the license: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of

this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

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

(7) An unlicensed winery temporarily licensed and meeting the requirements set forth in subsection (q) of this section may conduct the same sampling and sales set forth in subsection (q) of this section at a licensed fair and festival upon approval of the licensee holding the fair and festival license and temporary and limited licensure by the commissioner. An unlicensed winery shall be subject to the same limits, fees, requirements, restrictions and penalties set forth in subsection (q) of this section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

(i)(1) The commissioner may issue a special license for the retail sale of wine in a professional baseball stadium. A license to sell wine granted pursuant to this subsection entitles the licensee to sell and serve wine, for consumption in a professional baseball stadium. For the purpose of this subsection, "professional baseball stadium" means a facility constructed primarily for the use of a major or minor league baseball franchisee affiliated with the National Association of Professional Baseball Leagues, Inc., or its successor, and used as a major or minor league baseball park. Any special license issued pursuant to this subsection shall be for a term

beginning on the date of issuance and ending on the next following June 30, and its fee is $250 regardless of the length of the term of the license. The application for the special license shall contain information required by the commissioner and must be submitted to the commissioner at least 30 days prior to the first day when wine is to be sold at the professional baseball stadium. The special license may be issued in the name of the baseball franchisee or the name of the primary food and beverage vendor under contract with the baseball franchisee. These sales must take place within the confines of the professional baseball stadium. The exterior of the area where wine sales may occur must be surrounded by a fence or other barrier prohibiting entry except upon the franchisee's express permission, and under the conditions and restrictions established by the franchisee, so that the wine sales area is closed to free and unrestricted entry by the general public.

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

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

(j) A license to sell wine granted to a private wine bed and breakfast, private wine restaurant, private wine spa, or a private club under the provisions of this article entitles the

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

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

(l) The commissioner shall propose rules for promulgation in accordance with the provisions of §29A-1-

1 *et seq.* of this code to allow restaurants to serve wine with meals, and to sell wine by the bottle for off-premises consumption as provided in subsection (j) of this section. Each licensed restaurant shall be charged an additional $100 per year fee.

(m) The commissioner shall establish guidelines to permit wines to be sold in all stores licensed for retail sales.

(n) Wineries and farm wineries may advertise off premises as provided in §17-22-7 of this code.

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

(p) The commissioner may issue special one-day licenses to duly organized, nonprofit corporations and associations allowing the sale and serving of wine, and may, if applicable, also allow the charitable auctioning of certain

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

(q)(1) In addition to the authorization granted to licensed wineries and farm wineries in sub-sections (h) and (p), an unlicensed winery, regardless of its designation in another state, but that is duly licensed in its domicile state, may pay a $150 nonrefundable and nonprorated fee and submit an application for temporary licensure on a one-day basis for temporary sampling and sale of wine in sealed containers for off-premises consumption at a special one-day license nonprofit event.

(2) The application shall include, but is not limited to, the person or entity's name, address, taxpayer identification number, and location; a copy of its licensure in its domicile state; a signed and notarized verification that it produces 50,000 gallons or less of wine per year; a signed and notarized verification that it is in good standing with its domicile state; copies of its federal certificate of label approvals and certified lab alcohol analysis for the wines it desires to temporarily provide samples and temporarily sell wine in sealed containers for off-premises consumption at a special one-day license for a nonprofit event issued under sub-section (p); and such other information as the commissioner may reasonably require.

(3) The applicant winery shall include a list of all wines proposed to be temporarily sampled and temporarily sold in sealed containers at a special one-day license for a nonprofit event so that the wines may be reviewed in the interest of public health and safety. Once approved, the submitted wine list will create a temporary wine brand registration for up to two special one-day license for a nonprofit event for no additional fee.

(4) An applicant winery that receives this temporary special one-day license for a nonprofit event will provide a signed and notarized agreement where the applicant winery agrees to pay all municipal, local, and sales taxes applicable to the sale of wine in West Virginia.

(5) An application must be submitted per special one-day license for a nonprofit event the applicant winery desires to attend, and the license fee shall cover up to two special one-day license for nonprofit events before an additional fee would be paid. In no circumstance would such a winery be permitted to attend more than four special one-day license for nonprofit events per year. Any such applicant or unlicensed winery desiring to attend more than four special one-day license for nonprofit events per year or otherwise operate in West Virginia would need to seek appropriate licensure as a winery or a farm winery in this state.

(6) Notwithstanding the provisions of this article and requirements for licensure, wine brand registration, payment of wine liter tax, and the winery's appointment of suppliers and distributors, this temporary special one-day license for a nonprofit event, once granted, permits such a winery to operate in this limited capacity only at the approved specific, special one-day license for a nonprofit event subject to the limitations noted in this section.

(7) The applicant winery will need to further apply for and receive a transportation permit in order to legally transport wine in the state per §60-6-12 of this code.

(8) The applicant winery is subject to all applicable violations and/or penalties under this article and the legislative rules that is not otherwise excepted by this sub-section: *Provided*, That the commissioner may by rule or order provide for certain waivers or exceptions with respect to the provisions, rules, or orders as the circumstances of each festival or fair may require, including, without limitation, the right to revoke or suspend any license issued pursuant to this section prior to any notice or hearing notwithstanding the provisions §60-8-27 and §60-8-28 of this code: *Provided, however*, That under no circumstances shall the provisions of §60-8-20(c) or §60-8-20(d) of this code be waived nor shall any exception be granted with respect to those subsections.

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

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

express permission, and under the conditions and restrictions established by the college or university, so that the wine sales area is closed to free and unrestricted entry by the general public.

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

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

CHAPTER 11

(Com. Sub. for S. B. 150 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

Be it enacted by the Legislature of West Virginia:

Title

I. General Provisions.
II. Appropriations.
III. Administration.

TITLE I – GENERAL PROVISIONS.

TITLE I – GENERAL PROVISIONS.

§1. General Policy.
§2. Definitions.
§3. Classification of appropriations.
§4. Method of expenditure.
§5. Maximum expenditures.

Section 1. General policy. – The purpose of this bill is to appropriate money necessary for the economical and efficient discharge of the duties and responsibilities of the state and its agencies during the fiscal year 2021.

Sec. 2. Definitions. — For the purpose of this bill:

"Governor" shall mean the Governor of the State of West Virginia.

"Code" shall mean the Code of West Virginia, one thousand nine hundred thirty-one, as amended.

"Spending unit" shall mean the department, bureau, division, office, board, commission, agency or institution to which an appropriation is made.

The "fiscal year 2021" shall mean the period from July 1, 2020, through June 30, 2021.

"General revenue fund" shall mean the general operating fund of the state and includes all moneys received or collected by the state except as provided in W.Va. Code §12-2-2 or as otherwise provided.

"Special revenue funds" shall mean specific revenue sources which by legislative enactments are not required to

be accounted for as general revenue, including federal funds.

"From collections" shall mean that part of the total appropriation which must be collected by the spending unit to be available for expenditure. If the authorized amount of collections is not collected, the total appropriation for the spending unit shall be reduced automatically by the amount of the deficiency in the collections. If the amount collected exceeds the amount designated "from collections," the excess shall be set aside in a special surplus fund and may be expended for the purpose of the spending unit as provided by Article 2, Chapter 11B of the Code.

Sec. 3. Classification of appropriations. — An appropriation for:

"Personal services" shall mean salaries, wages and other compensation paid to full-time, part-time and temporary employees of the spending unit but shall not include fees or contractual payments paid to consultants or to independent contractors engaged by the spending unit. "Personal services" shall include "annual increment" for "eligible employees" and shall be disbursed only in accordance with Article 5, Chapter 5 of the Code.

Unless otherwise specified, appropriations for "personal services" shall include salaries of heads of spending units.

"Employee benefits" shall mean social security matching, workers' compensation, unemployment compensation, pension and retirement contributions, public employees insurance matching, personnel fees or any other benefit normally paid by the employer as a direct cost of employment. Should the appropriation be insufficient to cover such costs, the remainder of such cost shall be paid by each spending unit from its "unclassified" appropriation, or its "current expenses" appropriation or other appropriate appropriation. Each spending unit is hereby authorized and

required to make such payments in accordance with the provisions of Article 2, Chapter 11B of the Code.

Each spending unit shall be responsible for all contributions, payments or other costs related to coverage and claims of its employees for unemployment compensation and workers compensation. Such expenditures shall be considered an employee benefit.

"BRIM Premiums" shall mean the amount charged as consideration for insurance protection and includes the present value of projected losses and administrative expenses. Premiums are assessed for coverages, as defined in the applicable policies, for claims arising from, inter alia, general liability, wrongful acts, property, professional liability and automobile exposures.

Should the appropriation for "BRIM Premium" be insufficient to cover such cost, the remainder of such costs shall be paid by each spending unit from its "unclassified" appropriation, its "current expenses" appropriation or any other appropriate appropriation to the Board of Risk and Insurance Management. Each spending unit is hereby authorized and required to make such payments. If there is no appropriation for "BRIM Premium" such costs shall be paid by each spending unit from its "current expenses" appropriation, "unclassified" appropriation or other appropriate appropriation.

West Virginia Council for Community and Technical College Education and Higher Education Policy Commission entities operating with special revenue funds and/or federal funds shall pay their proportionate share of the Board of Risk and Insurance Management total insurance premium cost for their respective institutions.

"Current expenses" shall mean operating costs other than personal services and shall not include equipment, repairs and alterations, buildings or lands. Each spending unit shall be responsible for and charged monthly for all

postage meter service and shall reimburse the appropriate revolving fund monthly for all such amounts. Such expenditures shall be considered a current expense.

"Equipment" shall mean equipment items which have an appreciable and calculable period of usefulness in excess of one year.

"Repairs and alterations" shall mean routine maintenance and repairs to structures and minor improvements to property which do not increase the capital assets.

"Buildings" shall include new construction and major alteration of existing structures and the improvement of lands and shall include shelter, support, storage, protection or the improvement of a natural condition.

"Lands" shall mean the purchase of real property or interest in real property.

"Capital outlay" shall mean and include buildings, lands or buildings and lands, with such category or item of appropriation to remain in effect as provided by W.Va. Code §12-3-12.

From appropriations made to the spending units of state government, upon approval of the Governor there may be transferred to a special account an amount sufficient to match federal funds under any federal act.

Appropriations classified in any of the above categories shall be expended only for the purposes as defined above and only for the spending units herein designated: *Provided*, That the secretary of each department shall have the authority to transfer within the department those general revenue funds appropriated to the various agencies of the department: *Provided, however*, That no more than five percent of the general revenue funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: and no funds may be

transferred to a "personal services and employee benefits" appropriation unless the source funds are also wholly from a "personal services and employee benefits" line, or unless the source funds are from another appropriation that has exclusively funded employment expenses for at least twelve consecutive months prior to the time of transfer and the position(s) supported by the transferred funds are also permanently transferred to the receiving agency or board within the department: *Provided further*, That the secretary of each department and the director, commissioner, executive secretary, superintendent, chairman or any other agency head not governed by a departmental secretary as established by Chapter 5F of the Code shall have the authority to transfer funds appropriated to "personal services and employee benefits," "current expenses," "repairs and alterations," "equipment," "other assets," "land," and "buildings" to other appropriations within the same account and no funds from other appropriations shall be transferred to the "personal services and employee benefits" or the "unclassified" appropriation: *And provided further*, That no authority exists hereunder to transfer funds into appropriations to which no funds are legislatively appropriated: *And provided further*, That if the Legislature consolidates, reorganizes or terminates agencies, boards or functions, within any fiscal year the secretary or other appropriate agency head, or in the case of the termination of a spending unit of the state, the Director of the State Budget Office, in the absence of general law providing otherwise, may transfer the funds formerly appropriated to such agency, board or function, allocating items of appropriation as may be necessary if only part of the item may be allocated, in order to implement such consolidation, reorganization or termination. No funds may be transferred from a Special Revenue Account, dedicated account, capital expenditure account or any other account or fund specifically exempted by the Legislature from transfer, except that the use of the appropriations from the State Road Fund for the office of the Secretary of the Department of

Transportation is not a use other than the purpose for which such funds were dedicated and is permitted.

Appropriations otherwise classified shall be expended only where the distribution of expenditures for different purposes cannot well be determined in advance or it is necessary or desirable to permit the spending unit the freedom to spend an appropriation for more than one of the above classifications.

Sec. 4. Method of expenditure. — Money appropriated by this bill, unless otherwise specifically directed, shall be appropriated and expended according to the provisions of Article 3, Chapter 12 of the Code or according to any law detailing a procedure specifically limiting that article.

Sec. 5. Maximum expenditures. — No authority or requirement of law shall be interpreted as requiring or permitting an expenditure in excess of the appropriations set out in this bill.

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Health Care Authority, West Virginia - Health Care Cost Review Fund - Fund No. 5375 218
Health, Division of - The Health Facility Licensing Account - Fund No. 5172 217
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Health, Division of - Hospital Services Revenue Account - Special Fund - Capital Improvement, Renovation and Operations - Fund No. 5156 216
Health, Division of - Laboratory Services - Fund No. 5163 216
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Health, Division of – Medical Cannabis Program Fund Fund No. 5420 218
Health, Division of – Ryan Brown Addiction Prevention and Recovery Fund – Fund No. 5111 215
Health, Division of - Tobacco Control Special Fund - Fund No. 5218 218
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Health, Division of - West Virginia Birth-to-Three Fund - Fund 5214 218
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Human Services, Division of - Domestic Violence Legal Services Fund - Fund No. 5455 221
Human Services, Division of - Health Care Provider Tax - Medicaid State Share Fund - Fund No. 5090 219
Human Services, Division of - James "Tiger" Morton Catastrophic Illness Fund - Fund No. 5454 221
Human Services, Division of - Marriage Education Fund - Fund No. 5490 222
Human Services, Division of - Medical Services Trust Fund - Fund No. 5185 220
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HIGHER EDUCATION POLICY COMMISSION
Community and Technical College - Capital Improvement Fund - Fund No. 4908 241
Higher Education Policy Commission - System - Tuition Fee Capital Improvement Fund - (Capital Improvement and Bond Retirement Fund) – Control Account - Fund No. 4903 240
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West Virginia University - West Virginia University Health Sciences Center - Fund No. 4179 241

HOMELAND SECURITY, DEPARTMENT OF
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State Police, West Virginia - Central Abuse Registry Fund - Fund No. 6527 226
State Police, West Virginia - Drunk Driving Prevention Fund - Fund No. 6513 225
State Police, West Virginia – Forensic Laboratory Fund – Fund No. 6511 224
State Police, West Virginia - Motor Vehicle Inspection Fund - Fund No. 6501 224
State Police, West Virginia - State Police Academy Post Exchange - Fund No. 6544 226
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Examiners for Speech-Language Pathology and Audiology, West Virginia Board of – Speech-Language Pathology and Audiology Operating Fund - Fund No. 8646 246
Hospital Finance Authority Fund - Fund No. 5475 242
Licensed Dietitians, West Virginia Board of - Dieticians Licensure Board Fund - Fund No. 8680 246
Licensed Practical Nurses, West Virginia State Board of Examiners for - Fund No. 8517 242
Massage Therapy Licensure Board - Massage Therapist Board Fund - Fund No. 8671 247
Medicine, Board of - Medical Licensing Board Fund - Fund No. 9070 247
Public Service Commission - Fund No. 8623 243
Public Service Commission - Consumer Advocate Fund - Fund No. 8627 245
Public Service Commission - Gas Pipeline Division – Public Service Commission Pipeline Safety Fund - Fund No. 8624 244
Public Service Commission - Motor Carrier Division - Fund No. 8625 244
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Fund - Fund No. 7007 228
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State Budget Office - Public Employees Insurance
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Tax Division - Reduced Cigarette Ignition Propensity
Standard and Fire Prevention Act Fund - Fund No. 7092 230
Tax Division - Special Audit and Investigative
Unit - Fund No. 7073 229
Tax Division - Local Sales Tax and Excise Tax
Administration Fund - Fund No. 7099 230
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Fund - Fund No. 5409 239

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Motor Vehicles, Division of -
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§4. Appropriations from lottery net profits.

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Community and Technical College - Capital Improvement Fund - Fund No. 4908 265
Culture and History, Division of - Lottery Education Fund - Fund No. 3534 252
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Education, State Board of - Fund No. 3951 251
Education, State Department of - School Building Authority - Debt Service Fund - Fund No. 3963 252
Educational Broadcasting Authority Fund- Fund No. 3587 262
Higher Education Policy Commission - Lottery Education - Higher Education Policy Commission - Control Account - Fund No. 4925 264
Higher Education Policy Commission –Lottery Education - Marshall University - School of Medicine - Fund No. 4896 266
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§5. Appropriations from state excess lottery revenue fund.

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Higher Education Policy Commission— Education Improvement Fund - Fund No. 4295 268
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Infrastructure Council, West Virginia—West Virginia Infrastructure Transfer Fund – Fund No. 3390 269
Lottery Commission - Distributions to Statutory Funds and Purposes - Fund No. 7213 271
Lottery Commission - General Purpose Account - Fund No. 7206 268
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§6. Appropriations of federal funds.

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Development Office, West Virginia—Office of Economic Opportunity—Fund No. 8901 278
Energy, Office of - Fund No. 8892 280
Forestry, Division of - Fund No. 8703 277
Geological and Economic Survey - Fund No. 8704 277
Labor, Division of - Fund No. 8706 278
Miners' Health, Safety and Training, Division of - Fund No. 8709 279
Natural Resources, Division of - Fund No. 8707 278
Rehabilitation, State Board of – Division of Rehabilitation Services Fund No. 8734 280
Rehabilitation, State Board of – Division of Rehabilitation Services – Disability Determination Services Fund No. 8890 280
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Education, State Board of– State Department of Education - Fund No. 8712 281
Education, State Department of - Aid for Exceptional Children - Fund No. 8715 282

Education, State Board of - School Lunch
Program - Fund No. 8713 281

ARTS, CULTURE, AND HISTORY, DEPARTMENT OF
National and Community Service, Commission
for - Fund No. 8841 282
Culture and History, Division of - Fund
No. 8718 283
Educational Broadcasting Authority -
Fund No. 8721 283
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ENVIRONMENTAL PROTECTION, DEPARTMENT OF
Environmental Protection, Division of -
Fund No. 8708 284

EXECUTIVE
Agriculture, Department of - Fund No. 8736 274
Agriculture, Department of - Land Protection
Authority - Fund No. 8896 276
Agriculture, Department of - Meat Inspection -
Fund No. 8737 275
Agriculture, Department of - State Conservation
Committee - Fund No. 8783 275
Attorney General –
Medicaid Fraud Unit – Fund No. 8882 276
Secretary of State—State Election Fund —
Fund No. 8854 276

HEALTH AND HUMAN RESOURCES, DEPARTMENT OF
Consolidated Medical Service Fund - Fund
No. 8723 284
Health, Division of - Central Office - Fund
No. 8802 284
Health, Division of - West Virginia Safe
Drinking Water Treatment - Fund No. 8824 285
Human Services, Division of - Fund No. 8722 285
Human Rights Commission - Fund No. 8725 285

HOMELAND SECURITY, DEPARTMENT OF
Administrative Services, Division of –
Fund No. 8803 287
Corrections and Rehabilitation, Division of –
Fund No. 8836 286
Emergency Management, Division of-
Fund No. 8727 286
Fire Commission – Fund No. 8819 287
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State Police, West Virginia—Fund No. 8741 286

LEGISLATIVE
Crime Victims Compensation Fund - Fund No. 8738 274

JUDICIAL
Supreme Court - Fund No. 8867 274

MISCELLANEOUS BOARDS AND COMMISSIONS
Adjutant General – State Militia – Fund No. 8726 291
Adjutant GeneralBWest Virginia National Guard Counterdrug Forfeiture Fund - Fund No. 8785 291
National Coal Heritage Area Authority - Fund No. 8869 291
Public Service Commission - Gas Pipeline Division - Fund No. 8744 290
Public Service Commission - Motor Carrier Division - Fund No. 8743 290

REVENUE, DEPARTMENT OF
Insurance Commission - Fund No. 8883 287

SENIOR SERVICES, BUREAU OF
Senior Services, Bureau of - Fund No. 8724 290

TRANSPORTATION, DEPARTMENT OF
Aeronautics Commission – Fund No. 8831 288
Motor Vehicles, Division of - Fund No. 8787 288
Public Transit, Division of - Fund No. 8745 288

VETERANS' ASSISTANCE, DEPARTMENT OF
Veterans' Assistance, Department of - Fund No. 8858 289
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§7. Appropriations from federal block grants.

APPROPRIATIONS
Commerce, Department of – West Virginia Development Office – Office of Economic Opportunity Community Services - Fund No. 8902 292
Development Office, West Virginia - Community Development - Fund No. 8746 292
Health, Division of - Community Mental Health Services - Fund No. 8794 294
Health, Division of - Maternal and Child Health - Fund No. 8750 293
Health, Division of - Preventive Health - Fund No. 8753 293
Health, Division of - Substance Abuse Prevention and Treatment - Fund No. 8793 294

Human Services, Division of - Child Care and
Development - Fund No. 8817 294
Human Services, Division of - Energy
Assistance - Fund No. 8755 294
Human Services, Division of - Social Services -
Fund No. 8757 294
Human Services, Division of - Temporary Assistance
For Needy Families - Fund No. 8816 294
WorkForce West Virginia - Workforce Investment Act -
Fund No. 8749 293

§8. Awards for claims against the state.

§9. Appropriations from general revenue surplus accrued.
Governor's Office – Civil Contingent Fund
Fund No. 0105 296

§10. Appropriations from lottery net profits surplus accrued
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§11. Appropriations from state excess lottery revenue surplus accrued
Human Services, Division of - Fund No. 5365 298

§12. Special Revenue Appropriations.
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Fund No. 1506 299

§13. State Improvement Fund Appropriations.
§14. Specific funds and collection accounts.
§15. Appropriations for refunding erroneous payment.
§16. Sinking fund deficiencies.
§17. Appropriations for local governments.
§18. Total appropriations.
§19. General school fund.

Section 1. Appropriations from general revenue. – From the State Fund, General Revenue, there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B the following amounts, as itemized, for expenditure during the fiscal year 2021.

LEGISLATIVE

1-Senate

Fund 0165 FY 2021 Org 2100

	Appro-priation	General Revenue Fund
Compensation of Members (R).....	00300	$ 1,010,000
Compensation and Per Diem of Officers and Employees (R).....	00500	4,011,332
Current Expenses and Contingent Fund (R).....	02100	276,392
Repairs and Alterations (R)	06400	50,000
Computer Supplies (R)	10100	20,000
Computer Systems (R).....	10200	60,000
Printing Blue Book (R).....	10300	125,000
Expenses of Members (R).....	39900	370,000
BRIM Premium (R)	91300	29,482
Total.....		$ 5,952,206

The appropriations for the Senate for the fiscal year 2020 are to remain in full force and effect and are hereby reappropriated to June 30, 2021. Any balances so reappropriated may be transferred and credited to the fiscal year 2020 accounts.

Upon the written request of the Clerk of the Senate, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the Senate, with the approval of the President, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the Senate, for any bills for supplies and services that may have been incurred by the Senate and not included in the appropriation bill, for supplies and services incurred in preparation for the opening, the conduct of the business and after adjournment of any regular or extraordinary session, and for the necessary operation of the Senate offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel during any session of the Legislature as shall be needed in addition to staff personnel authorized by the Senate resolution adopted during any such session. The Clerk of the Senate, with the approval of the President, or the President of the Senate shall have authority to employ such staff personnel between sessions of the Legislature as shall be needed, the compensation of all staff personnel during and between sessions of the Legislature, notwithstanding any such Senate resolution, to be fixed by the President of the Senate. The Clerk is hereby authorized to draw his or her requisitions upon the Auditor for the payment of all such staff personnel for such services, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

For duties imposed by law and by the Senate, the Clerk of the Senate shall be paid a monthly salary as provided by the Senate resolution, unless increased between sessions under the authority of the President, payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the Senate.

The distribution of the blue book shall be by the office of the Clerk of the Senate and shall include 75 copies for each member of the Legislature and two copies for each classified and approved high school and junior high or middle school and one copy for each elementary school within the state.

Included in the above appropriation for Senate (fund 0165, appropriation 02100), an amount not less than $5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

2-House of Delegates

Fund 0170 FY 2021 Org 2200

Compensation of Members (R).....	00300	$ 3,000,000
Compensation and Per Diem of Officers and Employees (R)	00500	575,000
Current Expenses and Contingent Fund (R).....	02100	4,399,031
Expenses of Members (R).....	39900	1,350,000
BRIM Premium (R)	91300	80,000
Total.....		$ 9,404,031

The appropriations for the House of Delegates for the fiscal year 2020 are to remain in full force and effect and are hereby reappropriated to June 30, 2021. Any balances so reappropriated may be transferred and credited to the fiscal year 2020 accounts.

Upon the written request of the Clerk of the House of Delegates, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

The Clerk of the House of Delegates, with the approval of the Speaker, is authorized to draw his or her requisitions upon the Auditor, payable out of the Current Expenses and Contingent Fund of the House of Delegates, for any bills for supplies and services that may have been incurred by the House of Delegates and not included in the appropriation bill, for bills for services and supplies incurred in preparation for the opening of the session and after adjournment, and for the necessary operation of the House of Delegates' offices, the requisitions for which are to be accompanied by bills to be filed with the Auditor.

The Speaker of the House of Delegates shall have authority to employ such staff personnel during and between sessions of the Legislature as shall be needed, in addition to personnel designated in the House resolution,

and the compensation of all personnel shall be as fixed in such House resolution for the session, or fixed by the Speaker during and between sessions of the Legislature, notwithstanding such House resolution. The Clerk of the House of Delegates is hereby authorized to draw requisitions upon the Auditor for such services, payable out of the appropriation for the Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

For duties imposed by law and by the House of Delegates, including salary allowed by law as keeper of the rolls, the Clerk of the House of Delegates shall be paid a monthly salary as provided in the House resolution, unless increased between sessions under the authority of the Speaker and payable out of the appropriation for Compensation and Per Diem of Officers and Employees or Current Expenses and Contingent Fund of the House of Delegates.

Included in the above appropriation for House of Delegates (fund 0170, appropriation 02100), an amount not less than $5,000 is to be used for the West Virginia Academy of Family Physicians - Doc of the Day Program.

3-Joint Expenses

(WV Code Chapter 4)

Fund 0175 FY 2021 Org 2300

Joint Committee on Government and Finance (R)	10400	$ 6,725,138
Legislative Printing (R)	10500	260,000
Legislative Rule-Making Review Committee (R)	10600	147,250
Legislative Computer System (R)	10700	1,447,500
Legislative Fees & Dues (R)	10701	600,000
BRIM Premium (R)	91300	60,569
Total		$ 9,240,457

The appropriations for the Joint Expenses for the fiscal year 2020 are to remain in full force and effect and are hereby reappropriated to June 30, 2021. Any balances reappropriated may be transferred and credited to the fiscal year 2020 accounts.

Upon the written request of the Clerk of the Senate, with the approval of the President of the Senate, and the Clerk of the House of Delegates, with the approval of the Speaker of the House of Delegates, and a copy to the Legislative Auditor, the Auditor shall transfer amounts between items of the total appropriation in order to protect or increase the efficiency of the service.

JUDICIAL

4-Supreme Court –

General Judicial

Fund 0180 FY 2021 Org 2400

Personal Services and Employee Benefits (R)	00100	$ 111,440,000
Military Service Members Court (R)	09002	300,000
Current Expenses (R)	13000	19,911,000
Repairs and Alterations (R)	06400	40,000
Equipment (R)	07000	1,950,000
Judges' Retirement System (R)	11000	838,000
Buildings (R)	25800	10,000
Other Assets (R)	69000	200,000
BRIM Premium (R)	91300	810,000
Total		$ 135,499,000

The appropriations to the Supreme Court of Appeals for the fiscal years 2018, 2019 and 2020 are to remain in full force and effect and are hereby reappropriated to June 30, 2021. Any balances so reappropriated may be transferred and credited to the fiscal year 2021 accounts.

This fund shall be administered by the Administrative Director of the Supreme Court of Appeals, who shall draw requisitions for warrants in payment in the form of payrolls, making deductions there from as required by law for taxes and other items.

The appropriation for the Judges' Retirement System (fund 0180, appropriation 11000) is to be transferred to the Consolidated Public Retirement Board, in accordance with the law relating thereto, upon requisition of the Administrative Director of the Supreme Court of Appeals.

EXECUTIVE

5-Governor's Office

(WV Code Chapter 5)

Fund 0101 FY 2021 Org 0100

Personal Services and Employee Benefits	00100	$ 3,250,758
Current Expenses (R)	13000	800,000
Repairs and Alterations	06400	25,000
National Governors Association	12300	60,700
Herbert Henderson Office of Minority Affairs	13400	396,726
Community Food Program	18500	1,000,000
Office of Resiliency	18600	596,157
BRIM Premium	91300	183,645
Total		$ 6,312,986

Any unexpended balances remaining in the appropriations for Unclassified (fund 0101, appropriation 09900), and Current Expenses (fund 0101, appropriation 13000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The above appropriation for Herbert Henderson Office of Minority Affairs (fund 0101, appropriation 13400) shall be transferred to the Minority Affairs Fund (fund 1058).

6-Governor's Office –

Custodial Fund

(WV Code Chapter 5)

Fund 0102 FY 2021 Org 0100

Personal Services and			
Employee Benefits.....	00100	$	381,293
Current Expenses (R).....	13000		183,158
Repairs and Alterations.....	06400		5,000
Total.....		$	569,451

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0102, appropriation 13000) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

Appropriations are to be used for current general expenses, including compensation of employees, household maintenance, cost of official functions and additional household expenses occasioned by such official functions.

7-Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

Milton Flood Wall (R).....	75701	$	6,000,000
Public Health Emergency			
Response Fund.....	xxxxx		2,000,000
Total.....			8,000,000

Any unexpended balances remaining in the appropriations for Business and Economic Development Stimulus – Surplus (fund 0105, appropriation 08400), Civil Contingent Fund – Total (fund 0105, appropriation 11400), 2012 Natural Disasters – Surplus (fund 0105, appropriation

13500), Civil Contingent Fund – Total – Surplus (fund 0105, appropriation 23800), Civil Contingent Fund – Surplus (fund 0105, appropriation 26300), Business and Economic Development Stimulus (fund 0105, appropriation 58600), Civil Contingent Fund (fund 0105, appropriation 61400), Milton Flood Wall (fund 0105, appropriation 75701), and Natural Disasters – Surplus (fund 0105, appropriation 76400) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From this fund there may be expended, at the discretion of the Governor, an amount not to exceed $1,000 as West Virginia's contribution to the interstate oil compact commission.

The above fund is intended to provide contingency funding for accidental, unanticipated, emergency or unplanned events which may occur during the fiscal year and is not to be expended for the normal day-to-day operations of the Governor's Office.

8-Auditor's Office –

General Administration

(WV Code Chapter 12)

Fund 0116 FY 2021 Org 1200

Personal Services and		
Employee Benefits.....	00100	$ 2,797,589
Current Expenses (R).....	13000	13,429
BRIM Premium.....	91300	12,077
Total.....		$ 2,823,095

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0116, appropriation 13000) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0116, appropriation 00100), is $95,000 for the Salary of the Auditor.

9-Treasurer's Office

(WV Code Chapter 12)

Fund 0126 FY 2021 Org 1300

Personal Services and Employee Benefits	00100	$ 2,570,242
Unclassified	09900	31,463
Current Expenses (R)	13000	772,684
Abandoned Property Program	11800	41,794
Other Assets	69000	10,000
ABLE Program	69201	150,000
BRIM Premium	91300	59,169
Total		$ 3,635,352

Any unexpended balances remaining in the appropriation for Current Expenses (fund 0126, appropriation 13000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0126, appropriation 00100), is $95,000 for the Salary of the Treasurer.

10-Department of Agriculture

(WV Code Chapter 19)

Fund 0131 FY 2021 Org 1400

Personal Services and Employee Benefits	00100	$ 6,298,229
Animal Identification Program	03900	131,942
State Farm Museum	05500	87,759
Current Expenses (R)	13000	848,115

Gypsy Moth Program (R)	11900	1,003,440
WV Farmers Market	12801	150,467
Black Fly Control.....	13700	453,698
HEMP Program.....	13701	350,000
Donated Foods Program	36300	45,000
Veterans to Agriculture Program (R)	36301	255,624
Predator Control (R)	47000	176,400
Bee Research.....	69100	70,634
Microbiology Program.....	78500	99,828
Moorefield Agriculture Center	78600	975,284
Chesapeake Bay Watershed.....	83000	112,427
Livestock Care Standards Board....	84300	8,820
BRIM Premium.....	91300	138,905
State FFA-FHA Camp and Conference Center	94101	738,554
Threat Preparedness.....	94200	73,122
WV Food Banks.....	96900	426,000
Senior's Farmers' Market Nutrition Coupon Program	97000	55,835
Total.....		$ 12,500,083

Any unexpended balances remaining in the appropriations for Gypsy Moth Program (fund 0131, appropriation 11900), Current Expenses (fund 0131, appropriation 13000), Veterans to Agriculture Program (fund 0131, appropriation 36301), Predator Control (fund 0131, appropriation 47000), and Agricultural Disaster and Mitigation Needs – Surplus (fund 0131, appropriation 85000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0131, appropriation 00100), is $95,000 for the Salary of the Commissioner.

The above appropriation for Predator Control (fund 0131, appropriation 47000) is to be made available to the United States Department of Agriculture, Wildlife Services to administer the Predator Control Program.

A portion of the Current Expenses appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for marketing and development activities.

From the above appropriation for WV Food Banks (fund 0131, appropriation 96900), $20,000 is for House of Hope and the remainder of the appropriation shall be allocated to the Huntington Food Bank and the Mountaineer Food Bank in Braxton County.

11-West Virginia Conservation Agency

(WV Code Chapter 19)

Fund 0132 FY 2021 Org 1400

Personal Services and Employee Benefits	00100	$ 794,191
Unclassified	09900	77,059
Current Expenses (R)	13000	317,848
Soil Conservation Projects (R)	12000	9,799,709
BRIM Premium	91300	34,428
Total		$ 11,023,235

Any unexpended balances remaining in the appropriations for Soil Conservation Projects (fund 0132, appropriation 12000), and Current Expenses (fund 0132, appropriation 13000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

12-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 0135 FY 2021 Org 1400

Personal Services and Employee Benefits	00100	$ 668,030
Unclassified	09900	7,090

Current Expenses	13000		82,605
Total		$	757,725

Any part or all of this appropriation may be transferred to a special revenue fund for the purpose of matching federal funds for the above-named program.

13-Department of Agriculture –

Agricultural Awards Fund

(WV Code Chapter 19)

Fund 0136 FY 2021 Org 1400

Programs and Awards for 4-H Clubs and FFA/FHA	57700	$	15,000
Commissioner's Awards and Programs	73700		39,250
Total		$	54,250

14-Department of Agriculture –

West Virginia Agricultural Land Protection Authority

(WV Code Chapter 8A)

Fund 0607 FY 2021 Org 1400

Personal Services and Employee Benefits	00100	$	99,547
Unclassified	09900		950
Total		$	100,497

15-Attorney General

(WV Code Chapters 5, 14, 46A and 47)

Fund 0150 FY 2021 Org 1500

Personal Services and Employee Benefits (R)	00100	$	2,818,788
Unclassified (R)	09900		24,428

Current Expenses (R).....	13000	762,097
Repairs and Alterations.....	06400	1,000
Equipment.....	07000	1,000
Criminal Convictions and Habeas Corpus Appeals (R)	26000	946,078
Better Government Bureau	74000	279,412
BRIM Premium.....	91300	120,654
Total.....		$ 4,953,457

Any unexpended balances remaining in the above appropriations for Personal Services and Employee Benefits (fund 0150, appropriation 00100), Unclassified (fund 0150, appropriation 09900), Current Expenses (fund 0150, appropriation 13000), Criminal Convictions and Habeas Corpus Appeals (fund 0150, appropriation 26000), and Agency Client Revolving Liquidity Pool (fund 0150, appropriation 36200) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0150, appropriation 00100), is $95,000 for the Salary of the Attorney General.

When legal counsel or secretarial help is appointed by the Attorney General for any state spending unit, this account shall be reimbursed from such spending units specifically appropriated account or from accounts appropriated by general language contained within this bill: *Provided,* That the spending unit shall reimburse at a rate and upon terms agreed to by the state spending unit and the Attorney General: *Provided, however,* That if the spending unit and the Attorney General are unable to agree on the amount and terms of the reimbursement, the spending unit and the Attorney General shall submit their proposed reimbursement rates and terms to the Governor for final determination.

16-Secretary of State

(WV Code Chapters 3, 5, and 59)

Fund 0155 FY 2021 Org 1600

Personal Services and			
Employee Benefits	00100	$	118,794
Unclassified (R)	09900		8,352
Current Expenses (R)	13000		795,948
BRIM Premium	91300		34,500
Total		$	957,594

Any unexpended balances remaining in the appropriations for Unclassified (fund 0155, appropriation 09900) and Current Expenses (fund 0155, appropriation 13000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Included in the above appropriation to Personal Services and Employee Benefits (fund 0155, appropriation 00100), is $95,000 for the Salary of the Secretary of State.

17-State Election Commission

(WV Code Chapter 3)

Fund 0160 FY 2021 Org 1601

Personal Services and			
Employee Benefits	00100	$	2,477
Unclassified	09900		75
Current Expenses	13000		4,956
Total		$	7,508

DEPARTMENT OF ADMINISTRATION

18-Department of Administration –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0186 FY 2021 Org 0201

Personal Services and Employee Benefits	00100	$ 606,584
Unclassified	09900	9,177
Current Expenses	13000	85,009
Repairs and Alterations	06400	100
Equipment	07000	1,000
Financial Advisor (R)	30400	27,546
Lease Rental Payments	51600	15,000,000
Design-Build Board	54000	4,000
Other Assets	69000	100
BRIM Premium	91300	6,736
Total		$ 15,740,252

Any unexpended balance remaining in the appropriation for Financial Advisor (fund 0186, appropriation 30400) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

The appropriation for Lease Rental Payments (fund 0186, appropriation 51600) shall be disbursed as provided by W.Va. Code §31-15-6b.

19-Consolidated Public Retirement Board

(WV Code Chapter 5)

Fund 0195 FY 2021 Org 0205

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the retirement costs for their respective divisions. When specific appropriations are not made, such payments may be made from the balances in the various special revenue funds in excess of specific appropriations.

20-Division of Finance

(WV Code Chapter 5A)

Fund 0203 FY 2021 Org 0209

Personal Services and Employee Benefits	00100	$ 64,696
Unclassified	09900	1,400
Current Expenses	13000	66,721
GAAP Project (R)	12500	612,666
BRIM Premium	91300	7,517
Total		$ 753,000

Any unexpended balance remaining in the appropriation for GAAP Project (fund 0203, appropriation 12500) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

21-Division of General Services

(WV Code Chapter 5A)

Fund 0230 FY 2021 Org 0211

Personal Services and Employee Benefits	00100	$ 2,722,499
Unclassified	09900	20,000
Current Expenses	13000	1,148,349
Repairs and Alterations	06400	500
Equipment	07000	5,000
Fire Service Fee	12600	14,000
Preservation and Maintenance of Statues and Monuments on Capitol Grounds	37100	68,000
Capital Outlay, Repairs and Equipment (R)	58900	23,660,888
BRIM Premium	91300	129,983
Total		$ 27,769,219

Any unexpended balances remaining in the above appropriations for Buildings (fund 0230, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900), Capital Outlay, Repairs and Equipment – Surplus (fund 0230, appropriation 67700), and Land (fund 0230, appropriation 73000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for Preservation and Maintenance of Statues and Monuments on Capitol Grounds (fund 0230, appropriation 37100), the Division shall consult the Division of Culture and History and Capitol Building Commission in all aspects of planning, assessment, maintenance and restoration.

The above appropriation for Capital Outlay, Repairs and Equipment (fund 0230, appropriation 58900) shall be expended for capital improvements, maintenance, repairs and equipment for state-owned buildings.

22-Division of Purchasing

(WV Code Chapter 5A)

Fund 0210 FY 2021 Org 0213

Personal Services and Employee Benefits	00100	$ 1,055,926
Unclassified	09900	144
Current Expenses	13000	1,285
Repairs and Alterations	06400	200
BRIM Premium	91300	6,922
Total		$ 1,064,477

The Division of Highways shall reimburse Fund 2031 within the Division of Purchasing for all actual expenses incurred pursuant to the provisions of W.Va. Code §17-2A-13.

23-Travel Management

(WV Code Chapter 5A)

Fund 0615 FY 2021 Org 0215

Personal Services and			
Employee Benefits	00100	$	802,363
Unclassified	09900		12,032
Current Expenses	13000		440,247
Repairs and Alterations	06400		1,000
Equipment	07000		5,000
Buildings (R)	25800		100
Other Assets	69000		100
Total		$	1,260,842

Any unexpended balance remaining in the appropriation for Buildings (fund 0615, appropriation 25800) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

24-Commission on Uniform State Laws

(WV Code Chapter 29)

Fund 0214 FY 2021 Org 0217

Current Expenses	13000	$	45,550

To pay expenses for members of the commission on uniform state laws.

25-West Virginia Public Employees Grievance Board

(WV Code Chapter 6C)

Fund 0220 FY 2021 Org 0219

Personal Services and			
Employee Benefits	00100	$	969,627
Unclassified	09900		1,000
Current Expenses	13000		145,295

5	Equipment	07000	50
6	BRIM Premium	91300	8,740
7	Total		$ 1,124,712

26-Ethics Commission

(WV Code Chapter 6B)

Fund 0223 FY 2021 Org 0220

1	Personal Services and		
2	Employee Benefits	00100	$ 606,969
3	Unclassified	09900	2,200
4	Current Expenses	13000	104,501
5	Repairs and Alterations	06400	500
6	Other Assets	69000	100
7	BRIM Premium	91300	5,574
8	Total		$ 719,844

27-Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2021 Org 0221

1	Personal Services and		
2	Employee Benefits	00100	$ 1,899,483
3	Unclassified	09900	333,300
4	Current Expenses	13000	12,740
5	Public Defender Corporations	35200	19,538,435
6	Appointed Counsel Fees (R)	78800	12,691,113
7	BRIM Premium	91300	10,575
8	Total		$ 34,485,646

9 Any unexpended balance remaining in the above
10 appropriation for Appointed Counsel Fees (fund 0226,
11 appropriation 78800) at the close of the fiscal year 2020 is
12 hereby reappropriated for expenditure during the fiscal year
13 2021.

The director shall have the authority to transfer funds from the appropriation to Public Defender Corporations (fund 0226, appropriation 35200) to Appointed Counsel Fees (fund 0226, appropriation 78800).

28-Committee for the Purchase of

Commodities and Services from the Handicapped

(WV Code Chapter 5A)

Fund 0233 FY 2021 Org 0224

Personal Services and			
Employee Benefits.....	00100	$	3,187
Current Expenses	13000		868
Total.....		$	4,055

29-Public Employees Insurance Agency

(WV Code Chapter 5)

Fund 0200 FY 2021 Org 0225

PEIA Subsidy.....	80100	$	21,000,000

The Division of Highways, Division of Motor Vehicles, Public Service Commission and other departments, bureaus, divisions, or commissions operating from special revenue funds and/or federal funds shall pay their proportionate share of the public employees health insurance cost for their respective divisions.

The above appropriation for PEIA Subsidy (fund 0200, appropriation 80100) may be transferred to a special revenue fund and shall be utilized by the West Virginia Public Employees Insurance Agency for the purposes of offsetting benefit changes to offset the aggregate premium cost-sharing percentage requirements between employers and employees. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

30-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 0557 FY 2021 Org 0228

Forensic Medical			
Examinations (R).....	68300	$	141,579
Federal Funds/Grant Match (R).....	74900		105,074
Total.....		$	246,653

Any unexpended balances remaining in the appropriations for Forensic Medical Examinations (fund 0557, appropriation 68300) and Federal Funds/Grant Match (fund 0557, appropriation 74900) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

31-Real Estate Division

(WV Code Chapter 5A)

Fund 0610 FY 2021 Org 0233

Personal Services and			
Employee Benefits.....	00100	$	681,101
Unclassified	09900		1,000
Current Expenses	13000		137,381
Repairs and Alterations.....	06400		100
Equipment.....	07000		2,500
BRIM Premium.....	91300		9,784
Total.....		$	831,866

DEPARTMENT OF COMMERCE

32-West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 0246 FY 2021 Org 0304

Tourism – Brand Promotion (R)....	61803	$	10,000,000

Tourism – Public Relations (R)	61804	1,500,000
Tourism –Events and Sponsorships (R).....	61805	500,000
Tourism – Industry Development (R).....	61806	500,000
State Parks and Recreation Advertising (R).....	61900	1,500,000
Total.....		$ 14,000,000

Any unexpended balances remaining in the appropriations for Tourism – Brand Promotion (fund 0246, appropriation 61803), Tourism – Public Relations (fund 0246, appropriation 61804), Tourism – Events and Sponsorships (fund 0246, appropriation 61805), Tourism – Industry Development (fund 0246, appropriation 61806), and State Parks and Recreation Advertising (fund 0246, appropriation 61900) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The Executive Director of the West Virginia Tourism Office, with approval from the Secretary of Commerce, shall have the authority to transfer between the above items of appropriation.

33-Division of Forestry

(WV Code Chapter 19)

Fund 0250 FY 2021 Org 0305

Personal Services and Employee Benefits.....	00100	$ 2,881,455
Unclassified	09900	21,435
Current Expenses	13000	338,953
Repairs and Alterations.....	06400	80,000
Equipment (R).....	07000	2,061
BRIM Premium.....	91300	98,754
Total.....		$ 3,422,658

Any unexpended balance remaining in the appropriation for Equipment (fund 0250, appropriation 07000) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

Out of the above appropriations a sum may be used to match federal funds for cooperative studies or other funds for similar purposes.

34-Geological and Economic Survey

(WV Code Chapter 29)

Fund 0253 FY 2021 Org 0306

Personal Services and		
Employee Benefits	00100	$ 1,678,448
Unclassified	09900	27,678
Current Expenses	13000	51,524
Repairs and Alterations	06400	968
Mineral Mapping System (R)	20700	1,134,143
BRIM Premium	91300	24,486
Total		$ 2,917,247

Any unexpended balance remaining in the appropriation for Mineral Mapping System (fund 0253, appropriation 20700) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

The above Unclassified and Current Expense appropriations include funding to secure federal and other contracts and may be transferred to a special revolving fund (fund 3105) for the purpose of providing advance funding for such contracts.

35-West Virginia Development Office

(WV Code Chapter 5B)

Fund 0256 FY 2021 Org 0307

Personal Services and Employee Benefits	00100	$ 4,500,420
Unclassified	09900	108,055
Current Expenses	13000	5,815,277
National Youth Science Camp	13200	241,570
Local Economic Development Partnerships (R)	13300	1,250,000
ARC Assessment	13600	152,585
Guaranteed Work Force Grant (R)	24200	976,579
Mainstreet Program	79400	167,467
Local Economic Development Assistance (R)	81900	1,750,000
BRIM Premium	91300	3,157
Hatfield McCoy Recreational Trail	96000	198,415
Total		$ 15,163,525

Any unexpended balances remaining in the appropriations for Sales and Marketing Enhancement – Surplus (fund 0256, appropriation 05099), Unclassified – Surplus (fund 0256, appropriation 09700), Partnership Grants (fund 0256, appropriation 13100), Local Economic Development Partnerships (fund 0256, appropriation 13300), Guaranteed Work Force Grant (fund 0256, appropriation 24200), Industrial Park Assistance (fund 0256, appropriation 48000), and Local Economic Development Assistance (fund 0256, appropriation 81900) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for Current Expenses (fund 0256, appropriation 13000), $1,800,000 shall be used for the Eastern West Virginia Regional Airport; $50,000 shall be used for the Western Potomac Economic Partnership;$100,000 shall be used for Techconnect West Virginia and $100,000 shall be used for Advantage Valley.

The above appropriation to Local Economic Development Partnerships (fund 0256, appropriation

13300) shall be used by the West Virginia Development Office for the award of funding assistance to county and regional economic development corporations or authorities participating in the Certified Development Community Program developed under the provisions of W.Va. Code §5B-2-14. The West Virginia Development Office shall award the funding assistance through a matching grant program, based upon a formula whereby funding assistance may not exceed $34,000 per county served by an economic development or redevelopment corporation or authority.

36-Division of Labor

(WV Code Chapters 21, and 47)

Fund 0260 FY 2021 Org 0308

Personal Services and Employee Benefits	00100	$ 1,564,676
Current Expenses	13000	227,000
Repairs and Alterations	06400	28,000
Equipment	07000	15,000
BRIM Premium	91300	8,500
Total		$ 1,843,176

37-Division of Natural Resources

(WV Code Chapter 20)

Fund 0265 FY 2021 Org 0310

Personal Services and Employee Benefits	00100	$ 16,956,925
Unclassified	09900	184,711
Current Expenses	13000	196,302
Repairs and Alterations	06400	100
Equipment	07000	100
Buildings (R)	25800	100
Capital Outlay – Parks (R)	28800	3,000,000
Litter Control Conservation Officers	56400	146,986

Upper Mud River Flood Control ...	65400	164,791
Other Assets.....	69000	100
Land (R).....	73000	100
Law Enforcement.....	80600	2,552,994
BRIM Premium.....	91300	45,141
Total.....		$ 23,248,350

Any unexpended balances remaining in the appropriations for Buildings (fund 0265, appropriation 25800), Capital Outlay – Parks (fund 0265, appropriation 28800), Land (fund 0265, appropriation 73000), and State Park Improvements – Surplus (fund 0265, appropriation 76300) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Any revenue derived from mineral extraction at any state park shall be deposited in a special revenue account of the Division of Natural Resources, first for bond debt payment purposes and with any remainder to be for park operation and improvement purposes.

38-Division of Miners' Health, Safety and Training

(WV Code Chapter 22)

Fund 0277 FY 2021 Org 0314

Personal Services and		
Employee Benefits.....	00100	$ 9,450,243
Unclassified	09900	111,016
Current Expenses	13000	1,396,141
Coal Dust and		
Rock Dust Sampling.....	27000	487,752
BRIM Premium.....	91300	80,668
Total.....		$ 11,525,820

Included in the above appropriation for Current Expenses (fund 0277, appropriation 13000) is $500,000 to be used for coal mine training activities at an established mine training facility in southern West Virginia.

39-Board of Coal Mine Health and Safety

(WV Code Chapter 22)

Fund 0280 FY 2021 Org 0319

Personal Services and Employee Benefits	00100	$	233,981
Unclassified	09900		3,480
Current Expenses	13000		118,138
Total		$	355,599

Included in the above appropriation for Current Expenses (fund 0280, appropriation 13000) up to $29,000 shall be used for the Coal Mine Safety and Technical Review Committee.

40-WorkForce West Virginia

(WV Code Chapter 23)

Fund 0572 FY 2021 Org 0323

Personal Services and Employee Benefits	00100	$	51,433
Unclassified	09900		593
Current Expenses	13000		7,337
Total		$	59,363

41-Department of Commerce –

Office of the Secretary

(WV Code Chapter 19)

Fund 0606 FY 2021 Org 0327

Personal Services and Employee Benefits	00100	$	588,872
Unclassified	09900		1,490
Current Expenses	13000		17,099
Directed Transfer	70000		500,000

Total.....		$ 1,107,461

The above appropriation for Directed Transfer (fund 0606, appropriation 70000) shall be transferred to the Broadband Enhancement Fund (fund 3013).

42-Office of Energy

(WV Code Chapter 5B)

Fund 0612 FY 2021 Org 0328

Personal Services and Employee Benefits.....	00100	$ 198,299
Unclassified	09900	12,395
Current Expenses	13000	1,029,679
BRIM Premium.....	91300	3,894
Total.....		$ 1,244,267

From the above appropriation for Current Expenses (fund 0612, appropriation 13000) $558,247 is for West Virginia University and $308,247 is for Southern West Virginia Community and Technical College for the Mine Training and Energy Technologies Academy.

43-State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 0310 FY 2021 Org 0932

Personal Services and Employee Benefits.....	00100	$ 11,459,977
Independent Living Services	00900	429,418
Current Expenses	13000	558,815
Workshop Development	16300	1,817,427
Supported Employment Extended Services.....	20600	77,960
Ron Yost Personal Assistance Fund.....	40700	333,828

Employment Attendant Care Program	59800	131,575
BRIM Premium	91300	77,464
Total		$ 14,886,464

From the above appropriation for Workshop Development (fund 0310, appropriation 16300), fund shall be used exclusively with the private nonprofit community rehabilitation program organizations known as work centers or sheltered workshops. The appropriation shall also be used to continue the support of the program, services, and individuals with disabilities currently in place at those organizations.

DEPARTMENT OF EDUCATION

44-State Board of Education –

School Lunch Program

(WV Code Chapters 18, and 18A)

Fund 0303 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 348,042
Current Expenses	13000	2,118,865
Total		$ 2,466,907

45-State Board of Education –

State Department of Education

(WV Code Chapters 18, and 18A)

Fund 0313 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 4,598,523
Teachers' Retirement Savings Realized	09500	33,028,000
Unclassified (R)	09900	500,000

Current Expenses (R)	13000	5,330,000
Center for Professional Development (R)	11500	150,000
Increased Enrollment	14000	5,090,000
Safe Schools	14300	5,104,544
Attendance Incentive Bonus	15001	2,056,717
National Teacher Certification (R)	16100	300,000
Jobs & Hope – Childhood Drug Prevention Education	21901	5,000,000
Allowance for County Transfer	26400	238,174
Technology Repair and Modernization	29800	951,003
HVAC Technicians	35500	516,791
Early Retirement Notification Incentive	36600	300,000
MATH Program	36800	336,532
Assessment Programs	39600	1,339,588
Benedum Professional Development Collaborative (R)	42700	429,775
Governor's Honors Academy (R)	47800	1,059,270
21st Century Fellows	50700	274,899
English as a Second Language	52800	96,000
Teacher Reimbursement	57300	297,188
Hospitality Training	60000	272,775
Youth in Government	61600	100,000
High Acuity Special Needs (R)	63400	1,500,000
Foreign Student Education	63600	100,294
State Board of Education Administrative Costs	68400	277,403
IT Academy (R)	72100	500,000
Early Literacy Program	75600	5,705,624
School Based Truancy Prevention (R)	78101	2,032,238
Mastery Based Education	78104	125,000
Communities in Schools (R)	78103	4,900,000
21st Century Learners (R)	88600	1,756,470
BRIM Premium	91300	342,859

21st Century Assessment and Professional Development.....	93100	2,006,978
21st Century Technology Infrastructure Network Tools and Support.....	93300	7,636,586
Mountain State Digital Literacy Program.....	xxxxx	415,500
Special Olympic Games.....	96600	25,000
Educational Program Allowance ...	99600	516,250
Total.....		$ 95,209,981

The above appropriations include funding for the state board of education and their executive office.

From the above appropriation for Unclassified (fund 0313, appropriation 09900) $80,000 shall be used for creating a career exploration tool for students.

From the above appropriation for Current Expenses (fund 0313, appropriation 13000), $2,000,000 shall be used for the Department of Education Child Nutrition Program – Non-traditional Child Hunger Solutions, $750,000 shall be used for Local Education Projects.

Any unexpended balances remaining in the appropriations for Unclassified (fund 0313, appropriation 09900), Current Expenses (fund 0313, appropriation 13000), Center for Professional Development (fund 0313, appropriation 11500), National Teacher Certification (fund 0313, appropriation 16100), Benedum Professional Development Collaborative (fund 0313, appropriation 42700), Governor's Honors Academy (fund 0313, appropriation 47800), High Acuity Special Needs (fund 0313, appropriation 63400), IT Academy (fund 0313, appropriation 72100), School Based Truancy Prevention (fund 0313, appropriation 78101), Communities in Schools (fund 0313, appropriation 78103), and 21st Century Learners (fund 0313, appropriation 88600) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The above appropriation for Teachers' Retirement Savings Realized (fund 0313, appropriation 09500) shall be transferred to the Employee Pension and Health Care Benefit Fund (fund 2044).

From the above appropriation for Unclassified (fund 0313, appropriation 09900), $120,000 shall be for assisting low income students with AP exam fees.

The above appropriation for Hospitality Training (fund 0313, appropriation 60000), shall be allocated only to entities that have a plan approved for funding by the Department of Education, at the funding level determined by the State Superintendent of Schools. Plans shall be submitted to the State Superintendent of Schools to be considered for funding.

From the above appropriation for Educational Program Allowance (fund 0313, appropriation 99600), $100,000 shall be expended for the Morgan County Board of Education for Paw Paw Schools; $150,000 shall be for the Randolph County Board of Education for Pickens School; $100,000 shall be for the Preston County Board of Education for the Aurora School; $100,000 shall be for the Fayette County Board of Education for Meadow Bridge and $66,250 is for Project Based Learning in STEM fields.

46-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18, and 18A)

Fund 0314 FY 2021 Org 0402

Special Education – Counties	15900	$ 7,271,757
Special Education – Institutions.....	16000	3,968,631
Education of Juveniles		
Held in Predispositional		
Juvenile Detention Centers.....	30200	657,858

Education of Institutionalized Juveniles and Adults (R).....	47200	20,325,353
Total.....		$ 32,223,599

Any unexpended balance remaining in the appropriation for Education of Institutionalized Juveniles and Adults (fund 0314, appropriation 47200) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriations, the superintendent shall have authority to expend funds for the costs of special education for those children residing in out-of-state placements.

47-State Board of Education –

State Aid to Schools

(WV Code Chapters 18, and 18A)

Fund 0317 FY 2021 Org 0402

Other Current Expenses	02200	$ 170,216,073
Advanced Placement.....	05300	734,729
Professional Educators	15100	897,576,715
Service Personnel.....	15200	301,789,240
Fixed Charges	15300	106,219,537
Transportation.....	15400	78,177,730
Professional Student Support Services.....	65500	62,148,699
Improved Instructional Programs.....	15600	51,956,792
21st Century Strategic Technology Learning Growth	93600	26,408,349
Teacher and Leader Induction	93601	5,443,468
Basic Foundation Allowances		1,700,671,332
Less Local Share.....		(476,083,702)
Adjustments		(2,716,826)
Total Basic State Aid.....		1,221,870,804
Public Employees' Insurance Matching.....	01200	222,461,499

Teachers' Retirement System	01900	66,511,000
School Building Authority	45300	24,000,000
Retirement Systems –		
Unfunded Liability	77500	304,728,000
Total		$ 1,839,571,303

48-State Board of Education –

Vocational Division

(WV Code Chapters 18, and 18A)

Fund 0390 FY 2021 Org 0402

Personal Services and		
Employee Benefits	00100	$ 1,339,713
Unclassified	09900	268,800
Current Expenses	13000	883,106
Wood Products –		
Forestry Vocational Program	14600	79,873
Albert Yanni Vocational Program	14700	132,123
Vocational Aid	14800	24,229,691
Adult Basic Education	14900	5,271,228
Jobs & Hope	14902	3,100,000
Program Modernization	30500	884,313
High School Equivalency		
Diploma Testing (R)	72600	803,397
FFA Grant Awards	83900	11,496
Pre-Engineering		
Academy Program	84000	265,294
Total		$ 37,269,034

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0390, appropriation 14901) and High School Equivalency Diploma Testing (fund 0390, appropriation 72600) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

49-State Board of Education –

West Virginia Schools for the Deaf and the Blind

(WV Code Chapters 18, and 18A)

Fund 0320 FY 2021 Org 0403

Personal Services and Employee Benefits	00100	$ 11,379,675
Unclassified	09900	110,000
Current Expenses	13000	2,250,696
Repairs and Alterations	06400	164,675
Equipment	07000	77,000
Buildings (R)	25800	45,000
Capital Outlay and Maintenance (R)	75500	520,000
BRIM Premium	91300	130,842
Total		$ 14,677,888

Any unexpended balances remaining in the appropriations for Buildings (fund 0320, appropriation 25800) and Capital Outlay and Maintenance (fund 0320, appropriation 75500) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

50-Division of Culture and History

(WV Code Chapter 29)

Fund 0293 FY 2021 Org 0432

Personal Services and Employee Benefits	00100	$ 3,463,493
Current Expenses	13000	610,843
Repairs and Alterations	06400	1,000
Equipment	07000	1
Unclassified (R)	09900	28,483

WV Humanities Council	16800	250,000
Buildings (R)	25800	1
Other Assets	69000	1
Educational Enhancements	69500	573,500
Land (R)	73000	1
Culture and History Programming	73200	231,573
Capital Outlay and Maintenance (R)	75500	19,600
Historical Highway Marker Program	84400	57,548
BRIM Premium	91300	39,337
Total		$ 5,275,381

Any unexpended balances remaining in the appropriations for Unclassified (fund 0293, appropriation 09900), Buildings (fund 0293, appropriation 25800), Capital Outlay, Repairs and Equipment (fund 0293, appropriation 58900), Capital Improvements – Surplus (fund 0293, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0293, appropriation 67700), Land (fund 0293, appropriation 73000), and Capital Outlay and Maintenance (fund 0293, appropriation 75500) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The Current Expenses appropriation includes funding for the arts funds, department programming funds, grants, fairs and festivals and Camp Washington Carver and shall be expended only upon authorization of the Division of Culture and History and in accordance with the provisions of Chapter 5A, Article 3, and Chapter 12 of the Code.

From the above appropriation for Educational Enhancements (fund 0293, appropriation 69500), $500,000 shall be used for Save the Children and $73,500 shall be used for the Clay Center.

51-Library Commission

(WV Code Chapter 10)

Fund 0296 FY 2021 Org 0433

Personal Services and			
Employee Benefits	00100	$	1,314,744
Current Expenses	13000		139,624
Repairs and Alterations	06400		6,500
Services to Blind & Handicapped	18100		161,717
BRIM Premium	91300		18,205
Total		$	1,640,790

52-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 0300 FY 2021 Org 0439

Personal Services and			
Employee Benefits	00100	$	3,312,092
Current Expenses	13000		120,146
Mountain Stage	24900		300,000
Capital Outlay			
and Maintenance (R)	75500		50,000
BRIM Premium	91300		48,453
Total		$	3,830,691

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 0300, appropriation 75500) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

53-Environmental Quality Board

(WV Code Chapter 20)

Fund 0270 FY 2021 Org 0311

1	Personal Services and		
2	Employee Benefits	00100	$ 82,539
3	Current Expenses	13000	28,453
4	Repairs and Alterations	06400	800
5	Equipment	07000	500
6	Other Assets	69000	400
7	BRIM Premium	91300	791
8	Total		$ 113,483

54-Division of Environmental Protection

(WV Code Chapter 22)

Fund 0273 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits	00100	$ 4,207,200
3	Water Resources Protection		
4	and Management	06800	576,278
5	Current Expenses	13000	86,116
6	Repairs and Alterations	06400	1,500
7	Unclassified	09900	14,825
8	Dam Safety	60700	237,824
9	West Virginia Stream		
10	Partners Program	63700	77,396
11	Meth Lab Cleanup	65600	139,000
12	WV Contributions to		
13	River Commissions	77600	148,485
14	Office of Water Resources		
15	Non-Enforcement Activity	85500	1,009,855
16	Total		$ 6,498,479

55-Air Quality Board

(WV Code Chapter 16)

Fund 0550 FY 2021 Org 0325

1	Personal Services and		
2	Employee Benefits	00100	$ 60,737
3	Current Expenses	13000	11,612

4	Repairs and Alterations.....	06400	800
5	Equipment.....	07000	400
6	Other Assets.....	69000	200
7	BRIM Premium.....	91300	2,304
8	Total.....		$ 76,053

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

56-Department of Health and Human Resources –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0400 FY 2021 Org 0501

1	Personal Services and		
2	Employee Benefits.....	00100	$ 384,638
3	Unclassified	09900	6,459
4	Current Expenses	13000	50,613
5	Commission for the Deaf		
6	and Hard of Hearing	70400	225,534
7	Total.....		$ 667,244

8 Any unexpended balance remaining in the
9 appropriation for the Women's Commission (fund 0400,
10 appropriation 19100) at the close of the fiscal year 2020 is
11 hereby reappropriated for expenditure during the fiscal year
12 2021.

57-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	$ 12,544,773
3	Chief Medical Examiner.....	04500	8,714,647

Unclassified	09900	671,795
Current Expenses	13000	5,588,459
State Aid for Local and Basic Public Health Services	18400	14,160,490
Safe Drinking Water Program (R)	18700	1,891,323
Women, Infants and Children	21000	38,621
Early Intervention	22300	8,134,060
Cancer Registry	22500	206,306
Office of Drug Control Policy (R)	35401	545,153
Statewide EMS Program Support (R)	38300	1,695,271
Office of Medical Cannabis (R)	42001	1,459,989
Black Lung Clinics	46700	170,885
Vaccine for Children	55100	338,235
Tuberculosis Control	55300	329,256
Maternal and Child Health Clinics, Clinicians Medical Contracts and Fees (R)	57500	5,892,707
Epidemiology Support	62600	1,497,192
Primary Care Support	62800	4,263,706
Sexual Assault Intervention and Prevention	72300	250,000
Health Right Free Clinics	72700	3,750,000
Capital Outlay and Maintenance (R)	75500	70,000
Healthy Lifestyles	77800	890,000
Maternal Mortality Review	83400	49,933
Diabetes Education and Prevention	87300	97,125
BRIM Premium	91300	169,791
State Trauma and Emergency Care System	91800	1,921,322
WVU Charleston Poison Control Hotline	94400	712,942
Total		$ 76,053,981

Any unexpended balances remaining in the appropriations for Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund

0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Office of Medical Cannabis (fund 0407, appropriation 42001), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia Aids Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute resolution relating to nursing home administrative appeals; $50,000 is for Hospital Hospitality House of Huntington; $200,000 is for Potomac Center Inc. of Romney, West Virginia; and $1,000,000 shall be used for the administration of the Telestroke program.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to $400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and $11,000 is for the Marshall County Health Department for dental services.

58-Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2021 Org 0506

Personal Services and			
Employee Benefits.....	00100	$	1,632,588

Current Expenses	13000	14,113
Behavioral Health Program (R)	21900	68,613,953
Jobs & Hope	14902	200,000
Family Support Act	22100	251,226
Institutional Facilities		
Operations (R)	33500	147,729,180
Substance Abuse		
Continuum of Care (R)	35400	1,840,000
Capital Outlay		
and Maintenance (R)	75500	2,875,000
Renaissance Program	80400	165,996
BRIM Premium	91300	1,296,098
Total		$224,618,154

Any unexpended balances remaining in the appropriations for Jim's Dream (fund 0525, appropriation 14901), Behavioral Health Program (fund 0525, appropriation 21900), Institutional Facilities Operations (fund 0525, appropriation 33500), Substance Abuse Continuum of Care (fund 0525, appropriation 35400), and Capital Outlay and Maintenance (fund 0525, appropriation 75500) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided,* That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however,* That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

Included in the above appropriation for Behavioral Health Program (fund 0525, appropriation 21900) is $100,000 for the Healing Place of Huntington.

The above appropriation for Institutional Facilities Operations (fund 0525, appropriation 33500) contains prior

year salary increases due to the Hartley court order in the amount of $2,202,013 for William R. Sharpe Jr. Hospital, and $2,067,984 for Mildred Mitchel-Bateman Hospital.

From the above appropriation for Substance Abuse Continuum of Care (fund 0525, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

Additional funds have been appropriated in fund 5156, fiscal year 2021, organization 0506, for the operation of the institutional facilities. The secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the Institutional Facilities Operations appropriation to facilitate cost effective and cost saving services at the community level.

59-Division of Health –

West Virginia Drinking Water Treatment

(WV Code Chapter 16)

Fund 0561 FY 2021 Org 0506

West Virginia Drinking Water Treatment Revolving Fund-Transfer.....	68900	$	647,500

The above appropriation for Drinking Water Treatment Revolving Fund – Transfer shall be transferred to the West Virginia Drinking Water Treatment Revolving Fund or appropriate bank depository and the Drinking Water Treatment Revolving – Administrative Expense Fund as provided by Chapter 16 of the Code.

60-Human Rights Commission

(WV Code Chapter 5)

Fund 0416 FY 2021 Org 0510

Personal Services and Employee Benefits	00100	$ 1,073,553
Unclassified	09900	4,024
Current Expenses	13000	331,304
BRIM Premium	91300	10,764
Total		$ 1,419,645

61-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2021 Org 0511

Personal Services and Employee Benefits	00100	$ 50,356,249
Unclassified	09900	5,688,944
Current Expenses	13000	11,708,336
Child Care Development	14400	3,102,718
Medical Services	18900	297,855,264
Social Services	19500	226,476,781
Family Preservation Program	19600	1,565,000
Family Resource Networks	27400	1,762,464
Domestic Violence Legal Services Fund	38400	400,000
James “Tiger” Morton Catastrophic Illness Fund	45500	105,695
I/DD Waiver	46600	108,541,736
Child Protective Services Case Workers	46800	27,843,073
Title XIX Waiver for Seniors	53300	13,593,620
WV Teaching Hospitals Tertiary/Safety Net	54700	6,356,000
In-Home Family Education	68800	1,000,000
WV Works SeparateState Program	69800	135,000
Child Support Enforcement	70500	6,458,806
Temporary Assistance for Needy Families/Maintenance of Effort	70700	25,819,096
Child Care – Maintenance of Effort Match	70800	5,693,743

Grants for Licensed Domestic Violence Programs and Statewide Prevention	75000	2,500,000
Capital Outlay and Maintenance (R)	75500	11,875
Community Based Services and Pilot Programs for Youth...	75900	1,000,000
Medical Services Administrative Costs	78900	38,234,761
Traumatic Brain Injury Waiver.....	83500	800,000
Indigent Burials (R)	85100	1,550,000
CHIP Administrative Costs	85601	700,000
CHIP Services.....	85602	6,390,665
BRIM Premium.....	91300	892,642
Rural Hospitals Under 150 Beds ...	94000	2,596,000
Children's Trust Fund – Transfer ..	95100	220,000
PATH.....	95400	7,162,452
Total.....		$ 856,520,920

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0403, appropriation 75500) and Indigent Burials (fund 0403, appropriation 85100) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Notwithstanding the provisions of Title I, section three of this bill, the secretary of the Department of Health and Human Resources shall have the authority to transfer funds within the above appropriations: *Provided,* That no more than five percent of the funds appropriated to one appropriation may be transferred to other appropriations: *Provided, however,* That no funds from other appropriations shall be transferred to the personal services and employee benefits appropriation.

The secretary shall have authority to expend funds for the educational costs of those children residing in out-of-state placements, excluding the costs of special education programs.

Included in the above appropriation for Social Services (fund 0403, appropriation 19500) is funding for continuing education requirements relating to the practice of social work.

The above appropriation for Domestic Violence Legal Services Fund (fund 0403, appropriation 38400) shall be transferred to the Domestic Violence Legal Services Fund (fund 5455).

The above appropriation for James "Tiger" Morton Catastrophic Illness Fund (fund 0403, appropriation 45500) shall be transferred to the James "Tiger" Morton Catastrophic Illness Fund (fund 5454) as provided by Article 5Q, Chapter 16 of the Code.

The above appropriation for WV Works Separate State Program (fund 0403, appropriation 69800), shall be transferred to the WV Works Separate State College Program Fund (fund 5467), and the WV Works Separate State Two-Parent Program Fund (fund 5468) as determined by the secretary of the Department of Health and Human Resources.

From the above appropriation for Child Support Enforcement (fund 0403, appropriation 70500) an amount not to exceed $300,000 may be transferred to a local banking depository to be utilized to offset funds determined to be uncollectible.

From the above appropriation for the Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), 50% of the total shall be divided equally and distributed among the fourteen (14) licensed programs and the West Virginia Coalition Against Domestic Violence (WVCADV). The balance remaining in the appropriation for Grants for Licensed Domestic Violence Programs and Statewide Prevention (fund 0403, appropriation 75000), shall be

distributed according to the formula established by the Family Protection Services Board.

The above appropriation for Children's Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children's Trust Fund (fund 5469, org 0511).

DEPARTMENT OF HOMELAND SECURITY

62-Department of Homeland Security –

Office of the Secretary

(WV Code Chapter 5F)

Fund 0430 FY 2021 Org 0601

Personal Services and		
Employee Benefits	00100	$ 684,426
Unclassified (R)	09900	16,386
Current Expenses	13000	168,968
Repairs and Alterations	06400	1,500
Equipment	07000	1,500
Fusion Center (R)	46900	2,724,000
Other Assets	69000	2,500
Directed Transfer	70000	32,000
BRIM Premium	91300	22,563
WV Fire and EMS		
Survivor Benefit (R)	93900	200,000
Total		$ 3,853,843

Any unexpended balances remaining in the appropriations for Unclassified (fund 0430, appropriation 09900), Fusion Center (fund 0430, appropriation 46900), Justice Reinvestment Training – Surplus (fund 0430, appropriation 69900), WV Fire and EMS Survivor Benefit (fund 0430, appropriation 93900), and Homeland State Security Administrative Agency (fund 0430, appropriation 95300) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The above appropriation for Directed Transfer (fund 0430, appropriation 70000) shall be transferred to the Law-Enforcement, Safety and Emergency Worker Funeral Expense Payment Fund (fund 6003).

63-West Virginia Parole Board

(WV Code Chapter 62)

Fund 0440 FY 2021 Org 0605

Personal Services and Employee Benefits	00100	$ 405,066
Current Expenses	13000	355,234
Unclassified	09900	10,000
Salaries of Members of West Virginia Parole Board	22700	609,833
BRIM Premium	91300	6,149
Total		$ 1,386,282

The above appropriation for Salaries of Members of West Virginia Parole Board (fund 0440, appropriation 22700) includes funding for salary, annual increment (as provided for in W.Va. Code §5-5-1), and related employee benefits of board members.

64-Division of Emergency Management

(WV Code Chapter 15)

Fund 0443 FY 2021 Org 0606

Personal Services and Employee Benefits	00100	$ 2,189,894
Unclassified	09900	25,022
Current Expenses	13000	57,314
Repairs and Alterations	06400	600
Radiological Emergency Preparedness	55400	17,052
SIRN	55401	600,000
Federal Funds/Grant Match (R)	74900	1,409,145

Mine and Industrial Accident		
Rapid Response Call Center....	78100	469,911
Early Warning Flood System (R) ..	87700	1,284,448
BRIM Premium.....	91300	96,529
Total.....		$ 6,149,915

Any unexpended balances remaining in the appropriations for Federal Funds/Grant Match (fund 0443, appropriation 74900), Early Warning Flood System (fund 0443, appropriation 87700), and Disaster Mitigation (fund 0443, appropriation 95200) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

65-Division of Corrections and Rehabilitation –

Central Office

(WV Code Chapter 15A)

Fund 0446 FY 2021 Org 0608

Personal Services and		
Employee Benefits.....	00100	$ 576,577
Current Expenses	13000	2,400
Total.....		$ 578,977

66-Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapter 15A)

Fund 0450 FY 2021 Org 0608

Employee Benefits.....	01000	$ 1,258,136
Children's Protection Act (R).....	09000	838,437
Unclassified	09900	1,578,800
Current Expenses (R).....	13000	52,016,936
Facilities Planning		
and Administration (R).....	38600	1,274,200
Charleston Correctional Center	45600	3,400,402

Beckley Correctional Center.....	49000	2,518,874
Anthony Correctional Center.....	50400	6,096,779
Huttonsville Correctional Center...	51400	21,920,001
Northern Correctional Center	53400	8,018,685
Inmate Medical Expenses (R).....	53500	21,226,064
Pruntytown Correctional Center	54300	8,597,911
Corrections Academy	56900	1,925,980
Information Technology Services....	59901	2,759,052
Martinsburg Correctional Center...	66300	4,348,990
Parole Services.....	68600	5,850,564
Special Services	68700	6,477,777
Investigative Services	71600	3,394,070
Capital Outlay and Maintenance (R)	75500	2,000,000
Salem Correctional Center.....	77400	11,455,381
McDowell County Correctional Center.....	79000	2,542,590
Stevens Correctional Center	79100	7,863,195
Parkersburg Correctional Center....	82800	3,927,845
St. Mary's Correctional Center.....	88100	14,497,534
Denmar Correctional Center.....	88200	5,189,043
Ohio County Correctional Center..	88300	2,147,492
Mt. Olive Correctional Complex ...	88800	22,357,432
Lakin Correctional Center	89600	10,711,864
BRIM Premium.....	91300	2,527,657
Total.....		$238,721,691

Any unexpended balances remaining in the appropriations for Children's Protection Act (fund 0450, appropriation 09000), Unclassified – Surplus (fund 0450, appropriation 09700), Current Expenses (fund 0450, appropriation 13000), Facilities Planning and Administration (fund 0450, appropriation 38600), Inmate Medical Expenses (fund 0450, appropriation 53500), Capital Improvements – Surplus (fund 0450, appropriation 66100), Capital Outlay, Repairs and Equipment – Surplus (fund 0450, appropriation 67700), Capital Outlay and Maintenance (fund 0450, appropriation 75500), Security System Improvements – Surplus (fund 0450, appropriation

75501), and Roof Repairs and Mechanical System Upgrades (fund 0450, appropriation 75502) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between individual correctional unit appropriations as specified above and may transfer funds from the individual correctional unit appropriations as specified above to Current Expenses (fund 0450, appropriation 13000) or Inmate Medical Expenses (fund 0450, appropriation 53500).

From the above appropriation to Current Expenses (fund 0450, appropriation 13000) payment shall be made to house Division of Corrections and Rehabilitation inmates in federal, county, and /or regional jails.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

67-Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(WV Code Chapter 15A)

Fund 0570 FY 2021 Org 0608

Statewide Reporting Centers	26200	$	7,358,529
Robert L. Shell Juvenile Center.....	26700		2,519,068
Resident Medical Expenses (R).....	53501		3,604,999
Central Office	70100		2,167,320
Capital Outlay and Maintenance (R)	75500		250,000
Gene Spadaro Juvenile Center.....	79300		2,692,984
BRIM Premium.....	91300		115,967
Kenneth Honey Rubenstein Juvenile Center (R).....	98000		5,808,523
Vicki Douglas Juvenile Center	98100		2,389,494

Northern Regional Juvenile Center	98200	2,876,302
Lorrie Yeager Jr. Juvenile Center..	98300	2,422,880
Sam Perdue Juvenile Center	98400	2,614,497
Tiger Morton Center	98500	2,633,060
Donald R. Kuhn Juvenile Center ...	98600	5,060,657
J.M. "Chick" Buckbee Juvenile Center	98700	2,527,617
Total.....		$ 45,041,897

Any unexpended balances remaining in the appropriations for Resident Medical Expenses (fund 0570, appropriation 53501), Capital Outlay and Maintenance (fund 0570, appropriation 75500), Roof Repairs and Mechanical System Upgrades (fund 0570, appropriation 75502), and Kenneth Honey Rubenstein Juvenile Center (fund 0570, appropriation 98000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The Director of Juvenile Services shall have the authority to transfer between appropriations to the individual juvenile centers above including statewide reporting centers and central office and may transfer funds from the individual juvenile centers to Resident Medical Expenses (fund 0570, appropriation 53501).

68-West Virginia State Police

(WV Code Chapter 15)

Fund 0453 FY 2021 Org 0612

Personal Services and Employee Benefits.....	00100	$ 62,255,235
Children's Protection Act	09000	1,009,529
Current Expenses	13000	10,384,394
Repairs and Alterations.....	06400	450,523
Trooper Class.....	52100	3,207,832
Barracks Lease Payments	55600	237,898

Communications and		
Other Equipment (R)	55800	1,070,968
Trooper Retirement Fund.....	60500	11,487,590
Handgun Administration Expense ...	74700	77,892
Capital Outlay		
and Maintenance (R)	75500	250,000
Retirement Systems –		
Unfunded Liability	77500	16,648,000
Automated Fingerprint		
Identification System.....	89800	2,211,693
BRIM Premium.....	91300	5,743,921
Total.....		$115,035,475

Any unexpended balances remaining in the appropriations for Communications and Other Equipment (fund 0453, appropriation 55800), and Capital Outlay and Maintenance (fund 0453, appropriation 75500) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for Personal Services and Employee Benefits (fund 0453, appropriation 00100), an amount not less than $25,000 shall be expended to offset the costs associated with providing police services for the West Virginia State Fair.

69-Fire Commission

(WV Code Chapter 29)

Fund 0436 FY 2021 Org 0619

Current Expenses	13000	$ 64,021

70-Division of Protective Services

(WV Code Chapter 5F)

Fund 0585 FY 2021 Org 0622

Personal Services and		
Employee Benefits.....	00100	$ 3,029,459

Unclassified (R)	09900	21,991
Current Expenses	13000	422,981
Repairs and Alterations	06400	8,500
Equipment (R)	07000	64,171
BRIM Premium	91300	32,602
Total		$ 3,579,704

Any unexpended balances remaining in the appropriations for Equipment (fund 0585, appropriation 07000), and Unclassified (fund 0585, appropriation 09900) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

71-Division of Administrative Services

(WV Code Chapter 15A)

Fund 0619 FY 2021 Org 0623

Personal Services and Employee Benefits	00100	$ 2,306,255
Current Expenses	13000	305,000
Total		$ 2,611,255

72-Division of Justice and Community Services

(WV Code Chapter 15)

Fund 0546 FY 2021 Org 0623

Personal Services and Employee Benefits	00100	$ 570,979
Current Expenses	13000	133,360
Repairs and Alterations	06400	1,804
Child Advocacy Centers (R)	45800	2,206,954
Community Corrections (R)	56100	4,595,222
Justice Reinvestment Initiative	89501	2,332,101
Statistical Analysis Program	59700	49,819
Sexual Assault Forensic Examination Commission (R)	71400	77,525

Qualitative Analysis and Training for Youth Services (R).....	76200	332,446
Law Enforcement Professional Standards.....	83800	164,272
BRIM Premium.....	91300	2,123
Total.....		$ 10,466,605

Any unexpended balances remaining in the appropriations for Child Advocacy Centers (fund 0546, appropriation 45800), Community Corrections (fund 0546, appropriation 56100), Sexual Assault Forensic Examination Commission (fund 0546 appropriation 71400), Qualitative Analysis and Training for Youth Services (fund 0546, appropriation 76200), and Law Enforcement Training – Surplus (fund 0546, appropriation 83899) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for Child Advocacy Centers (fund 0546, appropriation 45800), the division may retain an amount not to exceed four percent of the appropriation for administrative purposes.

DEPARTMENT OF REVENUE

73-Office of the Secretary

(WV Code Chapter 11)

Fund 0465 FY 2021 Org 0701

Personal Services and Employee Benefits.....	00100	$ 516,906
Unclassified	09900	5,837
Current Expenses	13000	81,594
Repairs and Alterations.....	06400	1,262
Equipment.....	07000	8,000
Other Assets.....	69000	500
Total.....		$ 614,099

Any unexpended balance remaining in the appropriation for Unclassified – Total (fund 0465, appropriation 09600) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

74-Tax Division

(WV Code Chapter 11)

Fund 0470 FY 2021 Org 0702

Personal Services and		
Employee Benefits (R)	00100	$ 19,272,541
Unclassified (R)	09900	224,578
Current Expenses (R).....	13000	5,873,635
Repairs and Alterations.....	06400	10,150
Equipment.....	07000	54,850
Tax Technology Upgrade	09400	3,700,000
Integrated Tax		
Assessment System (R)	29200	1,100,000
Multi State Tax Commission	65300	77,958
Other Assets.....	69000	10,000
BRIM Premium.....	91300	15,579
Total.....		$ 30,339,291

Any unexpended balances remaining in the appropriations for Personal Services and Employee Benefits (fund 0470, appropriation 00100), Unclassified (fund 0470, appropriation 09900), Current Expenses (fund 0470, appropriation 13000), and Integrated Tax Assessment System (fund 0470, appropriation 29200) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

75-State Budget Office

(WV Code Chapter 11B)

Fund 0595 FY 2021 Org 0703

Personal Services and			
Employee Benefits	00100	$	794,942
Unclassified (R)	09900		1,199
Current Expenses	13000		127,450
Total		$	923,591

Any unexpended balance remaining in the appropriation for Unclassified (fund 0595, appropriation 09900) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

76-West Virginia Office of Tax Appeals

(WV Code Chapter 11)

Fund 0593 FY 2021 Org 0709

Personal Services and			
Employee Benefits	00100	$	452,106
Current Expenses (R)	13000		97,622
Unclassified	09900		5,255
BRIM Premium	91300		3,062
Total		$	558,045

Any unexpended balance remaining in the appropriation for Current Expenses (fund 0593, appropriation 13000) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

77-Division of Professional and Occupational Licenses –

State Athletic Commission

(WV Code Chapter 29)

Fund 0523 FY 2021 Org 0933

Personal Services and			
Employee Benefits	00100	$	7,200
Current Expenses	13000		29,611
Total		$	36,811

DEPARTMENT OF TRANSPORTATION

78-State Rail Authority

(WV Code Chapter 29)

Fund 0506 FY 2021 Org 0804

Personal Services and Employee Benefits	00100	$ 361,627
Current Expenses	13000	3,087,707
Other Assets (R)	69000	1,270,019
BRIM Premium	91300	201,541
Total		$ 4,920,894

From the above appropriation for Current Expenses (fund 0506, appropriation 13000), $2,800,000 shall be transferred to the State Rail Authority – Commuter Rail Access Fund (fund 8402).

Any unexpended balance remaining in the appropriation Other Assets (fund 0506, appropriation 69000) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

79-Division of Public Transit

(WV Code Chapter 17)

Fund 0510 FY 2021 Org 0805

Equipment (R)	07000	$ 25,000
Current Expenses (R)	13000	2,237,989
Total		$ 2,262,989

Any unexpended balances remaining in the appropriations for Equipment (fund 0510, appropriation 07000), Current Expenses (fund 0510, appropriation 13000), Buildings (fund 0510, appropriation 25800), and Other Assets (fund 0510, appropriation 69000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

80-Aeronautics Commission

(WV Code Chapter 29)

Fund 0582 FY 2021 Org 0807

Personal Services and			
Employee Benefits	00100	$	223,740
Current Expenses (R)	13000		591,839
Repairs and Alterations	06400		100
BRIM Premium	91300		4,438
Total		$	820,117

Any unexpended balances remaining in the appropriations for Unclassified (fund 0582, appropriation 09900) and Current Expenses (fund 0582, appropriation 13000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

DEPARTMENT OF VETERANS' ASSISTANCE

81-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2021 Org 0613

Personal Services and			
Employee Benefits	00100	$	1,987,212
Unclassified	09900		20,000
Current Expenses	13000		161,450
Repairs and Alterations	06400		5,000
Veterans' Field Offices	22800		405,550
Veterans' Nursing Home (R)	28600		6,916,912
Veterans' Toll Free			
Assistance Line	32800		2,015
Veterans' Reeducation			
Assistance (R)	32900		40,000
Veterans' Grant Program (R)	34200		560,000
Veterans' Grave Markers	47300		10,000
Veterans' Outreach Programs	61700		200,740

Veterans Cemetery	80800	389,215
BRIM Premium	91300	50,000
Total		$ 10,748,094

Any unexpended balances remaining in the appropriations for Veterans' Nursing Home (fund 0456, appropriation 28600), Veterans' Reeducation Assistance (fund 0456, appropriation 32900), Veterans' Grant Program (fund 0456, appropriation 34200), Veterans' Bonus – Surplus (fund 0456, appropriation 34400), and Educational Opportunities for Children of Deceased Veterans (fund 0456, appropriation 85400) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

82-Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 0460 FY 2021 Org 0618

Personal Services and Employee Benefits	00100	$ 1,217,096
Current Expenses	13000	46,759
Total		$ 1,263,855

BUREAU OF SENIOR SERVICES

83-Bureau of Senior Services

(WV Code Chapter 29)

Fund 0420 FY 2021 Org 0508

Current Expenses	13000	$ 500,000
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	29,950,955
Total		$ 30,450,955

From the above appropriation for Current Expenses (fund 0420, appropriation 13000), $500,000 shall be used for Local Senior Citizens Projects.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (fund 0420, appropriation 53900) along with the federal moneys generated thereby shall be used for reimbursement for services provided under the program.

The above appropriation is in addition to funding provided in fund 5405 for this program.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

84-West Virginia Council for

Community and Technical College Education –

Control Account

(WV Code Chapter 18B)

Fund 0596 FY 2021 Org 0420

West Virginia Council for Community and Technical Education (R) ...	39200	$ 738,955
Transit Training Partnership	78300	34,293
Community College Workforce Development (R)	87800	2,786,925
College Transition Program.....	88700	278,222
West Virginia Advance Workforce Development (R)	89300	3,118,960
Technical Program Development (R)	89400	1,800,735
WV Invests Grant Program.....	89401	7,034,748
Total.....		$ 15,792,838

Any unexpended balances remaining in the appropriations for West Virginia Council for Community

and Technical Education (fund 0596, appropriation 39200), Capital Improvements – Surplus (fund 0596, appropriation 66100), Community College Workforce Development (fund 0596, appropriation 87800), West Virginia Advance Workforce Development (fund 0596, appropriation 89300), and Technical Program Development (fund 0596, appropriation 89400) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for the Community College Workforce Development (fund 0596, appropriation 87800), $200,000 shall be expended on the Mine Training Program in Southern West Virginia.

Included in the above appropriation for West Virginia Advance Workforce Development (fund 0596, appropriation 89300) is $200,000 to be used exclusively for advanced manufacturing and energy industry specific training programs.

85-Mountwest Community and Technical College

(WV Code Chapter 18B)

Fund 0599 FY 2021 Org 0444

Mountwest Community and Technical College	48700	$	6,489,307

86-New River Community and Technical College

(WV Code Chapter 18B)

Fund 0600 FY 2021 Org 0445

New River Community and Technical College	35800	$	5,864,886

87-Pierpont Community and Technical College

(WV Code Chapter 18B)

Fund 0597 FY 2021 Org 0446

Pierpont Community and Technical College	93000	$	7,820,129

88-Blue Ridge Community and Technical College

(WV Code Chapter 18B)

Fund 0601 FY 2021 Org 0447

Blue Ridge Community and Technical College	88500	$	7,830,842

89-West Virginia University at Parkersburg

(WV Code Chapter 18B)

Fund 0351 FY 2021 Org 0464

West Virginia University – Parkersburg	47100	$	10,319,284

90-Southern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0380 FY 2021 Org 0487

Southern West Virginia Community and Technical College	44600	$	8,241,823

91-West Virginia Northern Community and Technical College

(WV Code Chapter 18B)

Fund 0383 FY 2021 Org 0489

West Virginia Northern Community and Technical College	44700	$	7,285,825

92-Eastern West Virginia Community and Technical College

(WV Code Chapter 18B)

Fund 0587 FY 2021 Org 0492

1	Eastern West Virginia Community		
2	and Technical College	41200	$ 2,179,912

93-BridgeValley Community and Technical College

(WV Code Chapter 18B)

Fund 0618 FY 2021 Org 0493

1	BridgeValley Community		
2	and Technical College	71700	$ 8,098,811

HIGHER EDUCATION POLICY COMMISSION

94-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 0589 FY 2021 Org 0441

1	Personal Services and		
2	Employee Benefits.....	00100	$ 2,710,154
3	Current Expenses	13000	1,113,606
4	Higher Education Grant Program ..	16400	40,619,864
5	Tuition Contract Program (R).....	16500	1,225,120
6	Underwood-Smith Scholarship		
7	Program-Student Awards	16700	628,349
8	Facilities Planning		
9	and Administration	38600	1,760,254
10	Higher Education		
11	System Initiatives	48801	1,630,000

PROMISE Scholarship – Transfer	80000	18,500,000
HEAPS Grant Program (R)	86700	5,014,728
Mental Health Provider Loan Repayment	XXXXX	330,000
RHI Program and Site Support – RHEP Program Administration	03700	80,000
Health Professionals' Student Loan Program	86701	400,000
BRIM Premium	91300	17,817
Total		$ 74,029,892

Any unexpended balances remaining in the appropriations for Tuition Contract Program (fund 0589, appropriation 16500), Capital Improvements – Surplus (fund 0589, appropriation 66100), and HEAPS Grant Program (fund 0589, appropriation 86700) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

The above appropriation for Facilities Planning and Administration (fund 0589, appropriation 38600) is for operational expenses of the West Virginia Education, Research and Technology Park between construction and full occupancy.

The above appropriation for Higher Education Grant Program (fund 0589, appropriation 16400) shall be transferred to the Higher Education Grant Fund (fund 4933, org 0441) established by W.Va. Code §18C-5-3.

The above appropriation for Underwood-Smith Scholarship Program-Student Awards (fund 0589, appropriation 16700) shall be transferred to the Underwood-Smith Teacher Scholarship and Loan Assistance Fund (fund 4922, org 0441) established by W.Va. Code §18C-4-1.

The above appropriation for PROMISE Scholarship – Transfer (fund 0589, appropriation 80000) shall be

transferred to the PROMISE Scholarship Fund (fund 4296, org 0441) established by W.Va. Code §18C-7-7.

95-Higher Education Policy Commission –

Administration -

West Virginia Network for Educational Telecomputing (WVNET)

(WV Code Chapter 18B)

Fund 0551 FY 2021 Org 0495

WVNET	16900	$ 1,747,826

96-West Virginia University –

School of Medicine

Medical School Fund

(WV Code Chapter 18B)

Fund 0343 FY 2021 Org 0463

WVU School of Health Science – Eastern Division	05600	$ 2,235,352
WVU – School of Health Sciences	17400	15,056,370
WVU – School of Health Sciences – Charleston Division	17500	2,286,711
Rural Health Outreach Programs	37700	164,517
West Virginia University School of Medicine BRIM Subsidy	46000	1,203,087
Total		$ 20,946,037

The above appropriation for Rural Health Outreach Programs (fund 0343, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for West Virginia University School of Medicine BRIM Subsidy (fund 0343, appropriation 46000) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the "Total Premium Billed" to the institution as part of the full cost of their malpractice insurance coverage.

97-West Virginia University –

General Administrative Fund

(WV Code Chapter 18B)

Fund 0344 FY 2021 Org 0463

West Virginia University	45900	$ 97,017,960
Jackson's Mill	46100	491,458
West Virginia University Institute of Technology	47900	8,020,938
State Priorities – Brownfield Professional Development	53100	316,556
Energy Express	86100	382,935
West Virginia University – Potomac State	99400	4,512,711
Total		$110,742,558

From the above appropriation for Jackson's Mill (fund 0344, appropriation 46100) $250,000 shall be used for the West Virginia State Fire Training Academy.

98-Marshall University –

School of Medicine

(WV Code Chapter 18B)

Fund 0347 FY 2021 Org 0471

Marshall Medical School	17300	$ 12,235,068
Rural Health Outreach Programs (R)	37700	156,022
Forensic Lab	37701	227,415

Center for Rural Health.....	37702	157,096
Marshall University Medical School		
BRIM Subsidy	44900	872,612
Total.....		$ 13,648,213

Any unexpended balance remaining in the appropriation for Rural Health Outreach Program (fund 0347, appropriation 37700) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

The above appropriation for Rural Health Outreach Programs (fund 0347, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for Marshall University Medical School BRIM Subsidy (fund 0347, appropriation 44900) shall be paid to the Board of Risk and Insurance Management as a general revenue subsidy against the "Total Premium Billed" to the institution as part of the full cost of their malpractice insurance coverage.

99-Marshall University –

General Administration Fund

(WV Code Chapter 18B)

Fund 0348 FY 2021 Org 0471

Marshall University	44800	$ 46,761,199
Luke Lee Listening		
Language and Learning Lab	44801	149,015
Vista E-Learning (R)	51900	229,019
State Priorities – Brownfield		
Professional Development (R)...	53100	309,606
Marshall University Graduate College		
Writing Project (R)	80700	25,412
WV Autism Training Center (R) ...	93200	1,808,381
Total.....		$ 49,282,632

Any unexpended balances remaining in the appropriations for Vista E-Learning (fund 0348, appropriation 51900), State Priorities – Brownfield Professional Development (fund 0348, appropriation 53100), Marshall University Graduate College Writing Project (fund 0348, appropriation 80700), and WV Autism Training Center (fund 0348, appropriation 93200) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

100-West Virginia School of Osteopathic Medicine

(WV Code Chapter 18B)

Fund 0336 FY 2021 Org 0476

West Virginia School of Osteopathic Medicine	17200	$ 8,879,296
Rural Health Outreach Programs (R)	37700	166,111
West Virginia School of Osteopathic Medicine BRIM Subsidy	40300	153,405
Rural Health Initiative – Medical Schools Support	58100	397,592
Total		$ 9,596,404

Any unexpended balance remaining in the appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) at the close of fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

The above appropriation for Rural Health Outreach Programs (fund 0336, appropriation 37700) includes rural health activities and programs; rural residency development and education; and rural outreach activities.

The above appropriation for West Virginia School of Osteopathic Medicine BRIM Subsidy (fund 0336, appropriation 40300) shall be paid to the Board of Risk and

23 Insurance Management as a general revenue subsidy against
24 the "Total Premium Billed" to the institution as part of the
25 full cost of their malpractice insurance coverage.

101-Bluefield State College

(WV Code Chapter 18B)

Fund 0354 FY 2021 Org 0482

1 Bluefield State College..... 40800 $ 6,383,221

102-Concord University

(WV Code Chapter 18B)

Fund 0357 FY 2021 Org 0483

1 Concord University..... 41000 $ 10,476,415

103-Fairmont State University

(WV Code Chapter 18B)

Fund 0360 FY 2021 Org 0484

1 Fairmont State University..... 41400 $ 18,600,341

104-Glenville State College

(WV Code Chapter 18B)

Fund 0363 FY 2021 Org 0485

1 Glenville State College..... 42800 $ 6,446,942

105-Shepherd University

(WV Code Chapter 18B)

Fund 0366 FY 2021 Org 0486

1 Shepherd University ..... 43200 $ 12,683,829

106-West Liberty University

(WV Code Chapter 18B)

Fund 0370 FY 2021 Org 0488

1	West Liberty University	43900	$ 9,102,662

107-West Virginia State University

(WV Code Chapter 18B)

Fund 0373 FY 2021 Org 0490

1	West Virginia State University	44100	$ 11,342,512
2	West Virginia State University		
3	Land Grant Match.....	95600	2,950,192
4	Total.....		$ 14,292,704

5 From the above appropriation for West Virginia State
6 University (fund 0373, appropriation 44100), $300,000
7 shall be for the Healthy Grandfamilies program.

MISCELLANEOUS BOARDS AND COMMISSIONS

108-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 0433 FY 2021 Org 0603

1	Unclassified (R)	09900	$ 106,798
2	College Education Fund.....	23200	4,000,000
3	Civil Air Patrol.....	23400	249,664
4	Mountaineer ChalleNGe		
5	Academy.....	70900	4,800,000
6	Armory Board Transfer	70015	2,317,555
7	Military Authority (R)	74800	6,260,251
8	Drug Enforcement and Support	74801	1,500,000
9	Total.....		$ 19,234,268

Any unexpended balances remaining in the appropriations for Unclassified (fund 0433, appropriation 09900), Military Authority (fund 0433, appropriation 74800), and Military Authority – Surplus (fund 0433, appropriation 74899) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriations an amount approved by the Adjutant General may be transferred to the State Armory Board for operation and maintenance of National Guard Armories.

The adjutant general shall have the authority to transfer between appropriations.

From the above appropriation and other state and federal funding, the Adjutant General shall provide an amount not less than $4,800,000 to the Mountaineer ChalleNGe Academy to meet anticipated program demand.

109-Adjutant General –

Military Fund

(WV Code Chapter 15)

Fund 0605 FY 2021 Org 0603

Personal Services and			
Employee Benefits.....	00100	$	100,000
Current Expenses	13000		57,775
Total.....		$	157,775

Total TITLE II, Section 1 – General Revenue
(Including claims against the state) $ 4,574,513,367

Sec. 2. Appropriations from state road fund. — From the state road fund there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2021.

DEPARTMENT OF TRANSPORTATION

110-Division of Motor Vehicles

(WV Code Chapters 17, 17A, 17B, 17C, 17D, 20, and 24A)

Fund 9007 FY 2021 Org 0802

	Appro-priation	State Road Fund
Personal Services and Employee Benefits	00100	$ 25,977,939
Current Expenses	13000	16,175,840
Repairs and Alterations	06400	144,000
Equipment	07000	1,080,000
Buildings	25800	10,000
Other Assets	69000	2,600,000
BRIM Premium	91300	89,940
Total		$ 46,077,719

111-Division of Highways

(WV Code Chapters 17 and 17C)

Fund 9017 FY 2021 Org 0803

Debt Service	04000	$ 150,000,000
Maintenance	23700	489,932,854
Inventory Revolving	27500	4,000,000
Equipment Revolving	27600	18,000,000
General Operations	27700	80,000,000
Interstate Construction	27800	90,000,000
Other Federal Aid Programs	27900	370,000,000
Appalachian Programs	28000	100,000,000
Highway Litter Control	28200	1,650,000
Courtesy Patrol	28201	5,000,000
Total		$1,308,582,854

The above appropriations are to be expended in accordance with the provisions of Chapters 17 and 17C of the code.

The Commissioner of Highways shall have the authority to operate revolving funds within the State Road Fund for the operation and purchase of various types of equipment used directly and indirectly in the construction and maintenance of roads and for the purchase of inventories and materials and supplies.

There is hereby appropriated in addition to the above appropriations, sufficient money for the payment of claims, accrued or arising during this budgetary period, to be paid in accordance with Sections 17 and 18, Article 2, Chapter 14 of the code.

It is the intent of the Legislature to capture and match all federal funds available for expenditure on the Appalachian highway system at the earliest possible time. Therefore, should amounts in excess of those appropriated be required for the purposes of Appalachian programs, funds in excess of the amount appropriated may be made available upon recommendation of the commissioner and approval of the Governor. Further, for the purpose of Appalachian programs, funds appropriated by appropriation may be transferred to other appropriations upon recommendation of the commissioner and approval of the Governor.

112-Office of Administrative Hearings

(WV Code Chapter 17C)

Fund 9027 FY 2021 Org 0808

Personal Services and Employee Benefits	00100	$	1,698,752
Current Expenses	13000		338,278
Repairs and Alterations	06400		3,000
Equipment	07000		15,500

BRIM Premium	91300	10,000
Total		$ 2,065,530

Total TITLE II, Section 2 – State Road Fund
(Including claims against the state) $1,357,570,267

Sec. 3. Appropriations from other funds. — From the funds designated there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2021.

LEGISLATIVE

113-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 1731 FY 2021 Org 2300

	Appro-priation	Other Funds
Personal Services and Employee Benefits	00100	$ 498,020
Current Expenses	13000	133,903
Repairs and Alterations	06400	1,000
Economic Loss Claim Payment Fund	33400	2,000,000
Other Assets	69000	3,700
Total		$ 2,636,623

JUDICIAL

114-Supreme Court –

Family Court Fund

(WV Code Chapter 51)

Fund 1763 FY 2021 Org 2400

Current Expenses	13000	$	1,150,000

From the above appropriation for Current Expenses (fund 1763, appropriation 13000), $100,000 shall be used for the West Virginia CASA Association.

115-Supreme Court –

Court Advanced Technology Subscription Fund

(WV Code Chapter 51)

Fund 1704 FY 2021 Org 2400

Current Expenses	13000	$	100,000

116-Supreme Court –

Adult Drug Court Participation Fund

(WV Code Chapter 62)

Fund 1705 FY 2021 Org 2400

Current Expenses	13000	$	200,000

EXECUTIVE

117-Governor's Office –

Minority Affairs Fund

(WV Code Chapter 5)

Fund 1058 FY 2021 Org 0100

Personal Services and Employee Benefits	00100	$	177,737
Current Expenses	13000		503,200
Martin Luther King, Jr. Holiday Celebration	03100		8,926
Total		$	689,863

118-Auditor's Office –

Land Operating Fund

(WV Code Chapters 11A, 12, and 36)

Fund 1206 FY 2021 Org 1200

Personal Services and			
Employee Benefits	00100	$	799,211
Unclassified	09900		15,139
Current Expenses	13000		715,291
Repairs and Alterations	06400		2,600
Equipment	07000		426,741
Cost of Delinquent Land Sales	76800		1,841,168
Total		$	3,800,150

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the necessary amount for the expenditure of funds other than Personal Services and Employee Benefits to enable the division to pay the direct expenses relating to land sales as provided in Chapter 11A of the West Virginia Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

119-Auditor's Office –

Local Government Purchasing Card Expenditure Fund

(WV Code Chapter 6)

Fund 1224 FY 2021 Org 1200

Personal Services and			
Employee Benefits	00100	$	627,779
Current Expenses	13000		282,030
Repairs and Alterations	06400		6,000
Equipment	07000		10,805
Other Assets	69000		50,000

Statutory Revenue Distribution	74100	3,500,000
Total.....		$ 4,476,614

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer of revenue distribution requirements to provide a proportionate share of rebates back to the general fund of local governments based on utilization of the program in accordance with W.Va. Code §6-9-2b.

120-Auditor's Office –

Securities Regulation Fund

(WV Code Chapter 32)

Fund 1225 FY 2021 Org 1200

Personal Services and Employee Benefits.....	00100	$ 2,487,017
Unclassified	09900	31,866
Current Expenses	13000	1,463,830
Repairs and Alterations.....	06400	12,400
Equipment.....	07000	394,700
Other Assets.....	69000	900,000
Total.....		$ 5,289,813

121-Auditor's Office – Technology Support and Acquisition Fund

(WV Code Chapter 12)

Fund 1233 FY 2021 Org 1200

Current Expenses	13000	$ 10,000
Other Assets.....	69000	5,000
Total.....		$ 15,000

Fifty percent of the deposits made into this fund shall be transferred to the Treasurer's Office – Technology Support and Acquisition Fund (fund 1329, org 1300) for expenditure for the purposes described in W.Va. Code §12-3-10c.

122-Auditor's Office –

Purchasing Card Administration Fund

(WV Code Chapter 12)

Fund 1234 FY 2021 Org 1200

Personal Services and		
Employee Benefits	00100	$ 2,824,837
Current Expenses	13000	2,303,622
Repairs and Alterations	06400	5,500
Equipment	07000	650,000
Other Assets	69000	308,886
Statutory Revenue Distribution	74100	8,000,000
Total		$ 14,092,845

There is hereby appropriated from this fund, in addition to the above appropriations if needed, the amount necessary to meet the transfer and revenue distribution requirements to the Purchasing Improvement Fund (fund 2264), the Hatfield-McCoy Regional Recreation Authority, and the State Park Operating Fund (fund 3265) per W.Va. Code §12-3-10d.

123-Auditor's Office –

Chief Inspector's Fund

(WV Code Chapter 6)

Fund 1235 FY 2021 Org 1200

Personal Services and		
Employee Benefits	00100	$ 3,583,096
Current Expenses	13000	765,915
Equipment	07000	50,000
Total		$ 4,399,011

124-Auditor's Office –

Volunteer Fire Department Workers'

Compensation Premium Subsidy Fund

(WV Code Chapters 12 and 33)

Fund 1239 FY 2021 Org 1200

1	Volunteer Fire Department		
2	Workers' Compensation		
3	Subsidy	83200	$ 2,500,000

125-Treasurer's Office

College Prepaid Tuition and Savings Program

Administrative Account

(WV Code Chapter 18)

Fund 1301 FY 2021 Org 1300

1	Personal Services and		
2	Employee Benefits.....	00100	$ 810,372
3	Unclassified	09900	14,000
4	Current Expenses	13000	897,559
5	Total.....		$ 1,721,931

126-Department of Agriculture –

Agriculture Fees Fund

(WV Code Chapter 19)

Fund 1401 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits.....	00100	$ 2,425,446
3	Unclassified	09900	37,425
4	Current Expenses	13000	1,856,184
5	Repairs and Alterations.....	06400	158,500

6	Equipment	07000	436,209
7	Other Assets	69000	10,000
8	Total		$ 4,923,764

127-Department of Agriculture –

West Virginia Rural Rehabilitation Program

(WV Code Chapter 19)

Fund 1408 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 78,251
3	Unclassified	09900	10,476
4	Current Expenses	13000	963,404
5	Total		$ 1,052,131

128-Department of Agriculture –

General John McCausland Memorial Farm Fund

(WV Code Chapter 19)

Fund 1409 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 71,937
3	Unclassified	09900	2,100
4	Current Expenses	13000	89,500
5	Repairs and Alterations	06400	36,400
6	Equipment	07000	15,000
7	Total		$ 214,937

8 The above appropriations shall be expended in
9 accordance with Article 26, Chapter 19 of the Code.

129-Department of Agriculture –

Farm Operating Fund

(WV Code Chapter 19)

Fund 1412 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 868,492
3	Unclassified	09900	15,173
4	Current Expenses	13000	1,367,464
5	Repairs and Alterations	06400	388,722
6	Equipment	07000	399,393
7	Other Assets	69000	20,000
8	Total		$ 3,059,244

130-Department of Agriculture –

Capital Improvements Fund

(WV Code Chapter 19)

Fund 1413 FY 2021 Org 1400

1	Unclassified	09900	10,000
2	Current Expenses	13000	10,000
3	Repairs and Alterations	06400	250,000
4	Equipment	07000	350,000
5	Building Improvements	25800	370,000
6	Other Assets	69000	10,000
7	Total		$ 1,000,000

131-Department of Agriculture –

Donated Food Fund

(WV Code Chapter 19)

Fund 1446 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 1,030,451
3	Unclassified	09900	45,807
4	Current Expenses	13000	3,410,542
5	Repairs and Alterations	06400	128,500
6	Equipment	07000	10,000
7	Other Assets	69000	27,000

8	Land	73000	250,000
9	Total		$ 4,902,300

132-Department of Agriculture –

Integrated Predation Management Fund

(WV Code Chapter 7)

Fund 1465 FY 2021 Org 1400

1	Current Expenses	13000	$ 112,500

133-Department of Agriculture –

West Virginia Spay Neuter Assistance Fund

(WV Code Chapter 19)

Fund 1481 FY 2021 Org 1400

1	Current Expenses	13000	$ 500,000

134-Department of Agriculture –

Veterans and Warriors to Agriculture Fund

(WV Code Chapter 19)

Fund 1483 FY 2021 Org 1400

1	Current Expenses	13000	$ 7,500

135-Department of Agriculture –

State FFA-FHA Camp and Conference Center

(WV Code Chapters 18 and 18A)

Fund 1484 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 1,218,564
3	Unclassified	09900	17,000

4	Current Expenses	13000	1,143,306
5	Repairs and Alterations	06400	82,500
6	Equipment	07000	76,000
7	Buildings	25800	1,000
8	Other Assets	69000	10,000
9	Land	73000	1,000
10	Total		$ 2,549,370

136-Attorney General –

Antitrust Enforcement Fund

(WV Code Chapter 47)

Fund 1507 FY 2021 Org 1500

1	Personal Services and		
2	Employee Benefits	00100	$ 363,466
3	Current Expenses	13000	148,803
4	Repairs and Alterations	06400	1,000
5	Equipment	07000	1,000
6	Total		$ 514,269

137-Attorney General –

Preneed Burial Contract Regulation Fund

(WV Code Chapter 47)

Fund 1513 FY 2021 Org 1500

1	Personal Services and		
2	Employee Benefits	00100	$ 222,569
3	Current Expenses	13000	54,615
4	Repairs and Alterations	06400	1,000
5	Equipment	07000	1,000
6	Total		$ 279,184

138-Attorney General –

Preneed Funeral Guarantee Fund

(WV Code Chapter 47)

Fund 1514 FY 2021 Org 1500

1	Current Expenses	13000	$	901,135

139-Secretary of State –

Service Fees and Collection Account

(WV Code Chapters 3, 5, and 59)

Fund 1612 FY 2021 Org 1600

1	Personal Services and			
2	Employee Benefits	00100	$	1,065,106
3	Unclassified	09900		4,524
4	Current Expenses	13000		8,036
5	Total		$	1,077,666

140-Secretary of State –

General Administrative Fees Account

(WV Code Chapters 3, 5, and 59)

Fund 1617 FY 2021 Org 1600

1	Personal Services and			
2	Employee Benefits	00100	$	2,947,630
3	Unclassified	09900		25,529
4	Current Expenses	13000		976,716
5	Technology Improvements	59900		570,000
6	Total		$	4,519,875

DEPARTMENT OF ADMINISTRATION

141-Department of Administration –

Office of the Secretary –

Tobacco Settlement Fund

(WV Code Chapter 4)

Fund 2041 FY 2021 Org 0201

Tobacco Settlement Securitization
Trustee Pass Thru ..... 65000 $ 80,000,000

142-Department of Administration –

Office of the Secretary –

Employee Pension and Health Care Benefit Fund

(WV Code Chapter 18)

Fund 2044 FY 2021 Org 0201

Current Expenses ..... 13000 $ 33,028,000

The above appropriation for Current Expenses (fund 2044, appropriation 13000) shall be transferred to the Consolidated Public Retirement Board – Teachers' Accumulation Fund (fund 2600).

143-Department of Administration –

Division of Finance –

Shared Services Section Fund

(WV Code Chapter 5A)

Fund 2020 FY 2021 Org 0209

Personal Services and
Employee Benefits..... 00100 $ 1,500,000

Current Expenses	13000	500,000
Total		$ 2,000,000

144-Division of Information Services and Communications

(WV Code Chapter 5A)

Fund 2220 FY 2021 Org 0210

Personal Services and Employee Benefits	00100	$ 22,464,463
Unclassified	09900	382,354
Current Expenses	13000	13,378,766
Repairs and Alterations	06400	1,000
Equipment	07000	2,050,000
Other Assets	69000	1,045,000
Total		$ 39,321,583

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Division of Information Services and Communications as provided by law.

Each spending unit operating from the General Revenue Fund, from special revenue funds or receiving reimbursement for postage from the federal government shall be charged monthly for all postage meter service and shall reimburse the revolving fund monthly for all such amounts.

145-Division of Purchasing –

Vendor Fee Fund

(WV Code Chapter 5A)

Fund 2263 FY 2021 Org 0213

Personal Services and Employee Benefits	00100	$ 741,589
Unclassified	09900	2,382
Current Expenses	13000	208,115

5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	2,500
7	Other Assets.....	69000	2,500
8	BRIM Premium.....	91300	810
9	Total.....		$ 962,896

146-Division of Purchasing –

Purchasing Improvement Fund

(WV Code Chapter 5A)

Fund 2264 FY 2021 Org 0213

1	Personal Services and		
2	Employee Benefits.....	00100	$ 778,176
3	Unclassified	09900	5,562
4	Current Expenses	13000	393,066
5	Repairs and Alterations.....	06400	500
6	Equipment.....	07000	500
7	Other Assets.....	69000	500
8	BRIM Premium.....	91300	850
9	Total.....		$ 1,179,154

147-Travel Management –

Aviation Fund

(WV Code Chapter 5A)

Fund 2302 FY 2021 Org 0215

1	Unclassified	09900	$ 1,000
2	Current Expenses	13000	149,700
3	Repairs and Alterations.....	06400	1,175,237
4	Equipment.....	07000	1,000
5	Buildings.....	25800	100
6	Other Assets.....	69000	100
7	Land	73000	100
8	Total.....		$ 1,327,237

148-Fleet Management Division Fund

(WV Code Chapter 5A)

Fund 2301 FY 2021 Org 0216

Personal Services and Employee Benefits	00100	$	757,145
Unclassified	09900		4,000
Current Expenses	13000		8,130,614
Repairs and Alterations	06400		12,000
Equipment	07000		800,000
Other Assets	69000		2,000
Total		$	9,705,759

149-Division of Personnel

(WV Code Chapter 29)

Fund 2440 FY 2021 Org 0222

Personal Services and Employee Benefits	00100	$	4,760,683
Unclassified	09900		51,418
Current Expenses	13000		1,262,813
Repairs and Alterations	06400		5,000
Equipment	07000		20,000
Other Assets	69000		60,000
Total		$	6,159,914

The total amount of these appropriations shall be paid from a special revenue fund out of fees collected by the Division of Personnel.

150-West Virginia Prosecuting Attorneys Institute

(WV Code Chapter 7)

Fund 2521 FY 2021 Org 0228

Personal Services and Employee Benefits	00100	$	251,663

3	Unclassified	09900	4,023
4	Current Expenses	13000	297,528
5	Repairs and Alterations	06400	600
6	Equipment	07000	500
7	Other Assets	69000	500
8	Total		$ 554,814

151-Office of Technology –

Chief Technology Officer Administration Fund

(WV Code Chapter 5A)

Fund 2531 FY 2021 Org 0231

1	Personal Services and		
2	Employee Benefits	00100	$ 414,722
3	Unclassified	09900	6,949
4	Current Expenses	13000	227,116
5	Repairs and Alterations	06400	1,000
6	Equipment	07000	50,000
7	Other Assets	69000	10,000
8	Total		$ 709,787

9 From the above fund, the provisions of W.Va. Code
10 §11B-2-18 shall not operate to permit expenditures in
11 excess of the funds authorized for expenditure herein.

DEPARTMENT OF COMMERCE

152-Division of Forestry

(WV Code Chapter 19)

Fund 3081 FY 2021 Org 0305

1	Personal Services and		
2	Employee Benefits	00100	$ 1,574,177
3	Current Expenses	13000	282,202
4	Repairs and Alterations	06400	53,000
5	Equipment	07000	300,000
6	Total		$ 2,209,379

153-Division of Forestry –

Timbering Operations Enforcement Fund

(WV Code Chapter 19)

Fund 3082 FY 2021 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	$ 239,244
3	Current Expenses	13000	87,036
4	Repairs and Alterations.....	06400	11,250
5	Total.....		$ 337,530

154-Division of Forestry –

Severance Tax Operations

(WV Code Chapter 11)

Fund 3084 FY 2021 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	$ 859,626
3	Current Expenses	13000	435,339
4	Total.....		$ 1,294,965

155-Geological and Economic Survey –

Geological and Analytical Services Fund

(WV Code Chapter 29)

Fund 3100 FY 2021 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	$ 37,966
3	Unclassified	09900	2,182
4	Current Expenses	13000	141,631
5	Repairs and Alterations.....	06400	50,000
6	Equipment.....	07000	20,000
7	Other Assets.....	69000	10,000
8	Total.....		$ 261,779

The above appropriations shall be used in accordance with W.Va. Code §29-2-4.

156-West Virginia Development Office –

Department of Commerce –

Marketing and Communications Operating Fund

(WV Code Chapter 5B)

Fund 3002 FY 2021 Org 0307

Personal Services and			
Employee Benefits	00100	$	1,724,082
Equipment	07000		36,000
Unclassified	09900		30,000
Current Expenses	13000		1,315,078
Total		$	3,105,160

157-West Virginia Development Office –

Office of Coalfield Community Development

(WV Code Chapter 5B)

Fund 3162 FY 2021 Org 0307

Personal Services and			
Employee Benefits	00100	$	435,661
Unclassified	09900		8,300
Current Expenses	13000		399,191
Total		$	843,152

158-West Virginia Development Office

Entrepreneurship and Innovation Investment Fund

(WV Code Chapter 5B)

Fund 3014 FY 2021 Org 0307

Entrepreneurship and Innovation			
Investment Fund	70301	$	500,000

159-Division of Labor –

West Virginia Jobs Act Fund

(WV Code Chapter 21)

Fund 3176 FY 2021 Org 0308

1	Current Expenses	13000	75,000
2	Equipment	07000	25,5000
3	Total		$ 100,000

160-Division of Labor –

HVAC Fund

(WV Code Chapter 21)

Fund 3186 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits	00100	$ 300,000
3	Unclassified	09900	4,000
4	Current Expenses	13000	85,000
5	Repairs and Alterations	06400	1,500
6	Buildings	25800	1,000
7	BRIM Premium	91300	8,500
8	Total		$ 400,000

161-Division of Labor –

Contractor Licensing Board Fund

(WV Code Chapter 21)

Fund 3187 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits	00100	$ 2,532,000
3	Unclassified	09900	21,000
4	Current Expenses	13000	500,000
5	Repairs and Alterations	06400	5,000

6	Buildings	25800	5,000
7	BRIM Premium	91300	8,500
8	Total		$ 3,071,500

162-Division of Labor –

Elevator Safety Fund

(WV Code Chapter 21)

Fund 3188 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits	00100	$ 397,862
3	Unclassified	09900	2,261
4	Current Expenses	13000	44,112
5	Repairs and Alterations	06400	2,000
6	Buildings	25800	1,000
7	BRIM Premium	91300	8,500
8	Total		$ 455,735

163-Division of Labor –

Steam Boiler Fund

(WV Code Chapter 21)

Fund 3189 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits	00100	$ 82,716
3	Unclassified	09900	1,000
4	Current Expenses	13000	15,000
5	Repairs and Alterations	06400	2,000
6	Buildings	25800	1,000
7	BRIM Premium	91300	1,000
8	Total		$ 102,716

164-Division of Labor –

Crane Operator Certification Fund

(WV Code Chapter 21)

Fund 3191 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	$ 191,899
3	Unclassified	09900	1,380
4	Current Expenses	13000	49,765
5	Repairs and Alterations.....	06400	1,500
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	8,500
8	Total.....		$ 254,044

165-Division of Labor –

Amusement Rides and Amusement Attraction Safety Fund

(WV Code Chapter 21)

Fund 3192 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	$ 187,462
3	Unclassified	09900	1,281
4	Current Expenses	13000	44,520
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	8,500
8	Total.....		$ 244,763

166-Division of Labor –

State Manufactured Housing Administration Fund

(WV Code Chapter 21)

Fund 3195 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	$ 289,199
3	Unclassified	09900	1,847
4	Current Expenses	13000	43,700

5	Repairs and Alterations.....	06400	1,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	3,404
8	Total.....		$ 340,150

167-Division of Labor –

Weights and Measures Fund

(WV Code Chapter 47)

Fund 3196 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	$ 0
3	Current Expenses	13000	100,000
4	Unclassified	09900	1,200
5	Repairs and Alterations.....	06400	10,000
6	Equipment.....	07000	10,000
7	BRIM Premium.....	91300	0
8	Total.....		$ 121,200

168-Division of Labor –

Bedding and Upholstery Fund

(WV Code Chapter 21)

Fund 3198 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	$ 150,000
3	Unclassified	09900	2,000
4	Current Expenses	13000	43,000
5	Repairs and Alterations.....	06400	2,000
6	Buildings.....	25800	1,000
7	BRIM Premium.....	91300	2,000
8	Total.....		$ 200,000

169-Division of Labor –

Psychophysiological Examiners Fund

(WV Code Chapter 21)

Fund 3199 FY 2021 Org 0308

1	Current Expenses	13000	$	4,000

170-Division of Natural Resources –

License Fund – Wildlife Resources

(WV Code Chapter 20)

Fund 3200 FY 2021 Org 0310

1	Wildlife Resources	02300	$	5,200,996
2	Administration	15500		1,300,249
3	Capital Improvements			
4	andLand Purchase (R)	24800		1,300,248
5	Law Enforcement	80600		5,200,996
6	Total		$	13,002,489

7 The total amount of these appropriations shall be paid
8 from a special revenue fund out of fees collected by the
9 Division of Natural Resources.

10 Any unexpended balance remaining in the
11 appropriation for Capital Improvements and Land Purchase
12 (fund 3200, appropriation 24800) at the close of the fiscal
13 year 2020 is hereby reappropriated for expenditure during
14 the fiscal year 2021.

171-Division of Natural Resources –

Natural Resources Game Fish and Aquatic Life Fund

(WV Code Chapter 22)

Fund 3202 FY 2021 Org 0310

1	Current Expenses	13000	$	125,000

172-Division of Natural Resources –

Nongame Fund

(WV Code Chapter 20)

Fund 3203 FY 2021 Org 0310

Personal Services and			
Employee Benefits	00100	$	688,103
Current Expenses	13000		201,810
Equipment	07000		106,615
Total		$	996,528

173-Division of Natural Resources –

Planning and Development Division

(WV Code Chapter 20)

Fund 3205 FY 2021 Org 0310

Personal Services and			
Employee Benefits	00100	$	457,738
Current Expenses	13000		257,864
Repairs and Alterations	06400		15,016
Equipment	07000		8,300
Buildings	25800		8,300
Other Assets	69000		1,900,000
Land	73000		31,700
Total		$	2,678,918

174-Division of Natural Resources –

Whitewater Study and Improvement Fund

(WV Code Chapter 20)

Fund 3253 FY 2021 Org 0310

Personal Services and			
Employee Benefits	00100	$	67,641

3	Current Expenses	13000	64,778
4	Equipment	07000	1,297
5	Buildings	25800	6,969
6	Total		$ 140,685

175-Division of Natural Resources –

Whitewater Advertising and Promotion Fund

(WV Code Chapter 20)

Fund 3256 FY 2021 Org 0310

1	Unclassified	09900	$ 200
2	Current Expenses	13000	19,800
3	Total		$ 20,000

176-Division of Miners' Health, Safety and Training –

Special Health, Safety and Training Fund

(WV Code Chapter 22A)

Fund 3355 FY 2021 Org 0314

1	Personal Services and		
2	Employee Benefits	00100	$ 501,228
3	WV Mining Extension Service	02600	150,000
4	Unclassified	09900	40,985
5	Current Expenses	13000	1,954,557
6	Buildings	25800	2,481,358
7	Land	73000	1,000,000
8	Total		$ 6,128,128

177-Department of Commerce –

Office of the Secretary –

Broadband Enhancement Fund

Fund 3013 FY 2021 Org 0327

Personal Services and			
Employee Benefits	00100	$	131,682
Current Expenses	13000	$	1,648,318
Total			1,780,000

178-Office of Energy –

Energy Assistance

(WV Code Chapter 5B)

Fund 3010 FY 2021 Org 0328

Energy Assistance – Total	64700	$	7,211

179-State Board of Rehabilitation –

Division of Rehabilitation Services –

West Virginia Rehabilitation Center Special Account

(WV Code Chapter 18)

Fund 8664 FY 2021 Org 0932

Personal Services and			
Employee Benefits	00100	$	119,738
Current Expenses	13000		1,180,122
Repairs and Alterations	06400		85,500
Equipment	07000		220,000
Buildings	25800		150,000
Other Assets	69000		150,000
Total		$	1,905,360

DEPARTMENT OF EDUCATION

180-State Board of Education –

Strategic Staff Development

(WV Code Chapter 18)

Fund 3937 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 134,000
Unclassified	09900	1,000
Current Expenses	13000	765,000
Total		$ 900,000

181-State Board of Education –

School Construction Fund

(WV Code Chapters 18 and 18A)

Fund 3952 FY 2021 Org 0404

SBA Construction Grants	24000	$ 35,845,818
Directed Transfer	70000	1,371,182
Total		$ 37,217,000

The above appropriation for Directed Transfer (fund 3952, appropriation 70000) shall be transferred to the School Building Authority Fund (fund 3959) for the administrative expenses of the School Building Authority.

182-School Building Authority

(WV Code Chapter 18)

Fund 3959 FY 2021 Org 0404

Personal Services and Employee Benefits	00100	$ 1,134,522
Current Expenses	13000	244,100
Repairs and Alterations	06400	13,150
Equipment	07000	26,000
Total		$ 1,417,772

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

183-Division of Culture and History –

Public Records and Preservation Revenue Account

(WV Code Chapter 5A)

Fund 3542 FY 2021 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	$ 226,624
3	Current Expenses	13000	862,241
4	Equipment.....	07000	75,000
5	Buildings.....	25800	1,000
6	Other Assets.....	69000	52,328
7	Land	73000	1,000
8	Total.....		$ 1,218,193

DEPARTMENT OF ENVIRONMENTAL PROTECTION

184-Solid Waste Management Board

(WV Code Chapter 22C)

Fund 3288 FY 2021 Org 0312

1	Personal Services and		
2	Employee Benefits.....	00100	$ 842,305
3	Current Expenses	13000	2,060,457
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	5,000
6	Other Assets.....	69000	4,403
7	Total.....		$ 2,913,165

185-Division of Environmental Protection –

Hazardous Waste Management Fund

(WV Code Chapter 22)

Fund 3023 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	$ 779,766
3	Current Expenses	13000	155,969
4	Repairs and Alterations.....	06400	500

5	Equipment	07000	1,505
6	Unclassified	09900	8,072
7	Other Assets	69000	2,000
8	Total		$ 947,812

186-Division of Environmental Protection –

Air Pollution Education and Environment Fund

(WV Code Chapter 22)

Fund 3024 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits	00100	$ 950,135
3	Current Expenses	13000	1,026,863
4	Repairs and Alterations	06400	13,000
5	Equipment	07000	53,105
6	Unclassified	09900	14,647
7	Other Assets	69000	20,000
8	Total		$ 2,077,750

187-Division of Environmental Protection –

Special Reclamation Fund

(WV Code Chapter 22)

Fund 3321 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits	00100	$ 1,627,573
3	Current Expenses	13000	16,185,006
4	Repairs and Alterations	06400	79,950
5	Equipment	07000	130,192
6	Other Assets	69000	32,000
7	Total		$ 18,054,721

188-Division of Environmental Protection –

Oil and Gas Reclamation Fund

(WV Code Chapter 22)

Fund 3322 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	143,906
Current Expenses	13000		356,094
Total		$	500,000

189-Division of Environmental Protection –

Oil and Gas Operating Permit and Processing Fund

(WV Code Chapter 22)

Fund 3323 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	3,486,896
Current Expenses	13000		1,249,758
Repairs and Alterations	06400		40,600
Equipment	07000		8,000
Unclassified	09900		44,700
Other Assets	69000		15,000
Total		$	4,844,954

190-Division of Environmental Protection –

Mining and Reclamation Operations Fund

(WV Code Chapter 22)

Fund 3324 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	3,566,280
Current Expenses	13000		2,202,231
Repairs and Alterations	06400		60,260
Equipment	07000		83,000
Unclassified	09900		920
Other Assets	69000		57,500
Total		$	5,970,191

191-Division of Environmental Protection –

Underground Storage Tank

Administrative Fund

(WV Code Chapter 22)

Fund 3325 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	476,417
Current Expenses	13000		318,420
Repairs and Alterations	06400		5,350
Equipment	07000		3,610
Unclassified	09900		7,520
Other Assets	69000		3,500
Total		$	814,817

192-Division of Environmental Protection –

Hazardous Waste Emergency Response Fund

(WV Code Chapter 22)

Fund 3331 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	598,154
Current Expenses	13000		767,905
Repairs and Alterations	06400		7,014
Equipment	07000		9,000
Unclassified	09900		10,616
Other Assets	69000		3,500
Total		$	1,396,189

193-Division of Environmental Protection –

Solid Waste Reclamation and

Environmental Response Fund

(WV Code Chapter 22)

Fund 3332 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	$ 825,811
3	Current Expenses	13000	3,604,737
4	Repairs and Alterations.....	06400	25,000
5	Equipment.....	07000	31,500
6	Unclassified	09900	22,900
7	Buildings.....	25800	500
8	Other Assets.....	69000	1,000
9	Total.....		$ 4,511,448

194-Division of Environmental Protection –

Solid Waste Enforcement Fund

(WV Code Chapter 22)

Fund 3333 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	$ 3,274,054
3	Current Expenses	13000	940,229
4	Repairs and Alterations.....	06400	30,930
5	Equipment.....	07000	23,356
6	Unclassified	09900	31,145
7	Other Assets.....	69000	25,554
8	Total.....		$ 4,325,268

195-Division of Environmental Protection –

Air Pollution Control Fund

(WV Code Chapter 22)

Fund 3336 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	$ 5,934,859
3	Current Expenses	13000	1,469,467

4	Repairs and Alterations.....	06400	84,045
5	Equipment.....	07000	103,601
6	Unclassified	09900	70,572
7	Other Assets.....	69000	52,951
8	Total.....		$ 7,715,495

196-Division of Environmental Protection –

Environmental Laboratory

Certification Fund

(WV Code Chapter 22)

Fund 3340 FY 2021 Org 0313

1	Personal Services and		
2	Employee Benefits.....	00100	$ 352,834
3	Current Expenses	13000	201,146
4	Repairs and Alterations.....	06400	1,000
5	Unclassified	09900	1,120
6	Other Assets.....	69000	163,000
7	Total.....		$ 719,100

197-Division of Environmental Protection –

Stream Restoration Fund

(WV Code Chapter 22)

Fund 3349 FY 2021 Org 0313

1	Current Expenses.....	13000	$ 5,182,076

198-Division of Environmental Protection –

Litter Control Fund

(WV Code Chapter 22)

Fund 3486 FY 2021 Org 0313

1	Current Expenses.....	13000	$ 60,000

199-Division of Environmental Protection –

Recycling Assistance Fund

(WV Code Chapter 22)

Fund 3487 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	660,575
Current Expenses	13000		2,754,258
Repairs and Alterations	06400		800
Equipment	07000		500
Unclassified	09900		400
Other Assets	69000		2,500
Total		$	3,419,033

200-Division of Environmental Protection –

Mountaintop Removal Fund

(WV Code Chapter 22)

Fund 3490 FY 2021 Org 0313

Personal Services and			
Employee Benefits	00100	$	1,250,562
Current Expenses	13000		642,934
Repairs and Alterations	06400		30,112
Equipment	07000		23,500
Unclassified	09900		1,180
Other Assets	69000		11,520
Total		$	1,959,808

201-Oil and Gas Conservation Commission –

Special Oil and Gas Conservation Fund

(WV Code Chapter 22C)

Fund 3371 FY 2021 Org 0315

1	Personal Services and		
2	Employee Benefits.....	00100	$ 162,161
3	Current Expenses	13000	161,225
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	9,481
6	Other Assets.....	69000	1,500
7	Total.....		$ 335,367

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

202-Division of Health –

Ryan Brown Addiction Prevention and Recovery Fund

(WV Code Chapter 19)

Fund 5111 FY 2021 Org 0506

1	Current Expenses	13000	$ 10,667,392

203-Division of Health –

The Vital Statistics Account

(WV Code Chapter 16)

Fund 5144 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	$ 938,484
3	Unclassified	09900	15,500
4	Current Expenses	13000	2,757,788
5	Total.....		$ 3,711,772

204-Division of Health –

Hospital Services Revenue Account

Special Fund

Capital Improvement, Renovation and Operations

(WV Code Chapter 16)

Fund 5156 FY 2021 Org 0506

Institutional Facilities Operations..	33500	$ 35,555,221
Medical Services Trust Fund –		
Transfer.....	51200	27,800,000
Total.....		$ 63,355,221

The total amount of these appropriations shall be paid from the Hospital Services Revenue Account Special Fund created by W.Va. Code §16-1-13, and shall be used for operating expenses and for improvements in connection with existing facilities.

Additional funds have been appropriated in fund 0525, fiscal year 2021, organization 0506, for the operation of the institutional facilities. The Secretary of the Department of Health and Human Resources is authorized to utilize up to ten percent of the funds from the appropriation for Institutional Facilities Operations to facilitate cost effective and cost saving services at the community level.

Necessary funds from the above appropriation may be used for medical facilities operations, either in connection with this fund or in connection with the appropriation designated Institutional Facilities Operations in the Consolidated Medical Service Fund (fund 0525, organization 0506).

205-Division of Health –

Laboratory Services Fund

(WV Code Chapter 16)

Fund 5163 FY 2021 Org 0506

Personal Services and		
Employee Benefits.....	00100	$ 936,712
Unclassified	09900	18,114

4	Current Expenses	13000	1,803,327
5	Total		$ 2,758,153

206-Division of Health –

The Health Facility Licensing Account

(WV Code Chapter 16)

Fund 5172 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits	00100	$ 645,446
3	Unclassified	09900	7,113
4	Current Expenses	13000	98,247
5	Total		$ 750,806

207-Division of Health –

Hepatitis B Vaccine

(WV Code Chapter 16)

Fund 5183 FY 2021 Org 0506

1	Current Expenses	13000	$ 9,740

208-Division of Health –

Lead Abatement Account

(WV Code Chapter 16)

Fund 5204 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits	00100	$ 19,100
3	Unclassified	09900	373
4	Current Expenses	13000	17,875
5	Total		$ 37,348

209-Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2021 Org 0506

Personal Services and Employee Benefits	00100	$	691,978
Unclassified	09900		223,999
Current Expenses	13000		30,134,400
Total		$	31,050,377

210-Division of Health –

Tobacco Control Special Fund

(WV Code Chapter 16)

Fund 5218 FY 2021 Org 0506

Current Expenses	13000	$	7,579

211-Division of Health –

Medical Cannabis Program Fund

(WV Code Chapter 16A)

Fund 5420 FY 2021 Org 0506

Personal Services and Employee Benefits	00100	$	509,658
Current Expenses	13000		2,046,040
Total		$	2,555,698

212-West Virginia Health Care Authority –

Health Care Cost Review Fund

(WV Code Chapter 16)

Fund 5375 FY 2021 Org 0507

Personal Services and Employee Benefits	00100	$	1,345,380

Unclassified	09900	20,100
Current Expenses	13000	785,445
Total		$ 2,150,925

The above appropriation is to be expended in accordance with and pursuant to the provisions of W.Va. Code §16-29B and from the special revolving fund designated Health Care Cost Review Fund.

213-West Virginia Health Care Authority –

Certificate of Need Program Fund

(WV Code Chapter 16)

Fund 5377 FY 2021 Org 0507

Personal Services and Employee Benefits	00100	$ 829,798
Current Expenses	13000	474,967
Total		$ 1,304,765

214-Division of Human Services –

Health Care Provider Tax –

Medicaid State Share Fund

(WV Code Chapter 11)

Fund 5090 FY 2021 Org 0511

Medical Services	18900	$ 213,594,315
Medical Services Administrative Costs	78900	242,287
Total		$ 213,836,602

The above appropriation for Medical Services Administrative Costs (fund 5090, appropriation 78900) shall be transferred to a special revenue account in the treasury for use by the Department of Health and Human Resources for administrative purposes. The remainder of all

moneys deposited in the fund shall be transferred to the Medical Services Program Fund (fund 5084).

215-Division of Human Services –

Child Support Enforcement Fund

(WV Code Chapter 48A)

Fund 5094 FY 2021 Org 0511

Personal Services and		
Employee Benefits.....	00100	$ 24,809,509
Unclassified	09900	380,000
Current Expenses	13000	12,810,491
Total.....		$ 38,000,000

216-Division of Human Services –

Medical Services Trust Fund

(WV Code Chapter 9)

Fund 5185 FY 2021 Org 0511

Medical Services.....	18900	$ 83,168,707
Medical Services		
Administrative Costs	78900	602,486
Total.....		$ 83,771,193

The above appropriation to Medical Services shall be used to provide state match of Medicaid expenditures as defined and authorized in subsection (c) of W.Va. Code §9-4A-2a. Expenditures from the fund are limited to the following: payment of backlogged billings, funding for services to future federally mandated population groups and payment of the required state match for Medicaid disproportionate share payments. The remainder of all moneys deposited in the fund shall be transferred to the Division of Human Services accounts.

217-Division of Human Services –

James "Tiger" Morton Catastrophic Illness Fund

(WV Code Chapter 16)

Fund 5454 FY 2021 Org 0511

1	Unclassified	09900	$	7,000
2	Current Expenses	13000		393,000
3	Total.....		$	400,000

218-Division of Human Services –

Domestic Violence Legal Services Fund

(WV Code Chapter 48)

Fund 5455 FY 2021 Org 0511

1	Current Expenses	13000	$	900,000

219-Division of Human Services –

West Virginia Works Separate State College Program Fund

(WV Code Chapter 9)

Fund 5467 FY 2021 Org 0511

1	Current Expenses	13000	$	500,000

220-Division of Human Services –

West Virginia Works Separate State Two-Parent Program Fund

(WV Code Chapter 9)

Fund 5468 FY 2021 Org 0511

1	Current Expenses	13000	$	1,500,000

221-Division of Human Services –

Marriage Education Fund

(WV Code Chapter 9)

Fund 5490 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	$ 10,000
3	Current Expenses	13000	25,000
4	Total.....		$ 35,000

DEPARTMENT OF HOMELAND SECURITY

222-Department of Homeland Security –

Office of the Secretary –

Law-Enforcement, Safety and Emergency Worker

Funeral Expense Payment Fund

(WV Code Chapter 15)

Fund 6003 FY 2021 Org 0601

1	Current Expenses	13000	$ 32,000

223-Division of Emergency Management –

Statewide Interoperable Radio Network Account

(WV Code Chapter 15)

Fund 6208 FY 2021 Org 0606

1	Current Expenses	13000	$ 80,000

224-Division Emergency Management –

West Virginia Interoperable Radio Project

(WV Code Chapter 24)

Fund 6295 FY 2021 Org 0606

1 Current Expenses	13000	$	2,000,000

2 Any unexpended balance remaining in the
3 appropriation for Unclassified – Total (fund 6295,
4 appropriation 09600) at the close of fiscal year 2020 is
5 hereby reappropriated for expenditure during the fiscal year
6 2021.

225-Division of Corrections and Rehabilitation –

Parolee Supervision Fees

(WV Code Chapter 15A)

Fund 6362 FY 2021 Org 0608

1 Personal Services and			
2 Employee Benefits	00100	$	1,118,697
3 Unclassified	09900		9,804
4 Current Expenses	13000		758,480
5 Equipment	07000		30,000
6 Other Assets	69000		40,129
7 Total		$	1,957,110

226-Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(WV Code Chapter 15A)

Fund 6675 FY 2021 Org 0608

1 Personal Services and			
2 Employee Benefits	00100	$	544,798
3 Debt Service	04000		9,000,000
4 Current Expenses	13000		245,472
5 Total		$	9,790,270

227-West Virginia State Police –

Motor Vehicle Inspection Fund

(WV Code Chapter 17C)

Fund 6501 FY 2021 Org 0612

Personal Services and Employee Benefits	00100	$ 1,907,726
Current Expenses	13000	1,488,211
Repairs and Alterations	06400	204,500
Equipment	07000	3,770,751
Buildings	25800	534,000
Other Assets	69000	5,000
BRIM Premium	91300	302,432
Total		$ 8,212,620

The total amount of these appropriations shall be paid from the special revenue fund out of fees collected for inspection stickers as provided by law.

228-West Virginia State Police –

Forensic Laboratory Fund

(WV Code Chapter 15)

Fund 6511 FY 2021 Org 0612

Personal Services and Employee Benefits	00100	$ 1,600,000
Current Expenses	13000	90,000
Repairs and Alterations	06400	5,000
Equipment	07000	545,000
Total		$ 2,240,000

229-West Virginia State Police –

Drunk Driving Prevention Fund

(WV Code Chapter 15)

Fund 6513 FY 2021 Org 0612

1	Current Expenses	13000	$ 1,327,000
2	Equipment	07000	3,491,895
3	BRIM Premium	91300	154,452
4	Total		$ 4,973,347

5 The total amount of these appropriations shall be paid
6 from the special revenue fund out of receipts collected
7 pursuant to W.Va. Code §11-15-9a and 16 and paid into a
8 revolving fund account in the State Treasury.

230-West Virginia State Police –

Surplus Real Property Proceeds Fund

(WV Code Chapter 15)

Fund 6516 FY 2021 Org 0612

1	Buildings	25800	$ 1,022,778
2	Land	73000	1,000
3	BRIM Premium	91300	77,222
4	Total		$ 1,101,000

231-West Virginia State Police –

Surplus Transfer Account

(WV Code Chapter 15)

Fund 6519 FY 2021 Org 0612

1	Current Expenses	13000	$ 225,000
2	Repairs and Alterations	06400	20,000
3	Equipment	07000	250,000
4	Buildings	25800	40,000
5	Other Assets	69000	45,000
6	BRIM Premium	91300	5,000
7	Total		$ 585,000

232-West Virginia State Police –

Central Abuse Registry Fund

(WV Code Chapter 15)

Fund 6527 FY 2021 Org 0612

Personal Services and			
Employee Benefits	00100	$	256,629
Current Expenses	13000		51,443
Repairs and Alterations	06400		500
Equipment	07000		300,500
Other Assets	69000		300,500
BRIM Premium	91300		18,524
Total		$	928,096

233-West Virginia State Police –

Bail Bond Enforcer Account

(WV Code Chapter 15)

Fund 6532 FY 2021 Org 0612

Current Expenses	13000	$	8,300

234-West Virginia State Police –

State Police Academy Post Exchange

(WV Code Chapter 15)

Fund 6544 FY 2021 Org 0612

Current Expenses	13000	$	160,000
Repairs and Alterations	06400		40,000
Total		$	200,000

235-Fire Commission –

Fire Marshal Fees

(WV Code Chapter 29)

Fund 6152 FY 2021 Org 0619

1	Personal Services and		
2	Employee Benefits.....	00100	$ 3,480,533
3	Unclassified	09900	3,800
4	Current Expenses	13000	1,246,550
5	Repairs and Alterations.....	06400	58,500
6	Equipment.....	07000	140,800
7	BRIM Premium.....	91300	65,000
8	Total.....		$ 4,995,183

236-Division of Administrative Services –

WV Community Corrections Fund

(WV Code Chapter 62)

Fund 6386 FY 2021 Org 0623

1	Personal Services and		
2	Employee Benefits.....	00100	$ 161,923
3	Unclassified	09900	750
4	Current Expenses	13000	1,846,250
5	Repairs and Alterations.....	06400	1,000
6	Total.....		$ 2,009,923

237-Division of Administrative Services –

Court Security Fund

(WV Code Chapter 51)

Fund 6804 FY 2021 Org 0623

1	Personal Services and		
2	Employee Benefits.....	00100	$ 23,840
3	Current Expenses	13000	1,478,135
4	Total.....		$ 1,501,975

238-Division of Administrative Services –

Second Chance Driver's License Program Account

(WV Code Chapter 17B)

Fund 6810 FY 2021 Org 0623

1 Current Expenses	13000	$	125,000

DEPARTMENT OF REVENUE

239-Division of Financial Institutions

(WV Code Chapter 31A)

Fund 3041 FY 2021 Org 0303

1 Personal Services and			
2 Employee Benefits	00100	$	2,703,057
3 Current Expenses	13000		650,475
4 Equipment	07000		8,500
5 Total		$	3,362,032

240-Office of the Secretary –

State Debt Reduction Fund

(WV Code Chapter 29)

Fund 7007 FY 2021 Org 0701

1 Retirement Systems –			
2 Unfunded Liability	77500	$	20,000,000

3 The above appropriation for Retirement System –
4 Unfunded Liability shall be transferred to the Consolidated
5 Public Retirement Board – West Virginia Teachers
6 Retirement System Employers School Aid Formula Funds
7 Holding Account Fund (fund 2606).

241-Home Rule Board Operations

(WV Code Chapter 8)

Fund 7010 FY 2021 Org 0701

1	Personal Services and		
2	Employee Benefits.....	00100	$ 25,000
3	Unclassified	09900	680
4	Current Expenses	13000	42,000
5	Repairs and Alterations.....	06400	120
6	Equipment.....	07000	200
7	Total.....		$ 68,000

242-Tax Division –

Cemetery Company Account

(WV Code Chapter 35)

Fund 7071 FY 2021 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	$ 25,928
3	Current Expenses	13000	7,717
4	Total.....		$ 33,645

243-Tax Division –

Special Audit and Investigative Unit

(WV Code Chapter 11)

Fund 7073 FY 2021 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	$ 696,428
3	Unclassified	09900	8,500
4	Current Expenses	13000	273,297
5	Repairs and Alterations.....	06400	7,000
6	Equipment.....	07000	5,000
7	Total.....		$ 990,225

244-Tax Division –

Wine Tax Administration Fund

(WV Code Chapter 60)

Fund 7087 FY 2021 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	$ 268,973
3	Current Expenses	13000	5,406
4	Total.....		$ 274,379

245-Tax Division –

Reduced Cigarette Ignition Propensity

Standard and Fire Prevention Act Fund

(WV Code Chapter 47)

Fund 7092 FY 2021 Org 0702

1	Current Expenses	13000	$ 35,000
2	Equipment.....	07000	15,000
3	Total.....		$ 50,000

246-Tax Division –

Local Sales Tax and Excise Tax

Administration Fund

(WV Code Chapter 11)

Fund 7099 FY 2021 Org 0702

1	Personal Services and		
2	Employee Benefits.....	00100	$ 1,543,527
3	Unclassified	09900	10,000
4	Current Expenses	13000	784,563
5	Repairs and Alterations.....	06400	1,000
6	Equipment.....	07000	5,000
7	Total.....		$ 2,344,090

247-State Budget Office –

Public Employees Insurance Reserve Fund

(WV Code Chapter 11B)

Fund 7400 FY 2021 Org 0703

Public Employees Insurance Reserve Fund – Transfer	90300	$ 6,800,000

The above appropriation for Public Employees Insurance Reserve Fund – Transfer shall be transferred to the Medical Services Trust Fund (fund 5185, org 0511) for expenditure.

248-State Budget Office –

Public Employees Insurance Agency Financial Stability Fund

(WV Code Chapter 11B)

Fund 7401 FY 2021 Org 0703

Retiree Premium Offset	80101	$ 5,000,000
PEIA Reserve.....	80102	10,000,000
Total.....		$ 15,000,000

The above appropriation shall be transferred to special revenue funds to be utilized by the West Virginia Public Employees Insurance Agency for the purposes of permitting the PEIA Finance Board to offset $5 million in retiree premium increases. Additionally, $10 million will be put into a reserve fund to stabilize and preserve the future solvency of PEIA. Such amount shall not be included in the calculation of the plan year aggregate premium cost-sharing percentages between employers and employees.

249-Insurance Commissioner –

Examination Revolving Fund

(WV Code Chapter 33)

Fund 7150 FY 2021 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	$ 748,764
3	Current Expenses	13000	1,357,201
4	Repairs and Alterations.....	06400	3,000
5	Equipment.....	07000	81,374
6	Buildings.....	25800	8,289
7	Other Assets.....	69000	11,426
8	Total.....		$ 2,210,054

250-Insurance Commissioner –

Consumer Advocate

(WV Code Chapter 33)

Fund 7151 FY 2021 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	$ 571,976
3	Current Expenses	13000	202,152
4	Repairs and Alterations.....	06400	5,000
5	Equipment.....	07000	34,225
6	Buildings.....	25800	4,865
7	Other Assets.....	69000	19,460
8	Total.....		$ 837,678

251-Insurance Commissioner –

Insurance Commission Fund

(WV Code Chapter 33)

Fund 7152 FY 2021 Org 0704

1	Personal Services and		
2	Employee Benefits.....	00100	$ 24,169,021
3	Current Expenses	13000	8,797,758
4	Repairs and Alterations.....	06400	68,614

5	Equipment.....	07000	1,728,240
6	Buildings.....	25800	25,000
7	Other Assets.....	69000	340,661
8	Total.....		$ 35,129,294

252-Insurance Commissioner –

Workers' Compensation Old Fund

(WV Code Chapter 23)

Fund 7162 FY 2021 Org 0704

1	Employee Benefits.....	01000	$ 50,000
2	Current Expenses.....	13000	250,500,000
3	Total.....		$250,550,000

253-Insurance Commissioner –

Workers' Compensation Uninsured Employers' Fund

(WV Code Chapter 23)

Fund 7163 FY 2021 Org 0704

1	Current Expenses.....	13000	$ 15,000,000

254-Insurance Commissioner –

Self-Insured Employer Guaranty Risk Pool

(WV Code Chapter 23)

Fund 7164 FY 2021 Org 0704

1	Current Expenses.....	13000	$ 9,000,000

255-Insurance Commissioner –

Self-Insured Employer Security Risk Pool

(WV Code Chapter 23)

Fund 7165 FY 2021 Org 0704

1 Current Expenses	13000	$	14,000,000

256-Municipal Bond Commission

(WV Code Chapter 13)

Fund 7253 FY 2021 Org 0706

1 Personal Services and			
2 Employee Benefits	00100	$	282,589
3 Current Expenses	13000		144,844
4 Equipment	07000		100
5 Total		$	427,533

257-Racing Commission –

Relief Fund

(WV Code Chapter 19)

Fund 7300 FY 2021 Org 0707

1 Medical Expenses – Total	24500	$	57,000

2 The total amount of this appropriation shall be paid
3 from the special revenue fund out of collections of license
4 fees and fines as provided by law.

5 No expenditures shall be made from this fund except for
6 hospitalization, medical care and/or funeral expenses for
7 persons contributing to this fund.

258-Racing Commission –

Administration and Promotion Account

(WV Code Chapter 19)

Fund 7304 FY 2021 Org 0707

1 Personal Services and			
2 Employee Benefits	00100	$	264,564
3 Current Expenses	13000		85,433

4	Other Assets	69000	5,000
5	Total		$ 354,997

259-Racing Commission –

General Administration

(WV Code Chapter 19)

Fund 7305 FY 2021 Org 0707

1	Personal Services and		
2	Employee Benefits	00100	$ 2,352,306
3	Current Expenses	13000	497,284
4	Repairs and Alterations	06400	5,000
5	Other Assets	69000	40,000
6	Total		$ 2,894,590

260-Racing Commission –

Administration, Promotion, Education, Capital Improvement

and Greyhound Adoption Programs

to include Spaying and Neutering Account

(WV Code Chapter 19)

Fund 7307 FY 2021 Org 0707

1	Personal Services and		
2	Employee Benefits	00100	$ 918,781
3	Current Expenses	13000	160,099
4	Other Assets	69000	200,000
5	Total		$ 1,278,880

261-Alcohol Beverage Control Administration –

Wine License Special Fund

(WV Code Chapter 60)

Fund 7351 FY 2021 Org 0708

Personal Services and Employee Benefits	00100	$ 147,213
Unclassified	09900	30,750
Current Expenses	13000	54,186
Repairs and Alterations	06400	7,263
Equipment	07000	10,000
Buildings	25800	100,000
Other Assets	69000	100
Total		$ 349,512

To the extent permitted by law, four classified exempt positions shall be provided from Personal Services and Employee Benefits appropriation for field auditors.

262-Alcohol Beverage Control Administration

(WV Code Chapter 60)

Fund 7352 FY 2021 Org 0708

Personal Services and Employee Benefits	00100	$ 5,790,574
Current Expenses	13000	2,890,577
Repairs and Alterations	06400	91,000
Equipment	07000	108,000
Buildings	25800	375,100
Purchase of Supplies for Resale	41900	76,500,000
Transfer Liquor Profits and Taxes	42500	21,200,000
Other Assets	69000	125,100
Land	73000	100
Total		$107,080,451

The total amount of these appropriations shall be paid from a special revenue fund out of liquor revenues and any other revenues available.

The above appropriations include the salary of the commissioner and the salaries, expenses, and equipment of administrative offices, warehouses, and inspectors.

The above appropriations include funding for the Tobacco/Alcohol Education Program.

There is hereby appropriated from liquor revenues, in addition to the above appropriations as needed, the necessary amount for the purchase of liquor as provided by law and the remittance of profits and taxes to the General Revenue Fund.

263-State Athletic Commission Fund

(WV Code Chapter 29)

Fund 7009 FY 2021 Org 0933

Personal Services and			
Employee Benefits	00100	$	10,500
Current Expenses	13000		29,500
Total		$	40,000

DEPARTMENT OF TRANSPORTATION

264-Division of Motor Vehicles –

Dealer Recovery Fund

(WV Code Chapter 17)

Fund 8220 FY 2021 Org 0802

Current Expenses	13000	$	189,000

265-Division of Motor Vehicles –

Motor Vehicle Fees Fund

(WV Code Chapter 17B)

Fund 8223 FY 2021 Org 0802

Personal Services and			
Employee Benefits	00100	$	3,733,074
Current Expenses	13000		4,357,773

4	Repairs and Alterations.....	06400	16,000
5	Equipment.....	07000	75,000
6	Other Assets.....	69000	10,000
7	BRIM Premium.....	91300	89,939
8	Total.....		$ 8,281,786

266-Division of Highways –

A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2021 Org 0803

1	Current Expenses.....	13000	$ 2,500,000

267-State Rail Authority -

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund 8402 FY 2021 Org 0804

1	Current Expenses.....	13000	$ 2,800,000

DEPARTMENT OF VETERANS' ASSISTANCE

268-Veterans' Facilities Support Fund

(WV Code Chapter 9A)

Fund 6703 FY 2021 Org 0613

1	Current Expenses.....	13000	$ 1,654,234
2	Other Assets.....	69000	10,000
3	Total.....		$ 1,664,234

269-Department of Veterans' Assistance –

WV Veterans' Home –

Special Revenue Operating Fund

(WV Code Chapter 9A)

Fund 6754 FY 2021 Org 0618

Current Expenses	13000	$	289,400
Repairs and Alterations	06400		10,600
Total		$	300,000

BUREAU OF SENIOR SERVICES

270-Bureau of Senior Services –

Community Based Service Fund

(WV Code Chapter 29)

Fund 5409 FY 2021 Org 0508

Personal Services and Employee Benefits	00100	$	160,883
Current Expenses	13000		10,348,710
Total		$	10,509,593

The total amount of these appropriations are funded from annual table game license fees to enable the aged and disabled citizens of West Virginia to stay in their homes through the provision of home and community-based services.

HIGHER EDUCATION POLICY COMMISSION

271-Higher Education Policy Commission –

System –

Tuition Fee Capital Improvement Fund

(Capital Improvement and Bond Retirement Fund)

Control Account

(WV Code Chapters 18 and 18B)

Fund 4903 FY 2021 Org 0442

Debt Service.....	04000	$ 27,713,123
General Capital Expenditures	30600	5,000,000
Facilities Planning and Administration	38600	441,111
Total.....		$ 33,154,234

The total amount of these appropriations shall be paid from the Special Capital Improvement Fund created in W.Va. Code §18B-10-8. Projects are to be paid on a cash basis and made available on July 1.

The above appropriations, except for Debt Service, may be transferred to special revenue funds for capital improvement projects at the institutions.

272-Tuition Fee Revenue Bond Construction Fund

(WV Code Chapters 18 and 18B)

Fund 4906 FY 2021 Org 0442

Any unexpended balance remaining in the appropriation for Capital Outlay (fund 4906, appropriation 51100) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

The appropriation shall be paid from available unexpended cash balances and interest earnings accruing to the fund. The appropriation shall be expended at the discretion of the Higher Education Policy Commission and the funds may be allocated to any institution within the system.

The total amount of this appropriation shall be paid from the unexpended proceeds of revenue bonds previously issued pursuant to W.Va. Code §18-12B-8, which have since been refunded.

273-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2021 Org 0442

Any unexpended balance remaining in the appropriation for Capital Improvements – Total (fund 4908, appropriation 95800) at the close of fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

The total amount of this appropriation shall be paid from the sale of the Series 2017 Community and Technical College Capital Improvement Refunding Revenue Bonds and anticipated interest earnings.

274-West Virginia University –

West Virginia University Health Sciences Center

(WV Code Chapters 18 and 18B)

Fund 4179 FY 2021 Org 0463

Personal Services and Employee Benefits	00100	$ 10,764,347
Current Expenses	13000	4,524,300
Repairs and Alterations	06400	425,000
Equipment	07000	512,000
Buildings	25800	150,000
Other Assets	69000	50,000
Total		$ 16,425,647

MISCELLANEOUS BOARDS AND COMMISSIONS

275-Board of Barbers and Cosmetologists –

Barbers and Beauticians Special Fund

(WV Code Chapters 16 and 30)

Fund 5425 FY 2021 Org 0505

Personal Services and			
Employee Benefits	00100	$	543,993
Current Expenses	13000		234,969
Repairs and Alterations	06400		5,000
Total		$	783,962

The total amount of these appropriations shall be paid from a special revenue fund out of collections made by the Board of Barbers and Cosmetologists as provided by law.

276-Hospital Finance Authority –

Hospital Finance Authority Fund

(WV Code Chapter 16)

Fund 5475 FY 2021 Org 0509

Personal Services and			
Employee Benefits	00100	$	93,279
Unclassified	09900		1,501
Current Expenses	13000		55,328
Total		$	150,108

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by Article 29A, Chapter 16 of the Code.

277-WV State Board of Examiners for Licensed Practical Nurses –

Licensed Practical Nurses

(WV Code Chapter 30)

Fund 8517 FY 2021 Org 0906

Personal Services and			
Employee Benefits	00100	$	495,505

Current Expenses	13000	107,700
Total		$ 603,205

278-WV Board of Examiners for Registered Professional Nurses –

Registered Professional Nurses

(WV Code Chapter 30)

Fund 8520 FY 2021 Org 0907

Personal Services and Employee Benefits	00100	$ 1,300,612
Current Expenses	13000	312,655
Repairs and Alterations	06400	3,000
Equipment	07000	25,000
Other Assets	69000	4,500
Total		$ 1,645,767

279-Public Service Commission

(WV Code Chapter 24)

Fund 8623 FY 2021 Org 0926

Personal Services and Employee Benefits	00100	$ 12,481,921
Unclassified	09900	147,643
Current Expenses	13000	2,572,202
Repairs and Alterations	06400	55,000
Equipment	07000	160,000
Buildings	25800	10
PSC Weight Enforcement	34500	4,605,652
Debt Payment/Capital Outlay	52000	350,000
Land	73000	10
BRIM Premium	91300	172,216
Total		$ 20,544,654

The total amount of these appropriations shall be paid from a special revenue fund out of collections for special license fees from public service corporations as provided by law.

The Public Service Commission is authorized to transfer up to $500,000 from this fund to meet the expected deficiencies in the Motor Carrier Division (fund 8625, org 0926) due to the amendment and reenactment of W.Va. Code §24A-3-1 by Enrolled House Bill Number 2715, Regular Session, 1997.

280-Public Service Commission –

Gas Pipeline Division –

Public Service Commission Pipeline Safety Fund

(WV Code Chapter 24B)

Fund 8624 FY 2021 Org 0926

Personal Services and			
Employee Benefits	00100	$	294,658
Unclassified	09900		3,851
Current Expenses	13000		93,115
Repairs and Alterations	06400		4,000
Total		$	395,624

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over pipeline companies as provided by law.

281-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8625 FY 2021 Org 0926

Personal Services and			
Employee Benefits	00100	$	2,377,514
Unclassified	09900		29,233
Current Expenses	13000		577,557

Repairs and Alterations.....	06400	23,000
Equipment.....	07000	50,000
Total.....		$ 3,057,304

The total amount of these appropriations shall be paid from a special revenue fund out of receipts collected for or by the Public Service Commission pursuant to and in the exercise of regulatory authority over motor carriers as provided by law.

282-Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2021 Org 0926

Personal Services and		
Employee Benefits.....	00100	$ 876,994
Current Expenses	13000	386,472
Equipment.....	07000	9,872
BRIM Premium.....	91300	4,660
Total.....		$ 1,277,998

The total amount of these appropriations shall be supported by cash from a special revenue fund out of collections made by the Public Service Commission.

283-Real Estate Commission –

Real Estate License Fund

(WV Code Chapter 30)

Fund 8635 FY 2021 Org 0927

Personal Services and		
Employee Benefits.....	00100	$ 607,098
Current Expenses	13000	293,122
Repairs and Alterations.....	06400	2,500
Equipment.....	07000	5,000
Total.....		$ 907,720

The total amount of these appropriations shall be paid out of collections of license fees as provided by law.

284-WV Board of Examiners for Speech-Language Pathology and Audiology –

Speech-Language Pathology and Audiology Operating Fund

(WV Code Chapter 30)

Fund 8646 FY 2021 Org 0930

Personal Services and Employee Benefits	00100	$	91,513
Current Expenses	13000		63,499
Total		$	155,012

285-WV Board of Respiratory Care –

Board of Respiratory Care Fund

(WV Code Chapter 30)

Fund 8676 FY 2021 Org 0935

Personal Services and Employee Benefits	00100	$	94,050
Current Expenses	13000		54,137
Repairs and Alterations	06400		400
Total		$	148,587

286-WV Board of Licensed Dietitians –

Dietitians Licensure Board Fund

(WV Code Chapter 30)

Fund 8680 FY 2021 Org 0936

Personal Services and Employee Benefits	00100	$	20,219
Current Expenses	13000		20,250
Total		$	40,469

287- Massage Therapy Licensure Board –

Massage Therapist Board Fund

(WV Code Chapter 30)

Fund 8671 FY 2021 Org 0938

Personal Services and			
Employee Benefits	00100	$	109,555
Current Expenses	13000		42,448
Total		$	152,003

288-Board of Medicine –

Medical Licensing Board Fund

(WV Code Chapter 30)

Fund 9070 FY 2021 Org 0945

Personal Services and			
Employee Benefits	00100	$	1,378,807
Current Expenses	13000		1,108,789
Repairs and Alterations	06400		8,000
Total		$	2,495,596

289-West Virginia Enterprise Resource Planning Board –

Enterprise Resource Planning System Fund

(WV Code Chapter 12)

Fund 9080 FY 2021 Org 0947

Personal Services and			
Employee Benefits	00100	$	6,856,239
Unclassified	09900		232,000
Current Expenses	13000		13,662,210
Repairs and Alterations	06400		300
Equipment	07000		302,000
Buildings	25800		2,000

Other Assets	69000	203,500
Total		$ 21,258,249

290-Board of Treasury Investments –

Board of Treasury Investments Fee Fund

(WV Code Chapter 12)

Fund 9152 FY 2021 Org 0950

Personal Services and Employee Benefits	00100	$ 832,889
Unclassified	09900	14,850
Current Expenses	13000	605,714
BRIM Premium	91300	31,547
Fees of Custodians, Fund Advisors and Fund Managers	93800	3,500,000
Total		$ 4,985,000

There is hereby appropriated from this fund, in addition to the above appropriation if needed, an amount of funds necessary for the Board of Treasury Investments to pay the fees and expenses of custodians, fund advisors and fund managers for the consolidated fund of the State as provided in Article 6C, Chapter 12 of the Code.

The total amount of these appropriations shall be paid from the special revenue fund out of fees and collections as provided by law.

291-State Armory Board –

General Armory Fund

(WV Code Chapter 15)

Fund 6057 FY 2021 Org 0603

Personal Services and Employee Benefits	00100	$ 1,681,247
Current Expenses	13000	650,000

Repairs and Alterations.....	06400	385,652
Equipment.....	07000	250,000
Buildings.....	25800	520,820
Other Assets.....	69000	350,000
Land	73000	200,000
Total.....		$ 4,037,719

From the above appropriations, the Adjutant General may receive and expend funds to conduct operations and activities to include functions of the Military Authority. The Adjutant General may transfer funds between appropriations, except no funds may be transferred to Personal Services and Employee Benefits (fund 6057, appropriation 00100).

Total TITLE II, Section 3 – Other Funds
(Including claims against the state) $1,513,410,079

Sec. 4. Appropriations from lottery net profits. — Net profits of the lottery are to be deposited by the Director of the Lottery to the following accounts in the amounts indicated. The Director of the Lottery shall prorate each deposit of net profits in the proportion the appropriation for each account bears to the total of the appropriations for all accounts.

After first satisfying the requirements for Fund 2252, Fund 3963, and Fund 4908 pursuant to W.Va. Code §29-22-18, the Director of the Lottery shall make available from the remaining net profits of the lottery any amounts needed to pay debt service for which an appropriation is made for Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 and is authorized to transfer any such amounts to Fund 9065, Fund 4297, Fund 3390, Fund 3514, Fund 9067, and Fund 9068 for that purpose. Upon receipt of reimbursement of amounts so transferred, the Director of the Lottery shall deposit the reimbursement amounts to the following accounts as required by this section.

292-Education, Arts, Sciences and Tourism –

Debt Service Fund

(WV Code Chapter 5)

Fund 2252 FY 2021 Org 0211

		Appro-priation	Lottery Funds
1	Debt Service – Total	31000	$ 10,000,000

293-West Virginia Development Office –

West Virginia Tourism Office

(WV Code Chapter 5B)

Fund 3067 FY 2021 Org 0304

1	Tourism – Telemarketing Center...	46300	$ 82,080
2	Tourism – Advertising (R).....	61800	2,422,407
3	Tourism – Operations (R).....	66200	4,227,938
4	Total.....		$ 6,732,425

5 Any unexpended balances remaining in the
6 appropriations for Tourism – Advertising (fund 3067,
7 appropriation 61800), and Tourism – Operations (fund
8 3067, appropriation 66200) at the close of the fiscal year
9 2020 are hereby reappropriated for expenditure during the
10 fiscal year 2021.

294-Division of Natural Resources

(WV Code Chapter 20)

Fund 3267 FY 2021 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	$ 2,428,178
3	Current Expenses	13000	26,900
4	Pricketts Fort State Park	32400	106,560

Non-Game Wildlife (R).....	52700	386,935
State Parks and		
Recreation Advertising (R).....	61900	494,578
Total.....		$ 3,443,151

Any unexpended balances remaining in the appropriations for Unclassified (fund 3267, appropriation 09900), Capital Outlay – Parks (fund 3267, appropriation 28800), Non-Game Wildlife (fund 3267, appropriation 52700), and State Parks and Recreation Advertising (fund 3267, appropriation 61900) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

295-State Board of Education

(WV Code Chapters 18 and 18A)

Fund 3951 FY 2021 Org 0402

FBI Checks	37200	$ 116,548
Vocational Education		
Equipment Replacement.....	39300	800,000
Assessment Program (R)	39600	3,016,444
Literacy Project.....	89900	350,000
21st Century Technology Infrastructure		
Network Tools and Support (R).....	93300	14,600,383
Total.....		$ 18,883,375

Any unexpended balances remaining in the appropriations for Unclassified (fund 3951, appropriation 09900), Current Expenses (fund 3951, appropriation 13000), Assessment Program (fund 3951, appropriation 39600), and 21st Century Technology Infrastructure Network Tools and Support (fund 3951, appropriation 93300) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

296-State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2021 Org 0404

Debt Service – Total	31000	$ 15,320,363
Directed Transfer	70000	2,679,637
Total.....		$ 18,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W.Va. Code §29-22-18.

The above appropriation for Directed Transfer (fund 3963, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

297-Division of Culture and History –

Lottery Education Fund

(WV Code Chapter 29)

Fund 3534 FY 2021 Org 0432

Huntington Symphony.....	02700	$ 59,058
Preservation WV (R)	09200	491,921
Fairs and Festivals (R)	12200	1,346,814
Commission for National and Community Service (R).....	19300	374,980
Archeological Curation/Capital Improvements (R).....	24600	36,276
Historic Preservation Grants (R)....	31100	368,428
West Virginia Public Theater	31200	120,019

Greenbrier Valley Theater	42300	115,000
Theater Arts of West Virginia	46400	90,000
Marshall Artists Series.....	51800	36,005
Grants for Competitive Arts Program (R)	62400	726,000
West Virginia State Fair	65700	31,241
Save the Music.....	68000	24,000
Contemporary American Theater Festival	81100	57,281
Independence Hall	81200	27,277
Mountain State Forest Festival	86400	38,187
WV Symphony	90700	59,058
Wheeling Symphony.....	90800	59,058
Appalachian Children's Chorus.....	91600	54,554
Total.....		$ 4,115,157

From the above appropriation for Preservation West Virginia (fund 3534, appropriation 09200) funding shall be provided to the African-American Heritage Family Tree Museum (Fayette) $2,673, Arts Monongahela (Monongalia) $11,881, Barbour County Arts and Humanities Council $891, Beckley Main Street (Raleigh) $2,970, Buffalo Creek Memorial (Logan) $2,970, Carnegie Hall (Greenbrier) $46,899, Ceredo Historical Society (Wayne) $1,188, Ceredo Kenova Railroad Museum (Wayne) $1,188, Ceredo Museum (Wayne) $720, Children's Theatre of Charleston (Kanawha) $3,127, Chuck Mathena Center (Mercer) $62,532, Collis P. Huntington Railroad Historical Society (Cabell) $5,941, Country Music Hall of Fame and Museum (Marion) $4,159, First Stage Children's Theater Company $1,188, Flannigan Murrell House (Summers) $3,781, Fort Ashby Fort (Mineral) $891, Fort New Salem (Harrison) $2,198, Fort Randolph (Mason) $2,970, General Adam Stephen Memorial Foundation (Berkeley) $11,006, Grafton Mother's Day Shrine Committee (Taylor) $8,749, Hardy County Tour and Crafts Association $11,881, Heartwood in the Hills (Calhoun) $5,040, Heritage Farm Museum & Village (Cabell) $29,703, Historic Fayette Theater

(Fayette) $3,267, Historic Middleway Conservancy (Jefferson) $594, Jefferson County Black History Preservation Society $2,970, Jefferson County Historical Landmark Commission $4,753, Maddie Carroll House (Cabell) $4,455, Marshall County Historical Society $5,049, McCoy Theater (Hardy) $11,881, Memorial Day Patriotic Exercise (Taylor) $20,000, Morgantown Theater Company (Monongalia) $11,881, Mountaineer Boys' State (Lewis) $5,941, Nicholas Old Main Foundation (Nicholas) $1,188, Norman Dillon Farm Museum (Berkeley) $5,941, Old Opera House Theater Company (Jefferson) $8,911, Parkersburg Arts Center (Wood) $11,881, Pocahontas Historic Opera House $3,564, Raleigh County All Wars Museum $5,941, Rhododendron Girl's State (Ohio) $5,941, Roane County 4-H and FFA Youth Livestock Program $2,970, Society for the Preservation of McGrew House (Preston) $2,079, Southern West Virginia Veterans' Museum $3,393, Summers County Historic Landmark Commission $2,970, Those Who Served War Museum (Mercer) $2,376, Three Rivers Avian Center (Summers) $5,311, Veterans Committee for Civic Improvement of Huntington (Wayne) $2,970, West Virginia Museum of Glass (Lewis) $2,970, West Virginia Music Hall of Fame (Kanawha) $20,792, Camp Horseshoe (Tucker) $59,406, Youth Museum of Southern West Virginia (Raleigh) $7,129, Z.D. Ramsdell House (Wayne) $720.

From the above appropriation for Fairs and Festivals (fund 3534, appropriation 12200) funding shall be provided to the A Princeton 4th (Mercer) $1,800, African-American Cultural Heritage Festival (Jefferson) $2,970, Alderson 4th of July Celebration (Greenbrier) $2,970, Allegheny Echo (Pocahontas) $4,456, Alpine Festival/Leaf Peepers Festival (Tucker) $6,683, American Civil War (Grant) $3,127, American Legion Post 8 Veterans Day Parade (McDowell) $1,250, Angus Beef and Cattle Show (Lewis) $891, Annual Don Redman Heritage Concert & Awards (Jefferson) $938, Annual Ruddle Park Jamboree (Pendleton) $4,690, Antique Market Fair (Lewis) $1,188, Apple Butter Festival

(Morgan) $3,564, Arkansaw Homemaker's Heritage Weekend (Hardy) $2,079, Armed Forces Day-South Charleston (Kanawha) $1,782, Arthurdale Heritage New Deal Festival (Preston) $2,970, Athens Town Fair (Mercer) $1,188, Augusta Fair (Randolph) $2,970, Autumn Harvest Fest (Monroe) $2,448, Barbour County Fair $14,851, Barboursville Octoberfest (Cabell) $2,970, Battelle District Fair (Monongalia) $2,970, Battle of Dry Creek (Greenbrier) $891, Battle of Point Pleasant Memorial Committee (Mason) $2,970, Belle Town Fair (Kanawha) $2,673, Belleville Homecoming (Wood) $11,881, Bergoo Down Home Days (Webster) $1,485, Berkeley County Youth Fair $10,990, Black Bear 4K Mountain Bike Race (Kanawha) $684, Black Heritage Festival (Harrison) $3,564, Black Walnut Festival (Roane) $5,940, Blast from the Past (Upshur) $1,440, Blue-Gray Reunion (Barbour) $2,079, Boone County Fair $5,940, Boone County Labor Day Celebration $2,376, Bradshaw Fall Festival (McDowell) $1,188, Brandonville Heritage Day (Preston) $1,048, Braxton County Fair $6,832, Braxton County Monster Fest / West Virginia Autumn Festival $1,485, Brooke County Fair $2,079, Bruceton Mills Good Neighbor Days (Preston) $1,188, Buckwheat Festival (Preston) $5,050, Buffalo 4th of July Celebration (Putnam) $400, Buffalo October Fest (Putnam) $3,240, Burlington Apple Harvest Festival (Mineral) $17,821, Burlington Pumpkin Harvest Festival (Raleigh) $2,970, Burnsville Freedom Festival (Braxton) $1,407, Cabell County Fair $5,940, Calhoun County Wood Festival $1,188, Campbell's Creek Community Fair (Kanawha) $1,485, Cape Coalwood Festival Association (McDowell) $1,485, Capon Bridge Founders Day Festival (Hampshire) $1,188, Capon Springs Ruritan 4th of July (Hampshire) $684, Cass Homecoming (Pocahontas) $1,188, Cedarville Town Festival (Gilmer) $684, Celebration of America (Monongalia) $3,564, Chapmanville Apple Butter Festival (Logan) $684, Chapmanville Fire Department 4th of July (Logan) $1,782, Charles Town Christmas Festival (Jefferson) $2,970, Charles Town Heritage Festival

(Jefferson) $2,970, Cherry River Festival (Nicholas) $3,861, Chester Fireworks (Hancock) $891, Chester 4th of July Festivities (Hancock) $2,970, Chief Logan State Park-Civil War Celebration (Logan) $4,752, Chilifest West Virginia State Chili Championship (Cabell) $1,563, Christmas In Our Town (Marion) $3,127, Christmas in Shepherdstown (Jefferson) $2,376, Christmas in the Park (Brooke) $2,970, Christmas in the Park (Logan) $14,851, City of Dunbar Critter Dinner (Kanawha) $5,940, City of Logan Polar Express (Logan) $4,456, City of New Martinsville Festival of Memories (Wetzel) $6,534, Clay County Golden Delicious Apple Festival $4,158, Clay District Fair (Monongalia) $1,080, Coal Field Jamboree (Logan) $20,792, Coalton Days Fair (Randolph) $4,158, Craigsville Fall Festival (Nicholas) $2,079, Cruise into Princeton (Mercer) $2,160, Culturefest World Music & Arts Festival (Mercer) $4,690, Delbarton Homecoming (Mingo) $2,079, Doddridge County Fair $4,158, Durbin Days (Pocahontas) $2,970, Elbert/Filbert Reunion Festival (McDowell) $891, Fairview 4th of July Celebration (Marion) $684, Farm Safety Day (Preston) $1,188, Farmer's Day Festival (Monroe) $2,330, Fenwick Mountain Old Time Community Festival (Nicholas) $2,880, FestivALL Charleston (Kanawha) $11,881, Flemington Day Fair and Festival (Taylor) $2,379, Follansbee Community Days (Brooke) $4,900, Fort Gay Mountain Heritage Days (Wayne) $2,970, Fort Henry Days (Ohio) $3,148, Fort Henry Living History (Ohio) $1,563, Fort New Salem Spirit of Christmas Festival (Harrison) $2,432, Frankford Autumnfest (Greenbrier) $2,970, Franklin Fishing Derby (Pendleton) $4,456, Freshwater Folk Festival (Greenbrier) $2,970, Friends Auxiliary of W.R. Sharpe Hospital (Lewis) $2,970, Frontier Days (Harrison) $1,782, Fund for the Arts-Wine & All that Jazz Festival (Kanawha) $1,485, Gassaway Days Celebration (Braxton) $2,970, Gilbert Elementary Fall Blast (Mingo) $2,188, Gilbert Spring Fling (Mingo) $3,595, Gilmer County Farm Show $2,376, Grant County Arts Council $1,188, Great Greenbrier River Race (Pocahontas) $5,940,

Greater Quinwood Days (Greenbrier) $781, Guyandotte Civil War Days (Cabell) $5,941, Hamlin 4th of July Celebration (Lincoln) $2,970, Hampshire Civil War Celebration Days (Hampshire) $684, Hampshire County 4th of July Celebration $11,881, Hampshire County Fair $5,002, Hancock County Oldtime Fair $2,970, Hardy County Commission - 4th of July $5,940, Hatfield McCoy Matewan Reunion Festival (Mingo) $12,330, Hatfield McCoy Trail National ATV and Dirt Bike Weekend (Wyoming) $2,970, Heat'n the Hills Chilifest (Lincoln) $2,970, Heritage Craft Festival (Monroe) $1,044, Heritage Days Festival (Roane) $891, Hilltop Festival (Cabell) $684, Hilltop Festival of Lights (McDowell) $1,188, Hinton Railroad Days (Summers) $4,347, Holly River Festival (Webster) $891, Hometown Mountain Heritage Festival (Fayette) $2,432, Hundred 4th of July (Wetzel) $4,307, Hurricane 4th of July Celebration (Putnam) $2,970, Iaeger Town Fair (McDowell) $891, Irish Heritage Festival of West Virginia (Raleigh) $2,970, Irish Spring Festival (Lewis) $684, Italian Heritage Festival-Clarksburg (Harrison) $17,821, Jackson County Fair $2,970, Jamboree (Pocahontas) $2,970, Jane Lew Arts and Crafts Fair (Lewis) $684, Jefferson County Fair Association $14,851, Jersey Mountain Ruritan Pioneer Days (Hampshire) $684, John Henry Days Festival (Monroe) $4,698, Johnnie Johnson Blues and Jazz Festival (Marion) $2,970, Johnstown Community Fair (Harrison) $1,485, Junior Heifer Preview Show (Lewis) $1,188, Kanawha Coal Riverfest-St. Albans 4th of July Festival (Kanawha) $2,970, Keeper of the Mountains-Kayford (Kanawha) $1,485, Kenova Autumn Festival (Wayne) $4,377, Kermit Fall Festival (Mingo) $1,782, Keystone Reunion Gala (McDowell) $1,563, King Coal Festival (Mingo) $2,970, Kingwood Downtown Street Fair and Heritage Days (Preston) $1,188, L.Z. Rainelle West Virginia Veterans Reunion (Greenbrier) $2,970, Lady of Agriculture (Preston) $684, Larry Joe Harless Center Octoberfest Hatfield McCoy Trail (Mingo) $5,940, Larry Joe Harless Community Center Spring Middle School Event (Mingo)

$2,970, Last Blast of Summer (McDowell) $2,970, Lewisburg Shanghai (Greenbrier) $1,188, Lincoln County Fall Festival $4,752, Lincoln County Winterfest $2,970, Lindside Veterans' Day Parade (Monroe) $720, Little Levels Heritage Festival (Pocahontas) $1,188, Lost Creek Community Festival (Harrison) $4,158, Main Street Arts Festival (Upshur) $3,127, Main Street Martinsburg Chocolate Fest and Book Fair (Berkeley) $2,813, Mannington District Fair (Marion) $3,564, Maple Syrup Festival (Randolph) $684, Marion County FFA Farm Fest $1,485, Marmet Labor Day Celebration (Kanawha) $3,078, Marshall County Antique Power Show $1,485, Mason County Fair $2,970, , Matewan Massacre Reenactment (Mingo) $5,004, Matewan-Magnolia Fair (Mingo) $15,932, McARTS-McDowell County $11,881, McGrew House History Day (Preston) $1,188, McNeill's Rangers (Mineral) $4,752, Meadow Bridge Hometown Festival (Fayette) $743, Meadow River Days Festival (Greenbrier) $1,782, Mercer Bluestone Valley Fair (Mercer) $1,188, Mercer County Fair $1,188, Mercer County Heritage Festival $3,474, Milton Christmas in the Park (Cabell) $1,485, Milton Old Timey Days (Cabell) $1,485, Mineral County Veterans Day Parade $891, Molasses Festival (Calhoun) $1,188, Monongahfest (Marion) $3,752, Moon Over Mountwood Fishing Festival (Wood) $1,782, Morgan County Fair-History Wagon $891, Moundsville Bass Festival (Marshall) $2,376, Moundsville July 4th Celebration (Marshall) $2,970, Mount Liberty Fall Festival (Barbour) $1,485, Mountain Fest (Monongalia) $11,881, Mountain Festival (Mercer) $2,747, Mountain Heritage Arts and Crafts Festival (Jefferson) $2,970, Mountain Music Festival (McDowell) $1,485, Mountain State Apple Harvest Festival (Berkeley) $4,456, Mountain State Arts & Crafts Fair Cedar Lakes (Jackson) $26,732, Mullens Dogwood Festival (Wyoming) $4,158, Multi-Cultural Festival of West Virginia (Kanawha) $11,881, Music and Barbecue - Banks District VFD (Upshur) $1,278, New Cumberland Christmas Parade (Hancock) $1,782, New Cumberland 4th of July (Hancock) $2,970, New River

Bridge Day Festival (Fayette) $23,762, Nicholas County Fair $2,970, Nicholas County Potato Festival $2,079, Oak Leaf Festival (Fayette) $6,253, Oceana Heritage Festival (Wyoming) $3,564, Oglebay City Park - Festival of Lights (Ohio) $47,524, Oglebay Festival (Ohio) $5,940, Ohio County Country Fair $5,346, Ohio River Fest (Jackson) $4,320, Ohio Valley Beef Association (Wood) $1,485, Ohio Valley Black Heritage Festival (Ohio) $3,267, Old Central City Fair (Cabell) $2,970, Old Tyme Christmas (Jefferson) $1,425, Paden City Labor Day Festival (Wetzel) $3,861, Parkersburg Homecoming (Wood) $8,754, Patty Fest (Monongalia) $1,188, Paw Paw District Fair (Marion) $2,079, Pax Reunion Committee (Fayette) $2,970, Pendleton County 4-H Weekend $1,188, Pendleton County Committee for Arts $8,910, Pendleton County Fair $6,253, Pennsboro Country Road Festival (Ritchie) $1,188, Petersburg 4th of July Celebration (Grant) $11,881, Petersburg HS Celebration (Grant) $5,940, Piedmont-Annual Back Street Festival (Mineral) $2,376, Pinch Reunion (Kanawha) $891, Pine Bluff Fall Festival (Harrison) $2,376, Pine Grove 4th of July Festival (Wetzel) $4,158, Pineville Festival (Wyoming) $3,564, Pleasants County Agriculture Youth Fair $2,970, Poca Heritage Days (Putnam) $1,782, Pocahontas County Pioneer Days $4,159, Point Pleasant Stern Wheel Regatta (Mason) $2,970, Pratt Fall Festival (Kanawha) $1,485, Princeton Autumnfest (Mercer) $1,563, Princeton Street Fair (Mercer) $2,970, Putnam County Fair $2,970, Quartets on Parade (Hardy) $2,376, Rainelle Fall Festival (Greenbrier) $3,127, Rand Community Center Festival (Kanawha) $1,485, Randolph County Community Arts Council $1,782, Randolph County Fair $4,158, Randolph County Ramp and Rails $1,188, Ranson Christmas Festival (Jefferson) $2,970, Ranson Festival (Jefferson) $2,970, Renick Liberty Festival (Greenbrier) $684, Ripley 4th of July (Jackson) $8,910, Ritchie County Fair and Exposition $2,970, Ritchie County Pioneer Days $684, River City Festival (Preston) $684, Roane County Agriculture Field Day $1,782, Rock the Park (Kanawha) $3,240, Rocket

Boys Festival (Raleigh) $1,710, Romney Heritage Days (Hampshire) $1,876, Ronceverte River Festival (Greenbrier) $2,970, Rowlesburg Labor Day Festival (Preston) $684, Rupert Country Fling (Greenbrier) $1,876, Saint Spyridon Greek Festival (Harrison) $1,485, Salem Apple Butter Festival (Harrison) $2,376, Sistersville 4th of July (Tyler) $3,267, Skirmish on the River (Mingo) $1,250, Smoke on the Water (Wetzel) $1,782, South Charleston Summerfest (Kanawha) $5,940, Southern Wayne County Fall Festival $684, Spirit of Grafton Celebration (Taylor) $6,240, St. Albans City of Lights - December (Kanawha) $2,970, Sternwheel Festival (Wood) $1,782, Stoco Reunion (Raleigh) $1,485, Stonewall Jackson Heritage Arts & Crafts Jubilee (Lewis) $6,534, Stonewall Jackson's Roundhouse Raid (Berkeley) $7,200, Strawberry Festival (Upshur) $17,821, Sylvester Big Coal River Festival (Boone) $1,944, Tacy Fair (Barbour) $684, Taste of Parkersburg (Wood) $2,970, Taylor County Fair $3,567, The Gathering at Sweet Creek (Wood) $1,782, Three Rivers Coal Festival (Marion) $4,604, Thunder on the Tygart - Mothers' Day Celebration (Taylor) $7,300, Town of Delbarton 4th of July Celebration (Mingo) $1,782, Town of Fayetteville Heritage Festival (Fayette) $4,456, Town of Rivesville 4th of July Festival (Marion) $3,127, Town of Winfield - Putnam County Homecoming $3,240, St. Albans Train Fest (Kanawha) $6,120, Treasure Mountain Festival (Pendleton) $14,851, Tri-County Fair (Grant) $22,548, Tucker County Arts Festival and Celebration $10,692, Tucker County Fair $2,821, Tucker County Health Fair $1,188, Turkey Festival (Hardy) $1,782, Tyler County Fair $3,088, Union Community Irish Festival (Barbour) $648, Upper Kanawha Valley Oktoberfest (Kanawha) $1,485, Upper Ohio Valley Italian Festival (Ohio) $7,128, Valley District Fair (Preston) $2,079, Veterans Welcome Home Celebration (Cabell) $938, Vietnam Veterans of America # 949 Christmas Party (Cabell) $684, Volcano Days at Mountwood Park (Wood) $2,970, War Homecoming Fall Festival (McDowell) $891, Wardensville Fall Festival (Hardy) $2,970, Wayne County

Fair $2,970, Wayne County Fall Festival $2,970, Webster County Fair $3,600, Webster County Wood Chopping Festival $8,910, Webster Wild Water Weekend (Webster) $1,188, Weirton July 4th Celebration (Hancock) $11,881, Welcome Home Family Day (Wayne) $1,900, Wellsburg 4th of July Celebration (Brooke) $4,456, Wellsburg Apple Festival of Brooke County $2,970, West Virginia Blackberry Festival (Harrison) $2,970, West Virginia Chestnut Festival (Preston) $684, West Virginia Coal Festival (Boone) $5,940, West Virginia Coal Show (Mercer) $1,563, West Virginia Dairy Cattle Show (Lewis) $5,940, West Virginia Dandelion Festival (Greenbrier) $2,970, West Virginia Day at the Railroad Museum (Mercer) $1,800, West Virginia Fair and Exposition (Wood) $4,812, West Virginia Fireman's Rodeo (Fayette) $1,485, West Virginia Oil and Gas Festival (Tyler) $6,534, West Virginia Peach Festival (Hampshire) $3,240, West Virginia Polled Hereford Association (Braxton) $891, West Virginia Pumpkin Festival (Cabell) $5,940, West Virginia Water Festival - City of Hinton (Summers) $9,144, Weston VFD 4th of July Firemen Festival (Lewis) $1,188, Wetzel County Autumnfest $3,267, Wetzel County Town and Country Days $10,098, Wheeling Celtic Festival (Ohio) $1,166, Wheeling City of Lights (Ohio) $4,752, Wheeling Sternwheel Regatta (Ohio) $5,940, Wheeling Vintage Raceboat Regatta (Ohio) $11,881, Whipple Community Action (Fayette) $1,485, Wine Festival and Mountain Music Event (Harrison) $2,970, Wirt County Fair $1,485, Wirt County Pioneer Days $1,188, Wyoming County Civil War Days $1,296, Youth Stockman Beef Expo (Lewis) $1,188.

Any unexpended balances remaining in the appropriations for Commission for National and Community Service (fund 3534, appropriation 19300), Archeological Curation/Capital Improvements (fund 3534, appropriation 24600), Historic Preservation Grants (fund 3534, appropriation 31100), Grants for Competitive Arts Program (fund 3534, appropriation 62400), and Project

ACCESS (fund 3534, appropriation 86500) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

298-Library Commission –

Lottery Education Fund

(WV Code Chapter 10)

Fund 3559 FY 2021 Org 0433

Books and Films	17900	$ 360,784
Services to Libraries	18000	550,000
Grants to Public Libraries	18200	9,439,571
Digital Resources	30900	219,992
Infomine Network	88400	943,353
Total.....		$ 11,513,700

Any unexpended balance remaining in the appropriation for Libraries – Special Projects (fund 3559, appropriation 62500) at the close of fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

299-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 3587 FY 2021 Org 0439

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 3587, appropriation 75500) at the close of fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

300-Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2021 Org 0508

Personal Services and Employee Benefits	00100	$ 209,640
Current Expenses	13000	332,284
Repairs and Alterations	06400	1,000
Local Programs Service Delivery Costs	20000	2,435,250
Silver Haired Legislature	20200	18,500
Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens	53900	4,615,503
Roger Tompkins Alzheimer's Respite Care	64300	2,302,016
WV Alzheimer's Hotline	72400	45,000
Regional Aged and Disabled Resource Center	76700	425,000
Senior Services Medicaid Transfer	87100	16,400,070
Legislative Initiatives for the Elderly	90400	9,671,239
Long Term Care Ombudsman	90500	297,226
BRIM Premium	91300	7,718
In-Home Services and Nutrition for Senior Citizens	91700	6,095,941
Total		$ 42,856,387

Any unexpended balance remaining in the appropriation for Senior Citizen Centers and Programs (fund 5405, appropriation 46200) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

Included in the above appropriation for Current Expenses (fund 5405, appropriation 13000), is funding to support an in-home direct care workforce registry.

The above appropriation for Transfer to Division of Human Services for Health Care and Title XIX Waiver for Senior Citizens (appropriation 53900) along with the

36 federal moneys generated thereby shall be used for
37 reimbursement for services provided under the program.

301-Higher Education Policy Commission –

Lottery Education –

Higher Education Policy Commission –

Control Account

(WV Code Chapters 18B and 18C)

Fund 4925 FY 2021 Org 0441

1 RHI Program and Site Support (R)	03600	$	1,912,491
2 RHI Program and Site Support –			
3 RHEP Program Administration....	03700		146,653
4 RHI Program and Site Support –			
5 Grad Med Ed			
6 And Fiscal Oversight (R).....	03800		88,913
7 Minority Doctoral Fellowship (R) ...	16600		129,604
8 Health Sciences Scholarship (R)....	17600		225,527
9 Vice Chancellor for Health Sciences –			
10 Rural Health			
11 Residency Program (R)	60100		62,725
12 WV Engineering, Science, and			
13 Technology Scholarship Program....	86800		452,831
14 Total.....		$	3,018,744

15 Any unexpended balances remaining in the
16 appropriations for RHI Program and Site Support (fund
17 4925, appropriation 03600), RHI Program and Site Support
18 – Grad Med Ed and Fiscal Oversight (fund 4925,
19 appropriation 03800), Minority Doctoral Fellowship (fund
20 4925, appropriation 16600), Health Sciences Scholarship
21 (fund 4925, appropriation 17600), and Vice Chancellor for
22 Health Sciences – Rural Health Residency Program (fund
23 4925, appropriation 60100) at the close of fiscal year 2020
24 are hereby reappropriated for expenditure during the fiscal
25 year 2021.

The above appropriation for WV Engineering, Science, and Technology Scholarship Program (fund 4925, appropriation 86800) shall be transferred to the West Virginia Engineering, Science and Technology Scholarship Fund (fund 4928, org 0441) established by W.Va. Code §18C-6-1.

302-Community and Technical College –

Capital Improvement Fund

(WV Code Chapter 18B)

Fund 4908 FY 2021 Org 0442

Debt Service – Total	31000	$	5,000,000

Any unexpended balance remaining in the appropriation for Capital Outlay and Improvements – Total (fund 4908, appropriation 84700) at the close of fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

303-Higher Education Policy Commission –

Lottery Education –

West Virginia University – School of Medicine

(WV Code Chapter 18B)

Fund 4185 FY 2021 Org 0463

WVU Health Sciences – RHI Program and Site Support (R)	03500	$	1,181,728
MA Public Health Program and Health Science Technology (R)	62300		52,445
Health Sciences Career Opportunities Program (R)	86900		336,987
HSTA Program (R)	87000		1,761,948

Center for Excellence		
in Disabilities (R).....	96700	313,517
Total.....		$ 3,646,625

Any unexpended balances remaining in the appropriations for WVU Health Sciences – RHI Program and Site Support (fund 4185, appropriation 03500), MA Public Health Program and Health Science Technology (fund 4185, appropriation 62300), Health Sciences Career Opportunities Program (fund 4185, appropriation 86900), HSTA Program (fund 4185, appropriation 87000), and Center for Excellence in Disabilities (fund 4185, appropriation 96700) at the close of fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

304-Higher Education Policy Commission –

Lottery Education –

Marshall University – School of Medicine

(WV Code Chapter 18B)

Fund 4896 FY 2021 Org 0471

Marshall Medical School –		
RHI Program and		
Site Support (R).....	03300	$ 427,075
Vice Chancellor for Health Sciences –		
Rural Health		
Residency Program (R)	60100	171,361
Total.....		$ 598,436

Any unexpended balances remaining in the appropriations for Marshall Medical School – RHI Program and Site Support (fund 4896, appropriation 03300) and Vice Chancellor for Health Sciences – Rural Health Residency Program (fund 4896, appropriation 60100) at the close of fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

Total TITLE II, Section 4 –
Lottery Revenue $127,808,000

Sec. 5. Appropriations from state excess lottery revenue fund. — In accordance with W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the following appropriations shall be deposited and disbursed by the Director of the Lottery to the following accounts in this section in the amounts indicated.

After first funding the appropriations required by W.Va. Code §29-22-18a, §29-22A-10d, §29-22A-10e, §29-22C-27a and §29-25-22b, the Director of the Lottery shall provide funding from the State Excess Lottery Revenue Fund for the remaining appropriations in this section to the extent that funds are available. In the event that revenues to the State Excess Lottery Revenue Fund are sufficient to meet all the appropriations required made pursuant to this section, then the Director of the Lottery shall then provide the funds available for fund 5365, appropriation 18900.

305-Lottery Commission –

Refundable Credit

Fund 7207 FY 2021 Org 0705

	Appro-priation	Excess Lottery Funds
Directed Transfer.....	70000	$ 10,000,000

The above appropriation shall be transferred to the General Revenue Fund to provide reimbursement for the refundable credit allowable under W.Va. Code §11-21-21. The amount of the required transfer shall be determined solely by the State Tax Commissioner and shall be completed by the Director of the Lottery upon the commissioner's request.

306-Lottery Commission –

General Purpose Account

Fund 7206 FY 2021 Org 0705

1 General Revenue Fund – Transfer ... 70011 $ 65,000,000

2 The above appropriation shall be transferred to the
3 General Revenue Fund as determined by the Director of the
4 Lottery in accordance with W.Va. Code §29-22-18a.

307-Higher Education Policy Commission –

Education Improvement Fund

Fund 4295 FY 2021 Org 0441

1 PROMISE Scholarship – Transfer... 80000 $ 29,000,000

2 The above appropriation shall be transferred to the
3 PROMISE Scholarship Fund (fund 4296, org 0441)
4 established by W.Va. Code §18C-7-7.

5 The Legislature has explicitly set a finite amount of
6 available appropriations and directed the administrators of
7 the Program to provide for the award of scholarships within
8 the limits of available appropriations.

308-Economic Development Authority –

Economic Development Project Fund

Fund 9065 FY 2021 Org 0944

1 Debt Service – Total ..... 31000 $ 19,000,000

2 Pursuant to W.Va. Code §29-22-18a, subsection (f),
3 excess lottery revenues are authorized to be transferred to
4 the lottery fund as reimbursement of amounts transferred to
5 the economic development project fund pursuant to section
6 four of this title and W.Va. Code §29-22-18, subsection (f).

309-Department of Education –

School Building Authority

Fund 3514 FY 2021 Org 0404

Debt Service – Total	31000	$ 18,999,900
Direct Transfer	70000	100
Total.....		$ 19,000,000

The School Building Authority shall have the authority to transfer between the above appropriations in accordance with W. Va. Code §29-22-18a

The above appropriation for Directed Transfer (fund 3514, appropriation 70000) may be transferred to the Department of Education, State Board of Education, School Building Authority, School Construction Fund, fund 3952, organization 0404 to be used for school construction and maintenance projects.

310-West Virginia Infrastructure Council –

West Virginia Infrastructure Transfer Fund

Fund 3390 FY 2021 Org 0316

Directed Transfer	70000	$ 46,000,000

The above appropriation shall be allocated pursuant to W.Va. Code §29-22-18d and §31-15-9.

311-Higher Education Policy Commission –

Higher Education Improvement Fund

Fund 4297 FY 2021 Org 0441

Directed Transfer	70000	$ 15,000,000

The above appropriation shall be transferred to fund 4903, org 0442 as authorized by Senate Concurrent Resolution No. 41.

312-Division of Natural Resources –

State Park Improvement Fund

Fund 3277 FY 2021 Org 0310

Current Expenses (R).....	13000	$	23,300
Repairs and Alterations (R)	06400		161,200
Equipment (R).....	07000		200,000
Buildings (R).....	25800		100,000
Other Assets (R).....	69000		1,020,500
Total.....		$	1,505,000

Any unexpended balances remaining in the above appropriations for Repairs and Alterations (fund 3277, appropriation 06400), Equipment (fund 3277, appropriation 07000), Unclassified – Total (fund 3277, appropriation 09600), Unclassified (fund 3277, appropriation 09900), Current Expenses (fund 3277, appropriation 13000), Buildings (fund 3277, appropriation 25800), and Other Assets (fund 3277, appropriation 69000) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

313-Economic Development Authority –

Cacapon and Beech Fork State Parks –

Lottery Revenue Debt Service

Fund 9067 FY 2021 Org 0944

Debt Service.....	04000	$	2,032,000

314-Economic Development Authority –

State Parks Lottery Revenue Debt Service Fund

Fund 9068 FY 2021 Org 0944

Debt Service.....	04000	$	4,395,000

315-Racing Commission –

Fund 7308 FY 2021 Org 0707

Special Breeders Compensation (WVC §29-22-18a, subsection (l))	21800	$ 2,000,000

316-Lottery Commission –

Distributions to Statutory Funds and Purposes

Fund 7213 FY 2021 Org 0705

Parking Garage Fund – Transfer	70001	$ 500,000
2004 Capitol Complex Parking Garage Fund – Transfer	70002	216,478
Capitol Dome and Improvements Fund – Transfer	70003	1,796,256
Capitol Renovation and Improvement Fund – Transfer	70004	2,381,252
Development Office Promotion Fund – Transfer	70005	1,298,864
Research Challenge Fund – Transfer	70006	1,731,820
Tourism Promotion Fund – Transfer	70007	4,808,142
Cultural Facilities and Capitol Resources Matching Grant Program Fund – Transfer	70008	1,250,535
State Debt Reduction Fund – Transfer	70010	20,000,000
General Revenue Fund – Transfer	70011	1,167,799
West Virginia Racing Commission Racetrack Video Lottery Account	70012	3,463,637
Historic Resort Hotel Fund	70013	24,010
Licensed Racetrack Regular Purse Fund	70014	22,383,247
Total		$ 61,022,040

317-Governor's Office

(WV Code Chapter 5)

Fund 1046 FY 2021 Org 0100

Any unexpended balance remaining in the appropriation for Publication of Papers and Transition Expenses – Lottery Surplus (fund 1046, appropriation 06600) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

318-Office of Technology

(WV Code Chapter 5A)

Fund 2532 FY 2021 Org 0231

Any unexpended balances remaining in the appropriations for Cyber Security (fund 2532, appropriation 99001), Enterprise Data Center (fund 2532, appropriation 99002), and Enterprise Telephony Modernization (fund 2532, appropriation 99003) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

319-West Virginia Development Office

(WV Code Chapter 5B)

Fund 3170 FY 2021 Org 0307

Any unexpended balances remaining in the appropriations for Unclassified – Total (fund 3170, appropriation 09600), Recreational Grants or Economic Development Loans (fund 3170, appropriation 25300), and Connectivity Research and Development – Lottery Surplus (fund 3170, appropriation 92300) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

320-Higher Education Policy Commission –

Administration –

Control Account

(WV Code Chapter 18B)

Fund 4932 FY 2021 Org 0441

Any unexpended balance remaining in the appropriation for Advanced Technology Centers (fund 4932, appropriation 02800) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

321-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2021 Org 0511

Medical Services..... 18900 $ 66,302,960

322-Division of Corrections and Rehabilitation –

Correctional Units

(WV Code Chapters 15A)

Fund 6283 FY 2021 Org 0608

Any unexpended balance remaining in the appropriation for Capital Outlay and Maintenance (fund 6283, appropriation 75500) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

Total TITLE II, Section 5 –
Excess Lottery Funds ..... $ 340,257,000

Sec. 6. Appropriations of federal funds. — In accordance with Article 11, Chapter 4 of the Code from

federal funds there are hereby appropriated conditionally upon the fulfillment of the provisions set forth in Article 2, Chapter 11B of the Code the following amounts, as itemized, for expenditure during the fiscal year 2021.

LEGISLATIVE

323-Crime Victims Compensation Fund

(WV Code Chapter 14)

Fund 8738 FY 2021 Org 2300

	Appro-priation	Federal Funds
Economic Loss Claim Payment Fund	33400	$ 1,400,000

JUDICIAL

324-Supreme Court

Fund 8867 FY 2021 Org 2400

Personal Services and Employee Benefits	00100	$ 1,813,000
Current Expenses	13000	1,557,000
Repairs and Alterations	06400	100,000
Equipment	07000	250,000
Other Assets	69000	280,000
Total		$ 4,000,000

EXECUTIVE

325-Department of Agriculture

(WV Code Chapter 19)

Fund 8736 FY 2021 Org 1400

Personal Services and Employee Benefits	00100	$ 2,628,780

3	Unclassified	09900	50,534
4	Current Expenses	13000	3,828,661
5	Repairs and Alterations	06400	650,000
6	Equipment	07000	910,500
7	Buildings	25800	1,000,000
8	Other Assets	69000	50,000
9	Land	73000	500,000
10	Total		$ 9,618,475

326-Department of Agriculture –

Meat Inspection Fund

(WV Code Chapter 19)

Fund 8737 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 658,571
3	Unclassified	09900	8,755
4	Current Expenses	13000	136,012
5	Repairs and Alterations	06400	5,500
6	Equipment	07000	114,478
7	Total		$ 923,316

327-Department of Agriculture –

State Conservation Committee

(WV Code Chapter 19)

Fund 8783 FY 2021 Org 1400

1	Personal Services and		
2	Employee Benefits	00100	$ 97,250
3	Current Expenses	13000	15,599,974
4	Total		$ 15,697,224

328-Department of Agriculture –

Land Protection Authority

Fund 8896 FY 2021 Org 1400

Personal Services and Employee Benefits	00100	$	46,526
Unclassified	09900		5,004
Current Expenses	13000		448,920
Total		$	500,450

329-Attorney General –

Medicaid Fraud Unit

Fund 8882 FY 2021 Org 1500

Personal Services and Employee Benefits	00100	$	1,038,458
Unclassified	09900		15,336
Current Expenses	13000		456,638
Repairs and Alterations	06400		4,313
Equipment	07000		7,500
Other Assets	69000		11,336
Total		$	1,533,581

330-Secretary of State –

State Election Fund

(WV Code Chapter 3)

Fund 8854 FY 2021 Org 1600

Personal Services and Employee Benefits	00100	$	210,240
Unclassified	09900		7,484
Current Expenses	13000		415,727
Repairs and Alterations	06400		15,000
Other Assets	69000		100,000
Total		$	748,451

DEPARTMENT OF COMMERCE

331-Division of Forestry

(WV Code Chapter 19)

Fund 8703 FY 2021 Org 0305

1	Personal Services and		
2	Employee Benefits.....	00100	$ 1,640,060
3	Unclassified	09900	51,050
4	Current Expenses	13000	5,232,560
5	Repairs and Alterations.....	06400	155,795
6	Equipment.....	07000	100,000
7	Other Assets.....	69000	1,808,300
8	Total.....		$ 8,987,765

332-Geological and Economic Survey

(WV Code Chapter 29)

Fund 8704 FY 2021 Org 0306

1	Personal Services and		
2	Employee Benefits.....	00100	$ 54,432
3	Unclassified	09900	2,803
4	Current Expenses	13000	195,639
5	Repairs and Alterations.....	06400	5,000
6	Equipment.....	07000	7,500
7	Other Assets.....	69000	15,000
8	Total.....		$ 280,374

333-West Virginia Development Office

(WV Code Chapter 5B)

Fund 8705 FY 2021 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	$ 1,039,921
3	Unclassified	09900	50,000
4	Current Expenses	13000	4,504,019
5	Total.....		$ 5,593,940

334-West Virginia Development Office –

Office of Economic Opportunity

(WV Code Chapter 5)

Fund 8901 FY 2021 Org 0307

1	Personal Services and		
2	Employee Benefits.....	00100	$ 497,289
3	Repairs and Alterations.....	06400	250
4	Equipment.....	07000	6,000
5	Unclassified	09900	106,795
6	Current Expenses	13000	10,069,166
7	Total.....		$ 10,679,500

335-Division of Labor

(WV Code Chapters 21 and 47)

Fund 8706 FY 2021 Org 0308

1	Personal Services and		
2	Employee Benefits.....	00100	$ 409,251
3	Unclassified	09900	5,572
4	Current Expenses	13000	167,098
5	Repairs and Alterations.....	06400	500
6	Total.....		$ 582,421

336-Division of Natural Resources

(WV Code Chapter 20)

Fund 8707 FY 2021 Org 0310

1	Personal Services and		
2	Employee Benefits.....	00100	$ 10,064,006
3	Unclassified	09900	107,693
4	Current Expenses	13000	7,887,660
5	Repairs and Alterations.....	06400	566,250
6	Equipment.....	07000	2,126,141
7	Administration	15500	50,325

8	Buildings	25800	951,000
9	Other Assets	69000	7,088,880
10	Land	73000	2,893,920
11	Total		$ 31,735,875

337-Division of Miners' Health,

Safety and Training

(WV Code Chapter 22)

Fund 8709 FY 2021 Org 0314

1	Personal Services and		
2	Employee Benefits	00100	$ 642,799
3	Current Expenses	13000	150,000
4	Total		$ 792,799

338-WorkForce West Virginia

(WV Code Chapter 23)

Fund 8835 FY 2021 Org 0323

1	Unclassified	09900	$ 5,127
2	Current Expenses	13000	507,530
3	Reed Act 2002 – Unemployment		
4	Compensation	62200	2,850,000
5	Reed Act 2002 –		
6	Employment Services	63000	1,650,000
7	Total		$ 5,012,657

8 Pursuant to the requirements of 42 U.S.C. 1103, Section
9 903 of the Social Security Act, as amended, and the
10 provisions of W.Va. Code §21A-9-9, the above
11 appropriation to Unclassified and Current Expenses shall be
12 used by WorkForce West Virginia for the specific purpose
13 of administration of the state's unemployment insurance
14 program or job service activities, subject to each and every
15 restriction, limitation or obligation imposed on the use of
16 the funds by those federal and state statutes.

339-Office of Energy

(WV Code Chapter 5B)

Fund 8892 FY 2021 Org 0328

1	Personal Services and		
2	Employee Benefits.....	00100	$ 426,385
3	Unclassified	09900	7,350
4	Current Expenses	13000	2,816,076
5	Total.....		$ 3,249,811

340-State Board of Rehabilitation –

Division of Rehabilitation Services

(WV Code Chapter 18)

Fund 8734 FY 2021 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	$ 11,863,244
3	Current Expenses	13000	34,440,940
4	Repairs and Alterations.....	06400	350,400
5	Equipment.....	07000	1,275,870
6	Total.....		$ 47,930,454

341-State Board of Rehabilitation –

Division of Rehabilitation Services –

Disability Determination Services

(WV Code Chapter 18)

Fund 8890 FY 2021 Org 0932

1	Personal Services and		
2	Employee Benefits.....	00100	$ 12,476,122
3	Current Expenses	13000	13,383,206
4	Repairs and Alterations.....	06400	1,100
5	Equipment.....	07000	83,350
6	Total.....		$ 25,943,778

DEPARTMENT OF EDUCATION

342-State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 5,785,359
Unclassified	09900	2,000,000
Current Expenses	13000	222,367,820
Repairs and Alterations	06400	10,000
Equipment	07000	10,000
Other Assets	69000	10,000
Total		$230,183,179

343-State Board of Education –

School Lunch Program

(WV Code Chapters 18 and 18A)

Fund 8713 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 1,881,766
Unclassified	09900	1,150,500
Current Expenses	13000	148,281,265
Repairs and Alterations	06400	20,000
Equipment	07000	100,000
Other Assets	69000	25,000
Total		$151,458,531

344-State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 1,896,249
Unclassified	09900	155,000
Current Expenses	13000	15,820,081
Repairs and Alterations	06400	10,000
Equipment	07000	10,000
Other Assets	69000	10,000
Total		$ 17,901,330

345-State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2021 Org 0402

Personal Services and Employee Benefits	00100	$ 3,477,006
Unclassified	09900	1,000,000
Current Expenses	13000	123,346,390
Repairs and Alterations	06400	10,000
Equipment	07000	10,000
Other Assets	69000	10,000
Total		$127,853,396

DEPARTMENT OF ARTS, CULTURE, AND HISTORY

346-Commission for National and Community Service

(WV Code Chapter 5F)

Fund 8841 FY 2021 Org 0432

Personal Services and Employee Benefits	00100	$ 437,040
Current Expenses	13000	5,587,325
Repairs and Alterations	06400	1,000
Total		$ 6,025,365

347-Division of Culture and History

(WV Code Chapter 29)

Fund 8718 FY 2021 Org 0432

1	Personal Services and		
2	Employee Benefits.....	00100	$ 810,436
3	Current Expenses	13000	1,947,372
4	Repairs and Alterations.....	06400	1,000
5	Equipment.....	07000	1,000
6	Buildings.....	25800	1,000
7	Other Assets.....	69000	1,000
8	Land	73000	360
9	Total.....		$ 2,762,168

348-Library Commission

(WV Code Chapter 10)

Fund 8720 FY 2021 Org 0433

1	Personal Services and		
2	Employee Benefits.....	00100	$ 353,396
3	Current Expenses	13000	1,076,162
4	Equipment.....	07000	543,406
5	Total.....		$ 1,972,964

349-Educational Broadcasting Authority

(WV Code Chapter 10)

Fund 8721 FY 2021 Org 0439

1	Equipment.....	07000	$ 200,000

DEPARTMENT OF ENVIRONMENTAL PROTECTION

350-Division of Environmental Protection

(WV Code Chapter 22)

Fund 8708 FY 2021 Org 0313

Personal Services and Employee Benefits	00100	$ 31,406,529
Current Expenses	13000	153,850,118
Repairs and Alterations	06400	739,783
Equipment	07000	1,712,238
Unclassified	09900	1,923,580
Other Assets	69000	2,177,261
Land	73000	80,000
Total		$191,889,509

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

351-Consolidated Medical Service Fund

(WV Code Chapter 16)

Fund 8723 FY 2021 Org 0506

Personal Services and Employee Benefits	00100	$ 1,532,219
Unclassified	09900	73,307
Current Expenses	13000	36,583,302
Total		$ 38,188,828

352-Division of Health –

Central Office

(WV Code Chapter 16)

Fund 8802 FY 2021 Org 0506

Personal Services and Employee Benefits	00100	$ 14,610,947
Unclassified	09900	856,614
Current Expenses	13000	69,201,885
Equipment	07000	456,972
Buildings	25800	155,000
Other Assets	69000	380,000
Total		$ 85,661,418

353-Division of Health –

West Virginia Safe Drinking Water Treatment

(WV Code Chapter 16)

Fund 8824 FY 2021 Org 0506

1	West Virginia Drinking Water Treatment		
2	Revolving Fund – Transfer.....	68900	$ 16,000,000

354-Human Rights Commission

(WV Code Chapter 5)

Fund 8725 FY 2021 Org 0510

1	Personal Services and		
2	Employee Benefits.....	00100	$ 449,874
3	Unclassified	09900	5,050
4	Current Expenses	13000	64,950
5	Total.....		$ 519,874

355-Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	$ 76,486,842
3	Unclassified	09900	22,855,833
4	Current Expenses	13000	112,110,500
5	Medical Services.....	18900	3,598,409,155
6	Medical Services		
7	Administrative Costs	78900	132,247,536
8	CHIP Administrative Costs	85601	4,539,496
9	CHIP Services.....	85602	47,422,974
10	Federal Economic Stimulus	89100	5,000,000
11	Total.....		$ 3,999,072,336

DEPARTMENT OF HOMELAND SECURITY

356-Office of the Secretary

(WV Code Chapter 5F)

Fund 8876 FY 2021 Org 0601

1	Unclassified	09900	$ 5,000
2	Current Expenses	13000	495,000
3	Total		$ 500,000

357-Division of Emergency Management

(WV Code Chapter 15)

Fund 8727 FY 2021 Org 0606

1	Personal Services and		
2	Employee Benefits	00100	$ 1,260,422
3	Current Expenses	13000	20,429,281
4	Repairs and Alterations	06400	5,000
5	Equipment	07000	100,000
6	Total		$ 21,794,703

358-Division of Corrections and Rehabilitation

(WV Code Chapter 15A)

Fund 8836 FY 2021 Org 0608

1	Unclassified	09900	$ 1,100
2	Current Expenses	13000	108,900
3	Total		$ 110,000

359-West Virginia State Police

(WV Code Chapter 15)

Fund 8741 FY 2021 Org 0612

1	Personal Services and		
2	Employee Benefits	00100	$ 2,480,877

3	Current Expenses	13000	2,125,971
4	Repairs and Alterations	06400	42,000
5	Equipment	07000	2,502,285
6	Buildings	25800	750,500
7	Other Assets	69000	144,500
8	Land	73000	500
9	Total		$ 8,046,633

360-Fire Commission

(WV Code Chapter 29)

Fund 8819 FY 2021 Org 0619

1	Current Expenses	13000	$ 80,000

361-Division of Administrative Services

(WV Code Chapter 15)

Fund 8803 FY 2021 Org 0623

1	Personal Services and		
2	Employee Benefits	00100	$ 1,222,258
3	Unclassified	09900	25,185
4	Current Expenses	13000	25,381,973
5	Repairs and Alterations	06400	1,750
6	Total		$ 26,631,166

DEPARTMENT OF REVENUE

362-Insurance Commissioner

(WV Code Chapter 33)

Fund 8883 FY 2021 Org 0704

1	Current Expenses	13000	$ 3,000,000

DEPARTMENT OF TRANSPORTATION

363-Division of Motor Vehicles

(WV Code Chapter 17B)

Fund 8787 FY 2021 Org 0802

1	Personal Services and		
2	Employee Benefits.....	00100	$ 551,394
3	Current Expenses	13000	5,448,106
4	Repairs and Alterations.....	06400	500
5	Total.....		$ 6,000,000

364-Division of Public Transit

(WV Code Chapter 17)

Fund 8745 FY 2021 Org 0805

1	Personal Services and		
2	Employee Benefits.....	00100	$ 922,070
3	Current Expenses	13000	8,663,149
4	Repairs and Alterations.....	06400	2,500
5	Equipment.....	07000	2,801,714
6	Buildings.....	25800	1,250,000
7	Other Assets.....	69000	100,000
8	Total.....		$ 13,739,433

365-Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2021 Org 0807

1	Current Expenses	13000	400,000
2	Other Assets.....	69000	100
3	Total.....		$ 400,100

DEPARTMENT OF VETERANS' ASSISTANCE

366-Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 8858 FY 2021 Org 0613

Personal Services and Employee Benefits	00100	$	2,947,485
Current Expenses	13000		2,840,300
Repairs and Alterations	06400		20,000
Equipment	07000		25,000
Buildings	25800		250,000
Land	73000		500
Veterans' Cemetery	80800		175,000
Total		$	6,258,285

367-Department of Veterans' Assistance –

Veterans' Home

(WV Code Chapter 9A)

Fund 8728 FY 2021 Org 0618

Personal Services and Employee Benefits	00100	$	906,850
Current Expenses	13000		601,700
Repairs and Alterations	06400		60,500
Equipment	07000		10,500
Buildings	25800		500
Other Assets	69000		500
Land	73000		100
Total		$	1,580,650

BUREAU OF SENIOR SERVICES

368-Bureau of Senior Services

(WV Code Chapter 29)

Fund 8724 FY 2021 Org 0508

1	Personal Services and		
2	Employee Benefits.....	00100	$ 767,364
3	Current Expenses	13000	13,811,853
4	Repairs and Alterations.....	06400	3,000
5	Total.....		$ 14,582,217

MISCELLANEOUS BOARDS AND COMMISSIONS

369-Public Service Commission –

Motor Carrier Division

(WV Code Chapter 24A)

Fund 8743 FY 2021 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	$ 1,352,576
3	Current Expenses	13000	368,953
4	Repairs and Alterations.....	06400	39,000
5	Equipment.....	07000	935,500
6	Total.....		$ 2,696,029

370-Public Service Commission –

Gas Pipeline Division

(WV Code Chapter 24B)

Fund 8744 FY 2021 Org 0926

1	Personal Services and		
2	Employee Benefits.....	00100	$ 621,039
3	Current Expenses	13000	124,628
4	Equipment.....	07000	3,000
5	Unclassified	09900	4,072
6	Total.....		$ 752,739

371-National Coal Heritage Area Authority

(WV Code Chapter 29)

Fund 8869 FY 2021 Org 0941

1	Personal Services and		
2	Employee Benefits	00100	$ 163,405
3	Current Expenses	13000	633,417
4	Repairs and Alterations	06400	5,000
5	Equipment	07000	3,000
6	Other Assets	69000	2,000
7	Total		$ 806,822

372-Adjutant General –

State Militia

(WV Code Chapter 15)

Fund 8726 FY 2021 Org 0603

1	Unclassified	09900	$ 982,705
2	Mountaineer ChalleNGe Academy	70900	7,200,000
3	Martinsburg Starbase	74200	439,622
4	Charleston Starbase	74300	424,685
5	Military Authority	74800	91,380,274
6	Total		$100,427,286

7 The Adjutant General shall have the authority to transfer
8 between appropriations.

373-Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2021 Org 0603

1	Personal Services and		
2	Employee Benefits	00100	$ 1,350,000

Current Expenses	13000	150,000
Repairs and Alterations	06400	50,000
Buildings	25800	100,000
Land	73000	50,000
Other Assets	69000	100,000
Equipment	07000	200,000
Total		$ 2,000,000

Total TITLE II, Section 6 - Federal Funds
(Including claims against the state) ..... $ 5,254,586,178

Sec. 7. Appropriations from federal block grants. — The following items are hereby appropriated from federal block grants to be available for expenditure during the fiscal year 2021.

374-West Virginia Development Office –

Community Development

Fund 8746 FY 2021 Org 0307

Personal Services and Employee Benefits	00100	$ 10,658,978
Unclassified	09900	2,375,000
Current Expenses	13000	224,476,883
Total		$237,510,861

375-Department of Commerce

West Virginia Development Office –

Office of Economic Opportunity –

Community Services

Fund 8902 FY 2021 Org 0307

Personal Services and Employee Benefits	00100	$ 362,389
Unclassified	09900	125,000
Current Expenses	13000	12,002,111

5	Repairs and Alterations.....	06400	1,500
6	Equipment.....	07000	9,000
7	Total.....		$ 12,500,000

376-WorkForce West Virginia –

Workforce Investment Act

Fund 8749 FY 2021 Org 0323

1	Personal Services and		
2	Employee Benefits.....	00100	$ 2,999,497
3	Unclassified	09900	23,023
4	Current Expenses	13000	39,263,511
5	Repairs and Alterations.....	06400	1,600
6	Equipment.....	07000	500
7	Buildings.....	25800	1,100
8	Total.....		$ 42,289,231

377-Division of Health –

Maternal and Child Health

Fund 8750 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	$ 2,268,209
3	Unclassified	09900	81,439
4	Current Expenses	13000	5,794,267
5	Total.....		$ 8,143,915

378-Division of Health –

Preventive Health

Fund 8753 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	$ 268,337
3	Unclassified	09900	22,457
4	Current Expenses	13000	1,895,366
5	Equipment.....	07000	165,642
6	Total.....		$ 2,351,802

379-Division of Health –

Substance Abuse Prevention and Treatment

Fund 8793 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	$ 657,325
3	Unclassified	09900	115,924
4	Current Expenses	13000	10,853,740
5	Total.....		$ 11,626,989

380-Division of Health –

Community Mental Health Services

Fund 8794 FY 2021 Org 0506

1	Personal Services and		
2	Employee Benefits.....	00100	$ 551,368
3	Unclassified	09900	33,533
4	Current Expenses	13000	4,883,307
5	Total.....		$ 5,468,208

381-Division of Human Services –

Energy Assistance

Fund 8755 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	$ 1,860,574
3	Unclassified	09900	350,000
4	Current Expenses	13000	38,182,151
5	Total.....		$ 40,392,725

382-Division of Human Services –

Social Services

Fund 8757 FY 2021 Org 0511

1	Personal Services and		
2	Employee Benefits.....	00100	$ 8,806,005

Unclassified	09900	171,982
Current Expenses	13000	8,870,508
Total		$ 17,848,495

383-Division of Human Services –

Temporary Assistance for Needy Families

Fund 8816 FY 2021 Org 0511

Personal Services and Employee Benefits	00100	$ 20,559,397
Unclassified	09900	1,250,000
Current Expenses	13000	105,851,386
Total		$ 127,660,783

384-Division of Human Services –

Child Care and Development

Fund 8817 FY 2021 Org 0511

Personal Services and Employee Benefits	00100	$ 2,797,226
Unclassified	09900	350,000
Current Expenses	13000	47,000,307
Total		$ 50,147,533

Total TITLE II, Section 7 – Federal Block Grants	$ 555,940,542

Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2021, from the fund as designated, in the amounts as specified, general revenue funds in the amount of $1,397,579, special revenue funds in the amount of $6,433, state road funds in the amount of $844,164, and federal revenue funds in the amount of $280,346 for payment of claims against the state.

Sec. 9. Appropriations from general revenue fund surplus accrued. — The following item is hereby appropriated from the state fund, general revenue, and is to

be available for expenditure during the fiscal year 2021 out of surplus funds only, accrued from the fiscal year ending June 30, 2020, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus as of July 31, 2020 from the fiscal year ending June 30, 2020, only after first meeting requirements of W.Va. Code §11B-2-20(b).

In the event that surplus revenues available on July 31, 2020, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available as of the date mandated to meet the appropriation in this section and shall be allocated first to provide the necessary funds to meet the first appropriation of this section and each subsequent appropriation in the order listed in this section.

385-Governor's Office –

Civil Contingent Fund

(WV Code Chapter 5)

Fund 0105 FY 2021 Org 0100

Milton Flood Wall - Surplus(R)	XXXXX	$ 6,000,000
Total TITLE II, Section 9 – Surplus Accrued		$ 6,000,000

Sec. 10. Appropriations from lottery net profits surplus accrued. — The following item is hereby appropriated from the lottery net profits, and is to be available for expenditure during the fiscal year 2021 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2020, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2020.

In the event that surplus revenues available from the fiscal year ending June 30, 2020, are not sufficient to meet the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

386 - Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2021 Org 0508

In-Home Services and Nutrition for Senior Citizens – Lottery Surplus..	76699	$ 750,000
Senior Services Medicaid Transfer – Lottery Surplus	68199	16,000,000
Total.....		$ 16,750,000
Total TITLE II, Section 10 – Surplus Accrued		$ 16,750,000

Sec. 11. Appropriations from state excess lottery revenue surplus accrued. — The following item is hereby appropriated from the state excess lottery revenue fund, and is to be available for expenditure during the fiscal year 2021 out of surplus funds only, as determined by the director of lottery, accrued from the fiscal year ending June 30, 2020, subject to the terms and conditions set forth in this section.

It is the intent and mandate of the Legislature that the following appropriation be payable only from surplus accrued from the fiscal year ending June 30, 2020.

In the event that surplus revenues available from the fiscal year ending June 30, 2020, are not sufficient to meet

the appropriation made pursuant to this section, then the appropriation shall be made to the extent that surplus funds are available.

387 - Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 5365 FY 2021 Org 0511

Medical Services –	
Lottery Surplus.....68100	$ 17,000,000
Total TITLE II, Section 11 –	
Surplus Accrued.....	$ 17,000,000

Sec. 12. Special revenue appropriations. — There are hereby appropriated for expenditure during the fiscal year 2021 appropriations made by general law from special revenues which are not paid into the state fund as general revenue under the provisions of W.Va. Code §12-2-2: Provided, That none of the money so appropriated by this section shall be available for expenditure except in compliance with the provisions of W.Va. Code §12-2 and 3, and W.Va. Code §11B-2, unless the spending unit has filed with the director of the budget and the legislative auditor prior to the beginning of each fiscal year:

(a) An estimate of the amount and sources of all revenues accruing to such fund; and

(b) A detailed expenditure schedule showing for what purposes the fund is to be expended.

During Fiscal Year 2021, the following funds are hereby available and are to be transferred to the appropriate funds as specified from available balances per the following:

388 -Attorney General

Consumer Protection Recovery Fund

(WV Code Chapter 46A)

Fund 1509 FY 2021 Org 1500

Directed Transfer ..... 70000 $ 6,100,000

From the above appropriation for Directed Transfer (Fund 1509, appropriation 70000), $100,000 shall be transferred to the Supreme Court – Family Court Fund (Fund 1763), $1,000,000 shall be transferred to the West Virginia State Police – Forensic Laboratory Fund (Fund 6511) and $5,000,000 shall be transferred to the Department of Health and Human Resources, Division of Health – Ryan Brown Addiction Prevention and Recovery Fund (Fund 5111).

389 - Attorney General

Medicaid Fraud Control Fund

(WV Code Chapter 9)

Fund 1506 FY 2021 Org 1500

Directed Transfer ..... 70000 $ 941,000

From the above appropriation for Directed Transfer (Fund 1506, appropriation 70000), $941,000 shall be transferred to the Department of Health and Human Resources, Division of Human Services – Medical Services Trust Fund (Fund 5185).

Total TITLE II, Section 12 –
Appropriations for Special Revenue
Appropriations ..... $ 7,041,000

Sec. 13. State improvement fund appropriations. — Bequests or donations of nonpublic funds, received by the

Governor on behalf of the state during the fiscal year 2021, for the purpose of making studies and recommendations relative to improvements of the administration and management of spending units in the executive branch of state government, shall be deposited in the state treasury in a separate account therein designated state improvement fund.

There are hereby appropriated all moneys so deposited during the fiscal year 2021 to be expended as authorized by the Governor, for such studies and recommendations which may encompass any problems of organization, procedures, systems, functions, powers or duties of a state spending unit in the executive branch, or the betterment of the economic, social, educational, health and general welfare of the state or its citizens.

Sec. 14. Specific funds and collection accounts. — A fund or collection account which by law is dedicated to a specific use is hereby appropriated in sufficient amount to meet all lawful demands upon the fund or collection account and shall be expended according to the provisions of Article 3, Chapter 12 of the Code.

Sec. 15. Appropriations for refunding erroneous payment. — Money that has been erroneously paid into the state treasury is hereby appropriated out of the fund into which it was paid, for refund to the proper person.

When the officer authorized by law to collect money for the state finds that a sum has been erroneously paid, he or she shall issue his or her requisition upon the Auditor for the refunding of the proper amount. The Auditor shall issue his or her warrant to the Treasurer and the Treasurer shall pay the warrant out of the fund into which the amount was originally paid.

Sec. 16. Sinking fund deficiencies. — There is hereby appropriated to the Governor a sufficient amount to meet any deficiencies that may arise in the mortgage finance

bond insurance fund of the West Virginia housing development fund which is under the supervision and control of the municipal bond commission as provided by W.Va. Code §31-18-20b, or in the funds of the municipal bond commission because of the failure of any state agency for either general obligation or revenue bonds or any local taxing district for general obligation bonds to remit funds necessary for the payment of interest and sinking fund requirements. The Governor is authorized to transfer from time to time such amounts to the municipal bond commission as may be necessary for these purposes.

The municipal bond commission shall reimburse the state of West Virginia through the Governor from the first remittance collected from the West Virginia housing development fund or from any state agency or local taxing district for which the Governor advanced funds, with interest at the rate carried by the bonds for security or payment of which the advance was made.

Sec. 17. Appropriations for local governments. — There are hereby appropriated for payment to counties, districts and municipal corporations such amounts as will be necessary to pay taxes due counties, districts and municipal corporations and which have been paid into the treasury:

(a) For redemption of lands;

(b) By public service corporations;

(c) For tax forfeitures.

Sec. 18. Total appropriations. — Where only a total sum is appropriated to a spending unit, the total sum shall include personal services and employee benefits, annual increment, current expenses, repairs and alterations, buildings, equipment, other assets, land, and capital outlay, where not otherwise specifically provided and except as otherwise provided in TITLE I – GENERAL PROVISIONS, Sec. 3.

Sec. 19. General school fund. — The balance of the proceeds of the general school fund remaining after the payment of the appropriations made by this act is appropriated for expenditure in accordance with W.Va. Code §18-9A-16.

TITLE III – ADMINISTRATION

Sec. 1. Appropriations conditional. — The expenditure of the appropriations made by this act, except those appropriations made to the legislative and judicial branches of the state government, are conditioned upon the compliance by the spending unit with the requirements of Article 2, Chapter 11B of the Code.

Where spending units or parts of spending units have been absorbed by or combined with other spending units, it is the intent of this act that appropriations and reappropriations shall be to the succeeding or later spending unit created, unless otherwise indicated.

Sec. 2. Constitutionality. — If any part of this act is declared unconstitutional by a court of competent jurisdiction, its decision shall not affect any portion of this act which remains, but the remaining portion shall be in full force and effect as if the portion declared unconstitutional had never been a part of the act.

CHAPTER 12

(S. B. 569 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511, in the amount of $3,000,000 from the Department of Administration, Premium Tax Savings Fund, fund 2367, fiscal year 2020, organization 0218; in the amount of $2,000,000 from the Department of Health and Human Resources, Division of Health, Hospital Services Revenue Account Special Fund, Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2020, organization 0506; and in the amount of $360,000 from the Department of Health and Human Resources, Division of Human Services, Marriage Education Fund, fund 5490, fiscal year 2020, organization 0511, by supplementing and amending chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill.

Whereas, The Governor finds that the account balance in the Department of Administration, Premium Tax Savings Fund, fund 2367, fiscal year 2020, organization 0218, the Department of Health and Human Resources, Division of Health, Hospital Services Revenue Account Special Fund, Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2020, organization 0506, and the Department of Health and Human Resources, Division of Human Services, Marriage Education Fund, fund 5490, fiscal year 2020, organization 0511, exceed that

which is necessary for the purposes for which the accounts were established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2020, to the Department of Administration, Premium Tax Savings Fund, fund 2367, fiscal year 2020, organization 0218, be decreased by expiring the amount of $3,000,000; that the balance of funds available for expenditure to the Department of Health and Human Resources, Division of Health, Hospital Services Revenue Account Special Fund, Capital Improvement, Renovation and Operations, fund 5156, fiscal year 2020, organization 0506, be decreased by expiring the amount of $2,000,000 and the balance of funds available for expenditure to the Department of Health and Human Resources, Division of Human Services, Marriage Education Fund, fund 5490, fiscal year 2020, organization 0511, be decreased by expiring the amount of $360,000 all to the Department of Health and Human Resources, Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511, during the fiscal year ending June 30, 2020.

CHAPTER 13

(Com. Sub. for S. B. 570 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the balance of the Department of Health and Human Resources, Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511, in the amount of $36,202,960, from the State Excess

Lottery Revenue Fund, Division of Human Services, fund 5365, fiscal year 2020, organization 0511, by supplementing and amending chapter 31, Acts of the Legislature, regular session 2019, known as the Budget Bill.

Whereas, The Governor finds that the account balance in the State Excess Lottery Revenue Fund, Division of Human Services, fund 5365, fiscal year 2020, organization 0511 exceeds that which is necessary for the purposes for which the account was established; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of funds available for expenditure in the fiscal year ending June 30, 2020 to the State Excess Lottery Revenue Fund, Division of Human Services, fund 5365, fiscal year 2020, organization 0511, be decreased by expiring the amount of $36,202,960 to the West Virginia Division of Human Services, Medical Services Program Fund, fund 5084, organization 0511.

CHAPTER 14

(Com. Sub. for S. B. 571 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed February 29, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of $20,000,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the

State Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2020, organization 0221.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of $20,000,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2020;

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0226, fiscal year 2020, organization 0221, be supplemented and amended by increasing existing items of appropriation and creating new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27 – Public Defender Services

(WV Code Chapter 29)

Fund 0226 FY 2020 Org 0221

			Appro-priation	General Revenue Fund
1	1	Personal Services and Employee Benefits– Surplus	XXXXX	$ 188,402
3	3	Unclassified – Surplus.....	09700	18,600
4	6	Appointed Counsel Fees – Surplus (R)	43500	19,792,998

Any unexpended balance remaining in the above appropriation for Appointed Counsel Fees – Surplus (fund 0226, appropriation 43500) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

CHAPTER 15

(S. B. 572 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending

June 30, 2020, in the amount of $18,294,868 from the balance of moneys remaining as an unappropriated balance in the Lottery Net Profits, and making a supplementary appropriation of public moneys out of the State Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources – Division of Health – Central Office, fund 0407, fiscal year 2020, organization 0506, to the Department of Health and Human Resources – Consolidated Medical Services Fund, fund 0525, fiscal year 2020, organization 0506, and to the Department of Health and Human Resources – Division of Human Services, fund 0403, fiscal year 2020, organization 0511.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020; and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's statement of the Lottery Net Profits, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the Lottery Net Profits be decreased by expiring the amount of $18,294,868

to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2020.

And, That the total appropriation for the fiscal year ending June 30, 2020, to fund 0407, fiscal year 2020, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

		Appro-priation		**General Revenue Fund**
12	Office of Medical Cannabis – Surplus (R)	42099	$	920,500

Any unexpended balance remaining in the appropriation for Office of Medical Cannabis – Surplus (fund 0407, appropriation 42099) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0525, fiscal year 2020, organization 0506, be supplemented and amended by increasing an existing item and adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

58 – Consolidated Medical Services Fund

(WV Code Chapter 16)

Fund 0525 FY 2020 Org 0506

		Appro-priation	General Revenue Fund
6	Institutional Facilities Operations – Surplus (R)	63200	$ 10,000,000
8a	Capital Outlay, Repairs, and Equipment – Surplus (R)	67700	714,368

Any unexpended balances remaining in the appropriations for Institutional Facilities Operations – Surplus (fund 0525, appropriation 62300) and Capital Outlay, Repairs, and Equipment – Surplus (fund 0525, appropriation 67700) at the close of the fiscal year 2020 are hereby reappropriated for expenditure during the fiscal year 2021.

And, That the total appropriation for the fiscal year ending June 30, 2020, to fund 0403, fiscal year 2020, organization 0511, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

			Appro-priation		General Revenue Fund
1	5	Medical Services – Surplus	63300	$	6,660,000

CHAPTER 16

(S. B. 573 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 21, 2020; in effect from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT supplementing, amending, and increasing the appropriations of public moneys out of the Treasury for claims against the state by making supplementary appropriations from the unappropriated balance in the State Fund, General Revenue, special revenue funds and state road funds for the fiscal year ending June 30, 2020.

Whereas, The Legislature passed House Bill 2020, the Budget Bill, during the 2019 Regular Legislative Session, which included therein an appropriation of general revenue funds in Title II, Section 8, Awards for Claims Against the State, in the amount of $642,817; special revenue funds in Title II, Section 8, Awards for Claims Against the State, in the amount of $212,743; and state road funds in Title II, Section 8, Awards for Claims Against the State, in the amount of $1,703,146; and

Whereas, The Legislature passed House Bill 2831, authorizing the payment of Claims Against the State; and

Whereas, House Bill 2831 authorized an amount for Claims against the General Revenue Fund, Claims against Special Revenue Funds, and Claims against the State Road Fund that exceed the amounts included in House Bill 2020, the Budget Bill, 2019 Regular Legislative Session; and

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, and the State Road Fund, setting forth therein the cash balances as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular appropriations for the fiscal year 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and the State Road Fund, there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That Section 8 of House Bill 2020, the Budget Bill, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Sec. 8. Awards for claims against the state. — There are hereby appropriated for fiscal year 2020, from the funds as designated, in the amounts as specified, general revenue funds in the amount of $644,261, special revenue funds in the amount of $242,243, and state road funds in the amount of $2,609,799 for payment of claims against the state.

CHAPTER 17

(S. B. 725 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of federal funds out of the Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Education, State Board of Education – State Department of Education, fund 8712, fiscal year 2020, organization 0402, to the Department of Education, State Board of Education – Vocational Division, fund 8714, fiscal year 2020, organization 0402, and to the Department of Education, State Board of Education – Aid for Exceptional Children, fund 8715, fiscal year 2020, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 8712, fiscal year 2020, organization 0402, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

336 – State Board of Education –

State Department of Education

(WV Code Chapters 18 and 18A)

Fund 8712 FY 2020 Org 0402

			Appro-priation	Federal Funds
1	3	Current Expenses.....	13000	$ 10,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2020, to fund 8714, fiscal year 2020,
4 organization 0402, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

338 – State Board of Education –

Vocational Division

(WV Code Chapters 18 and 18A)

Fund 8714 FY 2020 Org 0402

			Appro-priation	Federal Funds
1	3	Current Expenses.....	13000	$ 1,000,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2020, to fund 8715, fiscal year 2020,
4 organization 0402, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF EDUCATION

339 – State Board of Education –

Aid for Exceptional Children

(WV Code Chapters 18 and 18A)

Fund 8715 FY 2020 Org 0402

			Appro-priation	Federal Funds
1	3	Current Expenses.....	13000	$ 10,000,000

CHAPTER 18

(S. B. 778 - By Senators Blair, Boley, Hamilton, Mann, Maroney, Roberts, Tarr, Swope, Sypolt, Ihlenfeld, Palumbo, Prezioso, Plymale and Stollings)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of $5,158,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources –

Division of Human Services, fund 0403, fiscal year 2020, organization 0511.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of $5,158,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2020.

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0226, fiscal year 2020, organization 0221, be supplemented and amended by increasing an existing item appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

61 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 0403 FY 2020 Org 0511

			Appro-priation		General Revenue Fund
1	5	Medical Services – Surplus	63300	$	5,158,000

CHAPTER 19

(S. B. 779 - By Senators Blair, Boley, Hamilton, Mann, Maroney, Roberts, Tarr, Swope, Sypolt, Ihlenfeld, Palumbo, Prezioso, Plymale and Stollings)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, in the amount of $4,500,000 from the balance of moneys remaining as an unappropriated balance in the State Excess Lottery Revenue Fund, and making a supplementary appropriation of public moneys out of the Treasury from the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2020, to the Department of Veterans' Assistance – Department of Veterans' Assistance, fund 0456, fiscal year 2020, organization 0613.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2019, and further included the estimate of revenue for the fiscal year 2020, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2020, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

Whereas, It appears from the Governor's statement of the State Excess Lottery Revenue Fund, there now remains an unappropriated balance in the State Treasury which is available for expiration during the fiscal year ending June 30, 2020; and

Whereas, It appears from the Governor's statement of the State Fund, General Revenue, and this legislation, there now remains an unappropriated surplus balance in the Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds remaining as an unappropriated balance for the fiscal year ending June 30, 2020, in the State Excess Lottery Revenue Fund be decreased by expiring the amount of $4,500,000 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2020.

And, That the total appropriations for the fiscal year ending June 30, 2020, to fund 0226, fiscal year 2020, organization 0221, be supplemented and amended by increasing an existing item appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

83 – Department of Veterans' Assistance

(WV Code Chapter 9A)

Fund 0456 FY 2020 Org 0613

		Appro-priation	General Revenue Fund
6	Veterans' Nursing Home – Surplus (R)	29100	$ 4,500,000

Any unexpended balance remaining in the appropriation for Veterans' Nursing Home – Surplus (fund 0456, appropriation 29100) at the close of the fiscal year 2020 is hereby reappropriated for expenditure during the fiscal year 2021.

CHAPTER 20

(S. B. 780 - By Senators Blair, Boley, Hamilton, Mann, Maroney, Roberts, Tarr, Swope, Sypolt, Ihlenfeld, Palumbo, Prezioso, Plymale and Stollings)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by decreasing an existing appropriation and adding a new appropriation of federal funds out of the Treasury to the Department of Military Affairs and Public Safety – Adjutant General – West Virginia National Guard Counterdrug Forfeiture Fund, fund 8785, fiscal year 2020, organization 0603, by supplementing, amending, decreasing, and adding new items of appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 8785, fiscal year 2020, organization 0603, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFTEY

353 – Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

			Appro-priation		**Federal Funds**
1	2	Current Expenses.....	13000	$	150,000
2	3	Equipment	07000		150,000

3 And, That the total appropriation for the fiscal year
4 ending June 30, 2020, to fund 8785, fiscal year 2020,
5 organization 0603, be supplemented and amended by
6 adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFTEY

353 – Adjutant General –

West Virginia National Guard Counterdrug Forfeiture Fund

(WV Code Chapter 15)

Fund 8785 FY 2020 Org 0603

			Appro-priation		Federal Funds
1	3a	Other Assets.....	69000	$	100,000
2	3b	Repairs and Alterations	64000		50,000
3	3c	Buildings.....	25800		100,000
4	3d	Land.....	73000		50,000

CHAPTER 21

(S. B. 803 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending the appropriations of public moneys out of the State Treasury in the State Fund, General Revenue, to the Department of Health and Human Resources, Division of Health, Central Office, fund 0407, fiscal year 2020, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, Senate Bill 386, passed during the 2017 Regular Legislative Session, created the West Virginia Medical Cannabis

Act, placing the Medical Cannabis Program within the Department of Health and Human Resources, and under the direction of the Bureau for Public Health; and

Whereas, The Bureau for Public Health required the ability to transfer General Revenue-funded appropriations to its Special Revenue-funded appropriation for proper administration of the Medical Cannabis Program; and

Whereas, The Legislature passed Senate Bill 1038 during the First Extraordinary Legislative Session of 2019, requiring the General Revenue appropriation to the Bureau for Public Health for the Medical Cannabis Program be transferred to its Special Revenue-funded appropriation; and

Whereas, It has been determined that the General Revenue appropriation to the Bureau for Public Health for the Medical Cannabis Program should remain in the General Revenue Fund; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 0407, fiscal year 2020, organization 0506, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

57 – Division of Health –

Central Office

(WV Code Chapter 16)

Fund 0407 FY 2020 Org 0506

			Appro-priation	General Revenue Fund
1	1	Personal Services and		
2		Employee Benefits	00100	$ 12,694,773
3	2	Chief Medical Examiner.....	04500	9,666,347
4	3	Unclassified	09900	671,795
5	4	Current Expenses.....	13000	4,470,904
6	5	State Aid for Local and Basic		
7		Public Health Services.....	18400	14,160,490
8	6	Safe Drinking Water Program (R)	18700	2,211,323
9	7	Women, Infants and Children	21000	38,621
10	8	Early Intervention.....	22300	8,134,060
11	9	Cancer Registry	22500	206,306
12	10	Office of Drug		
13		Control Policy (R)	35401	567,953
14	11	Statewide EMS		
15		Program Support (R)	38300	1,845,271
16	12	Office of Medical Cannabis.....	42001	2,380,489
17	13	Black Lung Clinics	46700	170,885
18	14	Vaccine for Children	55100	338,235
19	15	Tuberculosis Control	55300	379,256
20	16	Maternal and Child Health Clinics,		
21		Clinicians Medical Contracts		
22		and Fees (R)	57500	6,342,707
23	18	Epidemiology Support.....	62600	1,547,192
24	19	Primary Care Support.....	62800	4,263,706
25	20	Sexual Assault Intervention		
26		and Prevention.....	72300	125,000
27	21	Health Right Free Clinics	72700	3,750,000
28	22	Capital Outlay		
29		and Maintenance (R)	75500	100,000
30	23	Healthy Lifestyles.....	77800	1,000,000
31	24	Maternal Mortality Review	83400	49,933
32	25	Diabetes Education		
33		and Prevention.....	87300	97,125
34	26	BRIM Premium	91300	169,791

27	State Trauma and Emergency Care System.....	91800	2,021,322
28	WVU Charleston Poison Control Hotline.....	94400	712,942
	Total.....		$ 78,116,426

Any unexpended balances remaining in the appropriations for Safe Drinking Water Program (fund 0407, appropriation 18700), Office of Drug Control Policy (fund 0407, appropriation 35401), Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402), Statewide EMS Program Support (fund 0407, appropriation 38300), Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500), Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), and Tobacco Education Program (fund 0407, appropriation 90600) at the close of the fiscal year 2019 are hereby reappropriated for expenditure during the fiscal year 2020.

From the above appropriation for Current Expenses (fund 0407, appropriation 13000), an amount not less than $100,000 is for the West Virginia Cancer Coalition; $50,000 shall be expended for the West Virginia Aids Coalition; $100,000 is for Adolescent Immunization Education; $73,065 is for informal dispute resolution relating to nursing home administrative appeals; $50,000 is for Hospital Hospitality House of Huntington; and $200,000 is for Potomac Center Inc. of Romney, West Virginia.

From the above appropriation for Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) up to $400,000 may be transferred to the Breast and Cervical Cancer Diagnostic Treatment Fund (fund 5197) and $11,000 is for the Marshall County Health Department for dental services.

CHAPTER 22

(S. B. 804 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of public moneys out of the Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Public Service Commission, Consumer Advocate Fund, fund 8627, fiscal year 2020, organization 0926, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established that there now remains an unappropriated balance in the Public Service Commission, Consumer Advocate Fund, fund 8627, fiscal year 2020, organization 0926, that is available for expenditure during the fiscal year ending June 30, 2020, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 8627, fiscal year 2020, organization 0926, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

MISCELLANEOUS BOARDS AND COMMISSIONS

280 – Public Service Commission –

Consumer Advocate Fund

(WV Code Chapter 24)

Fund 8627 FY 2020 Org 0926

			Appro-priation		Other Funds
1	1	Personal Services and			
2		Employee Benefits	00100	$	104,000
3	2	Current Expenses.....	13000		110,000

CHAPTER 23

(S. B. 805 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Transportation, Division of Highways, A. James Manchin Fund, fund 8319, fiscal year 2020, organization 0803, and to the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2020, organization 0804, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of

Transportation, Division of Highways, A. James Manchin Fund, fund 8319, fiscal year 2020, organization 0803, and in the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2020, organization 0804, that is available for expenditure during the fiscal year ending June 30, 2020, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 8319, fiscal year 2020, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

264 – Division of Highways –

A. James Manchin Fund

(WV Code Chapter 22)

Fund 8319 FY 2020 Org 0803

			Appro-priation	**Other Funds**
1	1	Current Expenses.....	13000	$ 800,000

2 And, That the total appropriation for the fiscal year
3 ending June 30, 2020, to fund 8402, fiscal year 2020,
4 organization 0804, be supplemented and amended by
5 increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF TRANSPORTATION

265 – State Rail Authority –

West Virginia Commuter Rail Access Fund

(WV Code Chapter 29)

Fund 8402 FY 2020 Org 0804

			Appro-priation		Other Funds
1	1	Current Expenses.....	13000	$	2,300,000

CHAPTER 24

(S. B. 806 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 3, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by adding a new appropriation of federal funds out of the State Treasury to the Department of Transportation, fund 8831, fiscal year 2020, organization 0807, by supplementing, amending, and adding a new appropriation for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which are hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, be supplemented and amended by adding a new item appropriation to Title II, Section 6 thereof, the following:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF TRANSPORTATION

361a – Aeronautics Commission

(WV Code Chapter 29)

Fund 8831 FY 2020 Org 0807

			Appro-priation	Federal Funds
1	1	Current Expenses.....	13000	400,000

CHAPTER 25

(S. B. 812 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of Lottery Net Profits from the balance of moneys remaining as an unappropriated balance in Lottery Net Profits to the Bureau of Senior Services, Lottery Senior Citizens Fund, fund 5405, fiscal year 2020, organization 0508, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted the Executive Budget Document to the Legislature on January 8, 2020, which included a statement of the Lottery Fund setting forth therein the unappropriated cash balance as of July 1, 2019, and further included the estimate of revenues for the fiscal year 2020, less regular appropriations for fiscal year 2020; and

Whereas, It appears from the Governor's statement of the Lottery Fund there now remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 5405, fiscal year 2020, organization 0508, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

296 – Bureau of Senior Services –

Lottery Senior Citizens Fund

(WV Code Chapter 29)

Fund 5405 FY 2020 Org 0508

		Appro-priation		**Lottery Funds**
15	In-Home Services and Nutrition for Senior Citizens.....	91700	$	3,000,000

Any unexpended balance remaining in the appropriation for In-Home Services and Nutrition for Senior Citizens (fund 5405, appropriation 91700) is hereby reappropriated for expenditure during the fiscal year 2021.

From the above appropriation for In-Home Services and Nutrition for Senior Citizens (fund 5405, appropriation 91700) $1,500,000 shall be utilized for congregate and home-delivered nutrition meal reimbursement rate increases and $1,500,000 shall be utilized for the nutrition home-delivered meal program wait list.

CHAPTER 26

(S. B. 843 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of federal funds out of the State Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources, Division of Human Services, Energy Assistance, fund 8755, fiscal year 2020, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 8755, fiscal year 2020, organization 0511, be

supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 7. Appropriations from federal block grants.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

374 – Division of Human Services–

Energy Assistance

Fund 8755 FY 2020 Org 0511

			Appro-priation		Federal Funds
1	3	Current Expenses.....	13000	$	5,000,000

CHAPTER 27

(S. B. 844 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of public moneys out of the State Treasury from the balance of moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources, Division of Health – West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2020, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established that there now remains an unappropriated balance in the Department of Health and Human Resources, Division of Health - West Virginia Birth-to-Three Fund, fund 5214, fiscal year 2020, organization 0506, that is available for expenditure during the fiscal year ending June 30, 2020, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 5214, fiscal year 2020, organization 0506, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

207 – Division of Health –

West Virginia Birth-to-Three Fund

(WV Code Chapter 16)

Fund 5214 FY 2020 Org 0506

			Appro-priation		**Other Funds**
1	3	Current Expenses.....	13000	$	2,080,851

CHAPTER 28

(Com. Sub. for S. B. 845 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT making a supplementary appropriation of federal funds out of the State Treasury from the balance of federal moneys remaining unappropriated for the fiscal year ending June 30, 2020, to the Department of Health and Human Resources, Division of Human Services, fund 8722, fiscal year 2020, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020.

Whereas, The Governor has established the availability of federal funds for expenditure in the fiscal year ending June 30, 2020, which is hereby appropriated by the terms of this supplementary appropriation bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2020, to fund 8722, fiscal year 2020, organization 0511, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 6. Appropriations of federal funds.

DEPARTMENT OF HEALTH AND HUMAN RESOURCES

350 – Division of Human Services

(WV Code Chapters 9, 48, and 49)

Fund 8722 FY 2020 Org 0511

			Appro-priation	Federal Funds
1	6	CHIP Administrative Costs	85601	$ 115,000
2	7	CHIP Services.....	85602	3,200,000

CHAPTER 29

(S. B. 852 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by decreasing an existing item of appropriation and adding a new item of appropriation for expenditure of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, State Excess Lottery Revenue Fund, to the State Department of Education, School Building Authority, fund 3514, fiscal year 2020, organization 0402, by supplementing and amending chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 8, 2020, which included a statement of the State Fund, State Excess Lottery Revenue Fund, setting forth therein the cash balance as of July 1, 2019, less net appropriation balances forwarded and regular and

recommended supplemental appropriations for the fiscal year 2020; and

Whereas, It appears from the statement of the State Fund, State Excess Lottery Revenue Fund, and this supplemental appropriation bill, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, be supplemented and amended by decreasing an existing item of appropriation and adding a new item of appropriation to Title II, Section 5 thereof, to read as follows:

TITLE II – APPROPRIATIONS.

Sec. 5. Appropriations from state excess lottery revenue fund.

305 –Department of Education –

School Building Authority –

Fund 3514 FY 2020 Org 0402

1	1	Debt Service - Total.....	31000	$ 18,999,900
2	2	SBA Construction Grants.....	24000	100
3		Total.....		$ 19,000,000

4 The School Building Authority shall have the
5 authority to transfer between the above appropriations in
6 accordance with W.Va. Code §29-22-18a.

7 The above appropriation for SBA Construction Grants
8 (fund 3514, appropriation 24000) may be transferred to
9 the Department of Education, State Board of Education,
10 School Construction Fund, fund 3951, organization 0402,
11 to be used for school construction and maintenance
12 projects.

CHAPTER 30

(S. B. 853 - By Senators Carmichael (Mr. President) and Prezioso)
[By Request of the Executive]

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT supplementing and amending by decreasing an existing item of appropriation and adding a new item of appropriation for expenditure of public moneys out of the State Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, Lottery Net Profits, to the State Department of Education, School Building Authority, fund 3963, fiscal year 2020, organization 0402, by supplementing and amending chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, for the fiscal year ending June 30, 2020.

Whereas, The Governor submitted to the Legislature the Executive Budget Document, dated January 8, 2020, which included a statement of the State Fund, Lottery Net Profits, setting forth therein the cash balance as of July 1, 2019, less net appropriation balances forwarded and regular and recommended supplemental appropriations for the fiscal year 2020; and

Whereas, It appears from the statement of the State Fund, Lottery Net Profits, and this supplemental appropriation bill, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2020; therefore

Be it enacted by the Legislature of West Virginia:

That chapter 31, Acts of the Legislature, regular session, 2019, known as the Budget Bill, be supplemented and amended by decreasing an existing item of appropriation and adding a new item of appropriation to Title II, Section 4 thereof, to read as follows:

TITLE II – APPROPRIATIONS.

Sec. 4. Appropriations from lottery net profits.

DEPARTMENT OF EDUCATION

293 – State Department of Education –

School Building Authority –

Debt Service Fund

(WV Code Chapter 18)

Fund 3963 FY 2020 Org 0402

1	1	Debt Service - Total.....	31000	$ 15,320,363
2	2	Directed Transfer.....	70000	100
3	3	SBA Construction Grants.....	24000	2,679,537
4		Total.....		$ 18,000,000

5 The School Building Authority shall have the
6 authority to transfer between the above appropriations in
7 accordance with W.Va. Code §29-22-18.

8 The above appropriation for SBA Construction Grants
9 (fund 3963, appropriation 24000) may be transferred to
10 the Department of Education, State Board of Education,
11 School Construction Fund, fund 3951, organization 0402,
12 to be used for school construction and maintenance
13 projects.

CHAPTER 31

(S. B. 651 - By Senator Azinger)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as amended, relating to amending the definition of "mortgage loan originator"; and clarifying the definition of "mortgage loan originator" with respect to retailers of manufactured or modular homes and their employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17A. WEST VIRGINIA SAFE MORTGAGE LICENSING ACT.

§31-17A-2. Definitions.

As used in this article:

(a) "Commissioner" means the Commissioner of Financial Institutions of this state;

(b) "Depository institution" has the same meaning as in Section three of the Federal Deposit Insurance Act and includes any federally insured credit union;

(c) "Division" means the West Virginia Division of Financial Institutions;

(d) "Federal banking agencies" means the Board of Governors of the Federal Reserve System, the Comptroller of the Currency, the Director of the Office of Thrift

Supervision, the National Credit Union Administration, and the Federal Deposit Insurance Corporation;

(e) "Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, and adoptive relationships;

(f) "Individual" means a natural person;

(g) "Loan processor or underwriter" means an individual who performs clerical or support duties as an employee at the direction of and subject to the supervision and instruction of a person licensed or exempt from licensing under §31-17-1 *et seq.* of this code.

(1) For purposes of this paragraph, "clerical or support duties" may include subsequent to the receipt of an application:

(A) The receipt, collection, distribution, and analysis of information common for the processing or underwriting of a residential mortgage loan; and

(B) Communicating with a consumer to obtain the information necessary for the processing or underwriting of a loan, to the extent that such communication does not include offering or negotiating loan rates or terms, or counseling consumers about residential mortgage loan rates or terms; or

(2) An individual engaging solely in loan processor or underwriter activities shall not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, or other promotional items, that such individual can or will perform any of the activities of a mortgage loan originator;

(h) "Mortgage loan originator" means an individual who for compensation or gain or in the expectation of

compensation or gain takes a residential mortgage loan application or offers or negotiates terms of a residential mortgage loan and is sponsored by a mortgage lender, broker, or regulated consumer lender licensed by the Division of Financial Institutions. "Mortgage loan originator" does not include:

(1) An individual engaged solely as a loan processor or underwriter except as otherwise provided in §31-17A-3 of this code;

(2) A person or entity who does not currently have and has never held a residential mortgage loan originator license in this or any other state and who acts as a mortgage loan originator on no more than three residential mortgage loans to purchasers of any dwelling owned by the person or entity in any calendar year: *Provided*, That the person or entity is required to report any such loan within 30 days of the date of the loan to the Division of Financial Institutions on a form available from the division upon request. Failure to timely report as required by this subdivision may result in imposition by the commissioner of a civil administrative penalty of up to $250;

(3) A person or entity that only performs real estate brokerage activities and is licensed or registered in accordance with West Virginia law, unless the person or entity is compensated by a lender, a mortgage broker, or other mortgage loan originator or by any agent of such lender, mortgage broker, or other mortgage loan originator;

(4) A person or entity solely involved in extensions of credit relating to timeshare plans, as that term is defined in Section 101(53D) of Title 11, United States Code; or

(5) A retailer of manufactured or modular homes or an employee of the retailer if the retailer or employee, as applicable:

(A) Does not receive compensation or gain for engaging in activities described in this subsection, that is in excess of any compensation or gain received in a comparable cash transaction;

(B) Discloses to the consumer:

(i) In writing, any corporate affiliation with any mortgage lender; and

(ii) If the retailer has a corporate affiliation with any mortgage lender, at least one unaffiliated mortgage lender;

(C) Does not directly negotiate with the consumer or mortgage lender on loan terms (including rates, fees, and other costs); and

(D) Does not represent to the public, through advertising or other means of communicating or providing information, including the use of business cards, stationery, brochures, signs, rate lists, social media, or other promotional items, that the individual can or will perform the activities described in this subsection;

(i) "Real estate brokerage activity" means any activity that involves offering or providing real estate brokerage services to the public, including:

(1) Acting as a real estate salesperson or real estate broker for a buyer, seller, lessor, or lessee of real property;

(2) Bringing together parties interested in the sale, purchase, lease, rental, or exchange of real property;

(3) Negotiating, on behalf of any party, any portion of a contract relating to the sale, purchase, lease, rental, or exchange of real property other than in connection with providing financing with respect to any such transaction;

(4) Engaging in any activity for which a person engaged in the activity is required to be registered or licensed as a

real estate agent or real estate broker under any applicable law; and

(5) Offering to engage in any activity, or act in any capacity, described in paragraph (1), (2), (3), or (4) of this subdivision;

(j) "Nationwide Mortgage Licensing System and Registry" means a mortgage licensing system developed and maintained by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators for the licensing and registration of mortgage brokers and lenders licensed pursuant to §31-17-1 *et seq.* of this code and mortgage loan originators licensed pursuant to this article;

(k) "Nontraditional mortgage product" means any mortgage product other than a fixed rate mortgage;

(l) "Person" means a natural person, corporation, company, limited liability company, partnership, or association;

(m) "Registered mortgage loan originator" means any individual who:

(1) Meets the definition of mortgage loan originator and is an employee of:

(A) A depository institution;

(B) A subsidiary that is:

(i) Owned and controlled by a depository institution; and

(ii) Regulated by a federal banking agency; or

(C) An institution regulated by the Farm Credit Administration; and

(2) Is registered with, and maintains a unique identifier through, the Nationwide Mortgage Licensing System and Registry;

(n) "Residential mortgage loan" means any loan primarily for personal, family, or household use that is secured by a mortgage, deed of trust, or other equivalent consensual security interest on a dwelling as defined in Section 103(w) of the Truth in Lending Act or residential real estate upon which is constructed or intended to be constructed a dwelling;

(o) "Residential real estate" means any real property located in West Virginia, upon which is constructed or intended to be constructed a dwelling; and

(p) "Unique identifier" means a number or other identifier assigned by protocols established by the Nationwide Mortgage Licensing System and Registry.

CHAPTER 32

(H. B. 4406 - By Delegates Nelson, Criss, Porterfield and Espinosa)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31A-4-35 of the Code of West Virginia, 1931, as amended, relating to the reproduction of checks and other records; the period for which banks shall retain or preserve records; providing clarification that an action against a bank for any balance, amount, or proceeds of an account must be brought during the retention or preservation period; providing duties of a bank in possession of records after expiration of the record retention or

preservation period; and providing an exception to retention or preservation period limitation for actions brought on behalf of minors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-35. Reproduction of checks and other records; admissibility of copies in evidence; disposition of originals; record production generally.

(a) Any bank may cause to be copied or reproduced, by any photographic, photostatic, microphotographic or by similar miniature photographic process or by nonerasable optical image disks (commonly referred to as compact disks) or by other records retention technology approved by rule of the Commissioner of Banking, all or any number of its checks and all or any part of its documents, books, records, correspondence and all other instruments, papers and writings in any manner relating to the operation of its business, other than its notes, bonds, mortgages and other securities and investments, and may substitute such copies or reproductions either in positive or negative form for the originals thereof. Thereafter, such copy or reproduction in the form of a positive print thereof shall be deemed for all purposes to be an original counterpart of and shall have the same force and effect as the original thereof and shall be admissible in evidence in all courts and administrative agencies in this state, to the same extent and for the same purposes as the original thereof, and the banking institution may destroy or otherwise dispose of the original, but every banking institution shall retain either the originals or such copies or reproductions of its records of final entry, including, without limiting the generality of the foregoing, cards used under the card system and deposit tickets for deposits made, for a period of at least five years from the date of the last entry on such books or the date of making of such deposit tickets and card records or, in the case of a

banking institution exercising trust or fiduciary powers, accounting and legal records shall be retained until the expiration of five years from the date of termination of any trust or fiduciary relationship relating to such accounting and legal records by a final accounting, release, court decree or other proper means of termination and supporting documentation for fiduciary account transactions shall be retained for five years from the dates of entry of such transactions.

All circumstances surrounding the making or issuance of such checks, documents, books, records, correspondence and other instruments, papers or writings, or the photographic, photostatic or microphotographic copies or optical disks or other permissible reproductions thereof, when the same are offered in evidence, may be shown to affect the weight but not the admissibility thereof.

Any device used to copy or reproduce such documents and records shall be one which correctly and accurately reproduces the original thereof in all details and any disk or film used therein shall be of durable material.

(b) When a subpoena duces tecum is served upon a custodian of records of any bank in an action or proceeding in which the bank is neither a party nor the place where any cause of action is alleged to have arisen and the subpoena requires the production of all or any part of the records of the bank relating to the conduct of its business with its customers, the bank shall be entitled to a search fee not to exceed $10, together with reimbursement for costs incurred in the copying or other reproduction of any such record or records which have already been reduced to written form, in an amount not to exceed 75 cents per page. Any and all such costs shall be borne by the party requesting the production of the record or records.

(c) Notwithstanding any other provision of this code establishing a statute of limitations for any period greater than five years, any action by or against a bank for any

balance, amount, or proceeds from any time, savings or demand deposit account based on the contents of records for which a period of retention or preservation is set forth in section (a) of this section shall be brought within the time for which the record must be retained or preserved. If records are retained beyond the period set forth in section (a) of this section or the bank otherwise has information regarding the status of funds held or previously held in any time, savings or demand deposit account, the bank shall provide such information, to the extent permitted by all applicable state and federal privacy laws, upon written request, to anyone with a legal interest in such balance, amount, or proceeds. This section does not apply to savings accounts or certificates of deposit established as a result of any legal action for the benefit of a minor.

CHAPTER 33

(H. B. 4410 - By Delegates Nelson, Criss, Westfall, Azinger, Estep-Burton, Lovejoy, Espinosa, Barrett, Bates, D. Jeffries and Capito)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31A-4-26 of the Code of West Virginia, 1931, as amended, relating to permitting directors and executive officers of a banking institution to borrow from a banking institution with which he or she is connected up to $25,000 or five percent of unimpaired capital and surplus to a maximum aggregate amount of $500,000 without the prior approval of a majority of the board of directors or discount committee of the banking institution.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. BANKING INSTITUTIONS AND SERVICES GENERALLY.

§31A-4-26. Limitation on loans and extensions of credit; limitation on investments; loans to executive officers and directors of banks and employees of the banking department; exceptions; valuation of securities.

(a) (1) The total loans and extensions of credit made by a state-chartered banking institution to any one person or common enterprise and not fully secured, as determined in a manner consistent with subdivision (2) of this subsection, may not exceed 15 percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension of credit is made.

(2) Where the total loans and extensions of credit by a state-chartered banking institution to any one person or common enterprise are fully secured by readily marketable collateral having a market value, as determined by reliable and continuously available price quotations, at least equal to the outstanding amount of such loans and extensions, then the bank may provide such loans or extensions of up to 10 percent of the unimpaired capital and unimpaired surplus of that state-chartered banking institution initially determined for the period such loan or extension is made. This limitation shall be separate from and in addition to the limitation contained in subdivision (1) of this subsection.

(3) For the purposes of this subsection:

(A) The term "loans and extensions of credit" includes all direct or indirect advances of funds to a person made on the basis of any obligation of that person to repay the funds or repayable from specific property pledged by or on behalf of the person and to the extent specified by the Commissioner of Financial Institutions; the terms also include any liability of a state-chartered banking institution

to advance funds to or on behalf of a person pursuant to a contractual commitment;

(B) The term "person" includes an individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction;

(C) The term "unimpaired capital and unimpaired surplus" means the amount of tier 1 (core) capital, as defined in federal regulations, that is outstanding as indicated in the bank's most recent quarterly report of condition and income as filed with the Commissioner of Financial Institutions pursuant to §31A-4-19 of this code, plus the amount of the allowance for loan losses; and

(D) The term "common enterprise" includes, but is not limited to, persons and entities who are so related by business or otherwise that the expected source of repayment on the loan or extension of credit is substantially the same for each person or entity.

(4) The limitations contained in this subsection are subject to the following exceptions:

(A) Loans or extensions of credit arising from the discount of commercial or business paper evidencing an obligation to the person negotiating it with recourse are not subject to any limitation based on capital and surplus;

(B) The purchase of bankers' acceptances of the kind described in Section 13 of the Federal Reserve Act and issued by other banks are not subject to any limitation based on capital and surplus;

(C) Loans and extensions of credit having a term of 10 months or less and secured by bills of lading, warehouse receipts or similar documents transferring or securing title to readily marketable staples are subject to a limitation of 20 percent of unimpaired capital and unimpaired surplus in addition to the general limitations set forth in subdivision (1) of this subsection, provided the market value of the staples securing each additional loan or extension of credit at all times equals or exceeds 115 percent of the outstanding amount of such loan or extension of credit. The staples shall be fully covered by insurance whenever it is customary to insure the staples. If collateral values of the staples fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general 15 percent limitation, the loan must be brought into conformance within five business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(D) Loans or extensions of credit secured by bonds, notes, certificates of indebtedness or treasury bills of the United States or by other such obligations fully guaranteed as to principal and interest by the United States or by bonds, notes, certificates of indebtedness which are general obligations of the State of West Virginia or by other such obligations fully guaranteed as to principal and interest by the State of West Virginia are not subject to any limitation based on capital and surplus;

(E) Loans or extensions of credit to or secured by unconditional takeout commitments or guarantees of any department, agency, bureau, board, commission or establishment of the United States or of the State of West Virginia or any corporation wholly owned directly or indirectly by the United States are not subject to any limitation based on capital and surplus;

(F) Loans or extensions of credit secured by a segregated deposit account in the lending bank are not subject to any limitation based on capital and surplus;

(G) Loans or extensions of credit to any banking institution or to any receiver, conservator or other agent in charge of the business and property of such banking institution or other federally insured depository institution, when the loans or extensions of credit are approved by the Commissioner of Financial Institutions, are not subject to any limitation based on capital and surplus;

(H) (i) Loans and extensions of credit arising from the discount of negotiable or nonnegotiable installment consumer paper which carries a full recourse endorsement or unconditional guarantee by the person or common enterprise transferring the paper are subject under this section to a maximum limitation equal to 25 percent of such unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) If the bank's files or the knowledge of its officers of the financial condition of each maker of consumer paper is reasonably adequate and an officer of the bank designated for that purpose by the board of directors of the bank certifies in writing that the bank is relying primarily upon the responsibility of each maker for payment of such loans or extensions of credit and not upon any full or partial recourse endorsement or guarantee by the transferor, the limitations of this section as to the loans or extensions of credit of each such maker are the sole applicable loan limitations;

(I)(i) Loans and extensions of credit secured by shipping documents or instruments transferring or securing title covering livestock or giving a lien on livestock when the market value of the livestock securing the obligation is not at any time less than 115 percent of the face amount of the note covered shall be subject under this section to a

maximum limitation equal to 25 percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(ii) Loans and extensions of credit which arise from the discount by dealers in livestock of paper given in payment for livestock, which paper carries a full recourse endorsement or unconditional guarantee of the seller and which are secured by the livestock being sold, are subject under this section to a limitation of 25 percent of the unimpaired capital and unimpaired surplus, notwithstanding the collateral requirements set forth in subdivision (2) of this subsection;

(iii) If collateral values of the livestock documents, instruments or discount paper fall below the levels required herein, to the extent that the loan is no longer in conformance with its collateral requirements and exceeds the general 15 percent limitation, the loan must be brought into conformance within 30 business days, except where judicial proceedings, regulatory actions or other extraordinary occurrences prevent the bank from taking action;

(J) Loans or extensions of credit to the Student Loan Marketing Association are not subject to any limitation based on capital and surplus; and

(K) Loans or extensions of credit to a corporation owning the property in which that state-chartered banking institution is located, when that state-chartered banking institution has an unimpaired capital and surplus of not less than $1 million or when approved in writing by the Commissioner of Financial Institutions, are not subject to any limitation based on capital and surplus.

(5) (A) The Commissioner of Financial Institutions may prescribe rules to administer and carry out the purposes of this subsection including rules to define or further define

terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of loans or extensions of credit;

(B) The Commissioner of Financial Institutions may also prescribe rules to deal with loans or extensions of credit, which were not in violation of this section prior to the effective date of this article, but which will be in violation of this section upon the effective date of this article; and

(C) The Commissioner of Financial Institutions may also determine when a loan putatively made to a person is, for purposes of this subsection, attributed to another person.

(b) (1) Except as hereinafter provided or otherwise permitted by law, nothing herein contained authorizes the purchase by a state-chartered banking institution for its own account of any shares of stock of any corporation: *Provided*, That a state-chartered banking institution may purchase and sell securities and stock without recourse, solely upon the order and for the account of customers.

(2) The total amount of investment securities of any one obligor or maker held by a state-chartered banking institution for its own account may not exceed that percentage of the unimpaired capital and unimpaired surplus of that state-chartered banking institution as is permitted for investment by national banks or for any federally insured depository institution.

(3) For purposes of this subsection:

(A) The term "investment securities" means a marketable obligation in the form of a stock, bond, note or debenture commonly regarded as an investment security and that is salable under ordinary circumstances with reasonable promptness at a fair value. "Derivative security" means a type of investment security involving a financial

contract whose value depends on the values of one or more underlying assets or indexes of asset values. The term "derivative" refers inter alia to financial contracts such as collateralized mortgage obligations, forwards, futures, forward rate agreements, swaps, options and caps/floors/collars whose primary purpose is to transfer price risks associated with fluctuations in asset values;

(B) The term "person" includes any individual, partnership, sole proprietorship, society, association, firm, institution, company, public or private corporation, not-for-profit corporation, state, governmental agency, bureau, department, division or instrumentality, political subdivision, county commission, municipality, trust, syndicate, estate or any other legal entity whatsoever, formed, created or existing under the laws of this state or any other jurisdiction; and

(C) The term "unimpaired capital and unimpaired surplus" has the same meaning as set forth in subsection (a) of this section.

(4) Notwithstanding any other provision of this subsection, a state-chartered banking institution may invest its funds in any investment authorized for national banking associations or for any other federally insured depository institution. The investments by state-chartered banking institutions shall be on the same terms and conditions applicable to national banking associations or any other federally insured depository institution: *Provided*, That: (i) The purchase of investment securities under this subdivision may be made only when in the bank's prudent judgment, which judgment may be based in part on estimates which it believes to be reliable, there is adequate evidence that the obligor will be able to perform all it undertakes to perform in connection with the securities, including all debt service requirements, and that the securities may be sold with reasonable promptness at a price that corresponds to their fair value; and (ii) the purchase conforms to the requirement of subdivision (5) of this subsection. The Commissioner of

Financial Institutions may, from time to time, provide notice to state-chartered banking institutions of authorized investments under this paragraph.

(5) The purchase of investment securities, including derivative securities, in which the investment characteristics are considered distinctly or predominantly speculative, or the purchase of such securities that are in default, whether as to principal or interest, is prohibited. The proper management of interest rate risk through the use of derivative or other investment securities may not be held a speculative purpose.

(6) The Commissioner of Financial Institutions may prescribe rules to administer and carry out the purposes of this subsection, including rules to define or further define terms used in this subsection and to establish limits or requirements other than those specified in this subsection for particular classes or categories of investment securities.

(c) If there is a material decline of unimpaired capital and unimpaired surplus of a state-chartered bank during any quarterly reporting period of more than 20 percent from that amount reported in the bank's most recent report of income and condition, or where there is a decrease of more than 30 percent in any 12 month period, the bank shall review its outstanding loans, extensions of credit and investments and report to the Commissioner of Financial Institutions those loans, extensions and investments that exceed the limitations of this section using the bank's current reevaluated unimpaired capital and unimpaired surplus. The report shall detail the bank's position in each such loan, extension of credit and investment. The commissioner may, within his or her discretion, require that such loans, extensions of credit and investments be brought into conformity with the bank's current reevaluated legal lending and investment limitation.

(d) Notwithstanding any other provision of this section, in order to ensure a bank's safety and soundness, the

Commissioner of Financial Institutions retains the authority to direct any state-chartered bank to recalculate its lending and investment limits at more frequent intervals than otherwise provided herein and to require all outstanding loans, extensions of credit and investments be brought into conformance with the reevaluated limitations. In such cases, the commissioner will provide the bank a written notice explaining briefly the specific reasons why the determination was made to require the more frequent calculations.

(e) Loans to directors or executive officers are subject to the following limitations:

(1) A director or executive officer of any banking institution may not borrow, directly or indirectly, from a banking institution with which he or she is connected more than $25,000 or five percent of unimpaired capital and surplus to a maximum aggregate amount of $500,000 without the prior approval of a majority of the board of directors or discount committee of the banking institution, or of any duly constituted committee whose duties include those usually performed by a discount committee. The approval shall be by resolution adopted by a majority vote of the board or committee, exclusive of the director or executive officer to whom the loan is made.

(2) If any director or executive officer of any bank owns or controls a majority of the stock of any corporation, or is a partner in any partnership, a loan to the corporation or partnership constitutes a loan to the director or officer.

(3) For purposes of this subsection, an "executive officer" means:

(A) A person who participates or has authority to participate, other than in the capacity of a director, in major policy-making functions of the company or bank, regardless of any official title, salary or other compensation. The chairman of the board, the president, every vice president,

the cashier, the secretary and the treasurer of a company or bank are considered executive officers unless the officer is excluded, by resolution of the board of directors or by the bylaws of the bank or company from participation, other than in the capacity of director, in major policy-making functions of the bank or company and the officer does not actually participate therein.

(B) An executive officer of a company of which the bank is a subsidiary, and any other subsidiary of that company, unless the executive officer of the subsidiary is excluded, by name or by title, from participation in major policy-making functions of the bank by resolutions of the boards of directors of both the subsidiary and the bank and does not actually participate in such major policy-making functions.

(4) Prior approval under subdivision (1) of this subsection is not required for:

(A) Payments of overdrafts pursuant to: (i) A written, preauthorized, interest-bearing extension of credit plan that has been approved by the board of directors or an appropriate committee and that specifies a method of repayment; or (ii) a written, preauthorized transfer of funds from another account of the account holder at the bank; or

(B) Payments of inadvertent overdrafts on an account in an aggregate amount of $1,000 or less: *Provided*, That: (i) The account is not overdrawn for more than five consecutive business days; and (ii) the bank charges the director or executive officer the same fee charged to any other customer of the bank in similar circumstances.

(f) An employee of the Division of Financial Institutions whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving depository institutions chartered by the division may not borrow, directly or indirectly, any sum of money from a state-chartered bank or

state-chartered credit union. An employee of the Division of Financial Institutions whose regulatory activities involve participation in an examination, audit, visitation, review, investigation or any other particular matter involving nondepository institutions licensed by the division may not borrow, directly or indirectly, any sum of money from a nondepository entity that is licensed by the division. The commissioner, deputy commissioner and in-house legal counsel of the Division of Financial Institutions may not borrow, directly or indirectly, any sum of money from any entity that is under the jurisdiction of the division.

(g) Securities purchased by a state-chartered banking institution shall be entered upon the books of the bank at actual cost. For the purpose of calculating the undivided profits applicable to the payment of dividends, securities may not be valued at a valuation exceeding their present cost as determined by amortization of premiums and accretion of discounts pursuant to generally accepted accounting principles, that is, by charging to profit and loss a sum sufficient to bring them to par at maturity: *Provided*, That securities held for trade or permissible marketable equity securities and any other types of debt securities which pursuant to generally accepted accounting principles are to be carried on the bank's books at fair market value shall have the unrealized market appreciation and depreciation included in the income and capital as permitted by generally accepted accounting principles.

(h) The market value of securities purchased and loans extended by a state-chartered banking institution shall be reported in all public reports and quarterly reports to the commissioner pursuant to §31A-4-19 of this code in accordance with generally accepted accounting principles and any applicable state or federal law, rule or regulation.

CHAPTER 34

(H. B. 4411 - By Delegates Nelson, Criss, Westfall, Azinger, Estep-Burton, Lovejoy, Espinosa, Bates, Barrett, Waxman and Capito)

[Passed February 27, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-17-8 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Residential Mortgage Lender, Broker and Servicer Act; and adjusting the allowable final installment payment on mortgage loans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. WEST VIRGINIA RESIDENTIAL MORTGAGE LENDER, BROKER AND SERVICER ACT.

§31-17-8. Maximum interest rate on subordinate loans; prepayment rebate; maximum points, fees and charges; overriding of federal limitations; limitations on lien documents; prohibitions on primary and subordinate mortgage loans; civil remedy.

(a) The maximum rate of finance charges on or in connection with any subordinate mortgage loan may not exceed 18 percent per year on the unpaid balance of the amount financed.

(b) A borrower has the right to prepay his or her debt, in whole or in part, at any time and shall receive a rebate for any unearned finance charge, exclusive of any points, investigation fees and loan origination fees, which rebate shall be computed under the actuarial method.

(c) Except as provided by §46A-3-109 of this code and by subsection (g) of this section, no additional charges may be made, nor may any charge permitted by this section be assessed unless the loan is made: *Provided*, That if the loan is not made, the licensee is not required to refund an appraisal fee that is collected from a loan applicant by the licensee and paid to an unrelated third-party appraiser unless the fee is required to be refunded pursuant to federal law.

(d) Where loan origination fees, investigation fees or points have been charged by the licensee, the charges may not be imposed again in any refinancing of that loan or any additional loan on that property made within 24 months thereof, unless the new loan has a reasonable, tangible net benefit to the borrower considering all of the circumstances, including the terms of both the new and the refinanced loans, the cost of the new loan and the borrower's circumstances. The licensee shall document this benefit in writing on a form prescribed by the commissioner and maintain the documentation in the loan file. To the extent this subdivision overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section apply.

(e) Notwithstanding other provisions of this section, a delinquent charge or late charge may be charged on any installment made 10 or more days after the regularly scheduled due date in accordance with §46A-3-112 or §46A-3-113 of this code, whichever is applicable. The charge may be made only once on any one installment during the term of the primary or subordinate mortgage loan.

(f) Hazard insurance may be required by the lender. The charges for any insurance may not exceed the standard rate approved by the Insurance Commissioner for the insurance.

Proof of all insurance in connection with primary and subordinate mortgage loans subject to this article shall be furnished to the borrower within 30 days from and after the date of application therefor by the borrower.

(g) Except for fees for services provided by unrelated third parties for appraisals, inspections, title searches and credit reports, no application fee is allowed whether or not the mortgage loan is consummated; however, the borrower may be required to reimburse the licensee for actual expenses incurred by the licensee in a purchase money transaction after acceptance and approval of a mortgage loan proposal made in accordance with the provisions of this article which is not consummated because of:

(1) The borrower's willful failure to close the loan; or

(2) The borrower's false or fraudulent representation of a material fact which prevents closing of the loan as proposed.

(h) A licensee may not make, offer to make, accept or offer to accept any primary or subordinate mortgage loan except on the terms and conditions authorized in this article.

(i) A licensee may not induce or permit any borrower to become obligated to the licensee under this article, directly or contingently, or both, under more than one subordinate mortgage loan at the same time for the purpose or with the result of obtaining greater charges than would otherwise be permitted under the provisions of this article.

(j) An instrument evidencing or securing a primary or subordinate mortgage loan may not contain:

(1) A power of attorney to confess judgment;

(2) A provision whereby the borrower waives any rights accruing to him or her under the provisions of this article;

(3) A requirement that more than one installment be payable in any one installment period, or that the amount of any installment be greater or less than that of any other installment, except for the final installment which may be in a lesser amount or no more than $5 greater than any previous payment installment, or unless the loan is structured as a revolving line of credit having no set final payment date: *Provided*, That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement;

(4) An assignment of or order for the payment of any salary, wages, commissions or other compensation for services, or any part thereof, earned or to be earned;

(5) A requirement for compulsory arbitration which does not comply with federal law; or

(6) Blank or blanks to be filled in after the consummation of the loan. A borrower must be given a copy of every signed document executed by the borrower at the time of closing.

(k) A licensee may not charge a borrower or receive from a borrower money or other valuable consideration as compensation before completing performance of all services the licensee has agreed to perform for the borrower unless the licensee also registers and complies with all requirements set forth for credit service organizations in §46A-6C-1 *et seq.* of this code, including all additional bonding requirements as may be established therein.

(l) A licensee may not make or broker revolving loans secured by a primary or subordinate mortgage lien for the

retail purchase of consumer goods and services by use of a lender credit card.

(m) In making any primary or subordinate mortgage loan, a licensee may not, and a primary or subordinate mortgage lending transaction may not, contain terms which:

(1) Collect a fee not disclosed to the borrower; collect any attorney fee at closing in excess of the fee that has been or will be remitted to the attorney; collect a fee for a product or service where the product or service is not actually provided; misrepresent the amount charged by or paid to a third party for a product or service; or collect duplicate fee or points to act as both broker and lender for the same mortgage loan, however, fees and points may be divided between the broker and the lender as they agree, but may not exceed the total charges otherwise permitted under this article: *Provided*, That the fact of any fee, point or compensation is disclosed to the borrower consistent with the solicitation representation made to the borrower;

(2) Compensate, whether directly or indirectly, coerce or intimidate an appraiser for the purpose of influencing the independent judgment of the appraiser with respect to the value of real estate that is to be covered by a deed of trust or is being offered as security according to an application for a primary or subordinate mortgage loan;

(3) Make or assist in making any primary or subordinate mortgage loan with the intent that the loan will not be repaid and that the lender will obtain title to the property through foreclosure: *Provided*, That this subdivision may not apply to reverse mortgages obtained under §47-24-1 *et seq.* of this code;

(4) Require the borrower to pay, in addition to any periodic interest, combined fees, compensation or points of any kind to the lender and broker to arrange, originate, evaluate, maintain or service a loan secured by any encumbrance on residential property that exceed, in the

aggregate, six percent of the loan amount financed, including any yield spread premium paid by the lender to the broker: *Provided*, That reasonable closing costs, as defined in §46A-1-102 of this code, payable to unrelated third parties may not be included within this limitation: *Provided, however*, That no yield spread premium is permitted for any loan for which the annual percentage rate exceeds 18 percent per year on the unpaid balance of the amount financed: *Provided further*, That if no yield spread premium is charged, the aggregate of fees, compensation or points can be no greater than five percent of the loan amount financed. The financing of the fees and points are permissible and, where included as part of the finance charge, does not constitute charging interest on interest. To the extent that this section overrides the preemption on limiting points and other charges on first lien residential mortgage loans contained in the United States Depository Institutions Deregulation and Monetary Control Act of 1980, 12 U. S. C. §1735f-7a, the state law limitations contained in this section apply;

(5) Secure a primary or subordinate mortgage loan by any security interest in personal property unless the personal property is affixed to the residential dwelling or real estate;

(6) Allow or require a primary or subordinate mortgage loan to be accelerated because of a decrease in the market value of the residential dwelling that is securing the loan;

(7) Require terms of repayment which do not result in continuous monthly reduction of the original principal amount of the loan: *Provided,* That the provisions of this subdivision do not apply to reverse mortgage loans obtained under §47-24-1 *et seq.* of this code, home equity, open-end lines of credit, bridge loans used in connection with the purchase or construction of a new residential dwelling or commercial loans for multiple residential purchases;

(8) Secure a primary or subordinate mortgage loan in a principal amount that, when added to the aggregate total of the outstanding principal balances of all other primary or subordinate mortgage loans secured by the same property,

exceeds the fair market value of the property on the date that the latest mortgage loan is made. For purposes of this paragraph, a broker or lender may rely upon a bona fide written appraisal of the property made by an independent third-party appraiser, duly licensed or certified by the West Virginia Real Estate Appraiser Licensing and Certification Board and prepared in compliance with the uniform standards of professional appraisal practice: *Provided,* That this prohibition does not apply to any mortgage modification or refinancing loan made in participation with and in compliance with the federal Making Homes Affordable program, or any other mortgage modification or refinancing loan eligible under any government sponsored enterprise requirements or funded through any federal or state program or litigation settlement;

(9) Advise or recommend that the consumer not make timely payments on an existing loan preceding loan closure of a refinancing transaction; or

(10) Knowingly violate any provision of any other applicable state or federal law regulating primary or subordinate mortgage loans, including, without limitation, §46A-1-1 *et seq.* of this code.

CHAPTER 35

(Com. Sub. for H. B. 4621 - By Delegates Capito, Cowles, Espinosa, Shott and Queen)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8G-1, §31A-8G-2, §31A-8G-3, §31A-8G-4, §31A-8G-5, §31A-8G-6,

§31A-8G-7, and §31A-8G-8, all relating to creating the West Virginia FinTech Regulatory Sandbox Program; defining terms; providing that the program shall be administered by the West Virginia Division of Financial Institutions, establishing requirements for participants to temporarily test innovative financial products or services on a limited basis without otherwise being licensed under the laws of the state; establishing scope of the ability to operate approved financial products or services without a license; providing consumer protections; establishing time limitations on the ability to test approved financial products or services without a license; providing reporting requirements; providing for rulemaking; and directing the West Virginia Division of Financial Institutions to provide annual reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8G. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.

§31A-8G-1. The West Virginia FinTech Regulatory Sandbox Program.

This article shall be known as the West Virginia FinTech Regulatory Sandbox Act.

§31A-8G-2. Definitions.

As used in this article:

"Applicable agency" means a department or agency of the state that by law regulates certain types of business activity in the state and persons engaged in such business activity, including the issuance of licenses or other types of authorization, which the department determines would otherwise regulate a regulatory sandbox participant.

"Applicant" means an individual or entity that is applying to participate in the regulatory sandbox program.

"Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an

innovative product or service that is being tested by a regulatory sandbox participant.

"Distributed ledger" means the use of a digital database containing records of financial transactions, including blockchain technology, which can be simultaneously used and shared within a decentralized, publicly accessible network and can record transactions between two parties in a verifiable and permanent way.

"Division of Financial Institutions" and "division" mean the West Virginia Division of Financial Institutions.

"Financial product or service" means:

(A) A financial product or financial service that requires state licensure or registration; or

(B) A financial product or financial service that includes a business model, delivery mechanism, or element that may require a license or other authorization to act as a financial institution, enterprise, or other entity that is regulated by the West Virginia Division of Financial Institutions under chapters 31, 31A, and 31C of this code, §32A-2-1 *et seq.* of this code, or other related provisions.

"Innovation" means the use or incorporation of a new or emerging technology or a new use of existing technology, including distributed ledger, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Division of Financial Institutions to have a comparable widespread offering in the state.

"Innovative product or service" means a financial product or service that includes an innovation.

"Regulatory sandbox participant" means a person whose application to participate in the regulatory sandbox program is approved in accordance with the provisions of this article.

"Regulatory sandbox program" means the West Virginia FinTech Regulatory Sandbox Program created by this article, which allows a person to temporarily test an innovative product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

"Regulatory sandbox testing period" means a 24-month period beginning on the date an applicant is admitted to the regulatory sandbox program.

"Test" means to provide an innovative product or service in accordance with the provisions of this chapter.

§31A-8G-3. Regulatory Sandbox Program; administration; application requirements; fee; rulemaking.

(a) There is created in the Division of Financial Institutions the Regulatory Sandbox Program.

(b) In administering the regulatory sandbox program, the Division of Financial Institutions:

(1) Shall consult with the West Virginia Development Office relating to the economic development opportunities relating to the potential regulatory sandbox participant and may consult with any applicable agency which otherwise may have jurisdiction or authority relating to any activity proposed for the regulatory sandbox program for which the applicant is seeking to proceed without authorization or license;

(2) Shall have the authority to promulgate rules in accordance with §31A-2-4 and §29A-3-1 *et seq.* of this code for the purposes of administering the regulatory sandbox program;

(3) Shall establish a program permitting an individual or an entity to obtain limited access to the market in the state to test an innovative product or service without obtaining a

license or other authorization that might otherwise be required; and

(4) May enter into cooperative, coordinating, or information-sharing agreements with or follow the best practices of the federal Consumer Financial Protection Bureau or other states that are administering similar programs as well as other state and federal agencies to carry out the mandates of this article.

(c) An applicant for the regulatory sandbox program shall provide to the Division of Financial Institutions an application in a form prescribed by the Division of Financial Institutions that:

(1) Demonstrates that the applicant is subject to the jurisdiction of the state;

(2) Demonstrates that the applicant has established a physical location in the state; where all required records, documents, and data relating to any approved testing can be made available for examination and review by the Division of Financial Institutions and any other applicable agency with jurisdiction;

(3) Demonstrates that the applicant has attempted in good faith to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia to implement the applicant's proposed test of an innovative product or service within the regulatory sandbox program: *Provided,* That the applicant shall not be excluded from participation in the regulatory sandbox program solely based on the applicant's ability to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia;

(4) Contains relevant personal and contact information for the applicant, including legal names, addresses,

telephone numbers, email addresses, website addresses, and other information required by the Division of Financial Institutions;

(5) Discloses any and all criminal convictions of the applicant or other participating personnel, if any, and submits to a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check;

(6) Demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and a developed plan to test, monitor, and assess the innovative product or service;

(7) Contains a description of the innovative product or service to be tested, including statements regarding all of the following:

(A) How the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox program;

(B) How the innovative product or service would benefit consumers;

(C) How the innovative product or service is different from other products or services available in the state;

(D) What risks may confront consumers that use or purchase the innovative product or service;

(E) What measures will be put into place to limit potential risks and harm to consumers and to resolve complaints during the regulatory sandbox testing period;

(F) How participating in the regulatory sandbox program would enable a successful test of the innovative product or service;

(G) A description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(H) A description of how the applicant will perform ongoing duties after the test; and

(I) How the applicant will end the test and protect consumers if the test fails;

(8) Sets forth whether the applicant has been provided any license or authorization by any state or federal agency; whether any state or federal agency has previously investigated, sanctioned, or pursued legal action against the applicant; and whether the applicant has had licensure or authorization denied or withdrawn by any state or federal agency;

(9) Demonstrates registration with the West Virginia Secretary of State;

(10) Demonstrates that the applicant has an exit plan to limit consumer harm at the conclusion of the regulatory sandbox testing period, including a plan to notify consumers and advise them of next steps; and

(11) Provides any other information as required by the Division of Financial Institutions.

(d) The Division of Financial Institutions may collect an application fee of not more than $1,500 from an applicant.

(e) An applicant shall file a separate application for each innovative product or service that the applicant wants to test.

(f) After an application is filed, the Division of Financial Institutions may seek additional information from the applicant as it deems necessary.

(g) Subject to subsection (h) of this section, not later than 90 days after the day on which a complete application is received by the Division of Financial Institutions, the division shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox program.

(h) The Division of Financial Institutions and an applicant may mutually agree to extend the 90-day time period described in subsection (g) of this section in order for the Division to determine whether an application is approved for entry into the regulatory sandbox program.

(i)(1) In reviewing an application under this section, the Division of Financial Institutions may consult with, and seek the approval of, any applicable agency before admitting an applicant into the regulatory sandbox program.

(2) The consultation with an applicable agency may include but is not limited to seeking information about whether:

(A) The applicant could obtain a license or other authorization from the applicable agency after exiting the regulatory sandbox program; and

(B) Certain licensure or other regulations should not be waived even if the applicant is accepted into the regulatory sandbox program.

(j) In reviewing an application under this section, the Division of Financial Institutions shall consider whether a competitor to the applicant is or has been a regulatory sandbox participant and, if so, weigh that as a factor in favor of allowing the applicant to also become a regulatory sandbox participant.

(k) If the Division of Financial Institutions approves admitting an applicant into the regulatory sandbox program, an applicant may become a regulatory sandbox participant.

(I)(1) The Division of Financial Institutions may deny any application submitted under this section, for any reason, at the division's discretion.

(2) If the Division of Financial Institutions denies an application submitted under this section, the division shall provide to the applicant a written description of the reasons for the denial as a regulatory sandbox participant.

§31A-8G-4. Scope; testing period; licenses; consumer protections.

(a) If the Division of Financial Institutions approves an application under §31A-8G-3 of this code, the regulatory sandbox participant has 24 months after the day on which the application was approved to test the innovative product or service described in the regulatory sandbox participant's application.

(b) An innovative product or service that is tested within the regulatory sandbox program is subject to the following:

(1) All consumers participating in the innovative product or service being tested shall be residents of the state;

(2) The Division of Financial Institutions may, on a case-by-case basis, specify the maximum number of consumers that may transact through or enter into an agreement to use the innovative product or service:

(A) For a regulatory sandbox participant testing a consumer loan, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of an individual loan that may be issued to an individual consumer and the maximum amount of aggregate loans that may be issued to an individual consumer; and

(B) For a regulatory sandbox participant testing an innovative product or service that would normally require a money transmission license pursuant to this code, the Division of Financial Institutions may, on a case-by-case

basis, specify the maximum amount of a single transaction for an individual consumer and the maximum aggregate amount of transactions for an individual consumer.

(c) This section does not restrict a regulatory sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(d) A regulatory sandbox participant is deemed to possess an appropriate license under the laws of this state for the purposes of any provision of federal law requiring state licensure or authorization.

(e) Except as otherwise provided in this chapter, including subsections (f), (g), and (h), a regulatory sandbox participant that is testing an innovative product or service is not subject to state laws that regulate financial products or services.

(f) Regulatory sandbox participants and the innovative products and services that they are testing in the regulatory sandbox program are subject to all applicable consumer protection laws, including, but not limited to those contained in chapter 46A of this code, the Collection Agency Act contained in chapter 47A of this code, and any limitations on interest rates, whether or not those interest rates would otherwise require licensure.

(g)(1) The Division of Financial Institutions may determine that additional state laws that regulate a financial product or service apply to a regulatory sandbox participant if the Division of Financial Institutions, at its sole discretion, determines that an applicant's proposed testing plan or the innovative product or service to be tested poses significant risk to consumers or to the safety and soundness of other institutions within the financial services marketplace as to warrant the imposition of other applicable state laws.

(2) The Division of Financial Institutions shall determine the applicability of certain state laws to each innovative product or service prior to approval of any application to participate in the regulatory sandbox program and shall notify the regulatory sandbox participant of the specific regulatory provisions that shall apply to the innovative product or service throughout the duration of the regulatory sandbox testing period.

(3) If at any time during the regulatory sandbox testing period, the Division of Financial Institutions determines that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers or the safety and soundness of other institutions operating within the financial services marketplace, the division may require that the regulatory sandbox participant come into compliance with such state laws within a reasonable time.

(h) Notwithstanding any other provision of this chapter, a regulatory sandbox participant does not have immunity related to any criminal offense committed during the regulatory sandbox participant's participation in the regulatory sandbox program.

(i) By written notice, the Division of Financial Institutions may end a regulatory sandbox participant's participation in the regulatory sandbox program at any time and for any reason, including if the Division of Financial Institutions determines a regulatory sandbox participant is not operating in good faith to bring an innovative product or service to market.

(j) The Division of Financial Institutions shall require a regulatory sandbox participant to post a consumer protection bond as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner in an amount not less than $5,000 and shall be commensurate with the risk profile of the innovative product or service. The commissioner may require that a bond be increased or decreased at any time based on risk

profile and shall provide the regulatory sandbox participant with 30 days prior written notice of such increase or decrease. The commissioner may use bond proceeds to offset losses suffered by consumers as a result of an innovative product or service. The bond shall expire two years after the date of the conclusion of the regulatory sandbox testing period. The commissioner may accept electronic bonds from any regulatory sandbox participant.

§31A-8G-5. Additional consumer protections; disclosures.

(a) Before providing an innovative product or service to a consumer, a regulatory sandbox participant shall disclose the following to the consumer:

(1) The name and contact information of the regulatory sandbox participant;

(2) That the innovative product or service is authorized pursuant to the regulatory sandbox program and, if applicable, that the regulatory sandbox participant does not have a license or other authorization to provide a product or service under state laws that regulate products or services outside the regulatory sandbox program;

(3) That the innovative product or service is undergoing testing, may not function as intended, and may expose the consumer to financial risk;

(4) That the provider of the innovative product or service is not immune from civil liability for any losses or damages caused by the innovative product or service;

(5) That the state does not endorse or recommend the innovative product or service;

(6) That the innovative product or service is a temporary test that may be discontinued at the conclusion of the regulatory sandbox testing period;

(7) The expected end date of the regulatory sandbox testing period; and

(8) That a consumer may contact the Division of Financial Institutions to file a complaint regarding the innovative product or service being tested and provide the Division of Financial Institution's telephone number and website address where a complaint may be filed.

(b) The disclosures required by subsection (a) of this section shall be provided to a consumer in a clear and conspicuous form and, for an internet or application-based innovative product or service, a consumer shall acknowledge receipt of the disclosure before a transaction may be completed.

(c) The Division of Financial Institutions may investigate all consumer complaints made against a regulatory sandbox participant pursuant to subsection (a) of this section: *Provided,* That the consumer making the complaint was directly provided the innovative product or service by the regulatory sandbox participant, and the innovative product or service was provided in the course of participation in the regulatory sandbox program.

(d) The Division of Financial Institutions may require that a regulatory sandbox participant make additional disclosures to a consumer.

§31A-8G-6. Exiting requirements; extensions.

(a) At least 30 days before the conclusion of the regulatory sandbox testing period, a regulatory sandbox participant shall:

(1) Notify the Division of Financial Institutions that the regulatory sandbox participant will exit the regulatory sandbox program, discontinue the regulatory sandbox participant's test, and stop offering any innovative product or service in the regulatory sandbox program within 60 days

after the day on which the regulatory sandbox testing period ends; or

(2) Seek an extension in accordance with §31A-8G-7 of this code.

(b) Subject to subsection (c) of this section, if the Division of Financial Institutions does not receive notification as required by subsection (a) of this section, the regulatory sandbox participant shall immediately stop offering each innovative product or service being tested at the conclusion of the regulatory sandbox testing period.

(c) If a test includes offering an innovative product or service that requires ongoing duties, such as servicing a loan, the regulatory sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the regulatory sandbox participant exits the regulatory sandbox program, and not less than 30 days before the conclusion of the regulatory sandbox testing period, notify, in writing, any consumer of the innovative product or service of the plan related to continuation or discontinuation of duties with respect to the innovative product or service.

§31A-8G-7. Testing period extensions.

(a) Thirty days prior to the conclusion of the regulatory sandbox testing period, a regulatory sandbox participant may request an extension of the regulatory sandbox testing period for the purpose of obtaining a license or other authorization required by law.

(b) The Division of Financial Institutions shall grant or deny a request for an extension in accordance with subsection (a) of this section by the conclusion of the regulatory sandbox testing period.

(c) The Division of Financial Institutions may grant an extension in accordance with this section for not more than

12 months after the conclusion of the regulatory sandbox testing period.

(d) A regulatory sandbox participant that obtains an extension in accordance with this section shall provide the Division of Financial Institutions with a written report every three months that provides an update on efforts to obtain a license or other authorization required by law, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorization.

§31A-8G-8. Recordkeeping and reporting requirements; participant removal.

(a) A regulatory sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an innovative product or service tested in the regulatory sandbox program, and shall maintain comprehensive records for not less than five years after the conclusion of the regulatory sandbox testing period.

(b) If an innovative product or service fails before the conclusion of a regulatory sandbox testing period, the regulatory sandbox participant shall notify the Division of Financial Institutions and report on actions taken by the regulatory sandbox participant to ensure consumers have not been harmed as a result of the failure.

(c) The Division of Financial Institutions will collaborate with a regulatory sandbox participant to establish periodic and reasonable reporting requirements for the regulatory sandbox participant.

(d) The Division of Financial Institutions may request records, documents, and data from a regulatory sandbox participant, and, upon the division's request, a regulatory sandbox participant shall make such records, documents, and data available for inspection by the division.

23 (e) If the Division of Financial Institutions determines
24 that a regulatory sandbox participant has engaged in, is
25 engaging in, or is about to engage in any practice or
26 transaction that is in violation of this chapter or that
27 constitutes a violation of a state or federal criminal law, the
28 Division of Financial Institutions may remove a regulatory
29 sandbox participant from the regulatory sandbox program
30 and may refer suspected violations of law relating to this act
31 to appropriate state or federal agencies for investigation,
32 prosecution, civil penalties, and other appropriate
33 enforcement actions.

34 (f) On or before December 1 of each year, the Division
35 of Financial Institutions shall provide an annual written
36 report to the Joint Committee on Government and Finance
37 that provides information regarding each regulatory
38 sandbox participant and that provides recommendations
39 regarding the effectiveness of the regulatory sandbox
40 program. This report shall be made publicly available on the
41 division's website.

CHAPTER 36

(Com. Sub. for H. B. 4015 - By Delegates Linville, Atkinson, Barnhart, D. Kelly, Maynard, Sypolt, Porterfield, Hanshaw (Mr. Speaker), Queen, Pack and Nelson)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31G-1-3 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §31G-5-1, §31G-5-2, §31G-5-3, and §31G-5-4, all relating to telecommunications and broadband; limiting the consecutive terms of the public

members of the Broadband Enhancement Council; limiting the consecutive terms of the chair and vice-chair of the Broadband Enhancement Council; enacting the Vertical Real Estate Management and Availability Act; requiring the Department of Administration to coordinate with the Governor to seek proposals to manage state-owned vertical real estate; establishing how the vertical real estate is to be managed; defining "vertical real estate" as any structure that is suitable for the mounting of communications equipment and associated ground facilities; providing for a distribution of funds from leasing state-owned vertical real estate; and setting forth certain exceptions to the availability for management of state-owned vertical real estate.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. BROADBAND ENHANCEMENT COUNCIL.

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

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

(b) The council is a governmental instrumentality of the State. The exercise by the council of the powers conferred by this article and the carrying out of its purpose and duties are considered and held to be, and are hereby determined to be, essential governmental functions and for a public

purpose. The council is created under the Department of Commerce for administrative, personnel, and technical support services only.

(c) The council shall consist of 13 voting members, designated as follows:

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

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

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

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

(5) Nine public members that shall serve no more than three consecutive three-year terms from the date of their appointment and are appointed by and serve at the will and pleasure of the Governor with the advice and consent of the Senate, as follows:

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

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

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

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

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

(6) Additionally, the President of the Senate shall name two Senators from the West Virginia Senate, one from each party, and the Speaker of the House shall name two

Delegates from the West Virginia House of Delegates, one from each party, each to serve in the capacity of ex officio, nonvoting advisory members of the council.

(d) The Secretary of Commerce shall chair the first meeting at which time a chair and vice chair shall be elected from the members of the council for a term of two years: *Provided*, That a chair or vice-chair may not serve more than two consecutive full or partial terms in that capacity. In the absence of the chair, the vice chair shall serve as chair. The council shall appoint a secretary-treasurer who need not be a member of the council and who, among other tasks or functions designated by the council, shall keep records of its proceedings.

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

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

(g) The gubernatorial appointed members shall be deemed part-time public officials, and may pursue and engage in another business or occupation or gainful employment. Any person employed by, owning an interest in, or otherwise associated with a broadband deployment project, project sponsor, or project participant may serve as a council member and is not disqualified from serving as a council member because of a conflict of interest prohibited under §6B-2-5 of this code and is not subject to prosecution for violation of that section when the violation is created solely as a result of his or her relationship with the broadband deployment project, project sponsor, or project participant so long as the member recuses himself or herself from board participation regarding the conflicting issue in the manner set forth in §6B-2-5 of this code and the

legislative rules promulgated by the West Virginia Ethics Commission.

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

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

ARTICLE 5. VERTICAL REAL ESTATE MANAGEMENT AND AVAILABILITY ACT.

§31G-5-1. Short title.

This article shall be known and cited as the Vertical Real Estate Management and Availability Act.

§31G-5-2. Definitions.

For the purposes of this article unless the context otherwise requires:

"Ground facilities" means any shed, buildings, server rooms, or other ancillary structure providing essential services to a tower, including, but not limited to, distributing power, providing communications backhaul, or other service necessary to carry out the purposes of the tower.

"Tower" means a structure which hosts an antenna or other equipment used for the purposes of transmitting cellular or wireless signals for communications purposes,

including telephonically, or, for computing purposes, including any antenna and all associated equipment; and

"Vertical Real Estate" means any communication or broadcast tower, or any other structure or similar installation mounted on a rooftop or other prominent place, and any other such facilities associated with that structure, upon which is suitable to mount communications equipment thereon, and the associated ground facilities necessary to accommodate that communications purpose, or other real estate suitable for the installation of a telecommunications vertical asset: *Provided*, That any excess telecommunications facilities owned or controlled by the West Virginia Division of Highways that do not meet this definition of Vertical Real Estate, shall be subject to the provisions of §17-2E-6a of this code: *Provided further*, That nothing in this definition may serve to prohibit terrestrial, middle-mile or last-mile broadband or high speed internet wiring or facilities installation pursuant to §17-2E-1 *et seq.* nor may classification as such facilities serve to prevent utility installation including, but not limited to, water, electric and sewer services.

§31G-5-3. Management of vertical real estate.

(a) Beginning on July 1, 2020, the Department of Administration shall coordinate with the executive to issue a request for proposals to manage state-owned vertical real estate. This request for proposals shall contain at a minimum the following information from each prospective manager:

(1) A standard method for valuation of space on each tower that is reasonable and customary for the reach of and the numbers of the population served by the vertical real estate.

(2) A clause which forbids any vendor to enter into an exclusive arrangement with any person for the right to use the vertical real estate, unless no other entity is interested,

and a clause which forbids the sharing of information, backhaul, or any other resources gleaned from managing the assets competitively with any competitors.

(3) A clause forbidding the vendor from engaging in any preferential treatment to their own operations as a competing provider of wireless broadband access.

(4) A minimum of 50 percent rental reduction for any entity whose utilization of that vertical real estate is providing broadband access which is rate unlimited or unthrottled; subject to current load/demand network management.

(b) There is hereby created in the state treasury a special account to be known as the Technology Infrastructure Reinvestment Fund to be administered by the Office of Technology. All revenue derived from the management of the vertical real estate shall be deposited into the fund pursuant to §31G-5-3 of this code. Expenditures from the fund shall be made by the Office of Technology for the purpose of reinvestment in the vertical real estate or technology infrastructure supporting broadband on state-owned property. Expenditures are not authorized from collections but are to be made in accordance with appropriation by the Legislature pursuant to the provisions of §12-3-1, *et seq.* of this code and upon the fulfillment of the provisions of §11B-2-1, *et seq.* of this code.

(c) The Office of Technology shall remit to the manager the compensation as per the contract and then on June 30 each year shall distribute any funds received in excess of the compensation due the manager as follows:

(1) Fifty percent to the Technology Infrastructure Reinvestment Fund,

(2) Fifty percent will go to the Broadband Expansion Fund established in §31G-1-5 of this code in control of the

Broadband Enhancement Council with the specific purpose of:

(A) Funding the ongoing operations of the Broadband Enhancement Council, and

(B) To provide funds to match federal grants.

(d) Counties, municipalities and other political subdivisions, as applicable, may join or participate in an awarded agreement with a successful manager under the same terms and conditions: *Provided*, That distribution of funds attributable to their assets may be expended at the discretion of their governing body.

§31G-5-4. Exceptions to the management of vertical real estate.

Any vertical real estate shall be exempted from management if:

(A) The rental of that vertical real estate would potentially affect the operations of any public safety, emergency management or homeland security operations: *Provided*, That if there is a showing that a reasonable, technically feasible, nondiscriminatory design can prevent such adverse effect on any public safety, emergency management or homeland security operations then such management may occur; or

(B) It would have an adverse effect on historic preservation of a property: *Provided*, That if there is a showing that a reasonable, technically feasible, nondiscriminatory, and technologically neutral design or concealment measures can prevent such adverse effect on the property's historic preservations then such management may occur.

CHAPTER 37

(Com. Sub. for H. B. 4619 – By Delegates Hanshaw (Mr. Speaker), Capito, Atkinson, Westfall, Queen, Nelson, Summers, J. Kelly, Barrett, Boggs and Miley)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§24-2-1p; to amend and reenact §31G-4-5 of said code; and to amend said code by adding thereto a new section, designated §31G-4-5a, all relating to broadband enhancement; excepting certain middle-mile fiber broadband infrastructure from consideration as a public utility; making legislative findings; defining terms; establishing the Middle-Mile Fiber Broadband Infrastructure Expansion Program; authorizing certain electric utilities to participate in said program; setting forth powers and duties of the Public Service Commission in reviewing and considering written plans and amendments thereto submitted pursuant to said program; requiring certain electric utilities to file written plans and application with the Public Service Commission upon a determination by the Broadband Enhancement Council that a proposed project is feasible; establishing that such a written plan and application is in lieu of a proceeding pursuant to §24-2-11; setting forth the required contents of said written plan and application; requiring that an electric utility publish in certain publication areas the anticipated monthly and yearly electric rate increase, if any, and actual rates under the proposal, as a Class I legal advertisement in compliance with the provisions of §59-3-1, *et seq.* of this code; requiring that a public hearing be held within 90 days of the publication of said notice; setting forth instances when no such public hearing is necessary; requiring

† Redesignated

that the Public Service Commission issue a final order within 150 days of the application filing date; setting forth instances when the Public Service Commission must approve such a written plan; authorizing an electric utility to implement such a plan upon approval by the Public Service Commission; setting forth project costs that an electric utility is entitled to recover as part of the implementation of an approved project; authorizing an electric utility to make certain accounting accruals; providing that electric utilities shall control the scope, scheduling and execution of a project; authorizing an electric utility to reestablish electric service and assure safety of its workers prior to restoration of middle-mile fiber broadband service; authorizing electric utilities to use contractors chosen by the electric utility to construct, install, operate, maintain and repair middle-mile fiber assets; providing an electric utility with sole control of the location and method of attachment and connection of certain middle-mile fiber infrastructure; requiring electric utilities to manage and document the entities that lease middle-mile fiber assets for last-mile operations; allowing an electric utility to own, manage, or control certain broadband capacity, fiber strands, equipment and electronics; allowing an electric utility to lease certain broadband capacity, fiber strands, equipment and electronics to certain Internet service providers and other third parties; allowing an electric utility to provide access points that are outside the electric utility's power supply zone to allow connection between the electric utility's broadband capacity system or fiber strands and non-governmental Internet service provider's or other third party's system; removing certain references to underserved areas of the state from feasibility studies of proposed broadband projects; and authorizing certain electric cooperatives to utilize their distribution system, poles, or rights of way to provide for critical infrastructure.

Be it enacted by the Legislature of West Virginia:

CHAPTER 24. PUBLIC SERVICE COMMISION.

ARTICLE 2. POWER AND DUTIES OF PUBLIC SERVICE COMMISSION.

†§24-2-1p. Middle-Mile Fiber Broadband Infrastructure Expansion Program.

(a) Legislative findings. The Legislature finds:

(1) That access to broadband services is of critical importance to and a necessary prerequisite for enabling economic development in the state and for improving education, health care, public safety and government services, among other benefits to its citizens;

(2) That broadband expansion into unserved rural areas of the state continues to be an issue of importance to the Legislature, and progress is hindered by lack of full development of middle-mile broadband fiber infrastructure within the state;

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

(4) That it continues to be a primary goal of the Legislature to make every municipality, community, and rural area in this state accessible to Internet communications through the expansion, extension, and general availability of broadband services and technology;

(5) That regulated electric utilities have existing distribution infrastructure in place throughout the state, and that their existing and new infrastructure could be utilized in connection with construction of middle-mile broadband fiber assets;

(6) That it is in the public interest to expedite construction of middle-mile broadband fiber infrastructure to provide the necessary architecture to facilitate additional broadband Internet access to individuals and institutions in unserved areas of the state; and

† Redesignated

(7) That it is appropriate to establish a program to allow electric utilities to construct middle-mile fiber broadband assets within the power supply zone utilizing existing and new electric utility distribution assets in a manner that addresses the needs of the public and is consistent with the operational concerns of the electric utilities that may participate in this program.

(b) Definitions. For purposes of this section:

"Commission" means the Public Service Commission of West Virginia.

"Council" means the Broadband Enhancement Council, as defined in §31G-1-1, *et seq.* of this code.

"Electric utility" means any electric utility operating within this state that is regulated by the commission: *Provided*, That an electric utility that has installed middle-mile fiber broadband infrastructure pursuant to this section shall not be considered a public utility engaged in the transmission of messages by telephone, telegraph or radio for purposes of §24-2-1(a) of this code.

"Program" means the Middle-mile fiber Broadband Expansion Program established pursuant to subsection (c) of this section.

"Project" means one or more middle-mile fiber infrastructure expansion projects, including any portion of such projects to be used for the electric utility's communication needs, proposed by an electric utility and approved by the commission pursuant to subsection (e) of this section as part of the program.

"Served" means any area with broadband service as defined in §31G-1-2 of this code.

"Unserved" means any area without broadband service as defined in §31G-1-2 of this code.

(c) Establishment of program. Commencing July 1, 2020, the Middle-Mile Fiber Broadband Infrastructure Expansion Program is hereby authorized and established.

(d) Authorizing participation. An electric utility having distribution infrastructure in this state may participate in the program pursuant to the provisions of this section.

(e) Powers and duties of Public Service Commission to act on written plans and amendments to written plans. The commission shall have the following powers and duties in connection with the program:

(1) Review, approve, or reject each written plan submitted by an electric utility pursuant to subsection (f) of this section. A written plan shall be approved if the commission determines that the proposed plan is reasonable, prudent, useful, and is not contrary to the public interests, considering the interests of the potential broadband users and the electric utility customers.

(2) Review, approve, or reject amendments to written plans submitted by an electric utility pursuant to subsection (f) of this section. Amendments to a written plan shall be approved if the commission determines that the proposed amendments to a written plan are reasonable, prudent, useful and not contrary to the public interest considering the interests of the potential broadband users and the electric utility customers.

(3) Perform any other duties necessary to effectuate the provisions of this section.

(f) Written plan. Following the council's determination that construction, installation, operation, and repair of a middle-mile broadband infrastructure expansion project by an electric utility is feasible pursuant to §31G-4-5 of this code, the electric utility shall file a written plan and application seeking the commission's approval of the project and its associated cost recovery. The written plan

and application is in lieu of a proceeding pursuant to §24-2-11 of this code and shall contain the following:

(1) The route of the middle-mile fiber infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle-mile, the location of the electric utility's distribution infrastructure that will be utilized in connection with the proposed project, the capacity or number of fiber strands of the middle-mile that will be available to lease to non-governmental last-mile broadband Internet providers and other third parties upon completion of the proposed project, and the commitment of at least one non-governmental last-mile broadband Internet provider that will lease access to the middle-mile fiber assets constructed as part of the proposed project, and an estimate of potential broadband customers, determined in consultation with the council, that would be served by the middle-mile infrastructure;

(2) The estimated cost of the proposed project, including, but not limited to, engineering costs, construction costs, permitting costs, right of way costs and a reasonable allowance for funds used during construction;

(3) Proposed schedule of construction of the proposed project;

(4) Method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(5) Testimony, exhibits or other evidence that demonstrates the project is reasonable, prudent, useful and not contrary to the public interest;

(6) A cost recovery mechanism that allocates all net costs to be recovered under this section on a distribution-level basis; and

(7) Other information the applicant considers relevant or the commission requires.

(g) The electric utility shall publish, in the form the commission directs, which form shall include, but not be limited to, the anticipated monthly and yearly electric rate increase, if any, and actual rates under the proposal, by average percentage and dollar amount for customers within a class of service, as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, the publication area to be each county in which service is provided by the electric utility, a notice of the filing of the application and that the commission shall hold a hearing on the application within 90 days of the notice; unless no opposition to the plan or the rate change is received by the commission within the time limits established by the commission, in which case the hearing can be waived, and the commission shall issue a final order within 150 days of the application filing date: *Provided*, That upon the request of any interested person or entity, the commission shall allow for the submission of comments on the feasibility of the plan.

(h) Upon notice and hearing, if required by the commission, the commission shall approve the plan and allow expedited recovery of costs related to the expenditures as provided in subsection (f) of this section if the commission finds that the expenditures and the associated rate requirements are just, reasonable, not contrary to the public interest, and will allow for the provision and maintenance of adequate, efficient, safe, reliable and reasonably priced middle-mile fiber broadband service.

(i) The council or the commission may not act to limit the number of last-mile broadband Internet providers eligible to be contracted to utilize the middle-mile fiber infrastructure constructed as part of a project proposed pursuant to this section. No board, commission, agency, or other governmental body may regulate the costs extended to

a broadband customer from any last-mile broadband Internet service provider. Nothing in this subsection shall prevent the commission from reviewing, modifying, and approving or denying the cost or means of providing a middle-mile fiber proposed project pursuant to this section.

(j) Upon commission approval, an electric utility will be authorized to implement the plan and to recover related project costs, net of any middle-mile broadband revenues or contributions in aid of construction, as provided in the following:

(1) An allowance for return shall be calculated by applying a rate of return to the planned net incremental increase to rate base attributable to the project for the coming year, considering the projected amount and timing of expenditures under the project, plus any expenditures in previous years of the project. The rate of return shall be determined by utilizing the rate of return on equity authorized by the commission in the electric utility's most recent rate case proceeding or in the case of a settled rate case, a rate of return on equity as determined by the commission, and the projected cost of the electric utility's debt during the period of the project to determine the weighted cost of capital based upon the electric utility's capital structure.

(2) Income taxes applicable to the return allowed on the project shall be calculated for inclusion in rates at the federal and state statutory rates.

(3) Depreciation and property tax expenses directly attributable to the project shall be estimated for the upcoming year.

(4) Operation and maintenance expense specifically and directly related to operation and maintenance of the middle-mile fiber broadband facilities.

(5) Following commission approval of the project and related cost recovery mechanism, an electric utility shall place into effect a commission approved reconcilable rate surcharge that recovers the revenue requirement of the allowance for return, related income taxes, operation and maintenance expenses, depreciation, property tax expenses associated with the electric utility's estimated project investments for the upcoming year, net of middle-mile revenue or contributions in aid of construction recovery of those costs provided by last mile broadband Internet providers upon completion of the project, if any ("middle-mile cost recovery rates"). In each year subsequent to the order approving the project and middle-mile cost recovery rates, the electric utility shall file a petition with the commission setting forth new proposed middle-mile cost recovery rates that recover the revenue requirement of the project investments previously installed and projected costs of the project based on investments to be made in the subsequent year, plus any under-recovery or minus any over-recovery of actual costs attributable to the project, for the preceding year.

(k) The electric utility may make any accounting accruals necessary to establish a regulatory asset or liability through which actual costs incurred and costs recovered through the rate mechanism are tracked.

(l) Construction, installation, operation, maintenance, and repair of middle-mile fiber expansion projects. Subject to continuing authority of the commission to determine the reasonableness of acts and practices, for all projects contained in a written plan approved by the commission pursuant to subsection (e) of this section, and constructed, installed, operated, maintained, and repaired by an electric utility pursuant to this section, the electric utility shall have control of the scope, scheduling and execution of the project to construct, install, operate, maintain and repair middle-mile fiber assets, including fiber build route selection and build and splice schedules. The electric utility shall be

entitled to reestablish electric service and assure safety of its workers prior to restoration of middle-mile fiber broadband service in order to ensure operational safety matters of the shared infrastructure. Additionally, the electric utility shall be entitled to use contractors chosen and approved by the electric utility to construct, install, operate, maintain, and repair middle-mile fiber assets pursuant to this section because of its or electric utility's knowledge of hazards in the power supply zone and the associated controls to reduce the risks involved. Nothing in this section confers any rights to work in the power supply space except by the electric utility and its designated contractors.

(m) Attachment and connection of middle-mile fiber assets. An electric utility participating in the program shall have sole control of the location and method of attachment and connection of middle-mile fiber assets to the electric utility's distribution infrastructure, unless otherwise ordered by the commission.

(n) Management of fiber projects. In order to manage operations, an electric utility participating in the program shall manage and document the entities that lease middle-mile fiber assets for last-mile operations, including, but not limited to, outage notification and management.

(o) Notwithstanding anything in this code or in the articles of incorporation of an electric utility to the contrary, an electric utility may, either directly or indirectly or through an affiliate or subsidiary, pursuant to a written plan approved by the commission:

(1) Own, manage or control any broadband capacity, number of fiber strands, equipment and electronics, including any plant, works, system, lines, facilities or properties, or any part or parts thereof, together with all appurtenances thereto, used or useful in connection with the provisions and extension of such broadband services;

(2) Lease such broadband capacity, number of fiber strands, equipment, or electronics to non-governmental Internet service providers and other third parties, on a nonexclusive basis; and

(3) Provide access points that are outside the electric utility's power supply zone to allow connection between the electric utility's broadband capacity system or fiber strands, and any non-governmental Internet service provider's or other third party's system.

CHAPTER 31G. BROADBAND ENHANCEMENT AND EXPANSION POLICIES.

ARTICLE 4. MAKE-READY POLE ACCESS.

§31G-4-5. Electric power utilities; feasibility study for providing broadband services; Public Service Commission to assist; proposed legislation to be developed; report.

(a) For purposes of this section:

(1) "Commission" shall mean the West Virginia Public Service Commission.

(2) "Council" shall mean the Broadband Enhancement Council, as defined in §31G-1-1 of this code.

(3) "Electric utility" shall mean any electric utility operating within this state that is regulated by the commission.

(4) "Project" shall mean a middle-mile broadband infrastructure expansion project proposed by an electric utility.

(b) Each electric utility may investigate the feasibility of constructing and operating a project within the electric utility distribution system and, if it so elects, may submit a feasibility study of a proposed project to the council on or before December 1, 2019. Additional feasibility studies may

be submitted to the council after December 1, 2019, without penalty.

(c) The council and the commission shall assist each such electric utility in its preparation of such a feasibility study.

(d) The feasibility study shall include an evaluation of the following:

(1) The scope of the proposed project for which the feasibility study is conducted, which shall include, but not be limited to:

(A) The route of the middle-mile infrastructure proposed for the project, the number of fiber strands that would be utilized in connection with the proposed project and dedicated to serve as the middle-mile, the location of the electric utility's distribution infrastructure that will be utilized in connection with the proposed project, the capacity of the middle-mile broadband infrastructure that will be available to lease to last-mile broadband Internet providers upon completion of the proposed project;

(B) The estimated cost of the proposed project, including but not limited to engineering costs, construction costs, permitting costs, materials and labor, right-of-way costs, and a reasonable rate of return to the electric utility;

(C) The proposed schedule of construction of the proposed project; and

(D) The method of attachment and connection of the middle-mile broadband fiber assets to the electric utility's distribution infrastructure;

(2) The regulatory and legal barriers to an electric utility constructing a project and operating middle-mile broadband infrastructure to provide access to unserved areas of the state, as defined in §31G-1-2 of this code, and proposed legislation to address such regulatory barriers;

(3) Whether it is in the public interest and the interest of the electric utility to make improvements to the distribution grid in furtherance of providing such middle-mile broadband Internet services in conjunction with its program of electric distribution projects;

(4) Whether it is in the public interest and the interest of the electric utility to operate middle-mile broadband Internet assets to provide access to unserved areas of the state;

(5) Whether it is in the public interest and the interest of the electric utility to permit a third party to lease such capacity to provide last-mile broadband Internet services to unserved areas of the state;

(6) Whether construction of middle-mile broadband Internet infrastructure utilizing electric utility distribution systems is feasible with respect to the maturity of the relevant technology, the compatibility of such services with existing electric services, and the financial requirements to undertake such project;

(7) The anticipated level of rate adjustment necessary to allow the electric utility to recover its costs associated with the proposed project, and a reasonable rate of return, on an expedited basis, that will be recovered by the electric utility through a rate adjustment at the commission; and

(8) Such other information that is pertinent to the project.

(e) Upon receipt of a feasibility study, the council shall post the same on the council website for written public comment for a period of seven days and then shall render a determination, by a majority vote of the council, as to the feasibility of the proposed project.

(f) In its consideration of the feasibility of a project, the council shall identify one or more last-mile broadband Internet providers that may lease the middle-mile broadband

Internet capacity created by the proposed project pursuant to lease terms and conditions set by the council.

(g) The council shall render such feasibility determination within 60 days from the date the feasibility study is submitted to the council.

(h) Commencing January 1, 2020, and each year thereafter, the council shall give a report of its consideration of feasibility studies submitted pursuant to this section to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the Joint Committee on Government and Finance.

§31G-4-5a. Electric Cooperative Providing Broadband Services.

An electric cooperative organized pursuant to state and federal law, including the Rural Electrification Act of 1936, may utilize its distribution system, poles, or rights of way to provide for critical infrastructure, which may include the construction or operation, or both, of a broadband infrastructure project consisting of middle mile or last mile services, or both.

CHAPTER 38

(Com. Sub. for S. B. 575 - By Senators Maynard, *original sponsor)**

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §49-4-201 and §49-4-202 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §49-4-206,

***NOTE:** Senator Rucker was also a sponsor of this bill.

all relating to safe-surrender sites; allowing the governing entity of a local fire department to designate the premises of its fire department as a safe-surrender site; providing the criteria of the child who may be accepted from a parent; setting forth requirements upon the fire department upon taking possession of a child; and establishing criteria for the fire department as a safe-surrender site.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

PART II. EMERGENCY POSSESSION OF CERTAIN RELINQUISHED CHILDREN.

§49-4-201. Accepting possession of certain relinquished children.

(a) A hospital or health care facility operating in this state, or a fire department that has been designated a safe-surrender site under §49-4-206 of this code, shall, without a court order, take possession of a child if the child is voluntarily delivered to the hospital, health care facility, or fire department by the child's parent within 30 days of the child's birth, and the parent did not express an intent to return for the child.

(b) A hospital, health care facility, or fire department that takes possession of a child under this article shall perform any act necessary to protect the physical health or safety of the child. In accepting possession of the child, the hospital, health care facility, or fire department may not require the person to identify himself or herself and shall otherwise respect the person's desire to remain anonymous.

§49-4-202. Notification of possession of relinquished child; department responsibilities.

(a) (1) Not later than the close of the first business day after the date on which a hospital or health care facility takes possession of a child pursuant to §49-4-201 of this code, the

hospital or health care facility shall notify the Child Protective Services Division of the Department of Health and Human Resources that it has taken possession of the child and shall provide the division any information provided by the parent delivering the child. The hospital or health care facility shall refer any inquiries about the child to the Child Protective Services Division.

(2) Upon taking possession of a child pursuant to §49-4-201 of this code, a fire department shall:

(A) Deliver the child to the nearest hospital or health care facility as soon as possible, but transport may begin no later than 30 minutes upon taking possession of a child; and

(B) Notify the Child Protective Services Division of the Department of Health and Human Resources within two hours of taking possession of a child:

(i) That it has delivered the child and identify the hospital or health care facility to which it delivered the child; and

(ii) Provide the division any information provided by the parent delivering the child.

(3) The fire department shall refer any inquiries about the child to the Child Protective Services Division.

(b) The Department of Health and Human Resources shall assume the care, control, and custody of the child as of the time of delivery of the child to the hospital, health care facility, or fire department, and may contract with a private child care agency for the care and placement of the child after the child leaves the hospital, health care facility, or fire department.

§49-4-206. Designation of local fire department as a safe-surrender site; posting requirement.

The governing entity of a local fire department that is staffed 24 hours a day, seven days a week, may designate

the premises of its fire department as a safe-surrender site to accept physical custody of a child who is 30 days old or younger from a parent of the child and who surrenders the child pursuant to §49-4-201 of this code. A local fire department that is designated a safe-surrender site shall post a sign that notifies the public that it is a location where a child 30 days old or younger may be safely surrendered pursuant to this article.

CHAPTER 39

(Com. Sub. for S. B. 711 - By Senator Trump)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §49-4-726, relating to directing the Secretaries of the Department of Health and Human Resources, the Department of Military Affairs and Public Safety, and requesting that the Juvenile Justice Commission of the Supreme Court of Appeals to collaborate and undertake an investigation of numerous issues related to juvenile justice, juvenile competency, and procedures for dealing with juveniles found incompetent to assist counsel in proceedings against them; and are determined to be nonrestorable; requiring certain recommendations and proposed legislation; and requiring the report and proposed legislation be supplied to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2020.

Be it enacted by the Legislature of West Virginia:

CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-726. Study of juvenile competency issues; requiring and requesting report and proposed legislation; submission to Legislature.

(a) The Secretary of the Department of Health and Human Resources and the Secretary of the Department of Military Affairs and Public Safety are directed, and the Juvenile Justice Commission of the Supreme Court of Appeals is requested to undertake a collaborative investigation and evaluation of issues regarding juvenile competency. They shall:

(1) Develop appropriate procedures for determining what actions should be taken when a juvenile is determined to lack substantial capacity to understand the proceedings against him or her brought under §49-4-704 of this code;

(2) Recommend appropriate processes for juveniles to receive restorative services when found to be incompetent; and

(3) Recommend appropriate disposition alternatives for juveniles found to be incompetent and not restorable, including a recommendation as to the location and operation of an appropriate facility to house juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement.

(b) The secretaries shall issue a joint report of their findings and recommendations, together with draft legislation necessary to effectuate the recommendations, on or before July 31, 2020, to the President of the Senate and the Speaker of the House of Delegates.

(c) The report shall:

(1) Include models from other states considered to be best practices;

(2) Include an estimate of the number of juveniles that may be affected by this procedure and data of trends by other states;

(3) Include an estimate of the cost of providing restorative services and a recommendation of which agency should pay for the services; and

(4) Ensure that any recommended legislation provides that all services be provided in the least restrictive placement for the juvenile and recommend a facility for the housing and treatment of juveniles determined to be incompetent, nonrestorable, and in need of out-of-home placement which can appropriately provide the juvenile with necessary services.

(d) It is the intent of the Legislature in enacting this section to acknowledge the importance of ensuring the constitutionality of juvenile proceedings under §49-4-704 of this code.

CHAPTER 40

(Com. Sub. for H. B. 4092 - By Delegates Hill, Pack, Summers, Espinosa, Hanna, Worrell, Estep-Burton, Lavender-Bowe, Pushkin, C. Thompson and Walker)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §49-2-102 and §49-2-104 of the Code of West Virginia, 1931, as amended; to amend and reenact §49-1-206 of said code; to amend and reenact §49-2-108, §49-2-110, §49-2-111, §49-2-111a, §49-2-112, §49-2-118, §49-2-121, §49-2-124, and §49-2-126 of said code; to amend said code by adding thereto five new sections, designated §49-2-111c,

§49-2-127, §49-2-127a, §49-2-128, and §49-2-129; to amend said code by adding thereto two new sections, designated §49-4-601a and §49-4-601b; and to amend and reenact §49-4-604 of said code, all relating generally to the child welfare system; defining terms; increasing the number children allowed in a foster family home; removing authorization for the Secretary of the Department of Health and Human Resources to transfer funds between certain accounts; eliminating requirement that the secretary provide public education; requiring certain information to be included in child placing agency data reports; setting a minimum amount that the Department of Health and Human Resources must pay child placing agencies per child adopted; requiring the department to review the rate of payment to foster parents at certain time intervals; authorizing and directing the department to expend funds to achieve certain priorities and objectives related to child placement and other services; requiring the department to expend an amount of appropriated funds in fiscal year 2021 to achieve certain priorities and objectives; requiring the secretary of the department to report annually, and upon request, to the Joint Standing Committee on Government and Finance regarding expenditures and progress toward meeting certain objectives and priorities; specifying when the department shall remit payments to foster families; eliminating summary review requirements for behavioral health care services and facilities for children in out of home placements; establishing the Foster Child Bill of Rights; establishing the Foster and Kinship Parent Bill of Rights; providing that violations of the rights provided to foster children and parents may be reported to and investigated by the foster care ombudsman; setting forth certain duties of foster parents; requiring a number of provisions to be included in the agreement between the foster parent and the child placing agency and the department; providing that neglect of a foster or kinship parent's duties and violations of agreements may be reported to and investigated by the foster care ombudsman; requiring the foster care ombudsman to make certain reports; setting forth the reasonable and prudent foster parent standard; providing that children in out-of-home care

are entitled to participate in certain activities and requiring caregivers to use the reasonable and prudent foster parent standard to make certain decisions regarding the child; limiting liability of a person adhering to the reasonable and prudent foster parent standard; requiring the department to establish minimum standards for transitional living services by legislative rule; establishing eligibility criteria for children and transitioning adults to participate in transitional living services; providing requirements for transitional living arrangements and the agency's duties in relation thereto; establishing preference that children removed from the home be placed with relatives and fictive kin; establishing a process by which the department shall, and others may assist, in identifying family members and fictive kin; requiring the department to provide notice to a person against whom an allegation of abuse or neglect, that does not result in a finding by a court, is substantiated; providing that a person against whom an allegation of abuse or neglect has been substantiated has a right to contest the substantiation and the right to appeal a decision of the department to the courts; establishing requirements for legislative rules of the department regarding substantiation of abuse and neglect allegations; requiring guardians ad litem to adhere to certain policies and meet certain requirements; requesting the supreme court to review certain rules; clarifying when the department, in an abuse and neglect case, is not required to make efforts to preserve the family; requiring the department to promulgate legislative rules; requiring the department promulgate emergency rules; making technical corrections; and eliminating obsolete language from the code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-206. Definitions related, but not limited to, child advocacy, care, residential, and treatment programs.

When used in this chapter, the following terms have the following meanings, unless the context clearly indicates otherwise:

"Child Advocacy Center (CAC)" means a community-based organization that is a member, in good standing, of the West Virginia Child Advocacy Network, Inc., as set forth in §49-3-101 of this code.

"Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social, and personal needs and the consideration of the child's rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Corrections and Rehabilitation pursuant to §49-2-901 *et seq.* of this code. It includes the provision of child care services or residential services.

"Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, for the care of 13 or more children for child care services in any setting, if the facility is open for more than 30 days per year per child.

"Child care services" means direct care and protection of children during a portion of a 24-hour day outside of the child's own home which provides experiences to children that foster their healthy development and education.

"Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children

who are 16 or 17 years of age and living in unlicensed residences.

"Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association, or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes or any facility that provides care for unmarried mothers and their children. A child welfare agency does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Corrections and Rehabilitation, pursuant to §49-2-901 *et seq.* of this code, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

"Community based" means a facility, program, or service located near the child's home or family and involving community participation in planning, operation, and evaluation and which may include, but is not limited to, medical, educational, vocational, social, and psychological guidance, training, special education, counseling, substance abuse, and any other treatment or rehabilitation services.

"Community-based juvenile probation sanctions" means any of a continuum of nonresidential accountability measures, programs, and sanctions in response to a technical violation of probation, as part of a system of community-based juvenile probation sanctions and incentives, that may include, but are not limited to:

(A) Electronic monitoring;

(B) Drug and alcohol screening, testing, or monitoring;

(C) Youth reporting centers;

(D) Reporting and supervision requirements;

(E) Community service; and

(F) Rehabilitative interventions such as family counseling, substance abuse treatment, restorative justice programs, and behavioral or mental health treatment.

"Community services" means nonresidential prevention or intervention services or programs that are intended to reduce delinquency and future court involvement.

"Evidence-based practices" means policies, procedures, programs, and practices demonstrated by research to reliably produce reductions in the likelihood of reoffending.

"Facility" means a place or residence, including personnel, structures, grounds, and equipment used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose. Facility does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Corrections and Rehabilitation for the secure housing or holding of juveniles committed to its custody.

"Family child care facility" means any facility which is used to provide nonresidential child care services for compensation for seven to 12 children, including children who are living in the household, who are under six years of age. A facility may be in a provider's residence or a separate building.

"Family child care home" means a facility which is used to provide nonresidential child care services for compensation in a provider's residence. The provider may care for four to six children at one time, including children who are living in the household, who are under six years of age.

"Family resource network" means:

(A) A local community organization charged with service coordination, needs and resource assessment, planning, community mobilization, and evaluation, and which has met the following criteria:

(i) Has agreed to a single governing entity;

(ii) Has agreed to engage in activities to improve service systems for children and families within the community;

(iii) Addresses a geographic area of a county or two or more contiguous counties;

(iv) Has, as the majority of the members of the governing body, nonproviders, which includes family representatives and other members who are not employees of publicly funded agencies, with family representatives as the majority of those members who are nonproviders;

(v) Has members of the governing body who are representatives of local service agencies, including, but not limited to, the public health department, the behavioral health center, the local health and human resources agency, and the county school district; and

(vi) Adheres to principles consistent with the cabinet's mission as part of its philosophy.

(B) A family resource network may not provide direct services, which means to provide programs or services directly to children and families.

"Family support", for the purposes of §49-2-601 *et seq.* of this code, means goods and services needed by families to care for their family members with developmental disabilities and to enjoy a quality of life comparable to other community members.

"Family support program" means a coordinated system of family support services administered by the Department

of Health and Human Resources through contracts with behavioral health agencies throughout the state.

"Fictive kin" means an adult of at least 21 years of age, who is not a relative of the child, as defined herein, but who has an established, substantial relationship with the child, including but not limited to, teachers, coaches, ministers, and parents, or family members of the child's friends.

"Foster family home" means a private residence which is used for the care on a residential basis of no more than six children who are unrelated, by blood, marriage, or adoption, to any adult member of the household.

"Foster parent" means a person with whom the department has placed a child and who has been certified by the department, a child placing agency, or another agent of the department to provide foster care.

"Health care and treatment" means:

(A) Developmental screening;

(B) Mental health screening;

(C) Mental health treatment;

(D) Ordinary and necessary medical and dental examination and treatment;

(E) Preventive care including ordinary immunizations, tuberculin testing, and well-child care; and

(F) Nonemergency diagnosis and treatment. However, nonemergency diagnosis and treatment does not include an abortion.

"Home-based family preservation services" means services dispensed by the Department of Health and Human Resources or by another person, association, or group who has contracted with that division to dispense services when those services are intended to stabilize and maintain the

natural or surrogate family in order to prevent the placement of children in substitute care. There are two types of home-based family preservation services and they are as follows:

(A) Intensive, short-term intervention of four to six weeks; and

(B) Home-based, longer-term after care following intensive intervention.

"Informal family child care" means a home that is used to provide nonresidential child care services for compensation for three or fewer children, including children who are living in the household who are under six years of age. Care is given in the provider's own home to at least one child who is not related to the caregiver.

"Kinship parent" means a person with whom the department has placed a child to provide a kinship placement.

"Kinship placement" means the placement of the child with a relative of the child, as defined herein, or a placement of a child with a fictive kin, as defined herein.

"Needs Assessment" means an evidence-informed assessment which identifies the needs a child or family has, which, if left unaddressed, will likely increase the chance of reoccurring.

"Nonsecure facility" means any public or private residential facility not characterized by construction fixtures designed to physically restrict the movements and activities of individuals held in lawful custody in that facility and which provides its residents access to the surrounding community with supervision.

"Nonviolent misdemeanor offense" means a misdemeanor offense that does not include any of the following:

(A) An act resulting in bodily injury or death;

(B) The use of firearm or other deadly weapon in the commission of the offense;

(C) A domestic abuse offense involving a significant or likely risk of harm to a family member or household member;

(D) A criminal sexual conduct offense; or

(E) Any offense for driving under the influence of alcohol or drugs.

"Out-of-home placement" means a post-adjudication placement in a foster family home, kinship parent home, group home, nonsecure facility, emergency shelter, hospital, psychiatric residential treatment facility, staff secure facility, hardware secure facility, detention facility, or other residential placement other than placement in the home of a parent, custodian, or guardian.

"Out-of-school time" means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

"Placement" means any temporary or permanent placement of a child who is in the custody of the state in any foster home, kinship parent home, group home, or other facility or residence.

"Pre-adjudicatory community supervision" means supervision provided to a youth prior to adjudication, for a period of supervision up to one year for an alleged status or delinquency offense.

"Regional family support council" means the council established by the regional family support agency to carry out the responsibilities specified in §49-2-601 *et seq.* of this code.

227 "Relative family child care" means a home that provides
228 nonresidential child care services only to children related to
229 the caregiver. The caregiver is a grandparent,
230 great-grandparent, aunt, uncle, great-aunt, great-uncle, or
231 adult sibling of the child or children receiving care. Care is
232 given in the provider's home.

233 "Relative of the child" means an adult of at least 21
234 years of age who is related to the child, by blood or
235 marriage, within at least three degrees.

236 "Residential services" means child care which includes
237 the provision of nighttime shelter and the personal
238 discipline and supervision of a child by guardians,
239 custodians, or other persons or entities on a continuing or
240 temporary basis. It may include care or treatment, or both,
241 for transitioning adults. Residential services does not
242 include or apply to any juvenile detention facility or juvenile
243 correctional facility operated by the Division of Corrections
244 and Rehabilitation, created pursuant to this chapter, for the
245 secure housing or holding of juveniles committed to its
246 custody.

247 "Risk and needs assessment" means a validated,
248 standardized actuarial tool which identifies specific risk
249 factors that increase the likelihood of reoffending and the
250 factors that, when properly addressed, can reduce the
251 likelihood of reoffending.

252 "Scattered-site living arrangement" means a living
253 arrangement where youth, 17 to 26 years of age, live in a
254 setting that allows staff to be available as needed, depending
255 on the youth's level of autonomy. Sites for such living
256 arrangements shall be in community environments to allow
257 the youth full access to services and resources in order to
258 fully develop independent living skills.

259 "Secure facility" means any public or private residential
260 facility which includes construction fixtures designed to

physically restrict the movements and activities of juveniles or other individuals held in lawful custody in such facility.

"Staff secure facility" means any public or private residential facility characterized by staff restrictions of the movements and activities of individuals held in lawful custody in such facility, and which limits its residents' access to the surrounding community, but is not characterized by construction fixtures designed to physically restrict the movements and activities of residents.

"Standardized screener" means a brief, validated nondiagnostic inventory or questionnaire designed to identify juveniles in need of further assessment for medical, substance abuse, emotional, psychological, behavioral, or educational issues, or other conditions.

"State family support council" means the council established by the Department of Health and Human Resources pursuant to §49-2-601 *et seq.* of this code to carry out the responsibilities specified in §49-2-101 *et seq.* of this code.

"Supervised group setting" means a setting where youth, 16 to 21 years of age, live with staff onsite or are available 24 hours per day and seven days per week. In this setting, staff provide face to face daily contact with youth.

"Time-limited reunification services" means individual, group, and family counseling, inpatient, residential, or outpatient substance abuse treatment services, mental health services, assistance to address domestic violence, services designed to provide temporary child care, and therapeutic services for families, including crisis nurseries and transportation to or from those services, provided during 15 of the most recent 22 months a child or juvenile has been in foster or in a kinship placement, as determined by the earlier date of the first judicial finding that the child is subjected to abuse or neglect, or the date which is 60 days after the child or juvenile is removed from home.

"Technical violation" means an act that violates the terms or conditions of probation or a court order that does not constitute a new delinquent offense.

"Truancy diversion specialist" means a school-based probation officer or truancy social worker within a school or schools who, among other responsibilities, identifies truants and the causes of the truant behavior, and assists in developing a plan to reduce the truant behavior prior to court involvement.

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-102. Minimum staffing complement for child protective services.

[Repealed.]

§49-2-104. Education of the public.

[Repealed.]

§49-2-108. Visits and inspections; records.

The department or its authorized agent shall visit and inspect every certified foster home as often as is necessary to assure proper care is given to the children. Every certified foster home shall maintain a record of the children received. This record shall include information in a type, form, and manner as prescribed by the department in legislative rule.

§49-2-110. Development of standards of child care.

The department shall develop standards for the care of children. It shall cooperate with, advise, and assist all child welfare agencies, including state institutions, which care for children who have been neglected, have been adjudicated delinquent, or have special needs such as physical, mental, or intellectual disabilities, and shall supervise those agencies. The department, in cooperation with child welfare agencies, shall formulate and make available standards of

child care and services for children, to which all child welfare agencies must conform.

§49-2-111. Supervision of child welfare agencies by the department; records and reports.

(a) In order to improve standards of child care, the department shall cooperate with the governing boards of child welfare agencies, assist the personnel of those agencies through advice on progressive methods and procedures of child care and improvement of the service rendered, and assist in the development of community plans of child care. The department, or its duly authorized agent, may visit any child welfare agency to advise the agency on matters affecting the health of children.

(b) Each child welfare agency shall keep records of each child under its control and care as the department may prescribe, and shall report to the department, whenever requested, facts as may be required with reference to the children, upon forms furnished by the department. All records regarding children and all facts learned about children and their parents or relatives shall be regarded as confidential and shall be properly safeguarded by the agency and the department.

§49-2-111a. Performance based contracting for child placing agencies.

(a) For purposes of this section:

(1) "Child" means:

(A) A person of less than 18 years of age; or

(B) A person 18 to 21 years of age who is eligible to receive the extended foster care services.

(2) "Child-placing agency" means an agency licensed by the department to place a child in a foster care home.

8 (3) "Department" means the Department of Health and
9 Human Resources.

10 (4) "Evidence-based" means a program or practice that
11 is cost-effective and includes at least two randomized or
12 statistically controlled evaluations that have demonstrated
13 improved outcomes for its intended population.

14 (5) "Performance-based contracting" means structuring
15 all aspects of the procurement of services around the
16 purpose of the work to be performed and the desired results
17 with the contract requirements set forth in clear, specific,
18 and objective terms with measurable outcomes and linking
19 payment for services to contractor performance.

20 (6) "Promising practice" means a practice that presents,
21 based upon preliminary information, potential for becoming
22 a research-based or consensus-based practice.

23 (7) "Research-based" means a program or practice that
24 has some research demonstrating effectiveness, but that
25 does not yet meet the standard of evidence-based practices.

26 (b) No later than December 1, 2020, the department
27 shall enter into performance-based contracts with child
28 placing agencies.

29 (c) In conducting the procurement, the department shall
30 actively consult with other state agencies and other entities
31 with expertise in performance-based contracting with child
32 placing agencies.

33 (d) The procurement process shall be developed and
34 implemented in a manner that complies with applicable
35 provisions of this code.

36 (e) The procurement and resulting contracts shall
37 include, but are not limited to, the following:

38 (1) Adequate capacity to meet the anticipated service
39 needs in the contracted service area of the child placing
40 agency;

41 (2) The use of evidence-based, research-based, and
42 promising practices, where appropriate, including fidelity
43 and quality assurance provisions;

44 (3) Child placing agency data reporting, including data
45 on performance and service outcomes, including, but not
46 limited to:

47 (A) Safety outcomes;

48 (B) Permanency outcomes;

49 (C) Well-being outcomes;

50 (D) Incentives earned;

51 (E) Placement of older children;

52 (F) Placement of children with special needs; and

53 (G) Recruitment and retention of foster parents; and

54 (4) A hold harmless period to determine a baseline for
55 evaluation.

56 (f) As part of the procurement process under this
57 section, the department shall issue the request for proposals
58 no later than July 1, 2020. The department shall notify the
59 apparently successful bidders no later than September 1,
60 2020.

61 (g) Performance-based payment methodologies must be
62 used in child placing agency contracting. Performance
63 measures should relate to successful engagement by a child
64 or parent in services included in their case plan, and
65 resulting improvement in identified problem behaviors and
66 interactions. For the first year of implementation of
67 performance-based contracting, the department may

transfer financial risk for the provision of services to the child placing agency only to the limited extent necessary to implement a performance-based payment methodology, such as phased payment for services. However, the department may develop a shared savings methodology through which the child placing agency will receive a defined share of any savings that result from improved performance. If the department receives a Title IV-E waiver, the shared savings methodology must be consistent with the terms of the waiver. If a shared savings methodology is adopted, the child placing agency shall reinvest the savings in enhanced services to better meet the needs of the families and children they serve.

(h) The department shall actively monitor the child placing agency's compliance with the terms of contracts executed under this section.

(i) The use of performance-based contracts under this section shall be done in a manner that does not adversely affect the state's ability to continue to obtain federal funding for child welfare-related functions currently performed by the state and with consideration of options to further maximize federal funding opportunities and increase flexibility in the use of such funds, including use for preventive and in-home child welfare services.

(j) The department shall pay child placing agencies contracted to provide adoption services to foster families a minimum of $1,000 per child for each adoption finalized.

(k) The rate of payment to foster parents and child placing agencies shall be reviewed by the department, at a minimum of every two years, to determine whether the level of foster care payments facilitates or hinders the efficient placement of foster children with West Virginia families. The department shall remit payments to foster parents on the same week each month to facilitate foster parents' ability to budget and appropriately expend payments for the benefit of the children in their custody.

(l) The department shall report the performance of the child placing agency to the Legislative Oversight Commission on Health and Human Resources Accountability by December 31, annually.

§49-2-111c. Priorities for use of funds.

(a) Subject to appropriations by the Legislature, the department is authorized and directed to:

(1) Enhance and increase efforts to provide services to prevent the removal of children from their homes;

(2) Identify relatives and fictive kin of children in need of placement outside of the home;

(3) Train kinship parents to become certified foster parents;

(4) Expand a tiered foster care system that provides higher payments for foster parents providing care to, and child placing agencies providing services to, foster children who have severe emotional, behavioral, or intellectual problems or disabilities, with particular emphasis upon removing children in congregate care and placing them with suitable foster parents. This program shall be operational no later than December 1, 2020; and

(5) Develop a pilot program to increase payment to uncertified kinship parents for the purpose of further helping families who have accepted kinship placements.

(b) During fiscal year 2021, the department shall expend at least $16,900,000 for the purposes of implementing the priorities and objectives listed in this section.

(c) On or before July 1, 2022 and on or before July 1 of every year thereafter, the secretary of the department shall present a report to the Joint Standing Committee on Government and Finance regarding the expenditures made pursuant to subsection (b) of this section and the

department's progress in meeting the priorities and objectives listed in subsection (a) of this section: *Provided*, That the secretary shall provide the information described in this subsection and updates to previous reports at any time, upon request of the Joint Standing Committee on Government and Finance.

§49-2-112. Family homes; approval of incorporation by Secretary of State; approval of articles of incorporation.

Before issuing a charter for the incorporation of any organization having as its purpose the receipt of children for care or for placement in family homes, the Secretary of State shall provide a copy of the petition, together with any other information in his or her possession pertaining to the proposed corporation, to the secretary.

§49-2-118. Closing of facilities by the secretary; placement of children.

When the secretary finds that the operation of a residential care facility constitutes an immediate danger of serious harm to children served by the facility, the secretary shall issue an order of closure terminating operation of the facility. When necessary, the secretary shall place or direct the placement of the children in a residential facility which has been closed into appropriate facilities. A facility closed by the secretary may not operate pending administrative or judicial review without court order.

§49-2-121. Rule-making.

(a) The secretary shall promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code regarding the licensure, approval, certification, and registration of child care facilities and the implementation of this article.

(b) The secretary shall review the rules promulgated pursuant to this article at least once every five years, making revisions when necessary or convenient.

(c) The rules shall incorporate, by reference, the requirements of the Integrated Pest Management Program established by legislative rule by the Department of Agriculture under §19-16A-4 of this code.

§49-2-124. Certificate of need not required; conditions; review.

A certificate of need, as provided in §16-2D-1 *et seq.* of this code, is not required by an entity proposing behavioral health care facilities or behavioral health care services for children who are placed out of their home, or who are at imminent risk of being placed out of their home.

§49-2-126. The Foster Child Bill of Rights.

(a) Foster children and children in a kinship placement are active and participating members of the child welfare system and have the following rights:

(1) The right to live in a safe and healthy environment, and the least restrictive environment possible;

(2) The right to be free from physical, sexual, or psychological abuse or exploitation, including being free from unwarranted physical restraint and isolation.

(3) The right to receive adequate and healthy food, appropriate and seasonally necessary clothing, and an appropriate travel bag;

(4) The right to receive medical, dental, and vision care, mental health services, and substance use treatment services, as needed;

(5) The right to be placed in a kinship placement, when such placement meets the objectives set forth in this article;

(6) The right, when placed with a foster of kinship family, to be matched as closely as possible with a family meeting the child's needs, including, when possible, the ability to remain with siblings;

(7) The right, as appropriate to the child's age and development, to be informed on any medication or chemical substance to be administered to the child;

(8) The right to communicate privately, with caseworkers, guardians ad litem, attorneys, Court Appointed Special Advocates (CASA), the prosecuting attorney, and probation officers;

(9) The right to have and maintain contact with siblings as may be reasonably accommodated, unless prohibited by court order, the case plan, or other extenuating circumstances;

(10) The right to contact the department or the foster care ombudsman, regarding violations of rights, to speak to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;

(11) The right to maintain contact with all previous caregivers and other important adults in his or her life, if desired, unless prohibited by court order or determined by the parent, according to the reasonable and prudent parent standard, not to be in the best interests of the child;

(12) The right to participate in religious services and religious activities of his or her choice to the extent possible;

(13) The right to attend school, and, consistent with the finances and schedule of the foster or kinship family, to participate in extracurricular, cultural, and personal enrichment activities, as appropriate to the child's age and developmental level;

(14) The right to work and develop job skills in a way that is consistent with the child's age and developmental level;

(15) The right to attend Independent Living Program classes and activities if the child meets the age requirements;

(16) The right to attend court hearings and speak directly to the judge, in the court's discretion;

(17) The right not to be subjected to discrimination or harassment;

(18) The right to have access to information regarding available educational options;

(19) The right to receive a copy of, and receive an explanation of, the rights set forth in this section from the child's guardian ad litem, caseworker, and attorney;

(20) The right to receive care consistent with the reasonable and prudent foster parent standard; and

(21) The right to meet with the child's department case worker no less frequently than every 30 days.

(b) The rights provided in this section do not create an independent cause of action. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by this section may not include any personally identifying information of a person named in a report, or a person submitting a report to, the ombudsman.

§49-2-127. The Foster and Kinship Parent Bill of Rights.

(a) Foster parents and kinship parents play an integral, indispensable, and vital role in the state's effort to care for

children displaced from their homes, and such parents and persons have the following rights:

(1) The right to be treated professionally and ethically as the primary provider of foster or kinship care in accordance with the terms of the agreement between the foster or kinship parent and the child placing agency and the department;

(2) The right to maintain the parent's or parents' own family values and beliefs, so long as the values and beliefs of the child are not infringed upon;

(3) The right to receive training, as provided in the agreement with the child placing agency and the department at appropriate intervals;

(4) The right to have an emergency contact 24 hours per day, seven days per week, as set forth in the agreement between the foster or kinship parent and the child placing agency and the department;

(5) The right, prior to the placement of a child, to be notified by the department and the child placing agency of any known issues relative to the child that may jeopardize the health and safety of the foster or kinship family or the child, or alter the manner in which foster or kinship care should be administered;

(6) The right to receive from the department and the child placing agency, prior to placement of a child, all known information relating to the child's behavior, family background, health, history, or special needs and to receive updates relevant to the care of the child as information becomes available;

(7) The right to be provided with a written copy of the individual treatment and service plan concerning the child in the foster or kinship parent's home and to discuss such plan with the case manager, and to receive reasonable notice of any changes to that plan, including timely notice of the

need to remove a child from the foster or kinship home and the reasons for the removal;

(8) The right to timely and reasonable notice of the department's case planning and decision-making process regarding the child, as provided in §49-4-101 *et seq.* of this code, and the right to participate in such process, in the discretion of the court;

(9) The right to communicate with professionals who work with the child, including, but not limited to, therapists, physicians, and teachers, as permitted by the case plan or the court;

(10) The right to be notified, in advance, by the department or the court, of any hearing or review where the case plan or permanency of the child is an issue, including initial and periodic reviews held by the court and permanency plan hearings: *Provided*, That the right of a foster or kinship parent to attend any hearing is in the discretion of the court;

(11) The right to be provided information regarding the final outcome of an investigation of complaints concerning the operation of a foster or kinship home and to receive an explanation of a corrective action plan or policy violation relating to foster or kinship parents;

(12) The right to be provided with information on how to contact the foster care ombudsman, and to contact the foster care ombudsman's office, regarding alleged violations of rights, to speak to representatives of these offices confidentially, and to be free from threats, retaliation, or punishment for making complaints;

(13) The right to write a letter or submit a report to the court regarding a violation of the rights provided in this section or §49-2-126 of this code, or any concerns over the conduct or performance of the guardian ad litem, a representative of the department, or a representative of the

child placing agency, which the court may act upon as it deems in its discretion to be appropriate: *Provided*, That the court may require the clerk to send copies of a letter or report, submitted to the court pursuant to this subdivision, to the parties in the case prior to the court's review or consideration of such communications;

(14) The right to be considered, where appropriate and consistent with the best interests of the child, as a permanent parent or parents for a child who is available for adoption or legal guardianship;

(15) The right to move to intervene in the pending case, without fear of retaliation, once parental rights have been terminated; and

(16) The right to receive, from the department and the child placing agency, a written copy of the rights set forth in this section and a copy of the contract between the department and the child placing agency.

(b) The rights provided in this section do not create an independent cause of action. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the ombudsman.

§49-2-127a. Foster and kinship parent duties; foster parent and kinship parent agreements.

(a) The West Virginia Legislature finds that foster and kinship parents providing care for children who are in the

legal custody of the department have duties and contractual rights. The duties and contractual rights shall be set forth in an agreement between the department and the child placing agency and the foster or kinship parent. The duties of the foster or kinship parent shall include, but are not limited to:

(1) The duty not to violate the rights of the child, provided in §49-2-126 of this code;

(2) The duty to provide all children in the parent's or parents' care with appropriate food, clothing, shelter, supervision, medical attention, and educational opportunities using the reasonable and prudent foster parent standard as defined in §49-2-128 of this code;

(3) The duty to complete the training required by the department and the child placing agency and the foster or kinship parent;

(4) The duty to support reunification with the biological family unless it has been determined not to be appropriate by the court;

(5) The duty not to divulge any information concerning the child's case or the child's family to anyone except for the child's caseworker, the child's guardian ad litem, the child's attorney, the child's Court Appointed Special Advocate (CASA) worker, the prosecuting attorney, the probation officer, the multidisciplinary team, the foster care ombudsman, or the child's school or health care provider;

(6) The duty to provide information to the caseworker and the guardian ad litem regarding the child's progress, and to attend multi-disciplinary team meetings, case planning sessions, court hearings, and to advise the court of any issues or concerns, in the court's discretion; and

(7) The duty to teach all children placed in their home age appropriate life skills.

(b) The duties of the department and the child placing agency shall include, but are not limited to:

(1) The duty not to infringe upon the rights of the child, provided in §49-2-126;

(2) The duty not to infringe upon the rights of the kinship or foster parent, provided in in §49-2-127; and

(3) The duty to abide by the provisions of the agreement required by this section.

(c) The terms of the agreement shall include the rights of the foster or kinship parent provided in §49-2-127 of this code. The terms of the agreement shall also include, but not be limited to:

(1) Provisions addressing what child care will be provided while the foster or kinship parent attends required training;

(2) Provisions informing the foster or kinship parent of applicable laws and guidelines regarding the responsibilities of the foster or kinship parent and provisions requiring that the foster or kinship parent receive regular updates on changes to such laws and guidelines in a timely manner;

(3) Provisions regarding required and available training for the foster or kinship parent;

(4) Provisions addressing payment to the foster or kinship parent;

(5) Provisions naming and addressing the emergency 24-hour contact provided by the child placing agency and the department;

(6) Provisions addressing travel, including out-of-state and overnight travel;

(7) Provisions addressing child care for the child;

(8) Provisions addressing when a placement may be terminated by the foster or kinship parent, the child placing agency, or the department;

(9) Provisions addressing medical care for the child, including how to obtain medical consent for procedures; and

(10) Provisions addressing how complaints against the foster or kinship parent will be handled and adjudicated, including provisions for appeal and review of the adjudication.

(d) The agreement may contain such other terms and provisions, not inconsistent with this article, as may be negotiated by the parties and as may be in the best interests of the child.

(e) The requirements of this section apply to agreements, entered into on or after the effective date of this section. Agreements entered into pursuant to this section shall expire on July 1 of each year and shall be renewed by the parties as necessary.

(f) The duties and requirements provided in this section do not create an independent cause of action, including a cause of action for breach of contract. Violations of these rights may be reported to and investigated by the foster care ombudsman. On or before December 15, 2021 and on or before December 15 of every year thereafter, the foster care ombudsman shall submit a written summary of the number and nature of reports received, and investigations conducted in response to said reports, to the Joint Standing Committee on Government and Finance, the West Virginia Supreme Court of Appeals, and the Governor: *Provided*, That the summary required by this section may not include any personally identifying information of a person named in a report or a person submitting a report to the ombudsman.

§49-2-128. Reasonable and prudent foster parent standard.

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

"Age-appropriate" means activities or items that are generally accepted as suitable for children of the same chronological age or level of maturity. Age-appropriateness is based on the development of cognitive, emotional, physical, and behavioral capacity that is typical for an age or age group.

"Caregiver" means a foster parent, kinship parent, or a designated official in a residential treatment facility.

"Reasonable and prudent foster parent standard" means the standard characterized parental decisions that maintain the child's health, safety, and best interests, while at the same time encouraging the child's emotional and developmental growth, that a caregiver shall use when determining whether to allow a child to participate in extracurricular, enrichment, and social activities.

(b) Each child who comes into care under this chapter is entitled to participate in age-appropriate extracurricular, enrichment, and social activities.

(c) Caregivers shall use a reasonable and prudent foster parent standard in determining whether to give permission for a child in out-of-home care to participate in extracurricular, enrichment, and social activities. When using the reasonable and prudent foster parent standard, the caregiver shall consider:

(1) The child's age, maturity, and developmental level, to maintain the overall health and safety of the child;

(2) The potential risk factors and the appropriateness of the extracurricular, enrichment, and social activity;

(3) The best interest of the child based on information known to the caregiver;

(4) The importance of encouraging the child's emotional and developmental growth;

(5) The importance of providing the child with the most family-like living experience possible; and

(6) The behavioral history of the child and the child's ability to safely participate in the proposed activity, as with any other child.

(d) Child placing agencies and residential treatment facilities shall have policies consistent with this section and shall promote and protect the ability of children to participate in age-appropriate extracurricular, enrichment, and social activities.

(e) A foster or kinship parent may use persons to care for or babysit for the child or permit overnight stays outside of the home using the reasonable and prudent foster parent standard.

(f) There is a rebuttable presumption that a caregiver has acted as a reasonable and prudent foster parent.

(g) A caregiver is not liable for harm caused to a child in his or her care who participates in an activity approved by the caregiver, provided that the caregiver has acted as a reasonable and prudent foster parent, unless the foster parent commits an act or omission that is an intentional tort or conduct that is willful, wanton, grossly negligent, reckless, or criminal.

§49-2-129. Transitional living services, scattered-site living arrangements, and supervised group settings; eligibility criteria.

(a) The department shall establish minimum standards, by legislative rule, for transitional living services, such as

scattered-site living arrangements and supervised group settings, to which all child placing agencies or child welfare agencies who provide this service must conform.

(b) Agencies shall establish eligibility criteria for serving transitioning children and adults and shall require, at a minimum, the following:

(1) That a transitioning child or adult receiving a transitional living placement is between 16 and 26 years of age;

(2) Written permission from the child's parents or guardian for a child less than 18 years of age to enter a scattered-site living arrangement;

(3) A written service agreement with a transitioning adult entering a transitional living arrangement;

(4) A determination by an agency that a transitioning child or adult has shown that he or she is stable, mature, and responsible enough for entry into the determined level of transitional living arrangement;

(5) A life skills assessment by an agency of the transitioning child or adult, prior to placing him or her in a transitional living arrangement, and an annual reassessment; and

(6) A written transition plan, developed with the transitioning child or adult, that provides an educational, training, or employment program or a plan for the child or adult to pursue employment while in transitional living.

(c) The agency and transitioning child or adult shall determine if a roommate is appropriate for the child or adult prior to placement in a transitional living setting. The roommate must be able to support himself or herself and contribute at least a pro rata share of the living expenses for the setting.

(d) An agency shall document face-to-face contact and hours spent with a transitioning child or adult in a transitional living setting in the service plan that meet the child's or adult's needs and program level.

(e) After a child or adult is in a transitional living placement, an agency shall assess the child's or adult's progress in acquiring basic living skills at a minimum of once every six months.

(f) An agency shall develop and implement policies and procedures to ensure that any child or adult in a transitional living setting receives training and guidance on appropriate health screening and services, including medical and dental screening and services.

(g) An agency shall develop policies and procedures for assisting a transitioning child or adult in searching for an appropriate dwelling that will be used as a scattered-site living setting, that meets the following criteria:

(1) The dwelling is safe and affordable;

(2) The dwelling has a working telephone or other means of communication in an emergency;

(3) The dwelling has appropriate equipment for indoor cooking; and

(4) The dwelling has an appropriate water source for cooking, cleaning, and bathing.

(h) The department shall promulgate legislative rules, including emergency rules if necessary, to implement the provisions of this section.

ARTICLE 4. COURT ACTIONS.

§49-4-601a. Preference of child placement.

When a child is removed from his or her home, placement preference is to be given to relatives or fictive kin

of the child. If a child requires out-of-home care, placement of a child with a relative is the least restrictive alternative living arrangement. The department must diligently search for relatives of the child and fictive kin within the first days of a child's removal and must identify and provide notice of the child's need for a placement to relatives and fictive kin who are willing to act as a foster or kinship parent.

(1) After a petition alleging abuse and neglect of a child is filed, the department shall commence a search for every relative and fictive kin of the child.

(2) No later than seven calendar days after the petition for removal has been filed, the department shall file, with the court, a list of all of the relatives and fictive kin of the child known to the department at the time of the filing, whether or not those persons have expressed a willingness to take custody of the child.

(3) Within seven days after the department files the list described in subdivision (2) of this subsection, any party to the case may file, with the court, his or her own list containing names and addresses of relatives and fictive kin of the child.

(4) The department shall investigate and determine whether any of the persons identified in the lists filed pursuant to this section are willing and able to act as foster or kinship parents to the child. The department shall file its determinations with the court within 45 days from the filing of the petition alleging abuse or neglect of a child.

§49-4-601b. Substantiation by the department of abuse and neglect.

(a) Notwithstanding any provision of this code to the contrary, when the department substantiates an allegation of abuse or neglect against a person, but there is no judicial finding of abuse or neglect as a result of the allegation, the department shall provide written notice of the substantiation to the person by certified mail, return receipt requested.

(b) The individual against whom an abuse or neglect allegation has been substantiated, as described in subsection (a) of this section, has the right to contest the substantiation by filing a grievance with the board of review of the department and has the right to appeal the decision of the board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this code regarding administrative appeals.

(c) The secretary of the department shall promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and neglect, but against whom there is no judicial finding of abuse or neglect, receives written notice of the substantiation in a timely manner. The written notice must, at a minimum, state the following:

(A) The name of the child the person is alleged to have abused or neglected, the place or places where the abuse or neglect allegedly occurred, and the date or dates on which the abuse or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person's name will be included as a result of a substantiated allegation of abuse and neglect and a

statement that the inclusion of the person's name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and neglect has been substantiated, but against whom there is no judicial finding of abuse or neglect, may file a grievance with the department and provisions guaranteeing that any such person will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person's name from an abuse and neglect registry maintained by the department if a substantiation is successfully challenged in the board of review or in a court.

§49-4-604. Disposition of neglected or abused children; case plans; dispositions; factors to be considered; reunification; orders; alternative dispositions.

(a) Child and family case plans. — Following a determination pursuant to §49-4-602 of this code wherein the court finds a child to be abused or neglected, the department shall file with the court a copy of the child's case plan, including the permanency plan for the child. The term "case plan" means a written document that includes, where applicable, the requirements of the family case plan as provided in §49-4-408 of this code and that also includes, at a minimum, the following:

(1) A description of the type of home or institution in which the child is to be placed, including a discussion of the appropriateness of the placement and how the agency which is responsible for the child plans to assure that the child receives proper care and that services are provided to the parents, child, and foster or kinship parents in order to improve the conditions that made the child unsafe in the care of his or her parent(s), including any reasonable accommodations in accordance with the Americans with

Disabilities Act of 1990, 42 U. S. C. §12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(2) A plan to facilitate the return of the child to his or her own home or the concurrent permanent placement of the child; and address the needs of the child while in kinship or foster care, including a discussion of the appropriateness of the services that have been provided to the child.

The term "permanency plan" refers to that part of the case plan which is designed to achieve a permanent home for the child in the least restrictive setting available. The plan must document efforts to ensure that the child is returned home within approximate time lines for reunification as set out in the plan. Reasonable efforts to place a child for adoption or with a legal guardian should be made at the same time, or concurrent with, reasonable efforts to prevent removal or to make it possible for a child to return to the care of his or her parent(s) safely. If reunification is not the permanency plan for the child, the plan must state why reunification is not appropriate and detail the alternative, concurrent permanent placement plans for the child to include approximate time lines for when the placement is expected to become a permanent placement. This case plan shall serve as the family case plan for parents of abused or neglected children. Copies of the child's case plan shall be sent to the child's attorney and parent, guardian or custodian or their counsel at least five days prior to the dispositional hearing. The court shall forthwith proceed to disposition giving both the petitioner and respondents an opportunity to be heard.

(b) Requirements for a Guardian ad litem. —

A guardian ad litem appointed pursuant to §49-4-601(f)(1) of this code, shall, in the performance of his or her duties, adhere to the requirements of the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct and such other rules as the

West Virginia Supreme Court of Appeals may promulgate, and any appendices thereto, and must meet all educational requirements for the guardian ad litem. A guardian ad litem may not be paid for his or her services without meeting the certification and educational requirements of the court. The West Virginia Supreme Court of Appeals is requested to provide guidance to the judges of the circuit courts regarding supervision of said guardians ad litem. The West Virginia Supreme Court of Appeals is requested to review the Rules of Procedure for Child Abuse and Neglect Proceedings and the Rules of Professional Conduct specific to guardians ad litem.

(c) Disposition decisions. — The court shall give precedence to dispositions in the following sequence:

(1) Dismiss the petition;

(2) Refer the child, the abusing parent, the battered parent or other family members to a community agency for needed assistance and dismiss the petition;

(3) Return the child to his or her own home under supervision of the department;

(4) Order terms of supervision calculated to assist the child and any abusing parent or battered parent or parents or custodian which prescribe the manner of supervision and care of the child and which are within the ability of any parent or parents or custodian to perform;

(5) Upon a finding that the abusing parent or battered parent or parents are presently unwilling or unable to provide adequately for the child's needs, commit the child temporarily to the care, custody, and control of the department, a licensed private child welfare agency, or a suitable person who may be appointed guardian by the court. The court order shall state:

(A) That continuation in the home is contrary to the best interests of the child and why;

(B) Whether or not the department has made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent or eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home;

(C) Whether the department has made reasonable accommodations in accordance with the Americans with Disabilities Act of 1990, 42 U. S. C. § 12101 *et seq.*, to parents with disabilities in order to allow them meaningful access to reunification and family preservation services;

(D) What efforts were made or that the emergency situation made those efforts unreasonable or impossible; and

(E) The specific circumstances of the situation which made those efforts unreasonable if services were not offered by the department. The court order shall also determine under what circumstances the child's commitment to the department are to continue. Considerations pertinent to the determination include whether the child should:

(i) Be considered for legal guardianship;

(ii) Be considered for permanent placement with a fit and willing relative; or

(iii) Be placed in another planned permanent living arrangement, but only in cases where the child has attained 16 years of age and the department has documented to the circuit court a compelling reason for determining that it would not be in the best interests of the child to follow one of the options set forth in subparagraphs (i) or (ii) of this paragraph. The court may order services to meet the special needs of the child. Whenever the court transfers custody of a youth to the department, an appropriate order of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 of this code;

(6) Upon a finding that there is no reasonable likelihood that the conditions of neglect or abuse can be substantially corrected in the near future and, when necessary for the welfare of the child, terminate the parental, custodial and guardianship rights and responsibilities of the abusing parent and commit the child to the permanent sole custody of the nonabusing parent, if there be one, or, if not, to either the permanent guardianship of the department or a licensed child welfare agency. The court may award sole custody of the child to a nonabusing battered parent. If the court shall so find, then in fixing its dispositional order the court shall consider the following factors:

(A) The child's need for continuity of care and caretakers;

(B) The amount of time required for the child to be integrated into a stable and permanent home environment; and

(C) Other factors as the court considers necessary and proper. Notwithstanding any other provision of this article, the court shall give consideration to the wishes of a child 14 years of age or older or otherwise of an age of discretion as determined by the court regarding the permanent termination of parental rights. No adoption of a child shall take place until all proceedings for termination of parental rights under this article and appeals thereof are final. In determining whether or not parental rights should be terminated, the court shall consider the efforts made by the department to provide remedial and reunification services to the parent. The court order shall state:

(i) That continuation in the home is not in the best interest of the child and why;

(ii) Why reunification is not in the best interests of the child;

(iii) Whether or not the department made reasonable efforts, with the child's health and safety being the paramount concern, to preserve the family, or some portion thereof, and to prevent the placement or to eliminate the need for removing the child from the child's home and to make it possible for the child to safely return home, or that the emergency situation made those efforts unreasonable or impossible; and

(iv) Whether or not the department made reasonable efforts to preserve and reunify the family, or some portion thereof, including a description of what efforts were made or that those efforts were unreasonable due to specific circumstances.

(7) For purposes of the court's consideration of the disposition custody of a child pursuant to this subsection, the department is not required to make reasonable efforts to preserve the family if the court determines:

(A) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse, and sexual abuse;

(B) The parent has:

(i) Committed murder of the child's other parent, guardian or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(ii) Committed voluntary manslaughter of the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(iii) Attempted or conspired to commit murder or voluntary manslaughter, or been an accessory before or after the fact to either crime;

(iv) Committed a malicious assault that results in serious bodily injury to the child, the child's other parent, guardian, or custodian, to another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent;

(v) Attempted or conspired to commit malicious assault, as outlined in subparagraph (iv), or been an accessory before or after the fact to the same;

(vi) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian, or custodian, another child of the parent, or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(vii) Attempted or conspired to commit sexual assault or sexual abuse, as outlined in subparagraph (vi), or been an accessory before or after the fact to the same.

(C) The parental rights of the parent to another child have been terminated involuntarily;

(D) A parent has been required by state or federal law to register with a sex offender registry, and the court has determined in consideration of the nature and circumstances surrounding the prior charges against that parent, that the child's interests would not be promoted by a preservation of the family.

(d) As used in this section, "No reasonable likelihood that conditions of neglect or abuse can be substantially corrected" means that, based upon the evidence before the court, the abusing adult or adults have demonstrated an inadequate capacity to solve the problems of abuse or neglect on their own or with help. Those conditions exist in the following circumstances, which are not exclusive:

(1) The abusing parent or parents have habitually abused or are addicted to alcohol, controlled substances or drugs, to the extent that proper parenting skills have been seriously impaired and the person or persons have not responded to or followed through the recommended and appropriate treatment which could have improved the capacity for adequate parental functioning;

(2) The abusing parent or parents have willfully refused or are presently unwilling to cooperate in the development of a reasonable family case plan designed to lead to the child's return to their care, custody and control;

(3) The abusing parent or parents have not responded to or followed through with a reasonable family case plan or other rehabilitative efforts of social, medical, mental health, or other rehabilitative agencies designed to reduce or prevent the abuse or neglect of the child, as evidenced by the continuation or insubstantial diminution of conditions which threatened the health, welfare, or life of the child;

(4) The abusing parent or parents have abandoned the child;

(5) The abusing parent or parents have repeatedly or seriously injured the child physically or emotionally, or have sexually abused or sexually exploited the child, and the degree of family stress and the potential for further abuse and neglect are so great as to preclude the use of resources to mitigate or resolve family problems, or assist the abusing parent or parents in fulfilling their responsibilities to the child; and

(6) The battered parent's parenting skills have been seriously impaired and the person has willfully refused or is presently unwilling or unable to cooperate in the development of a reasonable treatment plan, or has not adequately responded to or followed through with the recommended and appropriate treatment plan.

(e) The court may, as an alternative disposition, allow the parents or custodians an improvement period not to exceed six months. During this period the court shall require the parent to rectify the conditions upon which the determination was based. The court may order the child to be placed with the parents, or any person found to be a fit and proper person, for the temporary care of the child during the period. At the end of the period, the court shall hold a hearing to determine whether the conditions have been adequately improved and at the conclusion of the hearing shall make a further dispositional order in accordance with this section.

(f) The court may not terminate the parental rights of a parent on the sole basis that the parent is participating in a medication-assisted treatment program, as regulated in §16-5Y-1 *et seq.*, for substance use disorder, as long as the parent is successfully fulfilling his or her treatment obligations in the medication-assisted treatment program.

CHAPTER 41

(Com. Sub. for H. B. 4094 - By Delegates Hill, Pack, Summers, Espinosa, Mandt, Rowan, Worrell, Fleischauer, Pushkin, C. Thompson and Walker)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §49-9-101, §49-9-102, §49-9-103, §49-9-104, §49-9-105, §49-9-106, §49-9-107, §49-9-108, §49-9-109, and §49-9-110, all relating to the Foster Care Ombudsman Program; continuing the Foster Care Ombudsman; providing authority to the ombudsman; permitting access to foster care children; providing access to

certain records; providing the ombudsman with subpoena authority; requiring government entities to cooperate with the ombudsman; requiring investigations to remain confidential; providing the ombudsman with a limitation of liability; setting forth criminal penalties; providing funding for the ombudsman.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

(a) There is continued within the Office of the Inspector General the position of the West Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care Ombudsman to affect the purposes of this article.

(b) In addition to the duties provided in §9-5-27 of this code, the duties of the Foster Care Ombudsman include, but are not limited to, the following:

(1) Establishing a statewide procedure to receive, investigate, and resolve complaints filed on behalf of a foster child, foster parent, or kinship parent, or, on the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to action, inaction, or decisions of the state agency, child-placing agency, or residential care facility which may adversely affect the foster child, foster parent, or kinship parent;

(2) Review periodically and make appropriate recommendations for the policies and procedures established by any state agency providing services to foster children, foster parents, kinship parents, including, but not limited to, the system of providing foster care and treatment;

(3) Pursuant to an investigation, provide assistance to a foster child, foster parent, or kinship parent who the Foster Care Ombudsman determines is in need of assistance,

including, but not limited to, collaborating with an agency, provider, or others on behalf of the best interests of the foster child;

(4) Recommend action when appropriate, including, but not limited to, undertaking legislative advocacy and making proposals for systemic reform and formal legal action, in order to secure and ensure the legal, civil, and special rights of foster children who reside in this state;

(5) Conduct programs of public education when necessary and appropriate;

(6) Have input into the creation of, and thereafter make recommendations consistent with, the foster children, foster parents, and kinship parents bill of rights;

(7) Take appropriate steps to advise the public of the services of the Foster Care Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

(8) Make inquiries and obtain assistance and information from other state governmental agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her duties.

§49-9-102. Investigation of complaints.

(a) Upon receipt of a complaint filed on behalf of a foster child, foster parent, or kinship parent, on his or her own initiative or by court order within the scope of the Foster Care Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-9-102(c), any act, practice, policy, or procedure of any state agency, child-placing agency, or residential care facility which affects the health, safety, welfare, or rights of a foster child, a foster parent, or a kinship parent.

(b) Investigative activities of the Foster Care Ombudsman include, but are not limited to: information gathering, mediation, negotiation, informing parties of the

13 status of the investigation, notification to any aggrieved
14 party of alternative processes, reporting of suspected
15 violations to a licensing or certifying agency, and the
16 reporting of suspected criminal violations to the appropriate
17 authorities.

18 (c) The Foster Care Ombudsman need not investigate
19 any complaint upon determining that:

20 (1) The complaint is trivial, frivolous, vexatious, or not
21 made in good faith;

22 (2) The complaint has been too long delayed to justify
23 present investigation;

24 (3) The resources available, considering the established
25 priorities, are insufficient for an adequate investigation;

26 (4) The matter complained of is not within the
27 investigatory authority of the Foster Care Ombudsman; or

28 (5) A real or apparent conflict of interest exists and no
29 other person within the office is available to investigate the
30 complaint in an impartial manner.

31 (d) The Office of the Inspector General and other
32 appropriate state governmental agencies may establish and
33 implement cooperative agreements for receiving,
34 processing, responding to, and resolving complaints
35 involving state governmental agencies under the provisions
36 of this section.

37 (e) Beginning with the third quarter of 2020, the Foster
38 Care Ombudsman shall submit a written report to the
39 Governor containing:

40 (1) The number of complaints;

41 (2) The types of complaints;

42 (3) The location of the complaints;

(4) How the complaints are resolved; and

(5) Any other information the Foster Care Ombudsman feels is appropriate.

(f) Beginning in December 2020, the Foster Care Ombudsman shall summarize the quarterly reports and present that information to the Legislative Oversight Commission on Health and Human Resources Accountability.

§49-9-103. Access to foster care children.

(a) The Foster Care Ombudsman shall, with proper identification, have access to a foster family home, a state agency, a child-placing agency, or a residential care facility for the purposes of investigations of a complaint. The Foster Care Ombudsman may enter a foster family home, a state agency, a child-placing agency, or a residential care facility at a time appropriate to the complaint. The visit may be announced in advance or be made unannounced as appropriate to the complaint under investigation. Upon entry, the Foster Care Ombudsman shall promptly and personally advise the person in charge of his or her presence. If entry is refused by the person in charge, the Foster Care Ombudsman may apply to the magistrate court of the county in which a foster family home, a state agency, a child-placing agency, or a residential care facility is located for a warrant authorizing entry, and the court shall issue an appropriate warrant if it finds good cause therefor.

(b) For activities other than those specifically related to the investigation of a complaint, the Foster Care Ombudsman, upon proper identification, shall have access to a foster family home, a state agency, a child-placing agency, or a residential care facility between the hours of 8:00 a.m. and 8:00 p.m. in order to:

(1) Provide information on the Foster Care Ombudsman Program to a foster child, foster parents, or kinship parents;

(2) Inform a foster child, a foster parent, or a kinship parent of his or her rights and entitlements, and his or her corresponding obligations, under applicable federal and state laws; and

(3) Direct the foster child, the foster parents, or the kinship parents to appropriate legal resources;

(c) Access to a foster family home, a state agency, a child-placing agency, or a residential care facility under this section shall be deemed to include the right to private communication with the foster child, the foster parents, or the kinship parents.

(d) A Foster Care Ombudsman who has access to a foster family home, a state agency, a child-placing agency, or a residential care facility under this section shall not enter the living area of a foster child, foster parent, or kinship parent without identifying himself or herself to the foster child, foster parent, or kinship parent. After identifying himself or herself, an ombudsman shall be permitted to enter the living area of a foster child, foster parent, or kinship parent unless that foster child, foster parent, or kinship parent communicates on that particular occasion the foster child, foster parents', or kinship parents' desire to prevent the ombudsman from entering. A foster child, foster parent, or kinship parent has the right to terminate, at any time, any visit by the Foster Care Ombudsman.

(e) Access to a foster family home, a state agency, a child-placing agency, or a residential care facility pursuant to this section includes the right to tour the facility unescorted.

§49-9-104. Access to records.

(a) The Foster Care Ombudsman is allowed access to any foster child's, foster parents' or kinship parents' records, including medical records reasonably necessary to any investigation, without fee.

(b) The Foster Care Ombudsman is allowed access to all records of any foster family home, state agency, child-placing agency, or residential care facility that is reasonably necessary for the investigation of a complaint, including, but not limited to, incident reports; dietary records; policies and procedures that a foster family home, a state agency, a child-placing agency, or a residential care facility are required to maintain under federal or state law; admission agreements; staffing schedules; or any document depicting the actual staffing pattern.

§49-9-105. Subpoena powers.

(a) The Foster Care Ombudsman may, in the course of any investigation:

(1) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha County for the issuance of a subpoena to compel at a specific time and place, by subpoena, the appearance, before a person authorized to administer oaths, the sworn testimony of any person whom the Foster Care Ombudsman reasonably believes may be able to give information relating to a matter under investigation; or

(2) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha County for the issuance of a subpoena duces tecum to compel any person to produce at a specific time and place, before a person authorized to administer oaths, any documents, books, records, papers, objects, or other evidence which the Foster Care Ombudsman reasonably believes may relate to a matter under investigation.

(b) A subpoena or subpoena duces tecum applied for by the Foster Care Ombudsman may not be issued until a circuit court judge in term or vacation thereof has personally reviewed the application and accompanying affidavits and approved, by a signed order entered by the judge, the issuance of the subpoena or subpoena duces tecum.

Subpoenas or subpoenas duces tecum applied for pursuant to this section may be issued on an ex parte basis following review and approval of the application by the judge in term or vacation thereof.

(c) The Attorney General shall, upon request, provide legal counsel and services to the Foster Care Ombudsman in all administrative proceedings and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals.

§49-9-106. Cooperation among government departments or agencies.

(a) The Foster Care Ombudsman shall have access to the records of any state government agency reasonably necessary to any investigation. The Foster Care Ombudsman shall be notified of and be allowed to observe any survey conducted by a government agency affecting the health, safety, welfare, or rights of the foster child, the foster parents, or the kinship parents.

(b) The Foster Care Ombudsman shall develop procedures to refer any complaint to any appropriate state government department, agency, or office.

(c) When abuse, neglect, or exploitation of a foster child is suspected, the Foster Care Ombudsman shall make a referral to the Bureau for Children and Families, Office of Health Facility Licensure and Certification, or both.

(d) Any state government department, agency, or office that responds to a complaint referred to it by the Foster Care Ombudsman Program shall make available to the Foster Care Ombudsman copies of inspection reports and plans of correction, and notices of any citations and sanctions levied against the foster family home, the child-placing agency, or the residential care facility identified in the complaint.

§49-9-107. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint that contains the identity of the complainant or foster child, foster parent, or kinship parent shall remain confidential except:

(1) Where disclosure is authorized in writing by the complainant foster child, foster parent, kinship parent, or the guardian.

(2) Where disclosure is necessary to the Bureau for Children and Families in order for such office to determine the appropriateness of initiating an investigation regarding potential abuse, neglect, or emergency circumstances; or

(3) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both.

(b) Notwithstanding any other section within this article, all information, records, and reports received by or developed by the Foster Care Ombudsman Program which relate to a foster child, foster parent, or kinship parent, including written material identifying a foster child, foster parent, or kinship parent, are confidential pursuant to §49-5-101 *et seq.* of this code, and are not subject to the provisions of §29B-1-1 *et seq.* of this code, and may not be disclosed or released by the Foster Care Ombudsman Program, except under the circumstances enumerated in this section.

(c) Nothing in this section prohibits the preparation and submission by the Foster Care Ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any foster child, foster parent, kinship parent, or complainant.

(d) The Inspector General shall have access to the records and files of the Foster Care Ombudsman Program to verify its effectiveness and quality where the identity of any complainant or foster child, foster parent, or kinship parent is not disclosed.

§49-9-108. Limitations on liability.

(a) The Foster Care Ombudsman participating in an investigation carried out pursuant to this article who is performing his or her duties is immune from civil liability that otherwise might result by reason of his or her participation in the investigation, as long as such participation is not violative of any applicable law, rule, or regulation, and done within the scope of his or her employment and in good faith.

(b) If an act or omission by the Foster Care Ombudsman or an act in good faith pursuant to a specific foster child, foster parent, or kinship parent complaint causes a foster child's, foster parents', or kinship parents' rights to be violated, no foster family home, state agency, child-placing agency, or residential care facility, its owners, administrators, officers, director, agents, consultants, employees, or any member of management may be held civilly liable as a result of the act or omission.

§49-9-109. Willful interference; retaliation; penalties.

(a) An individual who willfully interferes with or impedes the Foster Care Ombudsman in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100.

(b) An individual who institutes or commits a discriminatory, disciplinary, retaliatory, or reprisal action against a foster child, foster parent, or kinship parent for having filed a complaint with or provided information in good faith to the Foster Care Ombudsman in carrying out the duties pursuant to this article is guilty of a misdemeanor

and, upon conviction thereof, shall be fined not more than $100.

(c) An individual violating the provisions of subsection (a) or (b) of this section is, for the second or any subsequent offense under either of these subsections, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $250. Each day of a continuing violation after conviction shall be considered a separate offense.

(d) Nothing in this section infringes upon the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

§49-9-110. Funding for Foster Care Ombudsman Program.

The Foster Care Ombudsman Program shall receive such funds appropriated by the Legislature for the operation of the program.

CHAPTER 42

(Com. Sub. for H. B. 4415 - By Delegates Rowan, Rohrbach, Boggs, Estep-Burton, Pyles, C. Martin, Toney, Mandt, Lovejoy, Sypolt and Hanna)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §15-3D-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-3D-9; to amend and reenact §49-6-103, §49-6-105, §49-6-106, §49-6-109, §49-6-110, §49-6-112, §49-6-113, and §49-6-114; and to amend said code by adding thereto a new section, designated §49-6-116, all relating to children; defining terms; creating missing and

endangered child advisory system; providing for rulemaking; expanding missing child information clearinghouse requirements; updating requirements for providing information; updating requirements for missing child report forms; requiring law-enforcement agency to investigate and issue advisory; providing for confidential information to be provided to Department of Health and Human Resources as legal custodian; updating clearinghouse advisory council; updating comprehensive strategic plan; establishing missing foster child locator unit program; establishing duties; providing for report; and making technical changes.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-3. Definitions.

1 For the purposes of this article:

2 (1) "CODIS" means the Federal Bureau of
3 Investigation's Combined DNA Index System, which
4 allows for the storage and exchange of DNA records
5 submitted by federal, state, and local forensic DNA
6 laboratories. The term "CODIS" includes the National DNA
7 Index System or NDIS, administered and operated by the
8 Federal Bureau of Investigation.

9 (2) "Complainant" means a person who contacts law
10 enforcement to report that a person is missing.

11 (3) "Electronic communication device" means a cellular
12 telephone, personal digital assistant, electronic device with
13 mobile data access, laptop computer, pager, broadband
14 personal communication device, two-way messaging
15 device, electronic game, or portable computing device.

16 (4) "Juvenile" means any person under 18 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 and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Health and Human Resources.

(8) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

(9) "Missing person" means any person who is reported missing to a law-enforcement agency.

(10) "NamUs" means the database of the National Missing and Unidentified Persons System.

(11) "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.

(12) "NCMEC" means the database of the National Center for Missing and Exploited Children.

(13) "Unidentified person" means any person, living or deceased, who has not been identified through investigation for over 30 days.

(14) "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.

(15) "WEAPON system" means the West Virginia Automated Police Network.

§15-3D-9. Missing and Endangered Child Advisory System; definitions; rule-making authority.

(a) There is hereby created an advisory system, referred to in this section as the "system", to aid in the identification and location of missing and endangered children.

(b) "Missing and Endangered Child Advisory" means a system used to alert the public of a missing and endangered child to aid in the child's rapid recovery.

(c) The State Police shall promulgate emergency rules establishing procedures for local law-enforcement agency's issuance of a missing and endangered child advisory.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-103. Information to clearinghouse; definitions.

(a) The Department of Health and Human Resources and every law-enforcement agency in West Virginia shall provide to the clearinghouse or another investigating law-enforcement agency any information that would assist in locating or identifying a missing child.

(b) For purposes of this article:

(1) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Health and Human Resources.

(2) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

§49-6-105. Missing child report forms; where filed.

(a) The clearinghouse shall distribute missing child and missing and endangered child report forms to law-enforcement agencies in the state and to the Department of Health and Human Resources.

(b) A missing child or missing and endangered child report may be made to a law-enforcement agency in person or by telephone, or other indirect method of communication, and the person taking the report may enter the information on the form for the reporter. A missing child or missing and

endangered child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the report form shall be maintained by the clearinghouse.

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

(a) A law-enforcement agency, upon receiving a missing child or missing and endangered child report, shall:

(1) Start an investigation to determine the present location of the child if it determines that the child is in danger; and

(2) Enter the name of the missing child or missing and endangered child into the clearinghouse and the National Crime Information Center missing person file if the child meets the center's criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics, and a description of the clothing worn when the missing child or missing and endangered child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the National Crime Information Center file as a supplement to the original entry.

(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the National Crime Information Center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not

required to make a direct entry of that information into the clearinghouse.

(d) A law-enforcement agency, upon receiving a missing and endangered child report, shall immediately:

(1) Start an investigation to determine the present location of the child if it determines that the child is missing and endangered; and

(2) Issue a Missing and Endangered Child Advisory pursuant to §15-3D-9 of this code.

§49-6-109. Interagency cooperation.

(a) State agencies and public and private schools shall cooperate with a law-enforcement agency that is investigating any missing child or missing and endangered child report and shall furnish any information, including confidential information, that will assist the law-enforcement agency in completing the investigation.

(b) Information provided by a state agency or a public or private school may not be released to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules of the West Virginia State Police.

§49-6-110. Confidentiality of records; rulemaking; requirements.

(a) The State Police shall promulgate rules according §29A-3-1 *et seq.* of this code to provide for the classification of information and records as confidential that:

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a missing child, a missing and endangered child, or an unidentified body, if the State Police, in consultation with the law-enforcement agency,

determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to missing children or missing and endangered children and unidentified bodies and the State Police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the State Police determines might interfere with an investigation or otherwise harm a child or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the missing child or missing and endangered child: *Provided*, That confidential information, which is not believed to jeopardize an investigation, must be shared with the custodian when the legal custodian is the Department of Health and Human Resources.

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

(a) Upon completion of the missing child or missing and endangered child report the law-enforcement agency shall immediately forward the contents of the report to the missing children information clearinghouse and the National Crime Information Center's missing person file. However, if an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(b) Within 15 days of completion of the report, if the child is less than 13 years of age the law-enforcement agency may, when appropriate, forward the contents of the report to the last:

(1) Child care center or child care home in which the child was enrolled; or

(2) School the child attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a missing child or missing and endangered child shall:

(1) Update the initial report filed by the agency that received notification of the missing child or missing and endangered child upon the discovery of new information concerning the investigation;

(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the National Crime Information Center's wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child's National Crime Information Center's missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the National Crime Information Center when the missing child is located.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of 11 members who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway, or exploitation of children or locating missing or missing and endangered children;

(2) The Secretary of the Department of Health and Human Resources or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

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

(5) The Director of the Division of Administrative Services or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council 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 in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway, or exploitation of children or locating missing children or missing and endangered children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall meet semiannually at the call of the chair. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to §6-9A-1 *et seq.* of this code.

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(f) The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

(g) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

(h) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and the Legislature on or before December 15 of each year.

§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children to locate missing children, advise the West Virginia State Police regarding operation of the clearinghouse and its other responsibilities under this article, and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, contracts, matching funds, and procurement arrangements from the state and federal government, private industry, and other agencies in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children, shall be developed and provided to the Governor, the Speaker of the House of Delegates, and the President of the Senate no later than July 1, 2020, and shall include, but not be limited to, the following:

(1) Findings and determinations regarding the extent of the problem in this state related to: (A) Abducted children; (B) missing children; (C) exploited children; and (D) missing and endangered children.

(2) Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, runaway, or exploitation of children, and to locate missing children, and assessing the strengths and weaknesses of those systems and the clearinghouse;

(3) The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited child is a person under the age of 18 years who has been: (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses under §61-8B-1 *et seq.* of this code; or (C) employed or exhibited in any injurious, immoral, or dangerous business or occupation in violation of §§61-8-5 through 61-8-8 of this code;

(4) Recommendations of legislative changes required to improve the effectiveness of the clearinghouse and other efforts to prevent abduction, runaway, or exploitation of children, and to locate missing children. Those recommendations shall consider the following:

(A) Interaction of the clearinghouse with child custody proceedings;

(B) Involvement of hospitals, child care centers, and other private agencies in efforts to prevent child abduction, runaway, or exploitation, and to locate missing children;

(C) Publication of a directory of and periodic reports regarding missing children;

(D) Required reporting by public and private agencies and penalties for failure to report and false reporting;

(E) Removal of names from the list of missing children;

(F) Creating of an advocate for missing and exploited children;

(G) State funding for the clearinghouse and efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children;

(H) Mandated involvement of state agencies, such as publication of information regarding missing children in

existing state publications and coordination with the state registrar of vital statistics under §16-5-12 of this code; and

(I) Expanded requirement for boards of education to notify the clearinghouse in addition to local law-enforcement agencies under §18-2-5c of this code or if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;

(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law, and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the state board of education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children; and

(11) Programs for voluntary fingerprinting.

§49-6-116. Establish a missing foster child locator unit program.

(a) The Secretary of the West Virginia Department of Health and Human Resources shall establish a Missing

Foster Child Locator Unit within the department with a minimum staffing of a northern-based caseworker, a southern-based caseworker, and an identified worker located in the Centralized Intake Unit.

(b) The duties of the Missing Foster Child Locator Unit shall include, but are not limited to, the following:

(1) Receiving reports of missing foster children;

(2) Assisting law enforcement in locating missing foster children who have been reported missing; and

(3) Interviewing missing foster children and completing trafficking screening once the child is located.

(c) For this section, "missing foster child" means missing child or missing and endangered child, as defined in §49-6-103 of this code, who is a foster child at the time he or she was reported missing.

(d) Beginning in July 1, 2021, and each year thereafter, the Secretary of the Department of Health and Human Resources shall provide a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

(e) The secretary shall implement and administer this program at least until December 31, 2022. The secretary may administer this program after such date.

CHAPTER 43

(Com. Sub. for H. B. 4470 - By Delegates D. Kelly, Shott, Criss, Graves, Steele, Howell, Miller, N. Brown, Maynard, J. Kelly and Mandt)

[By Request of the Department of Military Affairs and Public Safety]

[Passed February 17, 2020; in effect from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §49-4-722 of the Code of West Virginia, 1931, as amended, relating to persons 18 years of age or older in the custody of the Bureau of Juvenile Services; and authorizing the Commissioner of the Division of Corrections and Rehabilitation to designate a unit in one or more institutions to house adults remaining under the juvenile jurisdiction of the circuit court to ensure that such persons are not within sight or sound of adult inmates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-722. Conviction for offense while in custody.

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the Bureau of Juvenile Services and who is sentenced for the conviction to a regional jail or state correctional facility for the offense may not be returned to the custody of the Bureau upon the completion of his or her adult sentence.

(b) Whenever a person of 18 years of age or older is charged with an offense while in the custody of the Bureau of Juvenile Services, the Bureau shall provide notice of the

person's custodial status to the court in which the charge is pending and provide notice of the pending charge to the circuit court having juvenile jurisdiction over the person.

(c) At least 10 days prior to the sentencing on a criminal charge referred to in subsection (b) of this section, the sentencing court shall provide written notice of the sentencing hearing to the Commissioner of the Division of Corrections and Rehabilitation and to the circuit court having juvenile jurisdiction over the person. The person may not be released from custody until the sentencing court has received notice from the circuit court having juvenile jurisdiction over the person that it has held the hearing required by subsection (d) of this section.

(d) Prior to completion of the adult sentence referenced in subsection (c) of this section, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: *Provided*, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter.

(e) Notwithstanding the provisions of §15A-3-12(i) of this code, the Commissioner of the Division of Corrections and Rehabilitation is authorized to designate a unit in one or more institutions, either juvenile facilities, jails, or prisons, under his or her management to house adults remaining under the juvenile jurisdiction of the circuit court to ensure that such persons are not within sight or sound of adult inmates.

CHAPTER 44

(H. B. 4551 - By Delegates Hill and Pack)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating to subsidies; providing for adoption subsidies; providing for legal guardianship subsidies; updating availability; requiring payment for attorney's fees; updating requirements for insurance coverage; requiring certification; eliminating requirements with respect to child who is dependent of voluntary licensed child placing agency; prohibiting subsidy payment under certain circumstances; requiring adoptive parents and legal guardians receiving subsidy to inform department; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COURT ACTIONS.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

(a) From funds appropriated to the Department of Health and Human Resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department. A legal guardianship subsidy may not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances because one or more of the following

10 conditions inhibit their adoption or legal guardianship
11 placement:

12 (1) They have a physical or mental disability;

13 (2) They are emotionally disturbed;

14 (3) They are older children;

15 (4) They are a part of a sibling group; or

16 (5) They are a member of a racial or ethnic minority.

17 (b)(1) The department shall provide assistance in the
18 form of subsidies or services to parents who are found and
19 approved for adoption or legal guardianship of a child
20 certified as eligible for subsidy by the department, but
21 before the final decree of adoption or order of legal
22 guardianship is entered, there shall be a written agreement
23 between the family entering into the subsidized adoption or
24 legal guardianship and the department.

25 (2) Adoption or legal guardianship subsidies in
26 individual cases may commence with the adoption or legal
27 guardianship placement and will vary with the needs of the
28 child as well as the availability of other resources to meet
29 the child's needs. The subsidy may be for services, money
30 payments, for a limited period, or for a long term, or for any
31 combination of the foregoing.

32 (3) The specific financial terms of the subsidy shall be
33 included in the agreement between the department and the
34 adoptive parents or legal guardians. The agreement may
35 recognize and provide for direct payment by the department
36 of attorney's fees to an attorney representing the adoptive
37 parent or legal guardian. Any such payment for attorney's
38 fees shall be made directly to the attorney representing the
39 adoptive parent or legal guardian.

40 (4) The amount of the subsidy may in no case exceed
41 that which would be allowable for the child under foster

family care or, in the case of a service, the reasonable fee for the service rendered.

(5) The department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement, and who the department determines cannot be placed without medical assistance.

(c) The department shall certify the child as eligible for a subsidy to obtain adoption or a legal guardianship if it is in the best interest of the child.

(d) All records regarding subsidized adoptions or legal guardianships are to be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or person receiving funds for the child.

(e) A payment may not be made to adoptive parents or legal guardians of child:

(1) Who has attained 18 years of age, unless the department determines that the child has a special need which warrants the continuation of assistance or the child is continuing his or her education or actively engaging in employment;

(2) Who has obtained 21 years of age;

(3) Who has not attained 18 years of age, if the department determines that the adoptive parent or legal guardian is no longer supporting the child by performing actions to maintain a familial bond with the child.

(f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this section shall keep the department informed of circumstances which would, pursuant to §49-4-112(e) of this code, make them ineligible for the payment.

CHAPTER 45

(H. B. 4585 - By Delegates Hill and Pack)

[By Request of the West Virginia Department of Health and Human Resources]

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §49-2-810 of the Code of West Virginia, 1931, as amended, relating to immunity from criminal and civil liability and amending the provision of immunity to explicitly grant immunity from civil or criminal liability for individuals providing information or assistance to a good faith report of child abuse or neglect.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-810. Immunity from liability.

Any person, official, or institution participating in good faith in any act permitted or required by this article is immune from any civil or criminal liability that otherwise might result by reason of those actions, including individuals making good faith reports of suspected or known instances of child abuse or neglect, or who otherwise provide information or assistance, including medical evaluations or consultations, in connection with a report, investigation or legal intervention pursuant to a good faith report of child abuse or neglect.

CHAPTER 46

(Com. Sub. for S. B. 522 - By Senators Trump, Weld and Rucker)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §14-2A-3 and §14-2A-14 of the Code of West Virginia, 1931, as amended, all relating to compensation awards to victims of crimes; providing for an altered definition of an "allowable expense"; establishing conditions to satisfy reporting requirements for juvenile abuse and neglect cases; providing for expanded benefits for juvenile victims of abuse and neglect cases; and establishing agency authority to file an application on behalf of a minor child for expanded benefits for juvenile victims of abuse and neglect cases.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-3. Definitions.

As used in this article, the term:

(a) "Claimant" means any of the following persons, whether residents or nonresidents of this state, who claim an award of compensation under this article:

(1) A victim, except the term "victim" does not include a nonresident of this state where the criminally injurious act did not occur in this state;

(2) A dependent, spouse, or minor child of a deceased victim or, if the deceased victim is a minor, the parents, legal guardians, and siblings of the victim;

(3) A third person, other than a collateral source, who legally assumes or voluntarily pays the obligations of a victim or a victim's dependent when the obligations are incurred as a result of the criminally injurious conduct that is the subject of the claim;

(4) A person who is authorized to act on behalf of a victim, dependent, or a third person who is not a collateral source including, but not limited to, assignees, persons holding power of attorney or others who hold authority to make or submit claims in place of or on behalf of a victim, a dependent, or third person who is not a collateral source and if the victim, dependent, or third person who is not a collateral source is a minor or other legally incompetent person, their duly qualified fiduciary; and

(5) A person who is a secondary victim in need of mental health counseling due to the person's exposure to the crime committed whose award may not exceed $1,000.

(b) "Collateral source" means a source of benefits or advantages for economic loss otherwise compensable that the victim or claimant has received or that is readily available to him or her from any of the following sources:

(1) The offender, including restitution received from the offender pursuant to an order by a court sentencing the offender or placing him or her on probation following a conviction in a criminal case arising from the criminally injurious act for which a claim for compensation is made;

(2) The government of the United States or its agencies, a state or its political subdivisions, or an instrumentality of two or more states;

(3) Social Security, Medicare, and Medicaid;

(4) State-required, temporary, nonoccupational disability insurance or other disability insurance;

(5) Workers' compensation;

(6) Wage continuation programs of an employer;

(7) Proceeds of a contract of insurance payable to the victim or claimant for loss that was sustained because of the criminally injurious conduct;

(8) A contract providing prepaid hospital and other health care services or benefits for disability; and

(9) That portion of the proceeds of all contracts of insurance payable to the claimant on account of the death of the victim which exceeds $25,000.

(c) "Criminally injurious conduct" means conduct that occurs or is attempted in this state, or in any state not having a victim compensation program, which poses a substantial threat of personal injury or death and is punishable by fine or imprisonment. "Criminally injurious conduct" also includes criminally injurious conduct committed outside of the United States against a resident of this state. "Criminally injurious conduct" does not include conduct arising out of the ownership, maintenance, or use of a motor vehicle unless the person engaging in the conduct intended to cause personal injury or death or committed negligent homicide, driving under the influence of alcohol, controlled substances or drugs, leaving the scene of the accident, or reckless driving.

(d) "Dependent" means an individual who received over half of his or her support from the victim. For the purpose of making this determination there shall be taken into account the amount of support received from the victim as compared to the entire amount of support the individual received from all sources including self-support. The term support includes, but is not limited to, food, shelter, clothing, medical and dental care and education. The term

dependent includes a child of the victim born after his or her death.

(e) "Economic loss" means economic detriment consisting only of allowable expense, work loss, and replacement services loss. If criminally injurious conduct causes death, economic loss includes a dependents economic loss and a dependents replacement services loss. Noneconomic detriment is not economic loss; however, economic loss may be caused by pain and suffering or physical impairment. For purposes of this article, the term economic loss includes a lost scholarship as defined in this section.

(f) "Allowable expense" includes the following:

(1) Reasonable charges incurred or to be incurred for reasonably needed medical care, including products, services, and accommodations related to medical and psychological care, prosthetic devices, eye glasses, dentures, rehabilitation, and other remedial treatment and care but does not include that portion of a charge for a room in a hospital, clinic, convalescent home, nursing home, or other institution engaged in providing nursing care and related services which is in excess of a reasonable and customary charge for semiprivate accommodations unless accommodations other than semiprivate accommodations are medically required;

(2) A total charge not in excess of $10,000 for expenses in any way related to funerals, cremations and burials;

(3) Victim relocation costs not to exceed $2,500;

(4) Reasonable travel expenses not to exceed $1,000 for a claimant to attend court proceedings conducted for the prosecution of the offender;

(5) Reasonable travel expenses for a claimant to return a person who is a minor or incapacitated adult who has been unlawfully removed from this state to another state or

country if the removal constitutes a crime under the laws of this state which may not exceed $2,000 for expenses to another state or $3,000 to another country; and

(6) Reasonable travel expenses for the transportation of a victim to and from a medical facility.

(g) "Work loss" means loss of income from work that the injured person would have performed if he or she had not been injured and expenses reasonably incurred or to be incurred by him or her to obtain services in lieu of those he or she would have performed for income. "Work loss" is reduced by income from substitute work actually performed or to be performed by him or her or by income he or she would have earned in available appropriate substitute work that he or she was capable of performing but unreasonably failed to undertake. "Work loss" also includes loss of income from work by the parent or legal guardian of a minor victim who must miss work to take care of the minor victim.

(h) "Replacement services loss" means expenses reasonably incurred or to be incurred in obtaining ordinary and necessary services in lieu of those the injured person would have performed for the benefit of himself or herself or his or her family if he or she had not been injured. "Replacement services loss" does not include services an injured person would have performed to generate income.

(i) "Dependents' economic loss" means loss after a victim's death of contributions or things of economic value to his or her dependents but does not include services they would have received from the victim if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided by the dependent due to the victim's death.

(j) "Dependents' replacement service loss" means loss reasonably incurred or to be incurred by dependents after a victim's death in obtaining ordinary and necessary services in lieu of those the victim would have performed for their

benefit if he or she had not suffered the fatal injury. This amount is reduced by expenses avoided due to the victim's death but which are not already subtracted in calculating a dependent's economic loss.

(k) "Victim" means the following:

A person who suffers personal injury or death as a result of any one of the following:

(A) Criminally injurious conduct;

(B) The good faith effort of the person to prevent criminally injurious conduct; or

(C) The good faith effort of the person to apprehend a person that the injured person has observed engaging in criminally injurious conduct or who the injured person has reasonable cause to believe has engaged in criminally injurious conduct immediately prior to the attempted apprehension.

(l) "Contributory misconduct" means any conduct of the claimant or of the victim through whom the claimant claims an award that is unlawful or intentionally tortious and that, without regard to the conduct's proximity in time or space to the criminally injurious conduct, has a causal relationship to the criminally injurious conduct that is the basis of the claim and includes the voluntary intoxication of the claimant, either by the consumption of alcohol or the use of any controlled substance, when the intoxication has a causal connection or relationship to the injury sustained.

(m) "Lost scholarship" means a scholarship, academic award, stipend, student loan, or other monetary scholastic assistance which had been awarded, conferred upon, or obtained by a victim in conjunction with a post-secondary school educational program and which the victim is unable to receive or use, in whole or in part, due to injuries received from criminally injurious conduct.

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

(a) Except as provided in §14-2A-10(b) of this code, the commissioner may not approve an award of compensation to a claimant who did not file his or her application for an award of compensation within two years after the date of the occurrence of the criminally injurious conduct that caused the injury or death for which he or she is seeking an award of compensation.

(b) The commissioner may not approve an award of compensation if the criminally injurious conduct upon which the claim is based was not reported to a law-enforcement officer or agency or, in the case of sexual offense, the victim did not undergo a forensic medical examination, within 96 hours after the occurrence of the conduct, unless it is determined that good cause existed for the failure to report the conduct or undergo a forensic medical examination within the 96-hour period: *Provided*, That no reporting to a law-enforcement officer or agency or a forensic medical examination is required if the victim is a juvenile in order for a commissioner to approve an award of compensation: *Provided, however*, That the filing of a civil abuse and neglect petition in a circuit court satisfies the reporting requirement, thereby allowing the minor child who is the subject of the petition to file an application for benefits, with the claims process to proceed in accordance with this code. The agency filing the civil abuse and neglect petition shall file an application for benefits on behalf of the minor child.

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

(d) A commissioner, upon a finding that the claimant or victim has not fully cooperated with appropriate law-

enforcement agencies or the claim investigator, may deny a claim, reduce an award of compensation, or reconsider a claim already approved.

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

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

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

because of the death of the victim may not exceed $50,000 in the aggregate.

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

(h) If an award of compensation of $5,000 or more is made to a minor, a guardian shall be appointed pursuant to the provisions of §44-10-1 *et seq.* of this code to manage the minor's estate.

CHAPTER 47

(Com. Sub. for S. B. 529 - By Senator Trump)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §14-2-13a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §14-2A-14a, all relating to establishing limitations on claims and benefits; establishing a two-year time limit for a claimant to file a claim for unjust arrest, conviction, or imprisonment; and establishing a 10-year limitation on eligibility to receive benefits under certain conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CLAIMS AGAINST THE STATE.

§14-2-13a. Claims for unjust arrest and imprisonment or conviction and imprisonment.

(a) *Legislative intent.* — The Legislature finds and declares that innocent persons who have been wrongly convicted of crimes and subsequently imprisoned and innocent persons wrongly arrested, charged with a crime, or imprisoned, who have subsequently been released when another person was arrested, prosecuted, and convicted of the same criminal offense have been frustrated in seeking legal redress due to a variety of substantive and technical obstacles in the law and that affected persons should have an available avenue of redress over and above the existing tort remedies. Therefore, the Legislature intends by enactment of the provisions of this section that those innocent persons who can demonstrate that they were wrongly arrested and imprisoned or unjustly convicted and imprisoned are able to seek damages against the state for loss of liberty.

(b*) Notice of claim.* — The claimants notice of claim shall state facts in sufficient detail to permit the court to find that a claimant is likely to succeed at a trial on the merits. If the court finds in its discretion after reviewing a claim that the claimant has failed to allege sufficient facts upon which relief can be granted, the court may dismiss the claim, either on its own motion or by a motion of the state. Any claimant filing a claim under this article shall file his or her claim within two years of the date of the final order vacating the claimant's conviction, a pardon was granted, or the dismissal of the accusatory instrument.

(c) *Burden of proof.* — A claimant shall demonstrate by clear and convincing evidence that they were unjustly arrested and imprisoned or unjustly convicted and imprisoned, and the court shall, in the interest of justice, give due consideration to difficulties of proof caused by the passage of time, the death or unavailability of witnesses, the destruction of evidence, or other factors not caused by such persons or those acting on their behalf. Specifically, the following shall be proven by clear and convincing evidence:

(1)(A) The claimant has been convicted of one or more felonies or misdemeanors against the state and subsequently sentenced to a term of confinement, and has served all or any part of the sentence; or

(B) The claimant has been arrested and confined, and charged by warrant, information, or any other accusatory instrument for one or more felonies or misdemeanors, and that the charges were dismissed against the claimant; and

(2)(A) The claimant has been pardoned upon the ground of innocence of the crime or crimes for which the claimant was sentenced and which are the grounds for the complaint; or

(B) The claimant's judgment of conviction was reversed or vacated, and the accusatory instrument dismissed or, if a new trial was ordered, either the claimant was found not guilty at the new trial or the claimant was not retried and the accusatory instrument dismissed.

(d) *Type of relief granted and the claimant's burden to prove damages.* — If the court finds that the claimant is entitled to a judgment, the court shall award damages in a sum of money as the court determines will fairly and reasonably compensate the claimant based upon the sufficiency of the claimant's proof at trial. The damages shall depend upon the unique facts and circumstances of each claim. The claimant shall bear the ultimate burden of proving all damages associated with the claimant's claim.

ARTICLE 2A. COMPENSATION AWARDS TO VICTIMS OF CRIMES.

§14-2A-14a. Establishing a limitation on benefits.

All claims shall be considered closed and no longer eligible for benefits at the expiration of available benefits or 10 years after filing the claim, whichever occurs first: *Provided*, That this provision shall not apply to claimants or victims receiving benefits under §14-2A-14(g)(2) of this code.

CHAPTER 48

(Com. Sub. for S. B. 615 - By Senators Blair, Prezioso and Plymale)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT finding and declaring certain claims against the state and its agencies to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Commerce, Division of Natural Resources; Department of Environmental Protection; Department of Health and Human Resources; Department of Health and Human Resources, Office of Environmental Health Services; Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation; Department of Military Affairs and Public Safety, Regional Jail Authority; Department of Military Affairs and Public Safety, Eastern Regional Jail; Department of Military Affairs and Public Safety, South Central Regional Jail; Department of Military Affairs and Public Safety, West Virginia Adjutant General's Office; Department of Transportation, Division of Highways; and Department of Transportation, Division of Motor Vehicles, to be moral obligations of the state and directing payment thereof.

The Legislature has considered the findings of fact and recommendations reported to it by the Legislative Claims Commission concerning various claims against the state and

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

(a) Claim against the Department of Commerce, Division of Natural Resources:

(TO BE PAID FROM SPECIAL REVENUE FUND)

Travis L. Castle and Christine N. Castle.....$136.83

(b) Claim against the Department of Environmental Protection:

(TO BE PAID FROM FEDERAL FUNDS)

Qlarion, Inc.....$215,145.02

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

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Linda Adams-Doheny, Danny L. Boyce,
Ann Boyce, Janey I. Wigal,
and Amy B. Thomas.....$2,778.48

(2) WVARF, Inc. $76,222.82

(d) Claim against the Department of Health and Human Resources, Office of Environmental Health Services:

(TO BE PAID FROM GENERAL REVENUE FUND)

Pitney Bowes, Inc.....$2,419.92

(e) Claims against the Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Yasser Abdelhaq $22.28

(2) Wendell K. Ash.....$11.90

(3) Anthony Cartagena $18.53

(4) Anthony Cartagena $18.77

(5) Anthony Cartagena $1.50

(6) Anthony Cartagena $9.97

(7) Miguel Delgado $358.86

(8) Miguel Delgado $25.44

(9) Miguel Delgado $403.67

(10) Troy Goodman.....$38.79

(11) Larry Owens.....$108.17

(12) Charles F. Plymail.....$119.80

(13) William O. Robinson $520.00

(14) Wexford Health Sources, Inc. $433,333.00

(15) Wexford Health Sources, Inc. $433,334.00

(16) Wexford Health Sources, Inc. $433,333.00

(f) Claims against the Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation, Regional Jail Authority:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Jack Guy.....$300.00

(2) David McCarty.....$101.00

(3) Julian Richardson.....$190.00

(4) Joseph James Salmons $60.00

(5) Christopher Shy.....$269.90

(g) Claims against the Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation, Eastern Regional Jail:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Matthew Barton..... $300.00

(2) Samantha D. Boyer $90.94

(3) Michael R. Hughes.....$242.00

(4) Robert Lanham..... $350.00

(h) Claims against the Department of Military Affairs and Public Safety, Division of Corrections and Rehabilitation, South Central Regional Jail:

(TO BE PAID FROM SPECIAL REVENUE FUND)

(1) Clark F. Cooper..... $832.53

(2) Tyrece Phillips $230.00

(3) ZMM, Inc. $3,338.22

(i) Claims against the Department of Military Affairs and Public Safety, West Virginia Adjutant General's Office:

(TO BE PAID FROM FEDERAL FUNDS)

Frontier WV, Inc. $65,200.00

(j) Claims against Department of Transportation, Division of Highways:

(TO BE PAID FROM STATE ROAD FUND)

(1) Rommel Abella..... $7,332.00

(2) Sajith P. Abeyawickrama.....$348.98

(3) Cindy Ackerman.....$138.00

(4) David A. Adkins.....$280.34

(5) Gary C. Adkins.....$103.03

(6) Jacob Adkins.....$202.93

(7) Nyoka Adkins.....$148.73

(8) Richard Adkins.....$312.70

(9) Spencer Agnew and Danielle Agnew $319.81

(10) Gloria J. Ainsworth $302.64

(11) Gloria Jean Ainsworth $348.79

(12) Neoda Albright and Robert Albright.....$604.32

(13) William Scott Aley, Arika Foudray and Kristie Dawn Aley.....$107.54

(14) Abdullah Allawnha $358.70

(15) Clara Ruth Allen..... $1,104.73

(16) Christopher Allender.....$500.00

(17) Tina Marie Alley and Roscoe Hale.....$228.38

(18) Marcia Allman and Christopher Allman $185.50

(19) Marcia Allman and Christopher Allman $259.65

104 (20) Charles T. Alsup, Jr. and Julie K. Jividen....$500.00

105 (21) Todd Alter, Sr. and Susan Julia Alter..... $4,978.16

106 (22) Lynette Anderson $100.00

107 (23) Tiffany Anderson $138.02

108 (24) Wendell L. Archer.....$361.55

109 (25) Benny Arlia.....$49.95

110 (26) Ronald D. Arnett and Donna Arnett $250.00

111 (27) Billy D. Arnolds $492.50

112 (28) Deloris Darlene Ash and Rodney S. Ash.....$372.36

113 (29) Sherri A. Ash $278.00

114 (30) Sherrie Ash $252.90

115 (31) Beverly A. Ashley and Richard L. Ashley ..$500.00

116 (32) Michele Atchison $349.69

117 (33) Michael Attfield and Hilary Attfield.....$101.75

118 (34) Alex Michael Austin $900.00

119 (35) Alan Ayala $78.50

120 (36) Eman Ayash and Osama Al-Omar.....$257.57

121 (37) Vincent Azzarello and Kimberly Azzarello ...$387.23

122 (38) Steven A. Baczuk, Jr. and Laura Adams $498.96

123 (39) Jackie Bailes and Amber Bailes $125.08

124 (40) Dennis Bailey.....$95.50

125 (41) Lisa A. Bailey.....$208.65

126 (42) Lisa A. Bailey.....$212.60

127 (43) Sue C. Baker.....$125.00

128 (44) Lisa Baker and Tyler Jarr.....$500.00

129 (45) Lisa Baker and Tyler Jarr.....$254.24

130 (46) Jerry Michael Baker, Jr.....$242.70

131 (47) Barry Bales.....$1,000.00

132 (48) Derek E. Ball.....$500.00

133 (49) Jarrett Banks.....$110.36

134 (50) Patty Jo Barlow.....$146.50

135 (51) Thomas Barlow.....$500.00

136 (52) Chad E. Barnett.....$171.30

137 (53) Johnathan W. Barnett.....$155.15

138 (54) Richard B. Bartlett.....$500.00

139 (55) Linda Bartrug and Jack Bartrug.....$485.18

140 (56) Gerald Bastian.....$495.22

141 (57) Cole Riley Bates.....$20,000.00

142 (58) Judith Bath.....$232.10

143 (59) Virginia Batson.....$500.00

144 (60) Robert Baylor.....$435.15

145 (61) Beverly J. Beall and Charles D. Beall.....$1,461.85

146 (62) Maninder Bedi.....$2,500.00

147 (63) Connie M. Been.....$262.36

148 (64) Sylvia Belcher and Cassius Belcher $129.95

149 (65) David P. Belesky and Vernonica L. Belesky.... $90.10

150 (66) Donna Belles-Hall $25.00

151 (67) William R. Bennett $153.42

152 (68) David D. Benson and Jamie L. Benson $221.41

153 (69) James Berger $500.00

154 (70) Charles Berry and Deborah Berry $149.80

155 (71) Sharon Best $500.00

156 (72) Jamie L. Betts $250.00

157 (73) Bonnie Bevins $500.00

158 (74) Stevie Don Biedenbach $1,019.24

159 (75) Mitchell Bievenour $147.36

160 (76) Lisa Bishop $408.35

161 (77) Pamela Blair $153.63

162 (78) Curtis A. Blaney, II $90.10

163 (79) Mark Blankenship $407.70

164 (80) Melissa Blankenship and Jeffrey Blankenship $160.00

165 (81) Rosalie M. Blaul $747.50

166 (82) Brenda K. Bleigh and James A. Bleigh $229.34

167 (83) Barbara Boardman $93.81

168 (84) Karen Bocsusis $145.49

169 (85) Lisa D. Boling $500.00

170 (86) Deidra Bolton $407.14

171 (87) Shirlene Bolyard and Raymond Bolyard $353.15

172 (88) Timothy A. Bolyard $127.99

173 (89) Ronald E. Bonecutter, Jr. $528.86

174 (90) Robin Bonner $316.24

175 (91) Brenda G. Booker $139.43

176 (92) Kelly Boothe and First Security $524.47

177 (93) Ralph T. Bowles $342.18

178 (94) Shirley Bowman $148.00

179 (95) Grady M. Bowyer and Sharon A. Bowyer $250.00

180 (96) Barbara Branard and Roy Branard $194.94

181 (97) Leah J. Braner $517.00

182 (98) Catherine Brenner, Nicole Brenner
183 and Bob Brenner $423.95

184 (99) Scott A. Brodbeck $194.84

185 (100) Jeanette A. Brooks $130.01

186 (101) Khadaijia Brooks and Shonda Brooks $88.71

187 (102) Jennette Brown $465.99

188 (103) Sarah J. Brown and Wesley Brown $250.00

189 (104) Arthetta Browning $461.35

190 (105) Quincy O. Bruton and Deborah J. Barker $526.64

191 (106) Sandra Taylor Budden and William Budden . $250.00

192 (107) Floyd O. Bungard and Alice M. Bungard $356.46

193 (108) Brandi Burgess and Travis Burgess $174.41

194 (109) Mark S. Burnette and Deborah S. Burnette $500.00

195 (110) James L. Burrows, Jr. and Patricia Burrows ... $309.85

196 (111) Jennifer Busey $248.44

197 (112) Jan Bussey and Henry Bussey $203.80

198 (113) Karen Butler and Ocie Burgess $250.00

199 (114) Ashley Byrd $208.61

200 (115) Laura Cain $171.72

201 (116) Laura Cain $177.55

202 (117) Amanda Caja and Madison Caja $212.30

203 (118) Arlie Campbell and Tammy Campbell $398.56

204 (119) Donald Lou Canterbury $2,000.00

205 (120) Jeff D. Carpenter $209.14

206 (121) Marilyn Carpenter $268.50

207 (122) Shelli Carpenter $500.00

208 (123) Robin Carper $282.07

209 (124) Walter Carroll $500.00

210 (125) Craig Carter $500.00

211 (126) Michelle L. Carter $113.95

212 (127) Jonathan Carter and Tiffany Carter $500.00

213 (128) Rex Alan Caruthers $500.00

214 (129) Larry A. Casdorph $120.00

215 (130) Aaron Caserta.....$500.00

216 (131) Amanda Cash.....$500.00

217 (132) Damon Casseday $500.00

218 (133) David Castanon.....$414.09

219 (134) Sue A. Castin.....$518.89

220 (135) Kimberly Caudill and Ralph Caudill.....$290.94

221 (136) Kyle Cedar $60.40

222 (137) Lauren Cencula $163.66

223 (138) Butch Chaney and Morgan Chaney $500.00

224 (139) Lisa Marie Chaplin $456.61

225 (140) Richard A. Chaty and Leigh Chaty $308.16

226 (141) Sydney Cheesebraugh $221.00

227 (142) Bonnie Cheeseman and James Cheeseman.... $250.00

228 (143) Bonnie Cheeseman and James Cheeseman.... $215.00

229 (144) Rob L. Chisler, Jr. $6,200.02

230 (145) Joseph Cicchirillo.....$250.00

231 (146) William M. Clapham.....$214.01

232 (147) Chris Claqg.....$152.03

233 (148) Trina D. Clark $250.00

234 (149) David Classing.....$332.73

235 (150) Jeffrey Clemons $12,950.00

236 (151) Deborah C. Clever and Richard A. Clever $281.43

237 (152) John S. Clonch $500.00

238 (153) Amy Cochran $500.00

239 (154) Terry A. Coffman and Diana Coffman $508.27

240 (155) Anthony C. Cogar $120.84

241 (156) Jeremiah H. Cogar and Wendy D. Cogar $1,110.95

242 (157) William G. Cole $250.43

243 (158) Tabatha Collins $500.00

244 (159) Jesse Colon $500.00

245 (160) Danielle Linn Conaway $170.81

246 (161) Wayne E. Conaway $84.90

247 (162) Denise Conley $118.05

248 (163) Zachary A. Cook and Elisabeth Cook $263.89

249 (164) Susan D. Cooper $891.45

250 (165) Charles R. Copeland, Sr.
251 and Penny Copeland $250.00

252 (166) Sandra K. Corbett $250.16

253 (167) Guy Cordonier $500.00

254 (168) Clayton D. Corwin $100.00

255 (169) Nancy C. Cox $154.08

256 (170) James Tim Coyne and Mary N. Coyne $476.95

257 (171) Gary D. Cremeans, Sr. and
258 Kathleen Cremeans $500.00

259 (172) Gary D. Cremeans, Angela Cremeans Moore,
260 Brady M. Moore and Ryan Williams $68.25

261 (173) John M. Criado.....$250.00

262 (174) Brenda Crisp.....$164.30

263 (175) Sandra Cronin and Wayne Cronin $100.00

264 (176) Hannah Crookshanks and Lisa Crookshanks . $250.00

265 (177) Jeanine M. Cruey and William T. Cruey, Jr. .. $500.00

266 (178) Terry Cullen $582.48

267 (179) Sherry Cumberledge.....$128.34

268 (180) Stephanie K. Cummings and
269 Keenan C. Cummings $204.55

270 (181) Lori B. Cunningham-Hutson and
271 Darren Hutson.....$263.34

272 (182) Brenda S. Curry and Keith Curry $152.71

273 (183) George Dalecke.....$399.99

274 (184) Drake Dalton and Donald Dalton.....$447.53

275 (185) Eric Dalton and Jodi Dalton.....$294.47

276 (186) James S. Dalton.....$880.70

277 (187) Leslie Daniel and Gregory Daniel $165.28

278 (188) Alberta Daniels $79.50

279 (189) Alberta Daniels $53.00

280 (190) Hannah Daniels and Stephen Daniels $110.00

281 (191) Larry V. Dankmer.....$81.09

282 (192) Larry V. Dankmer.....$87.45

283 (193) Justin Robert Darby $500.00

284 (194) John David $365.70

285 (195) Brian M. Davis $250.00

286 (196) Chelsea Davis and Harley Davis $315.16

287 (197) Christa Davis and Allen Davis $144.45

288 (198) Earl D. Davis $396.31

289 (199) Jennifer Davis and Randy Davis $151.39

290 (200) Julie Davis $315.97

291 (201) Julie L. Davis $239.95

292 (202) Karen L. Davis $500.00

293 (203) Paul E. Davis and Nesta M. Davis $500.00

294 (204) Randy E. Davis $1,161.53

295 (205) Robert E. Davis and Malene J. Davis $500.00

296 (206) Susan Davis and Larry Davis $148.40

297 (207) Dwight Davisson and Jacqueline Davisson $437.20

298 (208) Wesley Deadrick $69.17

299 (209) Arthur Dean, Carolyn Dean and Kinslee Dean .. $209.51

300 (210) James Dean and Vickie Dean $181.90

301 (211) Deron L. Deem and Melissa A. Deem $243.80

302 (212) Mary Ann DeGarmo $100.00

303 (213) Rodney C. Demott and Lora Lamarre-Demott .. $457.86

304 (214) Rossana Denicola $500.00

305 (215) Christle Dennison $2,000.00

306 (216) Jenny Destefano $1,000.00

307 (217) Lan Deyerle and David Deyerle $65.16

308 (218) James R. Dice and Haley A. Dice $145.00

309 (219) Timothy D. Dillon and Amy D. Dillon $485.32

310 (220) Todd G. Dillon $464.56

311 (221) Jason Dingeldein $250.00

312 (222) Chelsey Dixon $96.00

313 (223) Logan Dobrovich $127.98

314 (224) Doddridge County Humane Society, Inc. $423.97

315 (225) Gabe D'ortenzio $203.80

316 (226) Rita J. Douglas $500.00

317 (227) David A. Dove $265.00

318 (228) Donna Drown $97.37

319 (229) Donna Drown $69.55

320 (230) Donna Drown $105.93

321 (231) Charles W. Dudley and Roberta Dudley $500.00

322 (232) Dales S. Dues $500.00

323 (233) John Duffy and Linda Duffy $100.00

324 (234) James W. Duke and Melanie A. Duke $87.97

325 (235) Jeffery L. Dulaney $537.46

326 (236) Pamela Dumire $167.05

327 (237) Linda L. Duncan $250.00

328 (238) Linda L. Duncan $217.73

329 (239) Jeffrey N. Durst $106.75

330 (240) Rachel Eades-Gill $1,000.00

331 (241) Michael Eakin $474.86

332 (242) Kathy E. Eddy $646.00

333 (243) Garnet D. Edwards $200.00

334 (244) John M. Efaw $368.05

335 (245) James Ellenbecker $529.62

336 (246) Julie Ellenwood and James Wojcik $395.68

337 (247) Nancy Eller and Randy Eller $704.56

338 (248) Karissa Ellis $395.13

339 (249) Lila C. Elms $121.64

340 (250) Sondra Elson and Jeremy Elson $463.49

341 (251) Albina M. Engler $77.38

342 (252) Jared Enoch $231.76

343 (253) Ken Enoch $656.17

344 (254) Molly S. Erlandson $500.00

345 (255) Phillip Eshenaur and Amber Eshenaur $840.23

346 (256) Scott D. Ethridge $211.85

347 (257) Richard A. Evans $260.00

348 (258) Miranda Ezzi and Matthew Ezzi $259.00

349 (259) Richard A. Facemire $250.00

350 (260) Philip J. Faini.....$274.54

351 (261) Alyssa Fairbanks and Eric Fairbanks.....$162.44

352 (262) Nick Fantasia.....$827.00

353 (263) Jennifer Farley.....$500.00

354 (264) Ruby Farley.....$283.32

355 (265) Douglas Ray Farley and Dawn Renee Farley....$500.00

356 (266) Leslie Farley and Thomas Farley.....$793.62

357 (267) Andrea Farnham and Jeremy Farnham.....$448.97

358 (268) Lillian Faulkiner.....$477.03

359 (269) Amy J. Ferguson.....$500.00

360 (270) Betty Ferrell.....$2,099.84

361 (271) Carla Ferrell.....$400.00

362 (272) Joshua Fields.....$486.33

363 (273) Angie D. Fink.....$141.19

364 (274) Randa Finley and Tiffany Finley.....$500.00

365 (275) Ashley Fisher and Benjamin Fisher.....$284.08

366 (276) Jeffery S. Fisher and Brooke J. Fisher.....$250.00

367 (277) Jennifer R. Fisher.....$286.58

368 (278) Ryan Fitzwater and Ivy Fitzwater.....$1,000.00

369 (279) Eric L. Flevaris.....$1,000.00

370 (280) E. Jane Flohr.....$96.26

371 (281) June Y. Flohr.....$90.95

372 (282) Ashley D. Ford.....$500.00

373 (283) Karen B. Ford.....$321.00

374 (284) Dennis F. Foreman $1,142.65

375 (285) Kathie R. Forman.....$500.00

376 (286) James A. Fortner and Judy K. Fortner.....$336.02

377 (287) John Gaylord Forzetting, II and
378 Paula Kay Forzetting $407.23

379 (288) Jacob Lee Foster $148.73

380 (289) Darlene Fowler and Ewings Fowler.....$500.00

381 (290) Stacey L. Fox $281.69

382 (291) Trina J. Fox.....$500.00

383 (292) James F. Fraley and Tennis S. Fraley.....$140.00

384 (293) Tiffany Franco and Jody Franco.....$456.84

385 (294) Cathy Lynn Franks $500.00

386 (295) Michael Frazier $430.31

387 (296) William L. Freed.....$100.70

388 (297) James Freeman and Susan Freeman.....$500.00

389 (298) Michael A. Fridley.....$296.50

390 (299) Angela L. Fuhr.....$195.02

391 (300) Charlotte Furphy and George Furphy $5,673.75

392 (301) G. M. McCrossin, Inc. $41,000.00

393 (302) Melissa J. Gaines $164.54

394 (303) Vincent A. Gala, Jr. $181.85

395 (304) Cynthia A. Gamblin.....$779.95

396 (305) Joshua Gant and Autumn Gant.....$203.52

397 (306) Jason R. Garnes.....$250.00

398 (307) Kelsey Garritano and Antonio Garritano.....$132.10

399 (308) Samuel W. Garvin.....$500.00

400 (309) Dana Gates.....$500.00

401 (310) James D. Gellner.....$2,241.05

402 (311) Brian Gillispie.....$559.68

403 (312) Patricia Giompalo.....$500.00

404 (313) Gino Gismondi and Amy Gismondi.....$608.02

405 (314) Gino Gismondi and Amy Gismondi.....$581.80

406 (315) Gino Gismondi and Amy Gismondi.....$661.87

407 (316) Todd Gookin.....$140.17

408 (317) Carlos Goss.....$912.43

409 (318) Roy Grass.....$500.00

410 (319) Larry D. Gray.....$812.87

411 (320) Roseanne Gray and James M. Gray.....$377.95

412 (321) Brandon Green.....$370.90

413 (322) Diana M. Green.....$332.45

414 (323) Dana Greenwood.....$154.06

415 (324) Lucas Greza and Anne Greza.....$500.00

416 (325) Debbi Griffith.....$250.00

417 (326) Heather Grimes and Philip Grimes..... $198.02

418 (327) Michael J. Groom $318.00

419 (328) Trevor Gum and Amanda Gum $250.00

420 (329) Claudia Gunnoe and Bonnie Bennett..... $500.00

421 (330) Shashi B. Gupta and Sukhdev Gupta $355.96

422 (331) David C. Gwinn $386.24

423 (332) Heather Haddon $500.00

424 (333) Riley Hager $500.00

425 (334) Samuel Hagley..... $361.87

426 (335) Whitney A. Hajdukovich $250.00

427 (336) Cassandra L. Hall..... $134.29

428 (337) Gary L. Hall and Chelsea M. Hall $500.00

429 (338) Jesse T. Hall $404.48

430 (339) William Hall and Betty Hall $500.00

431 (340) Jennifer M. Hall-Massey $220.42

432 (341) Linwood F. Hamilton $651.96

433 (342) Bonnie S. Hamm $649.94

434 (343) Kyle Hammond and Rachel Hammond..... $279.55

435 (344) Kyle Hammond and Rachel Hammond..... $500.00

436 (345) Leonard H. Hancock, Jr..... $107.00

437 (346) Theresa Haney $239.80

438 (347) Leigh Ann Hannas..... $500.00

439 (348) Shannon P. Hapuarachy $593.60

440 (349) Kim Harbour and Kris Hall..... $241.70

441 (350) Billie Harding and Gatens-Harding
442 Funeral Home $500.00

443 (351) John C. Harless, Jr. $664.24

444 (352) Allen Harmon $404.82

445 (353) Anthony Harmon $765.00

446 (354) Eva Harmon $267.79

447 (355) Benny Harper and Patricia Harper..... $500.00

448 (356) Patricia Harris..... $285.68

449 (357) Robert Harris..... $437.56

450 (358) Stephon C. Harris..... $100.00

451 (359) Laura B. Harshbarger $360.00

452 (360) Barbara E. Hart $500.00

453 (361) Candace L. Hart $250.43

454 (362) Jack L. Hart, Sr..... $100.00

455 (363) Mark Hartling and Belinda Hartling..... $322.23

456 (364) Kristie N. Hartsell and Allen Hartsell..... $283.04

457 (365) Joanne Hartzell..... $163.45

458 (366) Sean R. Hatcher $148.73

459 (367) Joseph Haun $500.00

460 (368) Melissa Hawkins..... $99.49

461 (369) Tanya Headley $173.84

462 (370) Rick Heasley and Valerie Heasley $254.40

463 (371) Dixie M. Heavener $129.38

464 (372) Kassidi Heavner and Paula Miley $261.00

465 (373) Gary Hebden $245.52

466 (374) Cindy Heilman $250.00

467 (375) Gregory A. Heiskell $198.72

468 (376) Belinda Henderson and Nick Henderson $500.00

469 (377) Mary Rose Hendricks $291.70

470 (378) Katie Hensel and Eli Hensel $203.36

471 (379) Robert Hepher $250.00

472 (380) Zachary Hercules $249.54

473 (381) Thaddeus Herman $311.12

474 (382) Wesley Herrick and Kathy Herrick $500.00

475 (383) Kyle Hess $121.85

476 (384) Cheryl M. Hicks $130.38

477 (385) James Hicks and Marva Hicks $245.00

478 (386) Bettie J. Hilbert $727.02

479 (387) William Scott Hill and Kathy Hill $929.42

480 (388) Carole L. Hinton $303.90

481 (389) Beth Hixenbaugh and Allen Hixenbaugh $113.21

482 (390) Deborah Hockensmith $250.00

483 (391) Melanie J. Hodges and John P. Hodges $130.12

484 (392) Adrian L. Hoffman $250.00

485 (393) Anita Hoffman $601.00

486 (394) Hazel Carolene Hoffman $139.09

487 (395) Kathleen Holden and Calvin Holden $154.08

488 (396) Carletta Hollandsworth..... $500.00

489 (397) James E. Holley and Jean A. Holley $500.00

490 (398) Karen L. Hollinger..... $175.00

491 (399) Wesley A. Holstein..... $500.00

492 (400) Margaret Holt and Tara L. Self..... $62.54

493 (401) Pamela Honaker and Stephen Honaker $250.00

494 (402) John Honhart..... $175.68

495 (403) Kendra Hoover and Charles Hoover..... $231.08

496 (404) Peter Joshua Hopkins $267.60

497 (405) Merrel Hopper..... $500.00

498 (406) Brittany Hornbeck $250.00

499 (407) Michal A. Hornyak and Karen Hornyak..... $250.00

500 (408) Charles Hoskins $500.00

501 (409) Bill House..... $250.00

502 (410) Lynn Housner $500.00

503 (411) Kenneth L. Howard $318.00

504 (412) Vernon G. Hudnall $277.85

505 (413) Tamy L. Huffman and Donald G. Huffman... $500.00

506 (414) Linda Huffman and Robert Goodman $201.35

507 (415) Charles Hulett and Jennifer Hulett..... $185.52

508 (416) Beverly Hunter..... $4,331.00

509 (417) Richard Hurley..... $87.93

510 (418) Scott Hurley..... $751.70

511 (419) Tracee Husted $500.00

512 (420) Lonnie Daniel Izdepski and
513 Melanie B. Izdepski $536.92

514 (421) Mistie Jackson and Mike Jackson $508.63

515 (422) William S. Jackson $500.00

516 (423) Kathleen Jarrell and Timothy Pridemore $157.94

517 (424) Noah Jarvis..... $249.14

518 (425) Jasper Engines and Transmissions, Inc. $890.24

519 (426) Dorris Jeffers and Charles Jeffers $565.59

520 (427) Joshua D. Jividen $1,000.00

521 (428) Sue Jividen $327.40

522 (429) Brandon Carter Johnson..... $478.54

523 (430) Garrett Isom Johnson..... $82.34

524 (431) James E. Johnson and Ethel R. Johnson $500.00

525 (432) Kaleena Johnson and Vernon Johnson $1,000.00

526 (433) Kathy J. Johnson..... $182.09

527 (434) Matthew H. Johnson and Denice G. Johnson.... $483.90

(435) Ross E. Johnson and Mountain State Insurance Agency $500.00

(436) Stuart Johnson and Virginia Moles $250.00

(437) Robert Johnson, The Sygma Network, Inc. and Sysco Corporation $10,589.61

(438) Scot B. Jonas and Jessica R. Proctor $500.00

(439) Rebecca R. Jones $956.14

(440) Shelly Jones $210.21

(441) Tammy L. Jones $500.00

(442) Ashley Surprise Jones and Aaron Surprise $231.71

(443) Gerald Jones and Katherine Jones $14,000.00

(444) Amy Jones and Ricky Jones $500.00

(445) Edgell James Jones, Jr. $239.98

(446) Hunter Joyce and Toby Joyce $242.49

(447) Mark Justice and Angela Justice $500.00

(448) Esmeralda M. Kaestner $500.00

(449) Mary H. Kahle $272.85

(450) John Karolcik $143.63

(451) Donald R. Keeney $148.73

(452) Regina Kelbaugh, Jeffrey Kelbaugh and Kaitlyn N. Kelbaugh $212.00

(453) Melvin R. Kerr, Sr. and Mary R. Kerr $6,000.00

(454) Tara Kester $248.19

(455) Tammy Ketchem and Henry Ketchem $487.53

552 (456) Delson Kiedaisch $145.76

553 (457) Marcus E. Kilburn $221.95

554 (458) Gabriel D. King $273.48

555 (459) Randy C. Kisner $500.00

556 (460) Britt Klandorf and Hillar Klandorf $463.40

557 (461) Charles H. Kline $800.55

558 (462) Dennis Klingensmith $352.93

559 (463) Susan Knauss $286.31

560 (464) Susan Knauss $289.65

561 (465) Joyce Knecht $74.15

562 (466) Angela M. Knotts and Kevin M. Knotts $309.41

563 (467) Kerrie L. Knotts $172.78

564 (468) Shelli Kobasko $500.00

565 (469) Jason A. Kociban $181.00

566 (470) Cynthia Koslik and Joseph R. Koslik $274.45

567 (471) Michael Kovach $207.49

568 (472) Chanin Krivonyak $500.00

569 (473) Lisa Krueger $193.20

570 (474) George Kurcaba $74.15

571 (475) William E. Kurczak $354.58

572 (476) John D. Kyle $500.00

573 (477) Frank Lambert $229.18

574 (478) Jerry Lambert and Cheryl Lambert $707.04

575 (479) Terry Lamm and State Equipment, Inc. $890.68

576 (480) Valerie Lamp $104.86

577 (481) Huey M. Land $209.07

578 (482) Jonathan Lane $226.10

579 (483) Michael Lane and Kathy Lane $500.00

580 (484) Keya Langmyer $894.41

581 (485) Tami L. Lanham $158.36

582 (486) Pamela Lavender $268.01

583 (487) Charlotte Lawler $195.76

584 (488) Tuanya Layton, Danielle B. Layton
585 and Terry Layton $189.96

586 (489) Paul Lee and Linda Lee $478.06

587 (490) Tim Lefevre and Amy Lefevre $158.40

588 (491) Jessica P. Lemon and Christopher A. Lemon $187.17

589 (492) Bonny Lenz $199.00

590 (493) Jared Lepic $500.00

591 (494) Rachel Lester $282.54

592 (495) Hollie Lewis $254.78

593 (496) Matthew Lilly and Robin Lilly $500.00

594 (497) Ryan Lindy $105.35

595 (498) Christopher Lee Linger and
596 Shawn Nicole Linger $500.00

597 (499) Rosanna M. Linton and William J. Hyman $379.24

598 (500) Jerry Linville and Gloria A. Linville $706.32

599 (501) Aaron H. Litman $117.21

600 (502) Clifford H. Lively, Jr. and Susan J. Lively..... $500.00

601 (503) Stephanie Loew..... $500.00

602 (504) James H. Long $500.00

603 (505) Robby Long and Amber Long..... $313.21

604 (506) Paul E. Long and Shirley A. Long..... $3,217.35

605 (507) Nick Lopetrone and Debra Lopertrone $250.00

606 (508) Carol Losh $490.99

607 (509) Brian K. Lough and Debra D. Lough..... $377.44

608 (510) Darrell Lovejoy $500.00

609 (511) Shasta M. Lowe $135.68

610 (512) Ashley Lucey and Clint Lucey $477.00

611 (513) Holli Ludtman and Jason Ludtman $203.30

612 (514) Janessa Lusk..... $500.00

613 (515) Jacob Eric Lyall $1,000.00

614 (516) David MacDonald $290.30

615 (517) John A. Macleod..... $500.00

616 (518) Justin Joseph Maggard $235.02

617 (519) Rodney S. Maher $250.00

618 (520) Catherine A. Maidens..... $462.10

619 (521) Richard C. Maier.....$750.00

620 (522) John Jay Malatinsky $218.36

621 (523) Dolores Malson.....$391.63

622 (524) Chris Manack-Stover.....$91.95

623 (525) Deborah Marcum and Noah Marcum.....$95.40

624 (526) Christopher Marcum and Stephanie Marcum ...$886.62

625 (527) Ronald L. Mares $84.15

626 (528) Richelle A. Marini $399.64

627 (529) Claude Marra and Sherry Marra.....$500.00

628 (530) Lillian Diane Martin $500.00

629 (531) Jeffrey Paul Massey.....$249.58

630 (532) Chris Mattox $260.81

631 (533) Karrie M. Mattox.....$1,000.00

632 (534) Ron May.....$176.29

633 (535) Ronald J. May and Debra May.....$142.17

634 (536) Theodore T. Mayberry $624.63

635 (537) Symia Mayfield and Joseph Moore.....$500.00

636 (538) Mynx Mayhew.....$99.49

637 (539) Billy J. Mays $250.00

638 (540) Charles Howard McCagg, Jr. and
639 Connie Jackson McCagg.....$173.46

640 (541) Joetta McCallister $105.00

641 (542) Linda McCarthy.....$500.00

642 (543) Debra L. McClary and Lenny McClary..... $265.29

643 (544) Elsie McCloud $97.78

644 (545) Edwin K. McClure and Julie Ann McClure ... $500.00

645 (546) Lynette J. McCollum and Daniel McCollum ... $94.20

646 (547) Joseph C. McComas, II $500.00

647 (548) David McCormick..... $337.07

648 (549) Kerri Ann McCormick..... $381.55

649 (550) Steven R. McCoy and Dawn R. McCoy..... $2,900.00

650 (551) Stephen R. McDiffit and HP&E Corp. $500.00

651 (552) Michael O. McDonald..... $399.23

652 (553) Michael C. McGee $152.10

653 (554) Troy D. McGreevy and Denise R. McGreevy .. $272.66

654 (555) Timothy L. McHenry $265.00

655 (556) Samuel B. McKenney, Steven H. McKenney,
656 and Margaret A. McKenney $1,000.00

657 (557) Kenneth McMillion, Sherry McMillion
658 and Anthony Shrewsberry..... $1,000.00

659 (558) Andrea McNeil $303.98

660 (559) Daniel McQuade..... $446.85

661 (560) Victor G. McQuiston..... $736.81

662 (561) Jane E. Meadows $243.67

663 (562) Roger S. Meadows, Roger Meadows
664 and Karen Meadows..... $500.00

665 (563) Timothy D. Meadows $432.30

666 (564) Nyoka N. Merilic $616.34

667 (565) Deborah Micker $361.20

668 (566) Paul M. Mihelic $2,308.00

669 (567) Maleea Miker and Joseph Miker, III $130.70

670 (568) Kelly J. Miles and Tara J. Miles $99.47

671 (569) Rebecca A. Miles and Mark V. Miles $193.25

672 (570) Sarah Danielle Milgrim $173.31

673 (571) Fred Milhorn $293.59

674 (572) Amy Miller $244.27

675 (573) Derik J. Miller $167.17

676 (574) Martin L. Miller and Teresa Miller $250.00

677 (575) Sonya J. Miller and Shane A. Miller $1,106.06

678 (576) Tina M. Miller $250.00

679 (577) Travis J. Miller and Sherry L. Miller $105.47

680 (578) Travis John Miller and Sherry L. Miller $103.14

681 (579) Waylon Keith Miller $189.42

682 (580) Willie Miller $252.00

683 (581) Willie Miller $85.55

684 (582) Dana A. Miller and Lisa Miller $250.00

685 (583) Connie Minnix and Daniel Minnix $250.00

686 (584) Brandon Minor and Leah A. Minor $55.56

687 (585) David K. Minturn and Sandra L. Minturn $266.50

688 (586) David K. Minturn and Sandra L. Minturn $219.67

689 (587) Preston Miske..... $79.50

690 (588) William F. Mitchell $176.18

691 (589) Tony R. Moles, Jr. $609.50

692 (590) Richard A. Monahan $250.00

693 (591) Charlene Moody $178.93

694 (592) Melissa J. Moody and Prentiss Moody $357.90

695 (593) Arun Kuma Moolchandani $342.00

696 (594) Erin Mooney $171.18

697 (595) Antoinette J. Moore $500.00

698 (596) Dale C. Moore and Lisa S. Moore..... $503.39

699 (597) Lisa M. Moore and Norman Moore..... $500.00

700 (598) Michele Moore and Jarrodd Moore..... $500.00

701 (599) Pamela Mae Moore $151.50

702 (600) Tyler Moore $210.84

703 (601) Zachary A. Moore..... $818.82

704 (602) Ronald A. Moore, Jr. $1,000.00

705 (603) Amy B. Morehead and
706 Christopher E. Morehead $297.46

707 (604) Wayne K. Moreland $250.00

708 (605) Wanda K. Moren $500.00

709 (606) Elijah C. Moreno..... $264.93

710 (607) Aubrey A. Morgan and Jennifer L. Morgan... $215.14

711 (608) Mark A. Morgan, Jr. $2,000.00

712 (609) Connie Morris $53.00

713 (610) Connie Morris $142.05

714 (611) Rita F. Morris $1,730.34

715 (612) Mahalia D. Morris and Donna J. Oliver $148.40

716 (613) David Moser and Mary Jane Moser $143.59

717 (614) William J. Moser $232.08

718 (615) Steven A. Mossor $250.00

719 (616) William R. Mott $859.08

720 (617) Matthew Mousadis and Ashley Mousadis $309.41

721 (618) Karen Mudry and Ryan Mudry $255.60

722 (619) Brandon Mullins $136.74

723 (620) Neatta Mullins $132.44

724 (621) Connie L. Murray and James P. Murray $100.00

725 (622) James Murray $500.00

726 (623) Jason Murray $270.28

727 (624) Anna M. Music $250.00

728 (625) Michael A. Muto $323.92

729 (626) Nathan Myers $227.91

730 (627) Grethe A. Myles and Tom Witt $177.54

731 (628) Patrick A. Naples $500.00

732 (629) Jeff Nass $217.98

733 (630) Steven Neff.....$207.34

734 (631) Lloyd L. Neilson.....$250.00

735 (632) Eric Nelson.....$500.00

736 (633) Sheryl Nelson and Daniel Mahaney.....$522.85

737 (634) Howard E. Nelson, Sr.....$254.66

738 (635) Eric T. Newell and Martha Newell.....$250.00

739 (636) John Newell.....$350.00

740 (637) Michael C. Newhouse.....$157.50

741 (638) Pamela G. Newlon.....$250.00

742 (639) Alan Newman.....$451.23

743 (640) Kent E. Newman.....$176.11

744 (641) Valori Newman and Leroy Newman.....$266.25

745 (642) Michelle Nichols and Roger Nichols.....$229.60

746 (643) Dustin Nicholson.....$71.02

747 (644) Renee K. Nicholson and Matthew K. Bauman.$310.58

748 (645) Ray Paul Nicoloan.....$500.00

749 (646) Robert E. Nolan, Jr.....$190.80

750 (647) Dakota Norris.....$575.23

751 (648) Larry F. Nutter and Trena M. Nutter.....$595.51

752 (649) Barbara S. Oakes.....$500.00

753 (650) Jason Oates.....$500.00

754 (651) Nina O'Connor and Steven O'Connor.....$100.00

755 (652) John W. O'Dell $250.00

756 (653) Russell J. Offutt and Glafre L. Offutt $500.00

757 (654) Robert B. Opperman and Carol J. Opperman.... $500.00

758 (655) Jennifer Orlofske and Sean A. Orlofske..... $500.00

759 (656) James D. Orr, Richard J. Orr and
760 Sara A. Orr $85.07

761 (657) Shirley Osborne $444.70

762 (658) Jim Ostrander and Shelly Ostrander..... $44.99

763 (659) William Park and Bryanna Park $200.00

764 (660) Austin Parker and Tasha Parker..... $277.68

765 (661) Mitchell P. Parlett $115.50

766 (662) Nancy O. Parsons..... $85.48

767 (663) Clarence D. Patton $248.64

768 (664) David Pauley $500.00

769 (665) Randy Pavalok and Tracy Pavalok..... $250.00

770 (666) Ellen Payne and James R. Payne $402.76

771 (667) Jackie R. Payne $135.00

772 (668) Carol Ann Peacock $1,000.00

773 (669) Lauren Peddicord and Jason Peddicord $500.00

774 (670) Shawn R. Pennybacker..... $250.00

775 (671) Misty Perkins and Brittany Perkins $504.00

776 (672) Carmen Melissa Perry and Aubrey S. Perry... $233.44

777 (673) Dolphus J. Perry $83.74

778 (674) Herbert Perry $39.22

779 (675) Sherry L. Perry and Donald H. Perry $288.86

780 (676) Maureen M. Persons $133.69

781 (677) Anna Petitto and Karen Petitto $83.54

782 (678) Allison Petonic $250.00

783 (679) Jeremy Pevahouse $300.00

784 (680) Donald B. Phillips and Beverly A. Phillips $263.88

785 (681) Timmy Phonesavanh $500.00

786 (682) Ernest J. Pierce $341.00

787 (683) Lora Pierce $89.16

788 (684) Alan E. Piercy $500.00

789 (685) Cynthia Pinson and Matt Pinson
790 and Pinson Mobile Medicine $573.15

791 (686) Kent Pirlo $217.55

792 (687) Michael J. Pitek, III $471.49

793 (688) Yuenan S. Pitrolo and Joe E. Pitrolo $393.96

794 (689) Jon Pittman and Darla Pittman $338.34

795 (690) Jeanne M. Pizatella $103.78

796 (691) Christopher A. Pletcher $1,000.00

797 (692) Benjamin Plunkert $1,000.00

798 (693) Roger Plymale $85,000.00

799 (694) William Ponceroff $927.79

800 (695) Shawn Poore $3,000.00

801 (696) Michael Porter and Arlie Dalton..... $500.00

802 (697) Mark S. Posten $500.00

803 (698) Kathryn Powell and Jarod Hooten..... $498.20

804 (699) Janet C. Power..... $376.35

805 (700) Wayne H. Powers and Brenda Powers $232.54

806 (701) April M. Pratt $162.99

807 (702) Premier Bank, Inc. and Michael L. Allen $203.01

808 (703) Darlene Presley $250.00

809 (704) Brien C. Price $779.50

810 (705) Jeffrey Ivan Price $1,000.00

811 (706) John Prusa $943.63

812 (707) Lisa D. Raber and Bryan L. Raber $127.20

813 (708) Jeffery T. Racer and Joann Racer $500.00

814 (709) Johnny L. Radcliff $500.00

815 (710) Dale Richard Radcliffe $1,000.00

816 (711) Timothy Raines and
817 April Manypenny-Raines..... $500.00

818 (712) John C. Ramirez, Jr.
819 and Elizabeth A. Jones Ramirez $229.89

820 (713) Randall C. Rapp and Shelly Rapp Davis $250.00

821 (714) Jeanette Ratcliffe..... $210.94

822 (715) Randy Ratcliffe and Paul Ratcliffe $406.07

823 (716) Christina Raynes and Jared Raynes..... $90.95

824 (717) Lyndsay Redden $129.71

825 (718) Kevin D. Renick $1,000.00

826 (719) Joseph Reynolds, II and Rachel Higgins..... $500.00

827 (720) Debra L. Richards and Robert M. Richards.... $250.00

828 (721) Doris Richardson and Nathan Richardson..... $349.75

829 (722) Richard Richmond and JoAnn Richmond..... $250.00

830 (723) David E. Ridenour $364.41

831 (724) Russell F. Riggins $500.00

832 (725) Nicole D. Riley and James F. Riley..... $181.09

833 (726) Nicole D. Riley and James F. Riley..... $184.03

834 (727) Michael L. Rittenhouse $321.45

835 (728) Todd C. Roatsey $306.91

836 (729) Amy Robertson and Raymond Robertson..... $142.54

837 (730) Andrew Robinson and Nancy Robinson $100.00

838 (731) Glenda M. Robison..... $500.00

839 (732) Claude E. Rodriguez..... $154.94

840 (733) William Rogers and Cherry Rogers $35,000.00

841 (734) Nathaniel T. Romino $314.98

842 (735) Jason Rooper $241.63

843 (736) Beth Ross..... $224.97

844 (737) Kari Ross $1,000.00

845 (738) Lisa Dianne Roth $88.18

846 (739) Elmer R. Roth, Jr. $100.00

847 (740) Timothy R. Rounds and Melissa Rounds $500.00

848 (741) Ellen E. Rowan $153.70

849 (742) James E. Rowan..... $148.28

850 (743) James Gregory Rowsey..... $500.00

851 (744) Christie L. Rucker and Joshua M. Rucker $230.05

852 (745) Kimberly Runion $406.87

853 (746) Joshua Thomas Ruppert $250.00

854 (747) Broaddus Rutledge $500.00

855 (748) Gregory A. Sabak $796.52

856 (749) Craig Sabol and Tina Sabol $500.00

857 (750) James P. Salakovich $700.18

858 (751) Niccole Lynn Salvatore and Roberta Carter ... $250.00

859 (752) Dustin Scott Samms $321.59

860 (753) Joseph A. Samples..... $250.00

861 (754) Russell W. Sandy and Cheri S. Sandy $500.00

862 (755) Keith Roy Santagata $500.00

863 (756) Gina P. Satterfield..... $222.60

864 (757) Ernest G. Sauers and Iva L. Sauers..... $200.83

865 (758) Christie Saunders $500.00

866 (759) Samara D. Saunders..... $476.95

867 (760) Paula Saver..... $143.18

868 (761) Michael Sayre and Rhonda Sayre $89.04

869 (762) Lisa Sayre and Jordan Page $143.53

870 (763) Patricia A. Scadden..... $250.00

871 (764) Malena Scalise $500.00

872 (765) Karen Scarbro $210.79

873 (766) Sherri Schambach $278.85

874 (767) Roger L. Schnegg and Brenda L. Schnegg..... $250.00

875 (768) Josh Schramm..... $291.50

876 (769) David Schroeder $197.05

877 (770) Christopher Schubert $264.46

878 (771) Enid J. Schultz..... $306.80

879 (772) Lance E. Schultz $1,038.00

880 (773) Richard Scott..... $3,929.45

881 (774) Scott Properties and Heidi Metheny..... $500.00

882 (775) Richard D. Seaman and Mary R. Seaman $280.90

883 (776) Rita S. Searls and Paul Searls..... $163.62

884 (777) Amber Sears..... $1,000.00

885 (778) Rosemary Sergakis and Nap Farms, LLC $214.21

886 (779) Cindy Settle and
887 Mindy Settle, Her Daughter..... $40,000.00

888 (780) Michael F. Sewock $165.88

889 (781) Jennifer M. Shahan and Michael R. Shahan... $162.18

890 (782) Aaron C. Shall..... $187.66

891 (783) Patricia Shamblin and Terri Pauley $121.90

892 (784) Patricia Shamblin and Terri Pauley $292.07

893 (785) Patricia Shamblin and Terri Pauley $126.09

894 (786) Mike Shay $250.00

895 (787) David R. Sheets $250.00

896 (788) Deborah Shell and Luther D. Shell $500.00

897 (789) Johnna Shelton Hunter $142.04

898 (790) Catherine E. Shepherd $435.06

899 (791) David Shepherd $138.28

900 (792) James M. Sheppard $622.39

901 (793) Robert H. Sherman, Jr.
902 and Helen Jean Sherman $340.88

903 (794) Robert L. Shields $120.42

904 (795) Michelle Shirley $250.00

905 (796) Tami Shrout $500.00

906 (797) Sandra Shultz and Kathleen Ertz $500.00

907 (798) Catherine Simmons $500.00

908 (799) Brian Simpson and Kerry Simpson $500.00

909 (800) David P. Simpson and Sharon Simpson $334.96

910 (801) Rachel Sims and Samuel Sims $250.00

911 (802) Robert Sine $100.27

912 (803) Seth Sirbaugh and Denver Sirbaugh $525.00

913 (804) Donetta Sisler $171.72

914 (805) Sandra Sisler.....$500.00

915 (806) Jacob M. Skeens $286.00

916 (807) Okey M. Slate, Sr.....$63.60

917 (808) Michelle Slaughter.....$476.58

918 (809) Edward W. Sloan.....$323.14

919 (810) Allison J. Smith and Eric B. Smith.....$104.41

920 (811) Felicia L. Smith.....$250.00

921 (812) Franklin K. Smith $250.00

922 (813) Gary L. Smith.....$163.24

923 (814) Kenneth R. Smith.....$500.00

924 (815) Mary L. Smith.....$250.00

925 (816) Amy Smith and Allison Mullins.....$266.15

926 (817) Jeffrey L. Smith, Jr.....$278.20

927 (818) Christopher C. Smith, Kendra Smith
928 and Kaylan Smith $408.84

929 (819) James M. Smoot $500.00

930 (820) Patricia Smyth.....$92.99

931 (821) Bonnie S. Snodgrass and Coy Snodgrass $192.60

932 (822) Elaine Snodgrass.....$228.41

933 (823) Steve Snodgrass.....$1,379.60

934 (824) Velma Snyder and John J. Snyder.....$500.00

935 (825) Stephanie A. Sobolewski $640.32

936 (826) Mathew Sokos and Jamie Sokos.....$500.00

937 (827) Helen Sollars $500.00

938 (828) Ryan E. Sommerkorn $500.00

939 (829) David L. Sommers $261.22

940 (830) Danielle V. South $500.00

941 (831) Thomas Sloan Sowers $785.42

942 (832) Thomas Sloan Sowers $1,000.00

943 (833) Pamela Spangler $402.80

944 (834) Jennifer Michelle Sparks $467.44

945 (835) Greg Specht $5,000.00

946 (836) William Spencer and Dorothy Spencer $500.00

947 (837) Diana Spiker $500.00

948 (838) Willa Spradling $118.29

949 (839) Rita Sprouse $500.00

950 (840) St. Paul's Episcopal Church $170,000.00

951 (841) Bobby Stacy $155.68

952 (842) Robert Benjamin Stahler $189.62

953 (843) Amber Indigo Stanley $139.65

954 (844) Charlotte L. Stanley $283.54

955 (845) Chelsey E. Stanley $500.00

956 (846) Mark A. Starcher $265.87

957 (847) Frank L. Starks, Jr. $500.00

958 (848) Lori C. Stas $551.15

959 (849) Robert Statton.....$500.00

960 (850) Donna S. Statts and Joann Thompson.....$230.74

961 (851) Bryan Stealey.....$193.24

962 (852) Loretta J. Steele.....$275.60

963 (853) Derek Stemple and Lesley Stemple $250.00

964 (854) Ciara Stewart.....$144.69

965 (855) Lucille Stewart.....$312.35

966 (856) Chelsea M. Stillman $500.00

967 (857) Robert B. Stollings.....$26.73

968 (858) Robert B. Stollings.....$100.00

969 (859) Robert B. Stollings.....$100.00

970 (860) Erin M. Stone and Mike Stone $500.00

971 (861) Loraine H. Stout and Samuel E. Stout.....$250.00

972 (862) Bryan H. Stricklin and Ranny L. Stricklin.....$500.00

973 (863) Francis Stump and Richard Stump.....$500.00

974 (864) Eva Rene Stutler $250.00

975 (865) Sarah C. Sullivan $107.67

976 (866) Melissa Summers and Mark Summers.....$279.15

977 (867) Lindsey Swank Meili.....$240.56

978 (868) Christopher Swires.....$98.50

979 (869) Otmer W. Tanner and Luella Tanner.....$500.00

980 (870) Anthony David Tartell and Mark Demary $383.40

981 (871) Brittany Taylor $220.25

982 (872) George D. Taylor $291.17

983 (873) Larry D. Taylor and Lydotta Taylor $651.68

984 (874) Matthew C. Taylor $123.82

985 (875) Spencer Taylor and George Taylor $210.74

986 (876) Heather Teel $455.75

987 (877) Carol A. Tennant and Roy Neil Tennant $459.67

988 (878) Karen Tennant $486.19

989 (879) Michael D. Tennant and Renae Tennant $157.28

990 (880) Cheryl A. Terrano and Michael Terrano $250.00

991 (881) Jeffrey Testement and Faith Testement $160.39

992 (882) Thomas Teter and Patricia Teter $177.02

993 (883) James Thacker $88.49

994 (884) Curtis L. Thomas, Jocelyn F. Thomas
995 and Diana B. Thomas $500.00

996 (885) John A. Thomas $500.00

997 (886) Michelle Thomas $250.00

998 (887) Ralph W. Thomas $500.00

999 (888) Brian H. Thompson $343.97

1000 (889) Jill Robin Thompson $243.80

1001 (890) Mary K. Thompson $100.00

1002 (891) Terry L. Thompson and Linda Thompson $250.00

1003 (892) Paul D. Thompson, PP&J Structures,
1004 and General Contracting, LLC $500.00

1005 (893) Joette Thorn and Tara Johnson $500.00

1006 (894) Kristi Tingler $294.25

1007 (895) Sandra Toney $65.22

1008 (896) Corey Tornes $500.00

1009 (897) Ashley Torres and Adolfo Torres $500.00

1010 (898) Michael J. Travis and Barbara J. Travis $180.15

1011 (899) Patsy S. Trecost, II and Jennifer Trecost $517.23

1012 (900) Carl Trosper and Joy Trosper $404.87

1013 (901) Nancy E. Trudel $182.85

1014 (902) Alan Tucker and Myrtle Liva Tucker $500.00

1015 (903) Ira T. Turner $500.00

1016 (904) Jeffrey K. Twigg and Lisa R. Twigg $424.00

1017 (905) William Twyman and Patricia Twyman $316.47

1018 (906) Kenneth E. Tyree, Jr. and Leona E. Tyree $500.00

1019 (907) Chris Ullman and Chris Ullman
1020 Pre-Owned Autos, LLC $1,280.00

1021 (908) Rodney O. Underwood
1022 and Dustin N. Underwood $459.36

1023 (909) Carolyn Urbanek $385.74

1024 (910) Debbie Vac and Dennis Vac $500.00

1025 (911) Shelly Vaczy $250.00

1026 (912) John T. Vannatter and Melody Vannatter $587.92

1027 (913) Cheryl Frank Vega $250.00

1028 (914) Francis Veon $216.01

1029 (915) Robert Vickers and Bernice Vickers $415.55

1030 (916) Annette M. Viola $500.00

1031 (917) Peter J. Vrotsos and Gretchen J.G. Vrotsos $500.00

1032 (918) Ivan Vujic $2,776.54

1033 (919) Mark L. Wallace $390.11

1034 (920) Christopher D. Waller $470.00

1035 (921) Jerry L. Walls $317.78

1036 (922) Jerry Lee Walters, Jr. and Carmella Walters... $250.00

1037 (923) Ryan L. Walton and Melinda J. Walton..... $106.00

1038 (924) Nichole Ward and William Ward..... $91.50

1039 (925) Woodrow Ward $500.00

1040 (926) Diann Ware $500.00

1041 (927) Stacy R. Warren $500.00

1042 (928) Warwood Armature Repair Co.
1043 and R.V. Thalman, III..... $341.20

1044 (929) Sheila Washington and David Washington $176.96

1045 (930) Marcia Watson $41.18

1046 (931) Robert A. Watterson $83.46

1047 (932) Robert Watts..... $213.91

1048 (933) Jeffrey Waugh and Dell Beth Waugh $567.07

1049 (934) Chuck Waybright..... $482.30

1050 (935) Thomas D. Waybright
1051 and Christie L. Waybright $1,000.00

1052 (936) Evelyn L. Webb $100.00

1053 (937) Tonya M. Webber-Miller
1054 and Molly M. Miller $340.90

1055 (938) Barton R. Weese and Julia A. Weese $269.24

1056 (939) Amy Wehrle $250.00

1057 (940) Richard Weinberger and Lori Weinberger $332.07

1058 (941) Kimberley L. Welch $207.98

1059 (942) Ronald Welch and Brenda Welch $116.49

1060 (943) Brenda L. Wells $97.86

1061 (944) Heather Hagens Welsh $229.51

1062 (945) Amy Lynn West $197.95

1063 (946) Doreen Wheatley $93.28

1064 (947) Bobby W. Whetzel and Mary E. Whetzel $500.00

1065 (948) Karen L. Whipkey $532.86

1066 (949) Beatrice J. White and Rodney White $214.12

1067 (950) Benjamin A. White $159.00

1068 (951) Charles W. White $425.76

1069 (952) David A. White $288.21

1070 (953) Todd R. White $924.31

1071 (954) Kaylee Whitlatch $224.45

1072 (955) John Whitmore $91.62

1073 (956) James E. Whitt $534.20

1074 (957) Joni Lee Whitt and John Whitt $500.00

1075 (958) Carol Wiles and Kevin Wiles $111.64

1076 (959) Charles Wiles $250.00

1077 (960) Krista A. Wilkins $250.00

1078 (961) Dolores Williams $347.09

1079 (962) Ted M. Williams and Karen Williams $374.50

1080 (963) Alysha Nicole Williams
1081 and Patricia Holcomb $397.87

1082 (964) Larry Williams and Tamara Williams..... $750.00

1083 (965) Krissie Williamson $500.00

1084 (966) Angela K. Willman..... $110.77

1085 (967) Deadra D. Wills and Eddie Wills $288.47

1086 (968) Deadra Wills and Eddie R. Wills..... $486.85

1087 (969) Mary Ann Wilmoth and Mark Wilmoth..... $343.06

1088 (970) Brenda D. Wilson $106.00

1089 (971) Dennis A. Wilson..... $277.29

1090 (972) James P. Wilson and Susan M. Wilson..... $500.00

1091 (973) Mark Allen Wilson and Beverly Rae Wilson.... $500.00

1092 (974) Wayne Wilson and Sandra Wilson $216.96

1093 (975) Nicole Wilson-Carr..... $500.00

1094 (976) Bradley Wilton and Danielle N. Rossi $500.00

1095 (977) Stephen C. Winslow..... $1,500.00

1096 (978) Richard Winters $399.54

1097 (979) Kala Withrow $250.00

1098 (980) Kala Withrow $250.00

1099 (981) Kala Withrow $250.00

1100 (982) Kala Withrow $250.00

1101 (983) Vernon L. Withrow $409.53

1102 (984) Robert Wolfe and Kristie Wolfe $144.22

1103 (985) Susan C. Wolfe $500.00

1104 (986) W. Nathan Wolfe $1,000.00

1105 (987) Tracy A. Wolfe and James Wolfe, III $106.13

1106 (988) Betty J. Woodall $199.00

1107 (989) Christina Woods and Josh Woods $250.00

1108 (990) Brenda Workman $1,000.00

1109 (991) Larry T. Workman and Alex M. Workman ... $664.58

1110 (992) Melissa Wright $340.26

1111 (993) Robert W. Wright and Denise A. Wright $500.00

1112 (994) Amber Wroblewski and Ron Wroblewski $395.51

1113 (995) Shauntell Yerkey and Justin Yerkey $250.86

1114 (996) Robert S. Young, Jr.
1115 and Willa Jeanne Young $100.00

1116 (997) Paula Susan Zaharko $500.00

1117 (998) Stacie L. Zelkowski $64.35

1118 (999) Alicia Y. Ziman and Matthew Ziman $99.95

(k) Claim against the Department of Transportation, Division of Motor Vehicles:

(TO BE PAID FROM STATE ROAD FUND)

Connie Everhart $270.00

The Legislature finds that the above moral obligations and the appropriations made in satisfaction thereof shall be the full compensation for all claimants and that prior to the payments to any claimant provided in this bill, the Legislative Claims Commission shall receive a release from said claimant releasing any and all claims for moral obligations arising from the matters considered by the Legislature in the finding of the moral obligations and the making of the appropriations for said claimant. The Legislative Claims Commission shall deliver all releases obtained from claimants to the department against which the claim was allowed.

CHAPTER 49

(H. B. 4582 - By Delegates Criss, Pack, Hardy, Bates, Pethtel, Barrett, Hartman and Williams)

[Passed February 29, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT recognizing and declaring certain claims against agencies of the state to be moral obligations of the state; and directing the Auditor to issue warrants for the payment thereof.

Be it enacted by the Legislature of West Virginia:

CLAIMS AGAINST THE STATE.

§1. Finding and declaring certain claims against the Department of Health and Human Resources to be moral obligations of the state and directing payments thereof.

The Legislature has heretofore made findings of fact that the state has received the benefit of the commodities received and/or services rendered by certain claimants herein and has considered these claims against the state, and agency thereof, which have arisen due to over-expenditures of the departmental appropriations by officers of the state spending units, the claims having been previously considered by the Legislative Claims Commission which also found that the state has received the benefit of the commodities received and/or services rendered by the claimants, but were denied by the Legislative Claims Commission on the purely statutory grounds that to allow the claims would be condoning illegal acts contrary to the laws of the state. The Legislature, pursuant to its findings of fact and also by the adoption of the findings of fact by the Legislative Claims Commission as its own, while not condoning such illegal acts, hereby declares it to be the moral obligation of the state to pay these claims in the amounts specified below and directs the Auditor to issue warrants upon receipt of properly executed requisitions supported by itemized invoices, statements, or other satisfactory documents as required by §12-3-10 of the Code of West Virginia, 1931, as amended, for the payments thereof out of any fund appropriated and available for the purpose.

Claims against the Department of Health and Human Resources:

(TO BE PAID FROM GENERAL REVENUE FUND)

(1) Affordable Cremations of WV, LLC $1,250.00

(2) Affordable Cremations of WV, LLC $1,250.00

(3) Affordable Cremations of WV, LLC $1,250.00

(4) Affordable Cremations of WV, LLC $1,250.00

(5) Affordable Cremations of WV, LLC $1,250.00

(6) Altmeyer Funeral Home.....$7,000.00

(7) Chambers and James Funeral Home $1,250.00

CHAPTER 50

(S. B. 789 - By Senator Carmichael (Mr. President))

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §4-2B-1 of the Code of West Virginia, 1931, as amended; and to repeal §4-3-3b of said code, relating to removing provisions regarding obsolete functions and completed tasks for the administration of, or by, the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WORK GROUPS.

§1. Repeal of article authorizing the establishment of job work groups.

That §4-2B-1 of the Code of West Virginia, 1931, as amended, is repealed.

ARTICLE 3. JOINT COMMITTEE ON GOVERNMENT AND FINANCE.

§1. Repeal of section relating to duty of the Joint Committee on Government and Finance with respect to the statewide reappraisal to be completed on the March 31, 1985.

That §4-3-3b of the Code of West Virginia, 1931, as amended, is repealed.

CHAPTER 51

(S. B. 830 - By Senator Blair)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §5-5-4a of the Code of West Virginia, 1931, as amended, relating to eliminating a special merit-based employment system for health care professionals in state-operated health care facilities.

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.

That §5-5-4a of the Code of West Virginia, 1931, as amended, be repealed.

CHAPTER 52

(Com. Sub. for S. B. 208 - By Senator Tarr)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §46A-6J-2 and §46A-6J-3 of the Code of West Virginia, 1931, as amended, all relating to the protection of consumers from price gouging and unfair pricing practices during and shortly after a state of emergency; amending definition of "state of emergency"; and authorizing the Governor to periodically review the scope and the time period for which prices for certain goods may not be changed following a state of emergency.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6J. PROTECTION OF CONSUMERS FROM PRICE GOUGING AND UNFAIR PRICING PRACTICES DURING AND SHORTLY AFTER A STATE OF EMERGENCY.

§46A-6J-2. Definitions.

(a) "Building materials" means lumber, construction tools, windows, and any other item used in the building or rebuilding of property.

(b) "Consumer food item" means any article that is used or intended for use for food or drink by a person or animal.

(c) "Disaster" means the occurrence or imminent threat of widespread or severe damage, injury, loss of life, or property resulting from any natural or man-made cause, including fire, flood, earthquake, wind, snow, storm, chemical or oil spill, or other water or soil contamination,

11 epidemic, air contamination, blight, drought, infestation, or
12 other public calamity requiring emergency action.

13 (d) "Emergency supplies" includes, but is not limited to,
14 water, flashlights, radios, batteries, candles, blankets,
15 generators, heaters, and temporary shelters.

16 (e) "Essential consumer item" means any article that is
17 necessary to the health, safety, and welfare of consumers,
18 including, but not limited to, clothing, diapers, soap,
19 cleaning supplies, and toiletries.

20 (f) "Gasoline" means any fuel used to power any motor
21 vehicle or power tool.

22 (g) "Housing" means any rental housing leased on a
23 month-to-month term or the sale of manufactured homes, as
24 that term is defined in §21-9-2 of this code.

25 (h) "Large-scale threat" means circumstances which
26 present a reasonable probability that necessary services or
27 public order would be disrupted, and effect a significant
28 number of people from either natural or man-made causes.

29 (i) "Medical supplies" includes, but is not limited to,
30 prescription and nonprescription medications, bandages,
31 gauze, isopropyl alcohol, and antibacterial products.

32 (j) "Repair or reconstruction services" means any
33 services performed by any person for repairs to residential,
34 commercial, or public property of any type that is damaged
35 as a result of a disaster.

36 (k) "State of emergency" means the situation existing
37 during or after the occurrence of a disaster or large-scale
38 threat in which a state of emergency has been declared by
39 the Governor or by the Legislature pursuant to the
40 provisions of §15-5-6 of this code.

41 (l) "State of preparedness" means the situation existing
42 before a disaster or large-scale threat in which a state of

preparedness has been declared by the Governor or by the Legislature pursuant to the provisions of §15-5-6 of this code.

(m) "Transportation, freight, and storage services" means any service that is performed by any company that contracts to move, store, or transport personal or business property, or rents equipment or storage space for those purposes.

§46A-6J-3. Prohibited unfair pricing practices.

(a) Upon the declaration of a state of emergency or state of preparedness, and continuing for the existence of the state of emergency or state of preparedness, or for 30 days following the declaration, whichever period is longer, it is unlawful for any person, contractor, business, or other entity to sell or offer to sell to any person in the area subject to the declaration any consumer food items, essential consumer items, goods used for emergency cleanup, emergency supplies, medical supplies, home heating oil, building materials, housing, transportation, freight and storage services, or gasoline or other motor fuels, for a price greater than 10 percent above the price charged by that person for those goods or services on the 10th day immediately preceding the declaration of emergency state of preparedness, unless the increase in price is directly attributable to additional costs imposed on the seller by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided*, That in those situations where the increase in price is attributable to additional costs imposed by the seller's supplier or additional costs of providing the good or service during the state of emergency or state of preparedness, the price is no greater than 10 percent above the total of the cost to the seller plus the markup customarily applied by the seller for that good or service in the usual course of business on the 10th day immediately preceding the declaration: *Provided, however*, That where a supplier of gasoline or other motor fuels cannot determine its daily

costs, the supplier may sell gasoline or other motor fuels to distributers on any day at a rate not to exceed the average of the Oil Price Information Service's average wholesale rack price for that product at the Montvale/Roanoke, Virginia, Fairfax, Virginia, and Pittsburgh, Pennsylvania, wholesale racks for the previous day.

(b) Upon the declaration of a state of emergency or state of preparedness, and for a period of 180 days following that declaration, it is unlawful for any contractor to sell or offer to sell any repair or reconstruction services or any services used in emergency cleanup in the area subject to the declaration for a price greater than 10 percent above the price charged by that person for those services on the 10th day immediately preceding the declaration, unless the increase in price was directly attributable to additional costs imposed on it by the supplier of the goods or directly attributable to additional costs for labor or materials used to provide the services: *Provided*, That in those situations where the increase in price is attributable to the additional costs imposed by the contractor's supplier or additional costs of providing the service, the price is no greater than 10 percent above the total of the cost to the contractor plus the markup customarily applied by the contractor for that good or service in the usual course of business on the 10th day immediately preceding to the declaration of the state of emergency or state of preparedness.

(c) Any business offering an item for sale at a reduced price 10 days immediately prior to the declaration of the state of emergency or state of preparedness may use the price at which it usually sells the item to calculate the price pursuant to subsection (a) or (b) of this section.

(d) Whenever the Governor declares a state of preparedness, the provisions of this article only apply to those items or services specifically set forth in the proclamation.

(e) On the 15th day after the declaration of a state of emergency, and each 15th day thereafter for so long as the state of emergency persists, the Governor shall review the scope of goods to which this article applies and may issue a proclamation maintaining, limiting, terminating, or extending the price restrictions imposed by this article with respect to any categories of goods.

CHAPTER 53

(S. B. 642 - By Senators Azinger, Baldwin, Beach, Clements, Cline, Hardesty, Jeffries, Lindsay, Maynard, Pitsenbarger, Romano, Rucker, Smith, Takubo, Weld, Woelfel and Trump)

[Passed February 17, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §46A-1-105 of the Code of West Virginia, 1931, as amended, relating to correcting an incorrect code citation in the West Virginia Consumer Credit and Protection Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. SHORT TITLE, DEFINITIONS, AND GENERAL PROVISIONS.

§46A-1-105. Exclusions.

(a) This chapter does not apply to:

(1) Extensions of credit to government or governmental agencies or instrumentalities;

(2) The sale of insurance by an insurer, except as otherwise provided in this chapter;

(3) The obligation of a property owner, lot owner, or homeowner in a planned community containing no more than 12 units which is not subject to any development rights or a planned community that provides in its declaration that the annual average common expense liability of all units restricted to residential purposes, exclusive of optional user fees and any insurance premiums paid by the association, may not exceed $300 as adjusted pursuant to §36B-1-114 of this code, or the efforts of property owners' associations or homeowners' associations to collect the same to pay dues, assessments, costs, or fees of any kind to a property owners' association or homeowners' association;

(4) Transactions under public utility or common carrier tariffs if a subdivision or agency of this state or of the United States regulates the charges for the services involved, the charges for delayed payment, and any discount allowed for early payment; or

(5) Licensed pawnbrokers.

(b) Mortgage lender and broker licensees are excluded from the provisions of this chapter to the extent those provisions directly conflict with any section of §31-17-1 *et seq.* of this code.

CHAPTER 54

(Com. Sub. for H. B. 4717 - By Delegates Shott, Fleischauer and Wilson)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60A-7-708 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §60A-7-708, all relating to

bookkeeping procedures and internal controls for seized or forfeited property under the West Virginia Contraband Forfeiture Act; providing for record keeping and accounting procedures; providing for a report to the State Auditor from law enforcement agencies excluding prosecuting attorneys; requiring the State Auditor establish a public website for reporting information; providing the State Auditor prepare and disseminate a yearly report; establishing that the State Auditor may perform a financial audit; requiring the State Auditor to conduct an audit when seizure of assets or expenditure of funds from seized assets exceeds a designated amount; permitting the State Auditor to charge a fee; requiring the State Auditor to notify a law enforcement agency for failure to report; providing the State Auditor may promulgate rules; establishing that reported information is subject to the W.Va. Freedom of Information Act; establishing an effective date; and providing that a court may seal records.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. WEST VIRGINIA CONTRABAND FORFEITURE ACT.

§60A-7-708. Bookkeeping procedures and internal controls.

(a) Any law-enforcement agency or office in this state, including, but not limited to, an "appropriate person" as identified in §60A-7-703(b), excluding prosecuting attorneys, who seizes or receives forfeited moneys, securities, negotiable instruments, items subject to forfeiture in accordance with §60A-7-703(a) of this code, or other property under the provisions of this article shall account for the same in the following manner:

(1) Maintain any items of property subject to forfeiture in accordance with §60A-7-704(d) of this code, including, but not limited to, moneys, securities, negotiable instruments, or other items and property identified in the same manner as the agency's appropriated funds. Bank

accounts, checkbooks, purchase cards, and other financial instruments or documents must be maintained in the same manner as appropriated funds;

(2) Establish a segregated account or accounting codes to track both revenues and expenditures for each respective program. No other funds may be commingled in these accounts or with these accounting codes;

(3) Process all expenditures and payments in the same manner as appropriated funds, including procurement and payment transactions;

(4) In accordance with the provisions of §60A-7-704(d)(4) of this code, in the case of seized moneys, securities, or other negotiable instruments, place the assets in an interest-bearing depository insured by an agency of the federal government. Deposit all interest earned on equitable sharing funds into the respective account or accounting code. All interest is subject to the same use restrictions as equitable sharing funds. Losses to funds maintained in investment accounts in accordance with the jurisdiction's policies may not be allocated to or deducted from the equitable sharing account;

(5) Develop, maintain, and follow written policies for accounting, bookkeeping, inventory control, and procurement that comply with the applicable jurisdiction policies. Ensure distribution of relevant policies to all appropriate personnel;

(6) Maintain records of all revenue and expenditures posted to the account or accounting code, to include bank/ledger statements, invoices, receipts, required jurisdiction approvals, or any other documents used or created during the procurement and disposition process;

(7) Report all transactions using cash-based accounting methods;

(8) Dispose of items purchased with shared funds in accordance with the agency's disposal policies. To the extent practicable and, if consistent with the agency's procurement and disposal polices, deposit proceeds from the sale of such property into the agency's sharing account or accounting code. If an item has minimal or no value, an agency may donate the item to a recipient of its choice if permitted under the agency's disposal policies;

(9) Ensure the agency head, or designee, authorizes all expenditures from the sharing accounts; and

(10) Obtain approval for expenditures from the governing body, such as the county commission, town council, or city manager's office, when required under normal established jurisdiction accounting procedures.

(b) Any law-enforcement agency or office in this state, excluding prosecuting attorneys, receiving forfeited moneys, securities, negotiable instruments, real property, personal property, or other property under the provisions of this article shall report the same to the State Auditor. For each seizure only one report shall be filed by the agency that made the seizure. All agencies receiving forfeited property shall report disposition and expenditures of any proceeds of that property. Reports shall be filed in the following manner:

(1) Name of the law-enforcement agency or office that seized the property, or if seized by a multijurisdictional task force, the name of the lead agency;

(2) The time and date the property was seized;

(3) The type of property seized, whether real or personal;

(4) The actual or estimated value of the property seized;

(5) The property's final disposition, including the amount received if the property was sold, or if the property

was put to use on behalf of a law-enforcement agency or office, the identity of the agency or office that took possession and use of the property;

(6) Whether forfeiture was made by settlement agreement;

(7) Whether any procedure for forfeiture was initiated in accordance with the provisions of §60A-7-705 of this code, or other identifying information sufficient to permit acquisition of any available public records related to the forfeiture procedure and disposition of the forfeited property;

(8) The disposition of any action under the provisions of §60A-7-705 of this code;

(9) If an arrest was made;

(10) Whether any charges brought against a defendant in conjunction with a seizure pursuant to this article resulted in deferred action, conviction, plea deal, acquittal, or ongoing criminal case;

(11) When an administrative forfeiture procedure has been initiated pursuant to the provisions of §60A-7-705a of this code, provide designated information contained in the administrative forfeiture notice;

(12) The total value of seized and forfeited or property held by the agency at the end of the reporting period; and

(13) A copy of the United States Department of Justice's Equitable Sharing Agreement and Certification - Annual Certification Report shall be provided to the State Auditor no later than October 31 each calendar year.

(c) The State Auditor shall establish and maintain a searchable public website that includes the aggregate information submitted by any law-enforcement agency or office required under subsection (b) of this section:

Provided, That the State Auditor's website must not provide individual case details on its public website.

(d) The State Auditor, before December 31 of each year, shall submit to the Speaker of the House of Delegates, the President of the Senate, the Attorney General, and the Governor a written report summarizing activity in the state for the preceding fiscal year on the type, approximate value, and disposition of the property forfeited and/or seized and the amount of any proceeds received or expended at the state and local levels. The report shall provide a categorized accounting of all proceeds expended. Summary data on seizures, forfeitures and expenditures of forfeiture proceeds shall be disaggregated by agency.

(e) In the course of preparing its annual report, the State Auditor may, in its discretion or for good cause shown, perform a financial audit of records related to inventory of seized property and expenditures of forfeiture proceeds by any law-enforcement agency or office in this state. This audit shall be conducted under the Generally Accepted Government Auditing Standards (GAGAS). A copy of the financial audit report shall be submitted to the State Auditor no later than 90 days after its initiation. The State Auditor shall submit a copy of the financial audit report to the Speaker of the House of Delegates, the President of the Senate, the Attorney General and the Governor.

(f) If, in the course of a calendar year, any law enforcement agency or office that secures seized or forfeited assets valued in excess of 50 percent of the prior year's total seized or forfeited assets, or expends more than 50 percent of the prior year's total expenditures of forfeited assets, shall so advise the State Auditor, who shall perform a financial audit under the Generally Accepted Government Auditing Standards (GAGAS) of records related to inventory of seized property and expenditures of forfeiture proceeds. A copy of the final audit report shall be submitted to the State Auditor no later than 90 days after the end of the fiscal year and shall be made public.

(g) The State Auditor may recoup its costs under this section by charging a fee.

(h) The State Auditor may include in its aggregate report required by subsection (d) of this section recommendations to improve statutes, rules, and policies related to seizure, forfeiture, and expenditures. The aggregate report shall be made available on the State Auditor's website.

(i) If a law-enforcement agency fails to timely file the report identified in subsection (b) of this section the State Auditor shall immediately notify the law-enforcement agency that the report has not been received.

(j) The State Auditor may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement this section.

(k) The data and reports compiled and prepared under this section are public information under the West Virginia Freedom of Information Act, chapter 29B of this code.

(l) This section is effective for the reporting period starting January 1, 2021.

(m) Nothing provided in this section would prevent a court of competent jurisdiction from sealing records otherwise made available under the provisions of this section.

CHAPTER 55

(H. B. 2922 - By Delegates Barrett and S. Brown)

[Passed February 18, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §60A-4-407a, relating to authorizing a court to require participation and successful completion of a drug court program or drug treatment program in order for a defendant, pleading or being found guilty of possession of a controlled substance which is or contains a controlled substance listed in §60A-2-204 of this code, other than marijuana, or a controlled substance listed in §60A-2-206, §60A-2-208, or §60A-2-210 to qualify for a final order of discharge and dismissal.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-407a. Authorizing additional requirements to obtain a final order of discharge and dismissal for persons charged with possession of controlled substances.

(a) Notwithstanding any provision of this code to the contrary, when a person pleads guilty or is found guilty of a violation of §60A-4-401(c) of this code, or a municipal ordinance containing the same elements where the controlled substance possessed is listed in §60A-2-204 of this code, other than marijuana, or is a controlled substance listed in §60A-2-206, §60A-2-208, or §60A-2-210 of this code, the court may, as an additional condition for the entry of a final order of discharge or dismissal under §60A-4-407 of this code or a municipal ordinance containing the same

11 or substantially the same provision, require the defendant to
12 be:

13 (1) Evaluated for admission into a drug court program;
14 or

15 (2) Participate in a drug treatment program.

16 (b) If a defendant is determined to be an appropriate
17 candidate for admission to drug court or a drug treatment
18 program, the court may make successful completion of a
19 drug court or a drug treatment program a requirement for
20 obtaining a final order of discharge and dismissal.

CHAPTER 56

(H. B. 4354 - By Delegates Worrell, Summers and Wilson)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §60A-2-201 of the Code of West Virginia, 1931, as amended, relating to drugs; providing for the sale, wholesale, distribution, or prescribing of nabiximols in a product approved by the Food and Drug Administration; and providing that nabiximols shall be placed on the schedules of controlled substances or descheduled as provided by the Drug Enforcement Administration.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STANDARDS AND SCHEDULES.

§60A-2-201. Authority of Board of Pharmacy; recommendations to Legislature.

(a) The Board of Pharmacy shall administer the provisions of this chapter. It shall also, on the first day of each regular legislative session, recommend to the Legislature which substances should be added to or deleted from the schedules of controlled substances contained in this article or reschedule therein. The Board of Pharmacy shall also have the authority between regular legislative sessions, on an emergency basis, to add to or delete from the schedules of controlled substances contained in this article or reschedule such substances based upon the recommendations and approval of the federal food, drug and cosmetic agency, and shall report such actions on the first day of the regular legislative session immediately following said actions.

In making any such recommendation regarding a substance, the Board of Pharmacy shall consider the following factors:

(1) The actual or relative potential for abuse;

(2) The scientific evidence of its pharmacological effect, if known;

(3) The state of current scientific knowledge regarding the substance;

(4) The history and current pattern of abuse;

(5) The scope, duration and significance of abuse;

(6) The potential of the substance to produce psychic or physiological dependence liability; and

(7) Whether the substance is an immediate precursor of a substance already controlled under this article.

(b) After considering the factors enumerated in subsection (a), the Board of Pharmacy shall make findings with respect to the substance under consideration. If it finds that any substance not already controlled under any

schedule has a potential for abuse, it shall recommend to the Legislature that the substance be added to the appropriate schedule. If it finds that any substance already controlled under any schedule should be rescheduled or deleted, it shall so recommend to the Legislature.

(c) If the Board of Pharmacy designates a substance as an immediate precursor, substances which are precursors of the controlled precursor shall not be subject to control solely because they are precursors of the controlled precursor.

(d) If any substance is designated, rescheduled or deleted as a controlled substance under federal laws and notice thereof is given to the Board of Pharmacy, the board shall recommend similar control of such substance to the Legislature, specifically stating that such recommendation is based on federal action and the reasons why the federal government deemed such action necessary and proper.

(e) The authority vested in the board by subsection (a) of this section shall not extend to distilled spirits, wine, malt beverages or tobacco as those terms are defined or used in other chapters of this code nor to any nonnarcotic substance if such substance may under the "Federal Food, Drug and Cosmetic Act" and the law of this state lawfully be sold over the counter without a prescription.

(f) Notwithstanding any provision of this chapter to the contrary, the sale, wholesale, distribution or prescribing of a cannabidiol or nabiximols in a product approved by the Food and Drug Administration is permitted and shall be placed on the schedule or descheduled as provided for by the Drug Enforcement Administration.

CHAPTER 57

(Com. Sub. for H. B. 4544 - By Delegates Waxman, Steele, Phillips, Miley, Queen, Hamrick, Foster, Bibby, Kump, N. Brown and Fast)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §60A-4-406 of the Code of West Virginia, 1931, as amended, relating to applying a mandatory period of incarceration prior to parole eligibility to persons 18 years old or over who are convicted of distributing a controlled substance within 200 feet of a public library; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21; distribution by persons 18 or over in, on, or within 1,000 feet of, school or college; distribution by persons 18 or over in, on, or within 200 feet of a public library; increasing mandatory period of incarceration prior to parole eligibility.

(a) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of three years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the

person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution;

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(b) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of two years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(ii) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution;

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(c) The existence of any fact which would make any person subject to the provisions of this section may not be considered unless the fact is clearly stated and included in the indictment or presentment by which the person is charged and is either:

(1) Found by the court upon a plea of guilty or nolo contendere;

(2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a special interrogatory for such purpose; or

(3) Found by the court, if the matter be tried by the court without a jury.

(d) Nothing in this section limits the sentencing alternatives made available to circuit court judges under other provisions of this code.

CHAPTER 58

(Com. Sub. for H. B. 4852 - By Delegates Shott and Capito)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by amending and reenacting §60A-4-401 relating to treating methamphetamine as a Schedule I or II narcotic under the controlled substances act; increasing the criminal penalty for possession with intent to distribute, or distribution of methamphetamine; increasing the penalty for possession with intent to distribute counterfeit methamphetamine; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-401. Prohibited acts A; penalties.

(a) Except as authorized by this act, it is unlawful for any person to manufacture, deliver, or possess with intent to manufacture or deliver a controlled substance.

Any person who violates this subsection with respect to:

(i) A controlled substance classified in Schedule I or II, which is a narcotic drug or which is methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned;

(ii) Any other controlled substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and imprisoned;

(iii) A substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned;

(iv) A substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(b) Except as authorized by this act, it is unlawful for any person to create, deliver, or possess with intent to deliver, a counterfeit substance.

Any person who violates this subsection with respect to:

(i) A counterfeit substance classified in Schedule I or II, which is a narcotic drug, or methamphetamine, is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than 15 years, or fined not more than $25,000, or both fined and imprisoned;

(ii) Any other counterfeit substance classified in Schedule I, II, or III is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not more than $15,000, or both fined and imprisoned;

(iii) A counterfeit substance classified in Schedule IV is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor more than three years, or fined not more than $10,000, or both fined and imprisoned;

(iv) A counterfeit substance classified in Schedule V is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined: *Provided*, That for offenses relating to any substance classified as Schedule V in §60A-10-1 *et seq.* of this code, the penalties established in said article apply.

(c) It is unlawful for any person knowingly or intentionally to possess a controlled substance unless the substance was obtained directly from, or pursuant to, a valid prescription or order of a practitioner while acting in the course of his or her professional practice, or except as otherwise authorized by this act. Any person who violates

this subsection is guilty of a misdemeanor, and disposition may be made under §60A-4-407 of this code, subject to the limitations specified in said section, or upon conviction thereof, the person may be confined in jail not less than 90 days nor more than six months, or fined not more than $1,000, or both fined and confined: *Provided*, That notwithstanding any other provision of this act to the contrary, any first offense for possession of synthetic cannabinoids as defined by §60A-1-101(d)(32) of this code; 3,4-methylenedioxypyrovalerone (MPVD) and 3,4-methylenedioxypyrovalerone and/or mephedrone as defined in §60A-1-101(f) of this code; or less than 15 grams of marijuana, shall be disposed of under §60A-4-407 of this code.

(d) It is unlawful for any person knowingly or intentionally:

(1) To create, distribute, deliver, or possess with intent to distribute or deliver, an imitation controlled substance; or

(2) To create, possess, sell, or otherwise transfer any equipment with the intent that the equipment shall be used to apply a trademark, trade name, or other identifying mark, imprint, number, or device, or any likeness thereof, upon a counterfeit substance, an imitation controlled substance, or the container or label of a counterfeit substance or an imitation controlled substance.

(3) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for not less than six months nor more than one year, or fined not more than $5,000, or both fined and confined. Any person 18 years old or more who violates subdivision (1) of this subsection and distributes or delivers an imitation controlled substance to a minor child who is at least three years younger than that person is guilty of a felony and, upon conviction thereof, may be imprisoned in a state correctional facility for not less than one year nor

more than three years, or fined not more than $10,000, or both fined and imprisoned.

(4) The provisions of subdivision (1) of this subsection shall not apply to a practitioner who administers or dispenses a placebo.

CHAPTER 59

(Com. Sub. for S. B. 472 - By Senators Maynard, Stollings, Clements and Cline)

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §62-11A-1a of the Code of West Virginia, 1931, as amended, relating to inmate work generally; including persons convicted in municipal court of ordinance violations as eligible to participate in alternative work programs; specifying supervisory authority for municipally sentenced inmates; authorizing approved and sentenced inmates in the custody of the Commissioner of Corrections to work for municipal, county, and state agencies; providing for sentenced persons in jails and state correctional facilities to perform tasks such as cleaning streams, parks, streets, and highways for municipal and county governments and state agencies; and requiring the commissioner to approve the tasks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11A. RELEASE FOR WORK AND OTHER PURPOSES.

§62-11A-1a. Other sentencing alternatives.

(a) Any person who has been convicted in a municipal court, circuit court, or in a magistrate court under any criminal provision of this code of a misdemeanor or felony, or municipal ordinance, which is punishable by imposition of a fine or confinement in a regional jail or a state correctional institution, or both fine and confinement, may, in the discretion of the sentencing judge or magistrate, as an alternative to the sentence imposed by statute or ordinance for the crime, be sentenced under one of the following programs:

(1) The weekend jail program under which a person would be required to spend weekends or other days normally off from work in jail;

(2) The work program under which a sentenced person would be required to spend the first two or more days of his or her sentence in jail and then, in the discretion of the court, would be assigned to a municipal, county, or state agency to perform labor within the jail, or in and upon the buildings, grounds, institutions, bridges, and roads, including orphaned roads used by the general public and public works within the municipality, county, or state. Eight hours of labor are to be credited as one day of the sentence imposed. A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes;

(3) The community service program under which a sentenced person would spend no time in jail, but would be sentenced to a number of hours or days of community service work with government entities or charitable or nonprofit entities approved by the circuit court. Regarding any portion of the sentence designated as confinement, eight hours of community service work is to be credited as one day of the sentence imposed. Regarding any portion of the sentence designated as a fine, the fine is to be credited at an hourly rate equal to the prevailing federal minimum wage at the time the sentence was imposed. In the discretion of the court, the sentence credits may run concurrently or

consecutively. A person sentenced under this program may be required to provide his or her own transportation to and from the work site, lunch, and work clothes; or

(b) In no event may the duration of the alternate sentence exceed the maximum period of incarceration otherwise allowed.

(c) In imposing a sentence under the provisions of this section, the court shall first make the following findings of fact and incorporate them into the court's sentencing order:

(1) The person sentenced was not convicted of an offense for which a mandatory period of confinement is imposed by statute;

(2) In circuit court cases, that the person sentenced is not a habitual criminal within the meaning of §61-11-18 and §61-11-19 of this code;

(3) In circuit court cases, that the offense underlying the sentence is not a felony offense for which violence or the threat of violence to the person is an element of the offense;

(4) In circuit court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the court's probation officers or the county sheriff or, in magistrate court cases, that adequate facilities for the administration and supervision of alternative sentencing programs are available through the county sheriff; and

(5) That an alternative sentence under provisions of this article will best serve the interests of justice.

(d) A person sentenced by the circuit court under the provisions of this article remains under the administrative custody and supervision of the court's probation officers or the county sheriff. A person sentenced by a magistrate remains under the administrative custody and supervision of the county sheriff. A person sentenced by a municipal judge

would be under the supervision of the city department for whom work is performed.

(e) A person sentenced under the provisions of this section may be required to pay the costs of his or her incarceration, including meal costs: *Provided*, That the judge or magistrate considers the person's ability to pay the costs.

(f) A person sentenced under the provisions of this section remains under the jurisdiction of the court. The court may withdraw any alternative sentence at any time by order entered with or without notice and require that the remainder of the sentence be served in the county jail, a regional jail or a state correctional facility: *Provided*, That no alternative sentence directed by the sentencing judge or magistrate or administered under the supervision of the sheriff, his or her deputies, a jailer, or a guard may require the convicted person to perform duties which would be considered detrimental to the convicted person's health as attested to by a physician.

(g) No provision of this section may be construed to limit a circuit judge's ability to impose a period of supervision or participation in a community corrections program created pursuant to §62-11C-1 *et seq.* of this code, except that a person sentenced to a day report center must be identified as moderate to high risk of reoffending and moderate to high criminogenic need, as defined by the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d)* of this code, and applied by a probation officer or day report staff: *Provided*, That a judge may impose a period of supervision or participation in a day report center, notwithstanding the results of the standardized risk and needs assessment, upon making specific written findings of fact as to the reason for departing from the requirements of this section.

***NOTE:** Correction of apparent word to number translation error.

(h) Magistrates may only impose a period of participation in a day report center with the consent by general administrative order of the supervising judge or chief judge of the judicial circuit in which he or she presides. The day report center staff shall determine which services a person receives based on the results of the standardized risk and needs assessment adopted by the Supreme Court of Appeals of West Virginia under §62-12-6(d)* of this code, along with any other conditions of supervision set by the court.

(i) There is hereby authorized a program whereby a sentenced person in a regional jail or state correctional facility may be assigned to participate in performing requested tasks approved by the commissioner for municipal, county, and state agencies that could use such services as cleaning up streams, state parks, streets and highways, and similar services.

CHAPTER 60

(S. B. 620 - By Senators Clements, Trump, Baldwin and Weld)

[Passed February 19, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §62-12-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §62-12-13c, all relating to authorizing the Commissioner of the Division of Corrections and Rehabilitation to approve home plans for inmates; authorizing the Commissioner of the Division of Corrections and Rehabilitation to establish a nonviolent offense parole program; establishing eligibility requirements for said program; clarifying that inmates released under said program

***NOTE:** Correction of apparent word to number translation error.

are subject to the same conditions of release and sanctions; clarifying that inmate's failing to successfully complete the rehabilitation treatment program are ineligible for release; and clarifying that inmates not otherwise released may be eligible for said program at the time of successful completion of the rehabilitation treatment program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-13. Powers and duties of board; eligibility for parole; procedure for granting parole.

(a) The Parole Board, whenever it is of the opinion that the best interests of the state and of the inmate will be served, and subject to the limitations provided in this section, shall release any inmate on parole for terms and upon conditions provided by this article.

(b) Any inmate of a state correctional institution is eligible for parole if he or she:

(1) (A) Has served the minimum term of his or her indeterminate sentence or has served one fourth of his or her definite term sentence, as the case may be; or

(B) He or she has applied for and been accepted by the Commissioner of Corrections and Rehabilitation into an accelerated parole program. To be eligible to participate in an accelerated parole program, the commissioner must determine that the inmate:

(i) Does not have a prior criminal conviction for a felony crime of violence against the person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(ii) Is not serving a sentence for a crime of violence against the person, or more than one felony for a controlled substance offense for which the inmate is serving a consecutive sentence, a felony offense involving the use of

a firearm, or a felony offense where the victim was a minor child; and

(iii) Has successfully completed a rehabilitation treatment program created with the assistance of a standardized risk and needs assessment.

(C) Notwithstanding any provision of this code to the contrary, any inmate who committed, or attempted to commit, a felony with the use, presentment, or brandishing of a firearm is not eligible for parole prior to serving a minimum of three years of his or her sentence or the maximum sentence imposed by the court, whichever is less: *Provided*, That any inmate who committed, or attempted to commit, any violation of §61-2-12 of this code, with the use, presentment, or brandishing of a firearm, is not eligible for parole prior to serving a minimum of five years of his or her sentence or one third of his or her definite term sentence, whichever is greater. Nothing in this paragraph applies to an accessory before the fact or a principal in the second degree who has been convicted as if he or she were a principal in the first degree if, in the commission of or in the attempted commission of the felony, only the principal in the first degree used, presented, or brandished a firearm. An inmate is not ineligible for parole under the provisions of this paragraph because of the commission or attempted commission of a felony with the use, presentment, or brandishing of a firearm unless that fact is clearly stated and included in the indictment or presentment by which the person was charged and was either: (i) Found guilty by the court at the time of trial upon a plea of guilty or nolo contendere; (ii) found guilty by the jury upon submitting to the jury a special interrogatory for such purpose if the matter was tried before a jury; or (iii) found guilty by the court if the matter was tried by the court without a jury.

(D) The amendments to this subsection adopted in the year 1981:

(i) Apply to all applicable offenses occurring on or after August 1 of that year;

(ii) Apply with respect to the contents of any indictment or presentment returned on or after August 1 of that year irrespective of when the offense occurred;

(iii) Apply with respect to the submission of a special interrogatory to the jury and the finding to be made thereon in any case submitted to the jury on or after August 1 of that year or to the requisite findings of the court upon a plea of guilty or in any case tried without a jury: *Provided*, That the state gives notice in writing of its intent to seek such finding by the jury or court, as the case may be. The notice shall state with particularity the grounds upon which the finding will be sought as fully as the grounds are otherwise required to be stated in an indictment, unless the grounds upon which the finding will be sought are alleged in the indictment or presentment upon which the matter is being tried;

(iv) Does not apply with respect to cases not affected by the amendments and in those cases the prior provisions of this section apply and are construed without reference to the amendments; and

(v) Insofar as the amendments relate to mandatory sentences restricting the eligibility for parole, all matters requiring a mandatory sentence shall be proved beyond a reasonable doubt in all cases tried by the jury or the court.

(E) As used in this section, "felony crime of violence against the person" means felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(F) As used in this section, "felony offense where the victim was a minor child" means any felony crime of violence against the person and any felony violation set forth in §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(G) For the purpose of this section, the term "firearm" means any instrument which will, or is designed to, or may readily be converted to, expel a projectile by the action of an explosive, gunpowder, or any other similar means;

(2) Is not in punitive segregation or administrative segregation as a result of disciplinary action;

(3) Has prepared and submitted to the Parole Board a written parole release plan setting forth proposed plans for his or her place of residence, employment and, if appropriate, his or her plans regarding education and post-release counseling and treatment which has been approved by the Division of Corrections and Rehabilitation: *Provided*, That an inmate's application for parole may be considered by the board without the prior submission of a home plan, but the inmate shall have a home plan approved by the division prior to his or her release on parole. The Commissioner of the Division of Corrections and Rehabilitation, or his or her designee, shall review and investigate the plan and provide findings to the board as to the suitability of the plan: *Provided, however*, That in cases in which there is a mandatory 30-day notification period required prior to the release of the inmate, pursuant to §62-12-23 of this code, the board may conduct an initial interview and deny parole without requiring the development of a plan. In the event the board believes parole should be granted, it may defer a final decision pending completion of an investigation and receipt of the commissioner's findings. Upon receipt of the plan, together with the investigation and findings, the board, through a panel, shall make a final decision regarding the granting or denial of parole; and

(4) Has satisfied the board that if released on parole he or she will not constitute a danger to the community.

(c) Except in the case of an inmate serving a life sentence, a person who has been previously twice convicted of a felony may not be released on parole until he or she has

served the minimum term provided by law for the crime for which he or she was convicted. An inmate sentenced for life may not be paroled until he or she has served 10 years, and an inmate sentenced for life who has been previously twice convicted of a felony may not be paroled until he or she has served 15 years: *Provided*, That an inmate convicted of first degree murder for an offense committed on or after June 10, 1994, is not eligible for parole until he or she has served 15 years.

(d) In the case of an inmate sentenced to a state correctional facility regardless of the inmate's place of detention or incarceration, the Parole Board, as soon as that inmate becomes eligible, shall consider the advisability of his or her release on parole.

(e) If, upon consideration, parole is denied, the board shall promptly notify the inmate of the denial. The board shall, at the time of denial, notify the inmate of the month and year he or she may apply for reconsideration and review. The board shall at least once a year reconsider and review the case of every inmate who was denied parole and who is still eligible: *Provided*, That the board may reconsider and review parole eligibility any time within three years following the denial of parole of an inmate serving a life sentence with the possibility of parole.

(f) Any inmate in the custody of the commissioner for service of a sentence who reaches parole eligibility is entitled to a timely parole hearing without regard to the location in which he or she is housed.

(g) The board shall, with the approval of the Governor, adopt rules governing the procedure in the granting of parole. No provision of this article and none of the rules adopted under this article are intended or may be construed to contravene, limit, or otherwise interfere with or affect the authority of the Governor to grant pardons and reprieves, commute sentences, remit fines, or otherwise exercise his or her constitutional powers of executive clemency.

(h) (1) The Division of Corrections and Rehabilitation shall promulgate policies and procedures for developing a rehabilitation treatment plan created with the assistance of a standardized risk and needs assessment. The policies and procedures shall provide for, at a minimum, screening and selecting inmates for rehabilitation treatment and development, using standardized risk and needs assessment and substance abuse assessment tools, and prioritizing the use of residential substance abuse treatment resources based on the results of the standardized risk and needs assessment and a substance abuse assessment. The results of all standardized risk and needs assessments and substance abuse assessments are confidential.

(2) An inmate shall not be paroled under paragraph (B), subdivision (1), subsection (b) of this section solely due to having successfully completed a rehabilitation treatment plan, but completion of all the requirements of a rehabilitation treatment plan along with compliance with the requirements of subsection (b) of this section creates a rebuttable presumption that parole is appropriate. The presumption created by this subdivision may be rebutted by a Parole Board finding that, according to the standardized risk and needs assessment, at the time parole release is sought the inmate still constitutes a reasonable risk to the safety or property of other persons if released. Nothing in subsection (b) of this section or in this subsection may be construed to create a right to parole.

(i) Notwithstanding the provisions of subsection (b) of this section, the Parole Board may grant or deny parole to an inmate against whom a detainer is lodged by a jurisdiction other than West Virginia for service of a sentence of incarceration, upon a written request for parole from the inmate. A denial of parole under this subsection precludes consideration for parole for a period of one year or until the provisions of subsection (b) of this section are applicable.

(j) If an inmate is otherwise eligible for parole pursuant to subsection (b) of this section, and has completed the rehabilitation treatment program required under subdivision (1), subsection (h) of this section, the Parole Board may not require the inmate to participate in an additional program, but may determine that the inmate must complete an assigned task or tasks prior to actual release on parole. The board may grant parole contingently, effective upon successful completion of the assigned task or tasks, without the need for a further hearing.

(k) (1) The Division of Corrections and Rehabilitation shall supervise all probationers and parolees whose supervision may have been undertaken by this state by reason of any interstate compact entered into pursuant to the Uniform Act for Out-of-State Parolee Supervision.

(2) The Division of Corrections and Rehabilitation shall provide supervision, treatment/recovery, and support services for all persons released to mandatory supervision under §15A-4-17 of this code.

(l) (1) When considering an inmate of a state correctional facility for release on parole, the Parole Board panel considering the parole shall have before it an authentic copy of, or report on, the inmate's current criminal record as provided through the West Virginia State Police, the United States Department of Justice, or any other reliable criminal information sources and written reports of the superintendent of the state correctional institution to which the inmate is sentenced:

(A) On the inmate's conduct record while in custody, including a detailed statement showing any and all infractions of disciplinary rules by the inmate and the nature and extent of discipline administered for the infractions;

(B) On the inmate's industrial record while in custody which shall include: The nature of his or her work, occupation or education, the average number of hours per

day he or she has been employed or in class while in custody and a recommendation as to the nature and kinds of employment which he or she is best fitted to perform and in which the inmate is most likely to succeed when he or she leaves the state correctional institution; and

(C) On any physical, mental, psychological, or psychiatric examinations of the inmate.

(2) The Parole Board panel considering the parole may waive the requirement of any report when not available or not applicable as to any inmate considered for parole but, in every case, shall enter in its record its reason for the waiver: *Provided*, That in the case of an inmate who is incarcerated because the inmate has been found guilty of, or has pleaded guilty to, a felony under the provisions of §61-8-12 of this code or under the provisions of §61-8B-1 *et seq.* or §61-8C-1 *et seq.* of this code, the Parole Board panel may not waive the report required by this subsection. The report shall include a study and diagnosis of the inmate, including an on-going treatment plan requiring active participation in sexual abuse counseling at an approved mental health facility or through some other approved program: *Provided, however*, That nothing disclosed by the inmate during the study or diagnosis may be made available to any law-enforcement agency, or other party without that inmate's consent, or admissible in any court of this state, unless the information disclosed indicates the intention or plans of the parolee to do harm to any person, animal, institution, or to property. Progress reports of outpatient treatment are to be made at least every six months to the parole officer supervising the parolee. In addition, in such cases, the Parole Board shall inform the prosecuting attorney of the county in which the person was convicted of the parole hearing and shall request that the prosecuting attorney inform the Parole Board of the circumstances surrounding a conviction or plea of guilty, plea bargaining, and other background information that might be useful in its deliberations.

(m) Before releasing any inmate on parole, the Parole Board shall arrange for the inmate to appear in person before a Parole Board panel and the panel may examine and interrogate him or her on any matters pertaining to his or her parole, including reports before the Parole Board made pursuant to the provisions of this section: *Provided*, That an inmate may appear by video teleconference if the members of the Parole Board panel conducting the examination are able to contemporaneously see the inmate and hear all of his or her remarks and if the inmate is able to contemporaneously see each of the members of the panel conducting the examination and hear all of the members' remarks: *Provided, however*, That the requirement that an inmate personally appear may be waived where a physician authorized to do so by the Commissioner of the Division of Corrections and Rehabilitation certifies that the inmate, due to a medical condition or disease, is too debilitated, either physically or cognitively, to appear. The panel shall reach its own written conclusions as to the desirability of releasing the inmate on parole and the majority of the panel considering the release must concur in the decision. The superintendent shall furnish all necessary assistance and cooperate to the fullest extent with the Parole Board. All information, records, and reports received by the Parole Board shall be kept on permanent file.

(n) The Parole Board and its designated agents are at all times to have access to inmates imprisoned in any state correctional facility or in any jail in this state and may obtain any information or aid necessary to the performance of its duties from other departments and agencies of the state or from any political subdivision of the state.

(o) The Parole Board shall, if requested by the Governor, investigate and consider all applications for pardon, reprieve, or commutation and shall make recommendation on the applications to the Governor.

(p) Prior to making a recommendation for pardon, reprieve or commutation, the board shall notify the

sentencing judge and prosecuting attorney at least ten days before the recommendation.

(q) A parolee shall participate as a condition of parole in the litter control program of the county to which he or she is released to the extent directed by the Parole Board, unless the board specifically finds that this alternative service would be inappropriate.

§62-12-13c. Authority of commissioner to establish a nonviolent offense parole program.

(a) The commissioner is authorized to establish a nonviolent offense parole program for any inmate of a state correctional facility in which an inmate may be paroled without action of the Parole Board based upon objective standards as set forth in this section, to commence on July 1, 2021.

(b) Notwithstanding any provision of this code to the contrary, any inmate of a state correctional facility is eligible for parole under the nonviolent offense parole program if:

(1) He or she has served at least the minimum term of his or her sentence and is eligible for parole as determined by the parole board; and

(2) He or she qualifies for the nonviolent offense parole program as authorized by this section.

(c) To qualify for the nonviolent offense parole program, the commissioner must determine that the inmate:

(1) Is not serving a sentence for a crime of violence against the person, crime of violence against an animal, or felony for a controlled substance offense which involves actual or threatened violence to a person, a felony offense involving the use of a firearm, or a felony offense where the victim was a minor child;

(2) Has successfully completed an individualized rehabilitation treatment program as determined by the division; and

(3) Has otherwise satisfied the requirements for parole eligibility set forth in §62-12-13 of this code.

(d) Any person released under the nonviolent offense parole program shall be subject to all conditions of release and sanctions for violations applicable to persons released on parole by the Parole Board, and all parole revocations of persons granted parole pursuant to this section shall be heard in accordance with the provisions of §62-12-19 of this code.

(e) The nonviolent offense parole program authorized by subsection (a) of this section requires no action by the Parole Board as to the release decision if the inmate qualifies for the program and has successfully completed his or her rehabilitation treatment program as determined by the commissioner.

(f) The commissioner shall develop a policy directive setting forth the processes and procedures to determine successful completion of the rehabilitation treatment program and to provide notice to the inmate. If the inmate fails to successfully complete his or her rehabilitation treatment program, his or her parole shall be determined in accordance with the provisions of §62-12-13 of this code. An inmate who has been denied parole pursuant to the provisions of §62-12-13 of this code and who thereafter successfully completes his or her rehabilitation treatment program prior to his or her next parole review shall be eligible for release under the nonviolent offense parole program within a reasonable time after he or she may successfully complete such program as determined by the commissioner, provided the inmate remains qualified for release under the nonviolent offense parole program.

CHAPTER 61

(Com. Sub. for S. B. 678 - By Senators Clements, Baldwin, Jeffries, Pitsenbarger, Roberts, Trump, Cline, Romano and Woelfel)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-5-10, relating to requiring that successful completion of the Getting Over Addicted Lifestyles Successfully Program be deemed as successful completion of the Division of Motor Vehicles' DUI Safety and Treatment Program; requiring the Division of Corrections and Rehabilitation to provide each individual that completes the Getting Over Addicted Lifestyles Successfully Program with a certificate of completion; and requiring the Division of Motor Vehicles to accept the certificate of completion as evidence of completion of the DUI Safety and Treatment Program.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-10. Completing the GOALS Program satisfies the requirements for the DUI Safety and Treatment Program.

1 Notwithstanding any provision of this code to the
2 contrary, any individual committed to the custody of the
3 Commissioner of the Division of Corrections and
4 Rehabilitation who successfully completes the Getting Over
5 Addictive Lifestyles Successfully Program shall be deemed
6 to have also completed the West Virginia DUI Safety and

7 Treatment Program discussed in §17C-5A-3 of this code for
8 purposes of reinstatement of driving privileges.

9 The Commissioner of the Division of Corrections and
10 Rehabilitation shall provide each individual that completes
11 the Getting Over Addictive Lifestyles Successfully Program
12 with a certificate of completion. Upon completion of the
13 Getting Over Addictive Lifestyles Successfully Program,
14 the individual shall provide the certificate of completion to
15 the Division of Motor Vehicles. The Division of Motor
16 Vehicles shall accept the certificate as evidence of
17 completion of the DUI Safety and Treatment Program.

CHAPTER 62

(H. B. 4501 - By Delegates Miller, Criss, Graves, Howell, Shott, N. Brown and Maynard)

[By Request of the Department of Military Affairs and Public Safety]

[Passed February 27, 2020; in effect from passage.]
[Approved by the Governor on March 7, 2020.]

AN ACT to repeal §62-6-6a of the Code of West Virginia, 1931, as amended; to amend and reenact §15A-5-9 of said code; and to amend and reenact §62-1C-14 of said code; all relating to the ability to refuse offenders for commitment to a jail; authorizing the acceptance of certain offenders refusing ordered examination or medical treatment; granting civil and criminal immunity to the division, the commissioner, employees and agents of the division for accepting offenders who refuse a medical examination or medical treatment; and clarifying conditions and circumstances under which division employees accept or refuse to accept offenders brought to a regional jail pursuant to a bailpiece.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15A. DEPARTMENT OF MILITARY AFFAIRS AND PUBLIC SAFETY.

ARTICLE 5. BUREAU OF PRISONS AND JAILS.

§15A-5-9. Ability to refuse offenders.

(a) Notwithstanding any other provision of this code, the commissioner, or any employee or agent of the division, having authority to accept offenders in a jail is not required to accept those offenders if an offender appears to be in need of medical attention of a degree necessitating treatment by a physician. If an offender is refused pursuant to the provisions of this section, he or she may not be accepted for detention until a written clearance is received from a licensed physician reflecting that the offender has been examined and if necessary treated, and which states that it is the physician's medical opinion that the offender can be safely housed in a jail.

(b) Notwithstanding the provisions of subsection (a) of this section, the division, the commissioner, or any employee or agent of the division, may accept an offender into custody who appears to be in need of medical attention of a degree necessitating treatment by a licensed medical professional, who refuses a medical examination or medical treatment to a licensed medical professional, and is immune from civil or criminal liability for accepting the person into custody.

CHAPTER 62. CRIMINAL PROCEDURE.

ARTICLE 1C. BAIL.

§62-1C-14. Bailpiece; issuance to surety; taking accused into custody.

(a) A bailpiece is a certificate stating that the bail became such for the accused in a particular case and the amount thereof. Upon demand therefor, the court, magistrate, or clerk shall issue to the bail bondsperson a bailpiece. Any officer having authority to execute a warrant

of arrest shall assist the bail bondsperson holding such bailpiece to take the accused into custody and produce him or her before the court or magistrate. The bail bondsperson may take the accused into custody and surrender him or her to the court or magistrate without such bailpiece.

(b) If bailpiece is inaccessible due to unavailability of the court's circuit clerk or magistrate, the bail bondsperson, or his or her designee, can take an offender to a regional jail without bailpiece, and the jail must accept the offender, provided:

(1) The bail bondsperson, or his or her designee, delivering an offender to a jail without a bailpiece issued by the court's circuit clerk or magistrate appears on the registered list maintained at the jails and approved by the court of original jurisdiction;

(2) The bail bondsperson signs an agreement provided by the jail indicating that the offender has been booked in lieu of bailpiece. Such agreement shall contain a clause indicating the incarceration of such offender is lawful and that the jail accepting the offender shall be held harmless from any claims of illegal incarceration or other relative charges; thereby, such bail bondsperson assumes the risk and liability of such incarceration; and

(3) Bailpiece must be applied for by the bail bondsperson or his or her designee from the court's circuit clerk or magistrate and hand-delivered by the bail bondsperson or his or her designee to the jail housing such offender on the next judicial day following the initial intake.

(c) Any bail bondsperson who willfully fails to attempt to obtain the appropriate bailpiece within the allotted time period provided in subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be prohibited from continuing to conduct business in this state and shall be fined not more than $1,000 and confined in the regional jail not more than one year.

41 (d) No officer, jailer, or other person having authority to
42 accept offenders in a regional jail is required to accept such
43 offenders being housed in lieu of bailpiece except as set
44 forth in §15A-5-9 of this code.

45 (e) The Division of Corrections and Rehabilitation, the
46 county sheriff, county commission, or any of their agents or
47 employees, shall be immune from liability for any claims of
48 illegal incarceration or other relative charges for any
49 offender accepted into a facility under this section.

ARTICLE 6. MISCELLANEOUS PROVISISIONS CONCERNING CRIMINAL PROCEDURES.

§62-6-6a. Disposition of prisoners.

1 [Repealed]

CHAPTER 63

(H. B. 4510 - By Delegates Steele, Criss, Graves, Howell, D. Kelly, Miller, Shott, N. Brown, Maynard and Fast)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-8-1 of the Code of West Virginia, 1931, as amended, relating to creating the offense of bodily intrusion by an inmate in the custody of the Commissioner of Corrections and Rehabilitation; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-1. Offenses by inmates; conspiracy.

(a) A person imprisoned or otherwise in the custody of the Commissioner of Corrections and Rehabilitation is guilty of a felony if he or she kills, wounds, or inflicts other bodily injury upon any person at any correctional facility; or breaks, cuts, or injures, or sets fire to any building, fixture, or fastening of any correctional facility, or jail or any part thereof, for the purpose of escaping or aiding any other inmate to escape therefrom, or renders any correctional facility or jail less secure as a place of confinement; or makes, procures, secretes, or has in his or her possession, any instrument, tool, or other thing for such purpose, or with intent to kill, wound, or inflict bodily injury; or resists the lawful authority of an officer or guard of any correctional facility or jail for such purpose or with such intent. Any three or more inmates confined, or in custody, who conspire together to commit any offense mentioned in this section are each guilty of a felony.

(b) Any person in the custody of the Commissioner of Corrections and Rehabilitation who commits an act of bodily intrusion is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years. As used in this subsection "bodily intrusion" means penetration, however slight, of the anus of a male or female or the sex organ of a female without his or her consent by means of forcible compulsion and for reasons other than the sexual gratification of either person.

CHAPTER 64

(Com. Sub. for S. B. 96 - By Senators Trump, Cline, Rucker, Azinger, Maynard, Roberts, Sypolt, Smith, Hamilton, Romano and Facemire)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating to prohibiting municipalities from limiting in any manner inconsistent with or in conflict with state law, the rights of persons to purchase, possess, transfer, own, carry, transport, sell, or store deadly weapons, firearms, or pepper spray; defining terms; extending restrictions on municipal regulation of firearms to pepper spray and deadly weapons; removing authority of municipalities to prohibit possession of deadly weapons or pepper spray in areas where temporary events are held; and limiting award of attorney's fees and costs to petitioners prevailing in certain actions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES, AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES, AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-5a. Limitations upon municipalities' power to restrict the purchase, possession, transfer, ownership, carrying, transport, sale, and storage of certain weapons and ammunition.

(a) Neither a municipality nor the governing body of any municipality may, by ordinance or otherwise, limit the right of any person to purchase, possess, transfer, own, carry, transport, sell, or store any deadly weapon, firearm, or pepper spray, or any ammunition or ammunition components to be used therewith nor to so regulate the keeping of gunpowder so as to directly or indirectly prohibit the ownership of the ammunition in any manner inconsistent with or in conflict with state law.

(b) For the purposes of this section:

(1) "Deadly weapon" has the meaning provided in §61-7-2 of this code.

(2) "Firearm" has the meaning provided in §61-7-2 of this code.

(3) "Municipally owned or operated building" means any building that is used for the business of the municipality, such as a courthouse, city hall, convention center, administrative building, or other similar municipal building used for a municipal purpose permitted by state law: *Provided*, That "municipally owned or operated building" does not include a building owned by a municipality that is leased to a private entity where the municipality primarily serves as a property owner receiving rental payments.

(4) "Municipally owned recreation facility" means any municipal swimming pool, recreation center, sports facility, facility housing an after-school program, or other similar facility where children are regularly present.

(5) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(c)(1) A municipality may enact and enforce an ordinance or ordinances that prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray in municipally owned or operated buildings.

(2) A municipality may enact and enforce an ordinance or ordinances that prohibit a person from carrying or possessing a deadly weapon, firearm, or pepper spray openly or that is not lawfully concealed in a municipally owned recreation facility: *Provided*, That a municipality may not prohibit a person with a valid concealed handgun license from carrying an otherwise lawfully possessed firearm into a municipally owned recreation facility and securely storing the firearm out of view and access to others during their time at the municipally owned recreation facility.

(3) A person may keep an otherwise lawfully possessed deadly weapon, firearm, or pepper spray in a motor vehicle in municipal public parking facilities if the vehicle is locked and the deadly weapon, firearm, or pepper spray is out of view.

(4) A municipality may not prohibit or regulate the carrying or possessing of a deadly weapon, firearm, or pepper spray on municipally owned or operated property other than municipally owned or operated buildings and municipally owned recreation facilities pursuant to subdivisions (1) and (2) of this section: *Provided*, That a municipality may prohibit persons who do not have a valid concealed handgun license from carrying or possessing a firearm on municipally owned or operated property.

(d) It shall be an absolute defense to an action for an alleged violation of an ordinance authorized by this section prohibiting or regulating the possession of a deadly weapon, firearm, or pepper spray that the person: (1) Upon being requested to do so, left the premises with the deadly weapon, firearm, or pepper spray or temporarily relinquished the deadly weapon, firearm, or pepper spray in response to

being informed that his or her possession of the deadly weapon, firearm, or pepper spray was contrary to municipal ordinance; and (2) but for the municipal ordinance the person was lawfully in possession of the deadly weapon, firearm, or pepper spray.

(e) Any municipality that enacts an ordinance regulating or prohibiting the carrying or possessing of a deadly weapon, firearm, or pepper spray pursuant to subsection (c) of this section shall prominently post a clear statement at each entrance to all applicable municipally owned or operated buildings or municipally owned recreation facilities setting forth the terms of the regulation or prohibition.

(f) Redress for an alleged violation of this section may be sought through the provisions of §53-1-1 *et seq.* of this code, which may include the awarding of reasonable attorney's fees and costs, if the petitioner prevails.

(g) For the purposes of §61-7-14 of this code, municipalities may not be considered a person charged with the care, custody, and control of real property.

(h) This section does not:

(1) Authorize municipalities to restrict the carrying or possessing of deadly weapons, firearm, or pepper spray, which are otherwise lawfully possessed, on public streets and sidewalks of the municipality; or

(2) Limit the authority of a municipality to restrict the commercial use of real estate in designated areas through planning or zoning ordinances.

CHAPTER 65

(Com. Sub. for S. B. 209 - By Senators Rucker and Maynard)

[Passed February 20, 2020; in effect from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §8-6-4a and §8-6-5 of the Code of West Virginia, 1931, as amended, all relating to annexation by minor boundary adjustment; clarifying language regarding entry of order by county commission following annexation of property within urban growth boundary by minor boundary adjustment; requiring that municipality as part of application provide affidavit that persons, businesses, and freeholders in additional territory consent to inclusion in annexation; providing procedure when affected party is unavailable to provide affidavit; requiring county commission to enter order denying application for minor boundary adjustment annexation upon determination that annexation could be efficiently and cost effectively accomplished under other provisions of said code, that application lacks evidence of consent of all affected parties, or is otherwise insufficient; and prohibiting municipality from applying for annexation by minor boundary adjustment for two years after denial of application.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. ANNEXATION.

PART III. ANNEXATION WITHOUT ELECTION.

§8-6-4a. Annexation without election for municipalities in counties that have an adopted countywide zoning ordinance which includes urban growth boundaries.

(a) This section applies to municipalities in counties that have adopted a countywide zoning ordinance with designated urban growth boundaries and, prior to January 1, 2009, have adopted local impact fees pursuant to the provisions of §7-20-1 *et seq.* of this code that want to annex additional property without an election.

(b) For purposes of this section only:

(1) "Contiguous" means property that is next to, abutting, and having a boundary that is coterminous with the municipality's designated urban growth boundary. The length of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography are not to be used to determine if a property is contiguous: *Provided*, That the width of a street, highway, road, or other traffic or utility easement, streams, rivers, or other natural topography may be used to determine contiguous boundaries.

(2) "Urban growth boundary" means a site-specific line, delineated on a zoning map or a written description in a zoning ordinance identifying an area around and outside the corporate limits of a municipality within which there is a sufficient supply of developable land within the boundary for at least a prospective 20-year period of municipal growth based on demographic forecasts and the time reasonably required to effectively provide municipal services to the identified area. The urban growth boundary may be called by any name chosen by the county commission, but the word "boundary" shall be used in the name of the boundary. The boundary shall be established by the county commission in agreement with each individual municipality regarding that municipality's boundary. If the county commission and municipality cannot agree upon the location or size of the boundary, either party may file for declaratory judgment relief in the circuit court which shall submit the dispute to mediation or arbitration prior to final resolution by the circuit court. Once a county has adopted an urban growth boundary by its designation on an adopted

county zoning map, the gross area inside the boundary may not be reduced without written consent of the municipality. The county commission shall review each urban growth boundary at a period not to exceed 10 years or upon request of the individual municipality.

(c) *Procedure for a municipality to annex property within an urban growth boundary.* —

(1) If the proposed property to be annexed by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code. Agreement with the county commission is not required.

(2) If the proposed property to be annexed by minor boundary adjustment by a municipality is entirely within the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the provisions of §8-6-5 of this code are followed, except that agreement with the county commission is not required.

(d) *Procedure for a municipality to annex property within urban growth boundaries of two or more municipalities.* —

If the proposed property to be annexed by a municipality is partially or wholly within another municipality's urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the two municipalities have executed an intergovernmental agreement regarding the annexation of the subject property. Agreement with the county commission is not required.

(e) *Procedure for a municipality to annex contiguous property outside an urban growth boundary.* —

(1) If the proposed property to be annexed by a municipality is outside the municipality's designated urban growth boundary, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code, if:

(A) The proposed property to be annexed is contiguous to the municipality, as defined in this section; and

(B) The municipality has the county commission's agreement.

(2) Prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(f) *Procedure for a municipality to annex noncontiguous property outside an urban growth boundary.* —

(1) If the proposed property to be annexed by a municipality is entirely outside the municipality's designated urban growth boundary and is not contiguous to the municipality, as defined in this section, then the municipality may annex without an election the proposed property pursuant to the provisions of §8-6-4 of this code if the municipality has the county commission's agreement and, prior to the agreement of the county commission to the annexation of the proposed property, the county commission shall:

(A) Hold a public hearing;

(B) Place a notice on the subject property, which notice shall be the same as that required for property to be rezoned; and

(C) At least 15 days prior to the public hearing, publish a notice of the date, time, and place of the public hearing as a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(2) After the public hearing and on-site notice, if the county commission finds, by a written record, that the proposed annexation is for the good of the county as a whole, then the county commission may agree to the annexation.

(g) Prior to the county commission entering an order for any annexation pursuant to this section, the annexed property shall be surveyed by a licensed professional surveyor and a metes and bounds description of the annexed property must be provided to the county commission of the county in which the property is located.

(h) After a municipality has annexed property pursuant to this section and the property has been surveyed, the county commission shall enter an order. After the order is entered, the corporate limits of the municipality include the annexed property.

PART IV. ANNEXATION BY MINOR BOUNDARY ADJUSTMENT.

§8-6-5. Annexation by minor boundary adjustment.

(a) In the event a municipality desires to increase its corporate limits by making a minor boundary adjustment, the governing body of the municipality may apply to the county commission of the county wherein the municipality or the major portion of the territory thereof, including the territory to be annexed, is located for permission to effect annexation by minor boundary adjustment. The

municipality shall pay the costs of all proceedings before the commission.

(b) In addition to any other annexation configuration, a municipality may incorporate by minor boundary adjustment: (i) Territory that consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders; or (ii) territory that consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed.

(c) A county commission may develop a form application for annexation for minor boundary adjustment. An application for annexation by minor boundary adjustment shall include, but not be limited to:

(1) The number of businesses located in and persons residing in the additional territory;

(2) An affidavit of each business located in, each person residing in, and each freeholder of the additional territory stating that he, she, or it has consented to be included in the annexation, in such form as the county commission deems sufficient. In the event the municipality cannot obtain an affidavit from a business, resident, or freeholder within 90 days after sending the affidavit form and a letter explaining the purpose of the affidavit via certified mail, return receipt requested, to the best available address for the business, resident, or freeholder, such business, resident, or freeholder shall be deemed to have consented to the annexation;

(3) An accurate map showing the metes and bounds of the additional territory;

(4) A statement setting forth the municipality's plan for providing the additional territory with all applicable public services such as police and fire protection, solid waste collection, public water and sewer services, and street maintenance services, including to what extent the public

services are or will be provided by a private solid waste collection service or a public service district;

(5) A statement of the impact of the annexation on any private solid waste collection service or public service district currently doing business in the territory proposed for annexation in the event the municipality should choose not to utilize the current service providers;

(6) A statement of the impact of the annexation on fire protection and fire insurance rates in the territory proposed for annexation;

(7) A statement of how the proposed annexation will affect the municipality's finances and services; and

(8) A statement that the proposed annexation meets the requirements of this section.

(d) Upon receipt of a complete application for annexation by minor boundary adjustment, the county commission shall determine whether the application meets the threshold requirements for consideration as a minor boundary adjustment including whether the annexation could be efficiently and cost effectively accomplished under §8-6-2 or §8-6-4 of this code. If the county commission determines that the annexation could be cost effectively and efficiently accomplished under §8-6-2 or §8-6-4 of this code, that the application lacks sufficient evidence that all affected parties of the additional territory consent to the annexation, or that the application otherwise fails to meet the threshold requirements for consideration as a minor boundary adjustment, it shall enter an order denying the application, which order shall include the reasons upon which it is based.

(e) If the application meets the threshold requirements, the county commission shall order publication of a notice of the proposed annexation to the corporate limits and of the date and time set by the commission for a hearing on the

proposal. Publication shall be as in the case of an order calling for an election, as set forth in §8-6-2 of this code. A like notice shall be prominently posted at not less than five public places within the area proposed to be annexed.

(f) In making its final decision on an application for annexation by minor boundary adjustment, the county commission shall, at a minimum, consider the following factors:

(1) Whether the territory proposed for annexation is contiguous to the corporate limits of the municipality. For purposes of this section, "contiguous" means that at the time the application for annexation is submitted, the territory proposed for annexation either abuts directly on the municipal boundary or is separated from the municipal boundary by an unincorporated street or highway, or street or highway right-of-way, a creek or river, or the right-of-way of a railroad or other public service corporation, or lands owned by the state or the federal government;

(2) Whether the proposed annexation is limited solely to a Division of Highways right-of-way or whether the Division of Highways holds title to the property in fee;

(3) Whether affected parties of the territory to be annexed oppose or support the proposed annexation. For purposes of this section, "affected parties" means freeholders, firms, corporations, and qualified voters in the territory proposed for annexation and in the municipality, and a freeholder whose property abuts a street or highway, as defined in §17C-1-35 of this code, when: (i) The street or highway is being annexed to provide emergency services; or (ii) the annexation includes one or more freeholders at the end of the street or highway proposed for annexation;

(4) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code and one or more freeholders;

(5) Whether the proposed annexation consists of a street or highway as defined in §17C-1-35 of this code which does not include a freeholder but which is necessary for the provision of emergency services in the territory being annexed;

(6) Whether another municipality has made application to annex the same or substantially the same territory; and

(7) Whether the proposed annexation is in the best interest of the county as a whole.

(g) If the county commission denies the application for annexation by minor boundary adjustment, the commission may allow the municipality to modify the proposed annexation to meet the commissions objections. The commission must order another public hearing if significant modifications are proposed.

(h) The final order of the commission shall include the reasons for the grant or denial of the application.

(i) The municipality applying for annexation or any affected party may appeal the commission's final order to the circuit court of the county in which the municipality or the major portion thereof, including the area proposed to be annexed, is located. The county commission may participate in any appeal taken from its order in the same manner and to the same extent as a party to the appeal. The order may be reviewed by the circuit court as an order of a county commission ordering an election may be reviewed under §8-5-16 of this code.

(j) If the final order of the county commission is a denial of the application for annexation, the municipality may appeal as set forth in this section, but the municipality may not present the commission with another application for annexation relating to the same proposed change or any part thereof for a period of two years after issuance of the final order of the commission, unless such application is directed by the circuit court as the result of an appeal.

CHAPTER 66

(Com. Sub. for S. B. 225 - By Senators Maynard and Cline)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-12-20, relating to empowering municipalities to enact Adopt-A-Street programs; and establishing eligibility criteria.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES, AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-20. Authorizing municipalities to enact Adopt-A-Street programs.

(a) In addition to all other powers and duties conferred by law upon municipalities, municipalities are empowered to enact municipality Adopt-A-Street programs.

(b) The state Adopt-A-Highway Program was established in the late 1980s to improve the quality of the state's environment by encouraging public involvement in the elimination of highway litter. That program is cosponsored by the Division of Highways and the Department of Environmental Protection, REAP Program. Its objective is to save taxpayer money by increasing public awareness and to serve as an educational tool by focusing

on the consequences of littering. The program offers volunteers the opportunity to take charge of their own environment by making a positive effort to create a cleaner, more aesthetic place in which to live.

In West Virginia, there are currently 25,000 volunteers who regularly pick up litter on 4,000 miles of highway. They have been responsible for removing more than 40 million pounds of litter since the program began.

(c) As with the state program, individuals, families, churches, businesses, schools, civic organizations, government agencies, scouting groups, fraternities, and communities may participate in a municipality's Adopt-A-Street program. Anyone who is at least 12 years old may participate. Any street that is maintained by that municipality is eligible for adoption, with the exception of interstates and streets deemed unsafe. Volunteers may select a street to adopt and then have it approved by the municipality, or they may ask the municipality to suggest an adoptable street. Alleys, dirt roads, and streets off the beaten path, as well as major streets, may be adopted. Adopted streets must be at least six blocks long.

(d) Adoptions are for a period of two years, during which time three cleanups are required per year. As volunteers pick up litter, bags that have been filled are placed on street sides for removal and disposal by the municipality. Garbage bags, safety vests, safety training, traffic warning signs, and gloves shall be furnished by the municipality.

(e) Adopted streets may be identified by a sign at each end of the section bearing the Adopt-A-Street logo and the name of the adopting entity. Volunteers who complete six required litter pickups within the two-year contract period are awarded a certificate of accomplishment signed by the mayor of the municipality.

CHAPTER 67

(S. B. 281 - By Senators Woelfel, Plymale and Palumbo)

[Passed February 28, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §8-14-12 of the Code of West Virginia, 1931, as amended, relating to removing the residency requirement for persons applying for reappointment to a municipal police department.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY, AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-12. Form of application; age and residency requirements; exceptions.

(a) The policemen's civil service commission in each Class I and Class II city shall require a person applying for admission to any competitive examination provided under the civil service provisions of this article or under the commission's rules to file in its office, within a reasonable time prior to the proposed examination, a formal application in which the applicant shall state under oath or affirmation:

(1) The applicant's full name, residence, and post-office address;

(2) The applicant's United States citizenship, age, and the place and date of the applicant's birth;

(3) The applicant's state of health and the applicant's physical capacity for the public service;

(4) The applicant's business and employments and residences for at least three previous years; and

(5) Other information as may reasonably be required, touching upon the applicant's qualifications and fitness for the public service.

(b) Applications shall be furnished by the commission, without charge. The commission may require, in connection with the application, the certificates of citizens, physicians, and others, having pertinent knowledge concerning the applicant, as the good of the service may require.

(c) Notwithstanding the provisions of §11-5-1 *et seq.* of this code, a person may not submit an application for original appointment if the person is less than 18 years of age or more than 40 years of age at the date of the individual's application.

(d) Notwithstanding the requirements established in this section, if an applicant: (1) Formerly served upon the paid police department of the city to which he or she makes application, for a period of more than his or her probationary period; (2) resigned from the department at a time when there were no charges of misconduct or other misfeasance pending against the applicant; and (3) applies for appointment by reinstatement within a period of two years from the date of resignation from the paid police department to which the individual seeks appointment by reinstatement, then the individual is eligible for appointment by reinstatement in the discretion of the policemen's civil service commission. The applicant may be over the age of 40 years. The applicant, providing his or her former term of service so justifies, may be appointed by reinstatement to

the paid police department without a competitive examination, but the applicant shall undergo a medical examination. The applicant shall be the lowest in rank in the department next above the probationers of the department.

CHAPTER 68

(S. B. 523 - By Senators Plymale and Stollings)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §8-22A-28 of the Code of West Virginia, 1931, as amended, relating to participation in Social Security by certain municipalities; extending the deadline for opting to extend Social Security coverage; and requiring State Auditor's office to assist municipalities in complying with certain requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22A. WEST VIRGINIA MUNICIPAL POLICE OFFICERS AND FIREFIGHTERS RETIREMENT SYSTEM.

§8-22A-28. How a municipality or municipal subdivision becomes a participating public employer; duty to request referendum on Social Security coverage.

(a) Subject to §8-22-16 of this code, any municipality or municipal subdivision employing municipal police officers or firefighters may by a majority of the members of its governing body eligible to vote, elect to become a participating public employer and thereby include its police officers and firefighters in the membership of the plan. The clerk or secretary of each municipality or municipal subdivision electing to become a participating public

employer shall certify the determination of the municipality or municipal subdivision by corporate resolution to the Consolidated Public Retirement Board within 10 days from and after the vote of the governing body. Separate resolutions are required for municipal police officers and municipal firefighters. Once a municipality or municipal subdivision elects to participate in the plan, the action is final and it may not, at a later date, elect to terminate its participation in the plan.

(b) On or before October 1, 2024, all participating employers shall submit a plan to the State Auditor, as the designated state agency under the Social Security Act, to extend Social Security benefits to members of the retirement system as authorized by §5-7-5 of this code and applicable federal laws. The State Auditor shall assist the participating employers in complying with the requirements for providing extension of Social Security benefits to members of the retirement system.

CHAPTER 69

(Com. Sub. for S. B. 532 - By Senators Azinger, Hamilton, Ihlenfeld, Plymale, Tarr, Jeffries and Romano)

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §8-22-28a, relating to the distribution of the assets remaining in a municipal policemen's or firemen's pension and relief fund upon the death or disqualification of the last remaining retiree or beneficiary receiving benefits from the fund; providing for the use of the assets received by the municipality; and

providing for the use of assets received by the Municipal Pensions Oversight Board.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. RETIREMENT BENEFITS GENERALLY; POLICEMEN'S PENSION AND RELIEF FUND; FIREMEN'S PENSION AND RELIEF FUND; PENSION PLANS FOR EMPLOYEES OF WATERWORKS SYSTEM, SEWERAGE SYSTEM, OR COMBINED WATERWORKS AND SEWERAGE SYSTEM.

§8-22-28a. Distribution of remaining assets in a closed municipal policemen's or firemen's pension and relief fund.

(a)(1) Upon the cessation of any and all benefit payments to retirees or retiree beneficiaries because of death or disqualification, the board shall transfer the remaining assets of a policemen's pension and relief fund or a firemen's pension and relief fund to the municipality to be used solely by the municipality's governing body to fund future retirement obligations for the municipality's police or fire department members who are in the Municipal Police Officers and Firefighters Retirement System established under §8-22A-1 *et seq.* of this code, subject to subdivision (2) of this subsection.

(2) If within five years prior to the death of the last remaining retiree or beneficiary the Municipal Pensions Oversight Board provided any state aid to the fund pursuant to §33-3-14d(b)(2) of this code, an amount equal to the aggregate amount of state aid provided to the fund during that period shall be repaid from the assets of the fund to the Municipal Pensions Oversight Board prior to the municipality's use of the remaining assets for the purposes described in subdivision (1) of this subsection. If the amount to be repaid is greater than the total assets of the fund, then the entire amount of the fund shall be repaid to the Municipal Pensions Oversight Board.

(b) The Municipal Pensions Oversight Board shall deposit any repaid amounts into the Municipal Pensions Security Fund for reallocation to municipal policemen's or firemen's pension and relief funds with an actuarial deficiency during the next allocation cycle pursuant to §33-3-14d(b)(2) of this code.

CHAPTER 70

(Com. Sub. for S. B. 649 - By Senators Maynard and Cline)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §24-6-5 of the Code of West Virginia, 1931, as amended, relating to permitting directors of county emergency phone systems to obtain mobile phone emergency lines and enter into service provider contracts; establishing payment of emergency mobile phone contracts; and requiring a report.

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

*NOTE: This section was also amended by H. B. 4123 (Chapter 295), which passed subsequent to this act.

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; and

(2) 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's 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 shall 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 emergency telephone systems, and any system established pursuant to this article may include the territory of more than one public agency, or may include only a portion of the territory of a public agency.

(j) The director of the county or municipal enhanced telephone system shall have the authority to enter into mobile-phone contracts with service providers for the purpose of obtaining a mobile-phone emergency line for the county or municipality. The director must solicit bids for mobile-phone contracts from mobile-phone service providers in this state. The director may award the contract to the lowest responsible bidder, or designate in writing, why any other bidder other than the lowest responsible bidder was awarded a contract. The director may obtain as many lines as reasonably needed for emergencies where landlines are unavailable to serve the county or

municipality. The director and phone service provider should collaborate to obtain the following:

(1) The emergency mobile-phone number may be the county prefix and end in 0911, as feasible for the phone service provider;

(2) The emergency mobile-phone service provider should permit roll-over service to allow multiple callers to dial into the amount of lines purchased; and

(3) The emergency mobile-phone service provider should provide the lowest possible cost.

Nothing in this subsection shall 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 emergency mobile-telephone systems. This section shall be effective July 1, 2020.

(k) Emergency mobile-phone contracts entered into pursuant to subsection (j) of this section may be paid from funds received by the Public Service Commission relating to 911 fees remitted to the county or by other county funds. A report of the funds expended for subsection (j) of this section shall be presented to the interim Joint Committee on Government Organization no later than November 30, 2020, to ensure the fiscal responsibility and efficacy of this section.

CHAPTER 71

(S. B. 654 - By Senators Tarr, Hardesty, Pitsenbarger, Prezioso, Smith, Weld, Cline, Stollings and Plymale)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-14D-24 of the Code of West Virginia, 1931, as amended, relating to allowing certain sheriffs to transfer from the Public Employees Retirement System into the Deputy Sheriff Retirement System.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-24. Service as sheriff.

(a) Any member who after the effective date of this article is elected sheriff of a county in West Virginia may elect to continue as a member in this plan by paying the amounts required by §7-14D-7 of this code. Upon the election, service as a sheriff shall be treated as covered employment and the sheriff is not entitled to any credit for that service under any other retirement system of the state.

(b) Any member retired as a deputy sheriff under this plan who, after the effective date of this article, is elected or appointed sheriff of a county in West Virginia, may elect to suspend the payment of his or her annuity from this system and again become a contributing member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service as a sheriff shall be treated as covered employment, and the sheriff is not entitled to any

credit for that period of elected service under any other retirement system of the state. At the end of his or her term as sheriff, the member making such election shall have his or her annuity recalculated and shall be granted an adjustment to his or her previous annuity to include the period of elected service.

(c) Any person, who before the effective date of this article was elected sheriff of a county in West Virginia, and who, immediately prior to being so elected sheriff, was a deputy sheriff with at least 20 years of credited service under the Public Employees Retirement System, with at least 16 of those 20 years having been earned as a deputy sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided*, That any service as a sheriff shall be treated as covered employment under this article and the sheriff is not entitled to any credit for that service as a sheriff or the prior service as a deputy sheriff under any other retirement system of the state. Persons making the election provided for in this subsection shall do so within 10 days of taking office as sheriff or within 10 days of the effective date of this provision.

(d) Any person who, before the effective date of this article, was elected sheriff of a county of West Virginia, and who, prior to being elected sheriff, was a deputy sheriff and also a previously elected sheriff, with credited service under the Public Employees Retirement System, with at least 16 of those years having been earned as combined service as a deputy sheriff and a previously elected sheriff, may elect to become a member of this plan by paying the amounts required by §7-14D-7 of this code. Upon such election, service shall be transferred from the Public Employees Retirement System pursuant to §7-14D-8 of this code: *Provided*, That a person's service as a sheriff shall be treated as covered employment under this article, and that person is

not entitled to any credit for that service as a sheriff or deputy sheriff under any other retirement system of this state. A person making the election provided in this subsection shall do so within 30 days of taking office as a sheriff or within 30 days of the effective date of this provision.

(e) Notwithstanding any other provision of the code to the contrary, any member who was elected sheriff of a county of West Virginia to serve on or after January 1, 2013, and who has not commenced retirement in the Deputy Sheriff Retirement System or the Public Employees Retirement System, must notify the board in writing by July 31, 2020, of his or her intent to pay the difference in the employee contribution between the Public Employees Retirement System and the Deputy Sheriff Retirement System in order to transfer all service credit earned as a sheriff or purchased in accordance with Section 414(u) of the Internal Revenue Code and the federal Uniformed Services Employment and Reemployment Rights Act from the Public Employees Retirement System to the Deputy Sheriff Retirement System. The board shall compute the difference in employee contributions owed up through September 30, 2020, on the total compensation for which assets are being transferred and notify the sheriff of the amount owed in writing by letter mailed no later than August 21, 2020. This difference in employee contributions must be paid in full by the sheriff to the Deputy Sheriff Retirement System no later than September 30, 2020. If timely paid, employee and employer contributions to the Deputy Sheriff Retirement System shall commence October 1, 2020.

(1) The board shall transfer assets from the Public Employees Retirement System into the Deputy Sheriff Retirement System no later than November 30, 2020.

(2) The amount of assets to be transferred for each transferring sheriff shall be computed as of July 1, 2019, using the actuarial valuation assumptions in effect for the

July 1, 2019, actuarial valuation of the Public Employees Retirement System, and updated with seven and one-half percent annual interest to the date of the actual asset transfer. The market value of the assets of the transferring sheriff in the Public Employees Retirement System shall be determined as of the end of the month preceding the actual transfer. To determine the computation of the asset share to be transferred the board shall:

(A) Compute the market value of the Public Employees Retirement System assets;

(B) Compute the accrued liability for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members;

(C) Reduce the market value of Public Employees Retirement System assets by the accrued liability determined in paragraph (B) of this subdivision;

(D) Compute the entry age method accrued liability for all active Public Employees Retirement System members;

(E) Compute the share of accrued liability as determined pursuant to paragraph (D) of this subdivision, that is attributable to those sheriffs in the Public Employees Retirement System who have elected to transfer to the plan;

(F) Compute the percentage of active member's accrued liability computed to the sheriffs by dividing paragraph (E) by paragraph (D) of this subdivision; and

(G) Determine the asset share to be transferred from Public Employees Retirement System to the plan by multiplying paragraph (C) times paragraph (F) of this subdivision.

CHAPTER 72

(Com. Sub. for S. B. 729 - By Senators Mann, Azinger, Jeffries, Romano, Weld, Baldwin, Hardesty, Stollings, Hamilton and Roberts)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-14D-14 of the Code of West Virginia, 1931, as amended, relating to awards and benefits for disability under the Deputy Sheriff Retirement Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14D. DEPUTY SHERIFF RETIREMENT SYSTEM ACT.

§7-14D-14. Awards and benefits for disability – duty related.

(a) Any member who after the effective date of this article and during covered employment:

(1) Has been or becomes either totally or partially disabled by injury, illness, or disease; and

(2) The disability is a result of an occupational risk or hazard inherent in or peculiar to the services required of members; or

(3) The disability was incurred while performing law-enforcement functions during either scheduled work hours or at any other time; and

(4) In the opinion of the board, the member is by reason of the disability unable to perform adequately the duties required of a deputy sheriff, is entitled to receive and shall

be paid from the fund in monthly installments the compensation under either subsection (b) or (c) of this section.

(b) If the member is totally disabled, the member shall receive 90 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months. Any member retired under this subsection, or under §7-14D-17 of this code, on or before July 1, 2020, shall have his or her monthly benefit payment increased by $400.

(c) If the member is partially disabled, the member shall receive 45 percent of his or her average full monthly compensation for the 12-month contributory period preceding the member's disability award, or the shorter period if the member has not worked 12 months.

(d) If the member remains partially disabled until attaining 60 years of age, the member shall then receive the retirement benefit provided in §7-14D-11 and §7-14D-12 of this code.

(e) The disability benefit payments will begin the first day of the month following termination of employment and receipt of the disability retirement application by the Consolidated Public Retirement Board.

CHAPTER 73

(H. B. 4396 - By Delegates Barnhart, Foster, Anderson, C. Martin, Bartlett, D. Jeffries, Azinger, Campbell, Howell, Hartman and Fast)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-1-16 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §8-1-9, all relating generally to the Commission on Special Investigations and the State Auditor being informed of fraud and misappropriations by county and municipal governments.

Be it enacted by the Legislature of West Virginia:

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-16. Reporting of fraud and misappropriation of funds.

(a) Whenever a county commission, or any of a county's boards, committees, or any other entities of any kind or nature authorized in this chapter, obtains information that an employee, officer or member of the county commission, or any of a county's boards, committees, or any other entities of any kind or nature authorized in this chapter may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, the county commission, or the county's board, committee, or other entity authorized in this chapter shall timely report that information or allegation in writing to the county prosecutor's office, the Legislature's Commission on Special Investigations and the State Auditor.

(b) The reporting of the information under subsection (a) of this section does not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 1. PURPOSE AND SHORT TITLE; DEFINITIONS; GENERAL PROVISIONS; CONSTRUCTION.

§8-1-9. Reporting of fraud and misappropriations of funds.

(a) Whenever a governing body for a municipality, or any of a municipality's boards, committees, or any other entities of any kind or nature authorized in this chapter, obtains information that an employee, officer, or member of the municipality, or any of a municipality's boards, committees, or any other entities of any kind or nature authorized in this chapter may have misappropriated funds, engaged in fraud, or otherwise violated a law relating to the public trust, the governing body for a municipality, or the municipality's board, committee, or other entity authorized in this chapter shall timely report that information or allegation in writing to the county prosecutor's office, the Legislature's Commission on Special Investigations and the State Auditor.

(b) The reporting of the information under subsection (a) of this section does not prevent, relieve or replace a report to a law-enforcement agency, if appropriate or warranted.

CHAPTER 74

(H. B. 4600 - By Delegates Graves, Nelson, Anderson, Pethtel and Evans)

[Passed February 27, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-22-26 of the Code of West Virginia, 1931, as amended, relating to the use of beneficiaries of a death benefit from a municipal policemen's or firemen's pension and relief fund in the calculation of the distribution of premium tax proceeds.

Be it enacted by the Legislature of West Virginia:

§8-22-26. Death benefits.

(a) In case:

(1) Any member of a paid police or fire department who has been in continuous service for more than five years dies from any cause other than as specified in subsection (b) of this section before retirement on a disability pension under the provisions of, prior to July 1, 1981, section twenty-four of this article, or after June 30, 1981, §8-22-23a and §8-22-24 of this code, or a retirement pension under the provisions of §8-22-25(a) or §8-22-25(a) and §8-22-25(b) of this code, leaving in either case surviving a spouse, or any dependent child or children under the age of eighteen years, or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years, or any dependent child over the age of eighteen years of age who is totally physically or mentally disabled so long as such condition exists; or

(2) Any former member of any such department who is on a disability pension prior to July 1, 1981, under section twenty-four of this article, or after June 30, 1981, under §8-22-23a and §8-22-24 of this code, or is receiving or is entitled to receive retirement pension benefits under the provisions of §8-22-25(a) or §8-22-25(a) and §8-22-25(b) of this code, dies from any cause other than as specified in subsection (b) of this section leaving in either case surviving a spouse or any dependent child or children under the age of eighteen years or dependent father or mother or both, or any dependent brothers or sisters or both under the age of eighteen years, or any dependent child over the age of eighteen years of age who is totally physically or mentally disabled so long as such condition exists; then in any of the cases set forth in subdivisions (1) and (2) of this subsection, the board of trustees of such pension and relief fund shall, immediately following the death of the member, pay to or for each entitled surviving dependents the following pension benefits: To the surviving spouse, until death or remarriage, a sum per month equal to sixty percent of the member's pension or, in the event the member was not receiving a pension at the time of the member's death, a sum per month equal to sixty percent of the monthly retirement pension such member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or the sum of $300 per month, whichever is greater; to each dependent child, a sum per month equal to twenty percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to twenty percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, or until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, a sum per month equal to twenty-five percent of the member's pension or, in the event the member was not receiving a

pension at the time of the member's death, a sum per month equal to twenty-five percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent orphaned child, a sum per month equal to twenty-five percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to twenty-five percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension, until the child attains the age of eighteen years or marries, whichever first occurs; to each dependent father or mother, a sum per month for each equal to ten percent of the member's pension or, in the event the member was not receiving a pension on the date of the member's death, a sum per month equal to ten percent of the monthly retirement pension the member would have been entitled to receive pursuant to §8-22-25 of this code on the date of the member's death if the member had then been eligible for a retirement pension; to each dependent brother or sister, the sum of $50 per month until he or she attains the age of eighteen years or marries, whichever first occurs, but in no event shall the aggregate amount paid to all brothers and sisters of the member exceed $100 per month. If at any time, because of the number of dependents, all dependents cannot be paid in full as herein provided, then each dependent shall receive his or her pro rata share of the payments. In no case shall the payments to the surviving spouse and children be cut below sixty-five percent of the total amount paid to all dependents.

(b) The surviving spouse, child or children, or dependent father or mother, or dependent brothers or sisters, of any member who dies by reason of service rendered in the performance of the member's duties shall, regardless of

the length of the member's service and irrespective of whether the member was or was not entitled to receive, or was or was not receiving, disability pension or temporary disability payments at the time of the member's death, receive the death benefits provided for in subsection (a) of this section. If the member had less than three years' service at the time of the member's death, the member's pension shall be computed on the basis of the actual number of years of service.

(c) If a member dies without leaving a spouse, dependent child or children, or dependent father or mother, or dependent brothers or sisters, the member's contributions to the fund plus six percent interest shall be refunded to the member's named beneficiary or, if no beneficiary has been named, to the member's estate to the extent that the contributions plus interest exceed any disability or retirement benefits that the member may have received before the member's death.

(d) The provisions of this section shall not be construed as creating or establishing any contractual or vested rights in favor of any individual who may be or become qualified as a beneficiary of the death benefits authorized to be made pursuant to this section. All the provisions of this section and benefits provided pursuant to this section are expressly subject to subsequent legislative enactments as may provide for any change, modification or elimination of the beneficiaries or benefits specified herein.

(e) Notwithstanding the provisions of §8-22-24 of this code, the benefit provided for in this section shall be calculated as if the member had remained unemployed throughout any period of disability.

(f) For the purpose of distributing premium tax proceeds as required by §33-3-14d of this code, one beneficiary of the death benefit authorized by this section shall be included in the average monthly number of retired police officers and firefighters.

CHAPTER 75

(H. B. 4601 - By Delegates Graves, Nelson, Anderson, Pethtel and Evans)

[Passed February 18, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §8-22-25a of the Code of West Virginia, 1931, as amended, relating to the distribution of premium tax proceeds to municipal policemen's and firemen's pension and relief funds which have members participating in a deferred retirement option plan.

Be it enacted by the Legislature of West Virginia:

§8-22-25a. Deferred retirement option plans; authorization; requirements; limitations.

(a) A deferred retirement option plan (DROP) is a method to encourage retention of a worker beyond normal retirement age by permitting the worker to freeze retirement benefits at a certain time prior to ceasing work, to continue to work for a specified period, and to have retirement benefits which accrue while the employee continues working set aside in an account which the worker will then receive in a lump sum upon finally discontinuing work. The Legislature acknowledges that a DROP may be a useful and economical tool for retaining experienced and trained employees and for planning for turnovers in the workforce. Experience, however, dictates that a DROP may place a heavy financial burden on the employer and the affected retirement system, negating any positive benefit offered by the DROP if the DROP is not carefully planned to be economically favorable to the employer and revenue neutral

for the affected retirement system while remaining attractive to the targeted employee.

(b)(1) The governing bodies of municipalities participating in policemen's and firemen's pension and relief funds pursuant to §8-22-16 through §8-22-28 of this code, are authorized to voluntarily offer DROPs. A participating municipality may design and establish a DROP to best meet the municipality's needs so long as the DROP complies with federal law, the requirements set forth in this section and be approved by the Municipal Pensions Oversight Board.

(2) Prior to approval by the Municipal Pensions Oversight Board, a municipality shall submit a proposed DROP to the board for analysis by the qualified actuary retained or employed by the board. The actuary shall examine the plan and, in light of the elements of the DROP and the actuarial projections of the impact of the DROP on the affected pension and relief fund, advise the board of the anticipated impact on the municipal pension and relief fund. The board shall seek to approve only those DROPs which, in the best judgment of the actuary, are designed to have no negative impact on the member's pension and relief fund. The submitting municipality shall reimburse the board for actuarial costs of analyzing the plan.

(c) To be eligible to enter a DROP, the member of the policemen's or firemen's pension and relief fund must be in active employment and an active member of his or her pension and relief fund for at least six months beyond attaining eligibility for regular retirement as provided in §8-22-25 of this code and have received a satisfactory performance evaluation within the prior 12 months. The member may defer retirement for a period of not less than one nor more than five years but must complete the period by age 65. The member may elect to commence participation after July 1, 2011.

(d)(1) During the DROP participation period, the member shall continue with full-time employment in a covered position subject to the municipality's requirements. A member's retirement benefits are calculated as of the DROP participation date and a member may not accumulate additional retirement benefits during the DROP participation period. Upon beginning participation, the member is treated as retired and receiving benefits for purposes of the retirement system: *Provided*, That for the purpose of distributing premium tax proceeds required in §33-3-14d of this code, he or she shall be included in the calculation of the municipality's average number of policemen or firemen for each month that he or she works at least one hundred hours. During the DROP participation period, the employer shall continue to make regular contributions to the employee's pension and relief fund.

(2) Benefit payments are accumulated for the member in the pension and relief fund in an accumulation account during the DROP participation period. At the end of the participation period, the amount in the accumulation account owing to the member, plus interest not to exceed three and one-half percent, shall be paid to the member in a lump sum. Monthly retirement payments shall be paid directly to the member starting in the month following the end of the DROP participation period.

(3) A member may voluntarily terminate DROP participation early with 60 days' advance notice. Deferred accumulated benefits will be paid with no interest for the DROP period and benefits payments will commence following the early termination date. Covered employment must terminate before benefit distributions may be made. Should the employer wish to terminate the employment during the participation period, the member may terminate participation with 30 days' notice and the deferred accumulation balance shall be paid with interest according to the DROP design: *Provided*, That if the employee is terminated for cause during the participation period, the member may terminate participation with 30 days' notice

and the deferred accumulation balance shall be paid without interest according to the DROP design.

(4) A member who is unable to continue working because of disability shall cease participation the first day of the month following notice of disability to the employer and the pension and relief fund. The accumulation account balance shall be paid to the member with no interest. No additional benefits are due the member on account of the disability.

(5) In the event of death of a member during DROP participation, the accumulation account of the member through the member's date of death is payable to the member's beneficiary or beneficiaries, with interest according to DROP design.

(6) A member entering the DROP is contractually obligated to terminate employment at the end of the DROP participation period. Failure to terminate voluntarily results in termination of employment for cause, except that a member who continues to work with the consent of the employer past the DROP participation period shall have all benefits frozen during the extension period and no additional benefit accumulates. During the period of time the member continues to work beyond the end of the DROP participation period with the consent of the employer, the employer shall continue to make regular contributions to the employee's pension and relief fund. Regular retirement benefits will commence the month following eventual employment termination or death. The member's accumulation account balance is frozen in value following the end of the DROP participation period.

(e) The oversight board shall annually report to the Legislature's Joint Committee on Pensions and Retirement, and to the Legislature as required by §4-1-23 and §5-1-20 of this code, on DROPs submitted to the board for approval and the status of any DROP that has been approved, including any experienced impact on an affected pension and relief fund.

CHAPTER 76

(Com. Sub. for H. B. 4633 - By Delegates Storch, Anderson, Nelson, Kessinger, Waxman, Summers, Criss, Sypolt, Hill, Espinosa and Capito)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; and adding the ability of county commissions to dispose of the property to community center organization in existence on effective date of amendment to this section of said code or nonprofit senior center organization without conducting a public sale.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. COUNTY PROPERTY.

§7-3-3. Sale of county or district property.

(a) Except as may be prohibited by law or otherwise, the county commission of a county is authorized by law to sell or dispose of any property, either real or personal, belonging to the county or held by it for the use of any district thereof. The property shall be sold either at an on-site public auction or by utilizing an Internet-based public auction service, and the sale shall be conducted by the president of the county commission, but before making the sale, notice of the time, terms, manner and either the location of the sale or the Internet-based public auction service to be utilized, together with a brief description of the property to be sold, shall be published as a Class II legal advertisement in compliance

with the provisions of §59-3-1 *et seq.* of this code, and the publication area for the publication is the county: *Provided*, That this section does not apply to the sale of any one item of property of less value than $1,000.

(b) The provisions of subsection (a) of this section concerning sale at public auction do not apply to a county commission selling or disposing of its property for a public use to:

(1) The United States of America, its instrumentalities, agencies or political subdivisions;

(2) The State of West Virginia, or its political subdivisions, including county boards of education, volunteer fire departments, and volunteer ambulance services; or

(3) Any community center organization already in existence on the effective date of the amendments to this section made during the 2020 Regular Session of the Legislature or nonprofit senior center organization, or any authority, commission, instrumentality, or agency established by act of the State of West Virginia or any of its political subdivisions.

(4) For all sales made pursuant to this subsection, county commissions are not required to exclusively consider the present commercial or market value of the property; and

(5) A sale under the provisions of this subsection may not be for less than $1.

(c) For all real property conveyed or sold by a county commission to a volunteer fire department, volunteer ambulance service, or any nonprofit community center organization or nonprofit senior center organization or any other authority, commission, instrumentality or agency, under the provisions of subsection (b) of this section, the real property shall revert back to the county commission if

the volunteer fire department, volunteer ambulance service, nonprofit community center organization or nonprofit senior center organization, authority, commission, instrumentality or agency proposes to dispose of the property, unless the county commission explicitly disclaims this reversionary right in writing in the deed of conveyance.

CHAPTER 77

(H. B. 4797 - By Delegates Capito, Pushkin, Miller, Westfall and Nelson)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-12-16 of the Code of West Virginia, 1931, as amended, relating to authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership under certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. GENERAL AND SPECIFIC POWERS, DUTIES, AND ALLIED RELATIONS OF MUNICIPALITIES, GOVERNING BODIES, AND MUNICIPAL OFFICERS AND EMPLOYEES; SUITS AGAINST MUNICIPALITIES.

§8-12-16. Ordinances regulating the repair, alteration, improvement, closing, demolition, etc., of structures, dwellings, or buildings that are unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; procedures.

(a) For the purposes of this section:

(1) "Code enforcement agency" means either a code enforcement department as defined by 87 CSR 7-2, as may

be amended, or an enforcement agency as permitted by subsection (c) of this section.

(2) "Code enforcement agency official" means any lawful agent of a code enforcement agency.

(3) "Owner" or "landowner" means a person who individually or jointly with others:

(A) Has legal title to the property, with or without actual possession of the property;

(B) Has charge, care, or control of the property as owner or agent of the owner;

(C) Is an executor, administrator, trustee, or guardian of the estate of the owner;

(D) Is the agent of the owner for the purpose of managing, controlling, or collecting rents; or

(E) May control or direct the management or disposition of the property.

(4) "Unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare" means:

(A) Any door, aisle, passageway, stairway, exit, or other means of egress that does not conform to the approved building or fire code of the jurisdiction as related to the requirements for existing buildings;

(B) The walking surface of any aisle, passageway, stairway, exit, or other means of egress is so warped, worn loose, torn, or otherwise unsafe as to not provide safe and adequate means of egress;

(C) Any portion of a dwelling, building, structure, or appurtenance that has been damaged by fire, earthquake, wind, flood, deterioration, neglect, abandonment, vandalism, or by any other cause to an extent that it is likely

to partially or completely collapse, or to become detached or dislodged;

(D) Any portion of a structure or building, or any member, appurtenance, or ornamentation on the exterior that is not of sufficient strength or stability, or is not so anchored, attached, or fastened in place so as to be capable of resisting natural or artificial loads of one and one-half the original designed value;

(E) The dwelling, building, or structure, or part of the building or structure, because of dilapidation, deterioration, decay, faulty construction, the removal or movement of some portion of the ground necessary for the support, or for any other reason, is likely to partially or completely collapse, or some portion of the foundation or underpinning of the dwelling, building or structure is likely to fail or give way;

(F) The dwelling, building, or structure, or any portion, is clearly unsafe for its use;

(G) The dwelling, building, or structure is neglected, damaged, dilapidated, unsecured, or abandoned so as to become an attractive nuisance to children, becomes a harbor for vagrants, criminals, and criminal activity, or enables persons to resort to the dwelling, building, or structure for committing a nuisance or an unlawful act;

(H) Any dwelling, building, or structure constructed, exists or is maintained in violation of any specific requirement or prohibition applicable to any dwelling, building, or structure provided by the approved building or fire code of the jurisdiction or of any law or ordinance that presents either a substantial risk of fire, building collapse, or any other threat to life and safety;

(I) A dwelling, building, or structure, used or intended to be used for dwelling purposes, because of inadequate maintenance, dilapidation, decay, contamination by any

hazardous substance or material, including, but not limited to, substance resulting from the illegal manufacture of drugs, damage, faulty construction or arrangement, inadequate light, ventilation, mechanical, or plumbing system, or otherwise, is determined by the code enforcement agency to be unsanitary, unfit for human habitation, or in a condition that is likely to cause sickness or disease;

(J) Any dwelling, building, or structure, because of a lack of sufficient or proper fire resistance-rated construction, fire protection systems, electrical system, fuel connections, mechanical system, plumbing system, or other cause, is determined by the code official to be a threat to life or health; or

(K) Any portion of a building that remains on a site after the demolition or destruction of the building or structure, or whenever any building or structure is abandoned.

(b) Plenary power and authority are hereby conferred upon every municipality adopt ordinances regulating the repair, alteration, or improvement, or the vacating and closing or removal or demolition, or any combination, of any structure, dwelling, or building, whether used for human habitation or not, that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare.

(c) In formally adopting any ordinance under this section, the governing body shall designate the enforcement agency, which shall consist of the code enforcement agency as provided by the state building code and authorized by §29-3-5b and §8-12-13 of this code; or municipal officials as may otherwise be authorized by this code; or municipal officials or agents as authorized by rules promulgated by the State Fire Commission and approved by the Legislature; or municipal officials or agents as may otherwise be authorized by the State Fire Commission. Notwithstanding any provision of this code to the contrary, for the purposes of this section any municipality that has not adopted the

state building code may designate an enforcement agency consisting of the mayor, the municipal engineer or building inspector, and one member at large, to be selected by and to serve at the will and pleasure of the mayor, and the ranking health officer and fire chief or their designees, who shall serve as ex officio members of the enforcement agency.

(d) Any ordinance adopted under the provisions of this section must provide fair and equitable rules of procedure and any other procedures required by law or necessary and appropriate to guide the code enforcement agency, or its officials, in the investigation of any structure, dwelling, or building conditions, and in any corrective action taken by the code enforcement agency.

(e) When a code enforcement agency official enters the premises of the property for investigating or inspecting any structure, dwelling, or building, the investigation shall be performed to minimize the inconvenience to the owner or persons in possession and shall be consistent with the following:

(1) Except in exigent circumstances and as permitted by law, the enforcement agency shall provide reasonable advance notice to the owner and request permission from the owner to enter the property;

(2) If the owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section, or if the owner refuses entry, the code enforcement agency may obtain an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located. Before obtaining an administrative search warrant, a code enforcement agency official is required to make a sworn statement and prima facie case showing that the code enforcement agency was unable to gain access to the structure, dwelling, or building after reasonable and good faith efforts, and that there is a legitimate and substantial safety concern involving

the structure, dwelling, or building that supports the requested entry;

(3) If granted by the court, and if the owner can be located, the code enforcement agency shall provide the owner a copy of the administrative search warrant five days before entering the property. If applicable, the code enforcement agency shall also provide the same notice to any tenant or other person in possession of the structure, dwelling, or building; and

(4) Entry is for the sole purpose of inspection of the structure, dwelling, or building for unsafe or unsanitary conditions and not for the purpose of criminal prosecution or gathering evidence for use in any criminal charge or proceeding unrelated to the unsafe or unsanitary condition of the structure, dwelling, or building.

(f) The governing body of every municipality has plenary power and authority to adopt an ordinance providing for the vacating, closing, removal, or demolition of any dwelling, structure or building by the municipality in the absence of owner agreement or court order: *Provided*, That the ordinance requires the code enforcement agency to provide lawful notice to and undertake reasonable efforts to seek agreement from the owner before taking any action permitted by this section and shall comply with the requirements set forth in this subsection:

(1) Any ordinance adopted under this subsection applies only to dwellings, structures, or buildings which meet the definition of unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare as set forth in:

(A) Paragraph (C), (E) or (H), subdivision (4), subsection (a) of this section; or

(B) Paragraph (F), (G), (I) or (K), subdivision (4), subsection (a) of this section: *Provided*, That the dwelling, building, or structure is vacant, abandoned, or has been

lawfully declared unfit for human habitation; and the reasonable estimated cost of repair, rehabilitation, or corrective action exceeds the fair market value of the dwelling, building, or structure.

(2) Any ordinance adopted under this subsection must provide for the following:

(A) The code enforcement agency shall produce a written notice containing the date of the last inspection, the name of the inspector, a reasonable description of the unsafe, unsanitary, dangerous, or detrimental conditions, the corrective measures required, the allotted time to correct the substandard conditions and the allotted time the owner has to apply to the circuit court for a temporary injunction or other similar relief restraining action by the enforcement agency.

(B) The notice shall be served upon the owner or landowner by conspicuously posting and attaching a copy of the notice to the subject property, and by serving the notice on the owner or landowner in the same manner as service of a complaint as set forth in subsection (j) of this section.

(C) If the code enforcement agency cannot effect personal service on the owner, a code enforcement agency official shall subscribe a written affidavit, to be maintained for a minimum of two years, that demonstrates the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section and sets forth the basis in reasonable detail, including documentation of same, and memorializes the code enforcement agency official's efforts to contact or get permission for entry and any corrective action from the owner; and the code enforcement agency shall publish notice of its intent to enter the property for the purpose of demolition or correction, along with the address of the property, the name of the owners and the date of the proposed action, as a Class II legal advertisement consistent

with the requirements of §59-3-2 of this code, the first of which shall run at least 30 days before the date of the proposed action by the enforcement agency, and the last being no later than 20 days before the date of the proposed action by the enforcement agency.

(D) If there is no response to the notice by the owner or landowner in the time specified in the notice, then the municipality may proceed in correction or demolition of the subject dwelling, building, or structure.

(3) It is an absolute defense to any civil action by an owner, landowner, or tenant for damages resulting from the closure, demolition, or other corrective action taken by a municipality under this section: *Provided*, That the municipality acted in good faith, can demonstrate that the structure, dwelling, or building falls within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section, that the municipality followed the procedures set forth in this subsection, and that the municipality had adopted the state building code at the time of the closure, demolition, or other corrective action occurred.

(4) Any ordinance adopted under this subsection must also provide for notice to the owner of the owner's right to apply to the circuit court for a temporary injunction or other similar relief restraining correction or demolition by the enforcement agency. If the application is made by the owner, a hearing shall be had within 20 days of the application, or as soon as reasonably possible.

(A) Continuances of the hearing provided for in this subdivision may be made for cause only. If a continuance is granted upon request by the owner, the owner is required to pay into court, in the form of a bond, any reasonable and necessary costs related to the property likely to be incurred by the municipality during the continuance.

(B) At the conclusion of a hearing held under this subdivision, if the court finds that the property is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare, the court shall make and enter an order granting the relief as requested by the municipality. The court may disburse any moneys paid into court by the owner in accordance with this section.

(g)(1) The governing body of every municipality has plenary power and authority to adopt an ordinance requiring the owner of any dwelling or building under determination of the State Fire Marshal, as provided in §29-3-12 of this code, or under order of the code enforcement agency of the municipality, to pay for the costs of repairing, altering, or improving, or of vacating and closing, removing or demolishing any dwelling or building, and may file a lien against the real property in question for an amount that reflects all costs incurred by the municipality for repairing, altering, or improving, or of vacating and closing, removing, or demolishing any dwelling or building, or structure. Any municipality that adopts an ordinance under this section may authorize the municipal court to place a structure, dwelling, or building into receivership when the following circumstances are present:

(A) The owner cannot be located after reasonable inquiry by the code enforcement agency as required by this section or if the owner refuses entry;

(B) The code enforcement agency has obtained an administrative search warrant from either the municipal court or the magistrate court located in the jurisdiction of the municipality or county where the structure, dwelling, or building is located;

(C) Upon entry, the code enforcement agency has determined that the structure, dwelling, or building is salvageable and does not require immediate demolition; and

(D) The code enforcement agency has proffered to the court that the structure, dwelling or building will require demolition or presents a substantial threat to nearby structures, property, or residents due to risk of fire, structural instability, or attractive nuisance if it is not repaired, altered, or improved in the near future.

(2) If all of these circumstances are present, the municipal court may place the structure, dwelling, or building into receivership with the municipality or another entity that is capable of making the necessary repairs, alterations, and improvements to the structure, dwelling or building. Any owner of the structure, dwelling, or building may petition the municipal court to terminate the receivership at any time and, upon showing that the owner will either demolish the structure, dwelling, or building or make the necessary repairs, alterations, and improvements to the satisfaction of the code enforcement agency, the municipal court may terminate the receivership.

(h) Every municipality may also institute a civil action in circuit court against the landowner or other responsible party to obtain an order allowing the municipality to take corrective action up to and including demolition of any structure, dwelling or building that is unsafe, unsanitary, dangerous, or detrimental to the public safety or welfare; and to recover all reasonable costs and expenses incurred by the municipality with respect to the property and for reasonable attorney fees and court costs incurred in the prosecution of the action:

(1) No fewer than 10 days before instituting a civil action as provided in this subsection, the municipality shall send notice to the landowner by certified mail, return receipt requested, advising the landowner of the governing body's intention to institute such action.

(2) The notice shall be sent to the most recent address of the landowner of record in the office of the assessor of the county where the subject property is located and to any other

address for the landowner as may exist on record with the municipality. If, for any reason, the certified mail is returned without evidence of proper receipt, the municipality shall resend the notices by first class mail, postage prepaid, and shall also post notice on the front door or other conspicuous location on the subject property.

(i) To the extent not otherwise authorized by state law, all notices of violation or correction for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by the enforcement agency of a municipality that has adopted the state building code shall be served in accordance with the process set forth in the state building code. All notices of violation or correction orders for violations that do not fall within one of the categories set forth in paragraph (A) or (B), subdivision (1), subsection (f) of this section issued by a code enforcement agency of a municipality that has not adopted the state building code shall be served in accordance with the law of this state concerning the service of process in civil actions, except that personal service may be made by a code enforcement agency official and the method of service effectuated by mail by the clerk of a court as permitted by Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure is effectuated by mailing by a code enforcement agency official and shall be posted in a conspicuous place on the property that is the subject of the notice of violation or correction.

(j) Any violation of an ordinance adopted under this section, may be prosecuted by the municipality consistent with state and local laws. Unless otherwise authorized by state law, prosecution of a violation shall be initiated by a complaint presented to and sworn or affirmed before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code in the municipality where the offense is alleged to have occurred. Unless otherwise provided by statute, the presentation and oath or affirmation shall be made by a code

enforcement agency official or municipal attorney showing reason to have reliable information and belief. If from the facts stated in the complaint the municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code finds probable cause, the complaint becomes the charging instrument initiating a criminal proceeding. A complaint lawfully authorized by this subsection along with a summons setting forth the date, time, and place of appearance before a municipal judge or other municipal official with lawful authority to hear and determine violations of municipal code shall be served in accordance with the law of the State of West Virginia concerning the service of process in civil actions, except that personal service of a summons and complaint may be made by a code enforcement agency official. If service is made by certified mail under Rule 4(d)(1)(D) of the West Virginia Rules of Civil Procedure and delivery of the summons and complaint is refused, the code enforcement agency official, promptly upon the receipt of the notice of the refusal, shall mail to the person or entity being noticed, by first class mail, postage prepaid, a copy of the summons and complaint. If the first class mailing is not returned as undeliverable by the U. S. Postal Service, service of the summons and complaint is presumed to have been effectuated. Upon service of the summons and complaint consistent with this subsection, the violation may be prosecuted consistent with state and local law.

CHAPTER 78

(Com. Sub. for H. B. 4946 - By Delegates Angelucci, Longstreth and Caputo)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §8-14-15 of the Code of West Virginia, 1931, as amended, relating to eliminating the requirement that municipal police civil service commissions certify a list of at least one but no more than three individuals for every position vacancy in a municipal police department not filled by promotion, reinstatement, or reduction.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. LAW AND ORDER; POLICE FORCE OR DEPARTMENTS; POWERS, AUTHORITY AND DUTIES OF LAW-ENFORCEMENT OFFICIALS AND POLICEMEN; POLICE MATRONS; SPECIAL SCHOOL ZONE AND PARKING LOT OR PARKING BUILDING POLICE OFFICERS; CIVIL SERVICE FOR CERTAIN POLICE DEPARTMENTS.

§8-14-15. Appointments from list of eligibles.

Every position, unless filled by promotion, reinstatement or reduction, shall be filled only in the manner specified in this section. The appointing officer shall notify the policemen's Civil Service Commission of any vacancy or vacancies in a position or positions which he or she desires to fill and shall request the certification of eligibles. The commission shall forthwith certify the names of at least one but no more than three eligible individuals ranked according to their averages at preceding competitive examinations held under the civil

service provisions of this article within a period of three years next preceding the date of the prospective appointment. The appointing officer shall, thereupon, with sole reference to the relative merit and fitness of the candidates, make an appointment or appointments from the names so certified: *Provided*, That should he make objection, to the commission, to one or more of these individuals, for any of the reasons stated in section fourteen of this article, and should such objection be sustained by the commission, after a public hearing along the lines of the hearing provided for in said section fourteen of this article, if any such hearing is requested, the commission shall thereupon strike the name of any such individual from the eligible list, and certify the next highest name for each individual so stricken. As each subsequent vacancy occurs, in the same or another position, precisely the same procedure shall be followed: *Provided, however*, That after any name has been three times rejected for the same or another position in favor of a name or names below it on the same list, the said name shall be stricken from the list. When there are a number of positions of the same kind to be filled at the same time, each appointment shall, nevertheless, be made separately and in accordance with the foregoing provisions. When an appointment is made under the provisions of this section it shall be, in the first instance, for the probationary period of one year, as provided in §8-14-11 of this code.

CHAPTER 79

(Com. Sub. for S. B. 597 - By Senators Trump, Woelfel, Romano, Unger, Lindsay, Palumbo and Plymale)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §50-1-3 of the Code of West Virginia, 1931, as amended; to amend and reenact §51-1-10a of said code; to amend and reenact §51-2-13 of said code; and to amend and reenact §51-2A-6 of said code, all relating to providing a 10 percent salary increase to certain judicial officers.

Be it enacted by the Legislature of West Virginia:

CHAPTER 50. MAGISTRATE COURTS.

ARTICLE 1. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

(a) The Legislature finds and declares that:

(1) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;

(2) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate section 39, article VI, of the Constitution of West Virginia;

(3) The Administrative Office of the Supreme Court of Appeals of West Virginia has stated that the utilization of a two-tiered salary schedule for magistrates is no longer an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than 7,300 in population and a second tier for magistrates serving 7,300 or more in population is no longer rational and equitable given current statistical information relating to population and caseload; and

(5) That, by January 1, 2017, all magistrates should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer than 7,300 in population shall be paid annual salaries of $51,125 and magistrates who serve 7,300 or more in population shall be paid annual salaries of $57,500.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

(d) Notwithstanding any provision of this code to the contrary, the amendments made to this section during the 2013 First Extraordinary Session are effective upon passage and are retroactive to January 1, 2013.

(e) On or before July 1, 2013, the Joint Committee on Government and Finance shall request a study by the National Center for State Courts, working in conjunction with the Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted caseloads

in each of the magistrate courts in this state, and present recommendations as to how the present resources and personnel in the magistrate court system could be better apportioned to equitably and timely meet the collective needs of the magistrate court system in West Virginia. Based on the findings and data generated by that study, the National Center for State Courts shall make recommendations as to the equitable redistribution of personnel and resources, by temporary or permanent reassignment, to better meet the needs and weighted loads that are demonstrated to exist in the various magistrate courts in this state. This study shall be presented to the Joint Committee on Government and Finance no later than December 1, 2014, and shall include recommendations and proposed legislation resulting from such study and shall also include a plan to continue the efficient delivery of justice by the magistrate court system and the justification for equalization of pay for all magistrates. As a part of the submitted study, the plan shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to include holding court or delivering services to adjacent counties with higher caseloads, as part of their regular duties, or being on call as needed to serve other needs in other adjacent counties or within the same judicial circuit.

On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall present its recommendations to the Legislature regarding how to allocate or assign a maximum of 158 magistrates throughout this state to improve the magistrate process, and more equitably distribute the magistrate court resources to efficiently and effectively meet the needs of the citizens of this state.

(f) Notwithstanding any provision of this code to the contrary, beginning January 1, 2017, all magistrates shall be compensated equally and the annual salary of all magistrates shall be $57,500.

(g) Notwithstanding any provisions of this code to the contrary, beginning July 1, 2021, the annual salary of a

magistrate shall be $60,375, and beginning July 1, 2022, the annual salary of a magistrate shall be $63,250.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-10a. Salary of justices.

The salary of each of the justices of the Supreme Court of Appeals shall be $95,000 per year: *Provided*, That beginning July 1, 2005, the salary of each of the justices of the Supreme Court shall be $121,000: *Provided, however*, That beginning July 1, 2011, the annual salary of a justice of the Supreme Court shall be $136,000: *Provided further*, That beginning July 1, 2021, the annual salary of a justice of the Supreme Court of Appeals shall be $142,800, and beginning July 1, 2022, the annual salary of a justice of the Supreme Court of Appeals shall be $149,600.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.

§51-2-13. Salaries of judges of circuit courts.

The salaries of the judges of the various circuit courts shall be paid solely out of the State Treasury. No county, county commission, board of commissioners, or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be $90,000 per year: *Provided*, That beginning July 1, 2005, the annual salary of all circuit judges shall be $116,000 per year: *Provided, however*, That beginning July 1, 2011, the annual salary of a circuit court judge shall be $126,000: *Provided further,* That beginning July 1, 2021, the annual salary of a circuit judge shall be $132,300 and beginning July 1, 2022, the annual salary of a circuit court judge shall be $138,600.

ARTICLE 2A. FAMILY COURTS.

§51-2A-6. Compensation and expenses of family court judges and their staffs.

(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of $62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of $82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be $94,500: *Provided further*, That beginning July 1, 2020, the annual salary of a family court judge shall be $103,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to receive an annual salary of $27,036: *Provided,* That on and after July 1, 2006, the annual salary of the secretary-clerk shall be established by the Administrative Director of the Supreme Court of Appeals, but may not exceed $39,000. In addition, any person employed as a secretary-clerk to a family court judge on the effective date of the enactment of this section during the sixth extraordinary session of the Legislature in the year 2001 who is receiving an additional $500 per year up to 10 years of a certain period of prior employment under the provisions of the prior enactment of §51-2A-8 of this code during the second extraordinary session of the Legislature in the year 1999 shall continue to receive such additional amount. Further, the secretary-clerk will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in §5-5-1 *et seq.* of this code.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed $36,000: *Provided*, That on and after July 1, 2006, the annual salary of the family case coordinator of the family court judge may not exceed

$51,000. The family case coordinator will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in §5-5-1 *et seq.* of this code.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) Notwithstanding any other provision of law, family court judges are not eligible to participate in the retirement system for judges under the provisions of §51-9-1 *et seq.* of this code.

CHAPTER 80

(Com. Sub. for S. B. 35 - By Senator Clements)

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §22-15A-4 of the Code of West Virginia, 1931, as amended, relating to limiting the civil penalty for persons convicted of littering to not less than $200 nor more than $2,000.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15A. THE A. JAMES MANCHIN REHABILITATION ENVIRONMENTAL ACTION PLAN.

§22-15A-4. Unlawful disposal of litter; civil and criminal penalty; Litter Control Fund; evidence; notice violations; litter receptacle placement; penalty; duty to enforce violations.

(a) (1) A person may not place, deposit, dump, throw, or cause to be placed, deposited, dumped, or thrown any litter as defined in §22-15A-2 of this code, in or upon any public or private highway, road, street, or alley; any private property; any public property; or the waters of the state or within 100 feet of the waters of this state, except in a proper litter or other solid waste receptacle.

(2) A person may not place, deposit, dump, throw, or cause to be placed, deposited, dumped, or thrown any litter from a motor vehicle or other conveyance or perform any act which constitutes a violation of the motor vehicle laws contained in §17C-14-14 of this code.

(3) If any litter is placed, deposited, dumped, discharged, thrown, or caused to be placed, deposited, dumped, or thrown from a motor vehicle, boat, airplane, or other conveyance, it is prima facie evidence that the owner or the operator of the motor vehicle, boat, airplane, or other conveyance intended to violate the provisions of this section.

(4) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter on his or her private property in an amount not exceeding 50 pounds in weight is not subject to the criminal provisions of this section.

(5) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for commercial purposes, in an amount not exceeding 100 pounds in weight or 27 cubic feet in size, is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than $100 nor more than $2,500, or in the discretion of the court, sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property, or waters of the state, as designated by the court, for not less than eight nor more than 100 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than $500 nor more than $3,000, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than 20 hours nor more than 120 hours, or both.

(6) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter, not collected for commercial purposes, in an amount greater than 100 pounds in weight or 27 cubic feet in size,

but less than 500 pounds in weight or 216 cubic feet in size is guilty of a misdemeanor. Upon conviction, he or she is subject to a fine of not less than $2,500 nor more than $5,000, or in the discretion of the court, may be sentenced to perform community service by cleaning up litter from any public highway, road, street, alley, or any other public park or public property, or waters of the state, as designated by the court, for not less than 16 hours nor more than 200 hours, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than $3,000 nor more than $5,500, or in the discretion of the court sentenced to perform community service by cleaning up litter from any waters of the state, as designated by the court, for not less than 20 hours nor more than 220 hours, or both.

(7) Any person who violates the provisions of this section by placing, depositing, dumping, or throwing or causing to be placed, deposited, dumped, or thrown any litter in an amount greater than 500 pounds in weight or 216 cubic feet in size or any amount which had been collected for commercial purposes is guilty of a misdemeanor. Upon conviction, the person shall be fined not less than $2,500 nor more than $25,000 or confinement in jail for not more than one year, or both. If any person is convicted of the misdemeanor by placing, depositing, dumping, or throwing litter in the waters of the state, that person shall be fined not less than $3,000 nor more than $11,000, or confinement in jail for not more than one year, or both. In addition, he or she may be guilty of creating or contributing to an open dump as defined in §22-15-2 of this code and subject to the enforcement provisions of §22-15-15 of this code.

(8) Any person convicted of a second or subsequent violation of this section is subject to double the authorized range of fines and community service for the subsection violated.

(9) The sentence of litter clean up shall be verified by environmental inspectors from the Department of Environmental Protection. Any defendant receiving the sentence of litter clean up shall provide, within a time to be set by the court, written acknowledgment from an environmental inspector that the sentence has been completed and the litter has been disposed of lawfully.

(10) Any person who has been found by the court to have willfully failed to comply with the terms of a litter clean-up sentence imposed by the court pursuant to this section is subject to, at the discretion of the court, double the amount of the original fines and community service penalties originally ordered by the court.

(11) All law-enforcement agencies, officers, and environmental inspectors shall enforce compliance with this section within the limits of each agency's statutory authority.

(12) A magistrate or municipal court judge may not dismiss an action brought under the provisions of this section without notification to the prosecuting attorney of that county of his or her intention to do so and affording the prosecuting attorney an opportunity to be heard.

(13) No portion of this section restricts an owner, renter, or lessee in the lawful use of his or her own private property or rented or leased property or prohibits the disposal of any industrial and other wastes into waters of this state in a manner consistent with the provisions of §22-11-1 *et seq.* of this code. But if any owner, renter, or lessee, private or otherwise, knowingly permits any of these materials or substances to be placed, deposited, dumped, or thrown in a location that high water or normal drainage conditions will cause these materials or substances to wash into any waters of the state, it is prima facie evidence that the owner, renter, or lessee intended to violate the provisions of this section: *Provided*, That if a landowner, renter, or lessee, private or otherwise, reports any placing, depositing, dumping, or

throwing of these substances or materials upon his or her property to the prosecuting attorney, county commission, the Division of Natural Resources, or the Department of Environmental Protection, the landowner, renter, or lessee will be presumed to not have knowingly permitted the placing, depositing, dumping, or throwing of the materials or substances.

(b) Any indication of ownership found in litter is prima facie evidence that the person identified violated the provisions of this section: *Provided*, That no inference may be drawn solely from the presence of any logo, trademark, trade name, or other similar mass reproduced things of identifying character appearing on the found litter.

(c) (1) Every person who is convicted of or pleads guilty to disposing of litter in violation of subsection (a) of this section shall pay a civil penalty of not less than $200 nor more than $2,000 as costs for clean up, investigation, and prosecution of the case, in addition to any other court costs that the court is otherwise required by law to impose upon a convicted person.

(2) The clerk of the circuit court, magistrate court, or municipal court in which these additional costs are imposed shall, on or before the last day of each month, transmit 50 percent of a civil penalty received pursuant to this section to the State Treasurer for deposit in the State Treasury to the credit of a special revenue fund known as the Litter Control Fund which was transferred to the Department of Environmental Protection. Expenditures for purposes set forth in this section are not authorized from collections but are to be made only in accordance with appropriation and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found from time to time to exceed the funds needed for the purposes set forth in this article may be transferred to other accounts or funds and designated for other purposes by appropriation of the Legislature.

(d) The remaining 50 percent of each civil penalty collected pursuant to this section shall be transmitted to the county or regional solid waste authority in the county where the litter violation occurred. Moneys shall be expended by the county or regional solid waste authority for the purpose of litter prevention, clean up, and enforcement. The county commission shall cooperate with the county or regional solid waste authority serving the respective county to develop a coordinated litter control program pursuant to §22C-4-8 of this code.

(e) The Commissioner of the Division of Motor Vehicles, upon registering a motor vehicle or issuing an operator's or chauffeur's license, shall issue to the owner or licensee, as the case may be, a summary of this section and §17C-14-14 of this code.

(f) The Commissioner of the Division of Highways shall cause appropriate signs to be placed at the state boundary on each primary and secondary road, and at other locations throughout the state, informing those entering the state of the maximum penalty provided for disposing of litter in violation of subsection (a) of this section.

(g) Any state agency or political subdivision that owns, operates, or otherwise controls any public area designated by the secretary by rule promulgated pursuant to §22-15A-3(a)(8) of this code shall procure and place litter receptacles at its own expense upon its premises and shall remove and dispose of litter collected in the litter receptacles. After receiving two written warnings from any law-enforcement officer or officers to comply with this subsection or the rules of the secretary, any state agency or political subdivision that fails to place and maintain the litter receptacles upon its premises in violation of this subsection or the rules of the secretary shall be fined $30 per day of the violation.

CHAPTER 81

(Com. Sub. for S. B. 46 - By Senator Rucker)

[Passed February 11, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §61-6-19 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-7-2 of said code, all relating to defining "pepper spray"; exempting pepper spray from definition of "deadly weapons"; providing that persons over 16 years of age may carry pepper spray for the purpose of self-defense; and providing that such persons may carry pepper spray in the State Capitol Complex.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. CRIMES AGAINST THE PEACE.

§61-6-19. Willful disruption of governmental processes; offenses occurring at State Capitol Complex; penalties.

(a) If any person willfully interrupts or molests the orderly and peaceful process of any department, division, agency, or branch of state government or of its political subdivisions, he or she is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than six months, or both fined and confined: *Provided*, That any assembly in a peaceable, lawful, and orderly manner for a redress of grievances is not a violation of this section.

(b) (1) It is unlawful for any person to bring upon the State Capitol Complex any deadly weapon as defined in §61-7-2 of this code: *Provided*, That a person who may lawfully possess a firearm may keep a firearm in his or her motor vehicle upon the State Capitol Complex if the vehicle

is locked and the weapon is out of normal view: *Provided, however*, That a person may not carry upon the State Capitol Complex, a cannister of pepper spray as defined in §61-7-2 of this code that exceeds one ounce. It is unlawful for any person to willfully deface any trees, wall, floor, stairs, ceiling, column, statue, monument, structure, surface, artwork, or adornment in the State Capitol Complex. It is unlawful for any person or persons to willfully block or otherwise willfully obstruct any public access, stair, or elevator in the State Capitol Complex after being asked by a law-enforcement officer acting in his or her official capacity to desist: *Provided further*, That in order to preserve the constitutional right of the people to assemble, it is not willful blocking or willful obstruction for persons gathered in a group or crowd if the persons move to the side or part to allow other persons to pass by the group or crowd to gain ingress or egress: *And provided further*, That this subsection does not apply to a law-enforcement officer acting in his or her official capacity.

(2) Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100, or confined in jail not more than six months, or both fined and confined.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-2. Definitions.

As used in this article, unless the context otherwise requires:

(1) "Blackjack" means a short bludgeon consisting, at the striking end, of an encased piece of lead or some other heavy substance and, at the handle end, a strap or springy shaft which increases the force of impact when a person or object is struck. The term "blackjack" includes, but is not limited to, a billy, billy club, sand club, sandbag, or slapjack.

(2) "Gravity knife" means any knife that has a blade released from the handle by the force of gravity or the

application of centrifugal force and when so released is locked in place by means of a button, spring, lever, or other locking or catching device.

(3) "Knife" means an instrument, intended to be used or readily adaptable to be used as a weapon, consisting of a sharp-edged or sharp-pointed blade, usually made of steel, attached to a handle which is capable of inflicting cutting, stabbing, or tearing wounds. The term "knife" includes, but is not limited to, any dagger, dirk, poniard, or stiletto, with a blade over three and one-half inches in length, any switchblade knife or gravity knife, and any other instrument capable of inflicting cutting, stabbing, or tearing wounds. A pocket knife with a blade three and one-half inches or less in length, a hunting or fishing knife carried for hunting, fishing, sports, or other recreational uses, or a knife designed for use as a tool or household implement is not included within the term "knife" as defined in this subsection unless the knife is knowingly used or intended to be used to produce serious bodily injury or death.

(4) "Switchblade knife" means any knife having a spring-operated blade which opens automatically upon pressure being applied to a button, catch, or other releasing device in its handle.

(5) "Nunchaku" means a flailing instrument consisting of two or more rigid parts, connected by a chain, cable, rope, or other nonrigid, flexible, or springy material, constructed in such a manner as to allow the rigid parts to swing freely so that one rigid part may be used as a handle and the other rigid part may be used as the striking end.

(6) "Metallic or false knuckles" means a set of finger rings attached to a transverse piece to be worn over the front of the hand for use as a weapon and constructed in such a manner that, when striking another person with the fist or closed hand, considerable physical damage may be inflicted upon the person struck. The terms "metallic or false knuckles" includes any such instrument without reference

to the metal or other substance or substances from which the metallic or false knuckles are made.

(7) "Pistol" means a short firearm having a chamber which is integral with the barrel, designed to be aimed and fired by the use of a single hand.

(8) "Revolver" means a short firearm having a cylinder of several chambers that are brought successively into line with the barrel to be discharged, designed to be aimed and fired by the use of a single hand.

(9) "Pepper spray" means a temporarily disabling aerosol that is composed partly of capsicum oleoresin and causes irritation, blinding of the eyes, and inflammation of the nose, throat, and skin that is intended for self-defense use.

(10) "Deadly weapon" means an instrument which is designed to be used to produce serious bodily injury or death or is readily adaptable to such use. The term "deadly weapon" includes, but is not limited to, the instruments defined in subdivisions (1) through (8), inclusive, of this section or other deadly weapons of like kind or character which may be easily concealed on or about the person. For the purposes of §18A-5-1a of this code and §61-7-11a of this code, in addition to the definition of "knife" set forth in subdivision (3) of this section, the term "deadly weapon" also includes any instrument included within the definition of "knife" with a blade of three and one-half inches or less in length. Additionally, for the purposes of §18A-5-1a of this code and §61-7-11a of this code, the term "deadly weapon" includes explosive, chemical, biological, and radiological materials. Notwithstanding any other provision of this section, the term "deadly weapon" does not include any item or material owned by the school or county board, intended for curricular use, and used by the student at the time of the alleged offense solely for curricular purposes. The term "deadly weapon" does not include pepper spray as

defined in subdivision (9) of this section when used by any person over the age of 16 solely for self-defense purposes.

(11) "Concealed" means hidden from ordinary observation so as to prevent disclosure or recognition. A deadly weapon is concealed when it is carried on or about the person in such a manner that another person in the ordinary course of events would not be placed on notice that the deadly weapon was being carried. For purposes of concealed handgun licensees, a licensee is considered to be carrying on or about his or her person while in or on a motor vehicle if the firearm is located in a storage area in or on the motor vehicle.

(12) "Firearm" means any weapon which will expel a projectile by action of an explosion.

(13) "Controlled substance" has the same meaning as is ascribed to that term in §60A-1-101(e) of this code.

(14) "Drug" has the same meaning as is ascribed to that term in §60A-1-101(m) of this code.

CHAPTER 82

(Com. Sub. for S. B. 144 - By Senators Sypolt and Cline)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to precluding the charge of making a materially false statement in the investigation of a misdemeanor offense serving as the basis for a secured bond or pre-trial incarceration; establishing a criminal offense in

certain circumstances for initiating a false complaint or report against a law-enforcement officer, knowing the information is false; and providing misdemeanor criminal penalties for a false report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. CRIMES AGAINST PUBLIC JUSTICE.

§61-5-17. Obstructing officer; fleeing from officer; making false statements to officer; interfering with emergency communications; penalties; definitions.

(a) A person who by threats, menaces, acts, or otherwise forcibly or illegally hinders or obstructs or attempts to hinder or obstruct a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

(b) A person who intentionally disarms or attempts to disarm a law-enforcement officer, correctional officer, probation officer, parole officer, courthouse security officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than one nor more than five years.

(c) A person who, with intent to impede or obstruct a law-enforcement officer, the State Fire Marshal or a full-time deputy or assistant fire marshal in the conduct of an investigation of a misdemeanor or felony offense, knowingly and willfully makes a materially false statement is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $200, or confined in jail for five days, or both fined and confined.

The provisions of this section do not apply to statements made by a spouse, parent, stepparent, grandparent, sibling, half-sibling, child, stepchild or grandchild, whether related by blood or marriage, of the person under investigation. Statements made by the person under investigation may not be used as the basis for prosecution under this subsection. For purposes of this subsection, "law-enforcement officer" does not include a watchman, a member of the West Virginia State Police or college security personnel who is not a certified law-enforcement officer. A criminal charge under this subsection relating to the investigation of a misdemeanor offense may not be used to seek or support a secured bond or pre-trial incarceration.

(d) A person who intentionally flees or attempts to flee by any means other than the use of a vehicle from a law-enforcement officer, probation officer, parole officer, courthouse security officer, correctional officer, the State Fire Marshal, or a full-time deputy or assistant fire marshal acting in his or her official capacity who is attempting to make a lawful arrest of or to lawfully detain the person, and who knows or reasonably believes that the officer is attempting to arrest or lawfully detain him or her, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500 or confined in jail not more than one year, or both fined and confined.

(e) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 and shall be confined in jail not more than one year.

(f) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal

directing the person to stop, and who operates the vehicle in a manner showing a reckless indifference to the safety of others, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $2,000 and shall be imprisoned in a state correctional facility not less than one nor more than five years.

(g) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes damage to the real or personal property of a person during or resulting from his or her flight, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $1,000 nor more than $3,000 and shall be confined in jail for not less than six months nor more than one year.

(h) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes bodily injury to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

(i) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who causes death to a person during or resulting from his or her flight, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 15 years. A person imprisoned pursuant to this subsection is not eligible for parole prior to having served a minimum of three years of his or her sentence or the

minimum period required by §62-12-13 of this code, whichever is greater.

(j) A person who intentionally flees or attempts to flee in a vehicle from a law-enforcement officer, probation officer, or parole officer acting in his or her official capacity after the officer has given a clear visual or audible signal directing the person to stop, and who is under the influence of alcohol, controlled substances, or drugs, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility not less than three nor more than 10 years.

(k) For purposes of this section, the term "vehicle" includes any motor vehicle, motorcycle, motorboat, all-terrain vehicle, or snowmobile as those terms are defined in §17A-1-1 of this code, whether or not it is being operated on a public highway at the time and whether or not it is licensed by the state.

(l) For purposes of this section, the terms "flee", "fleeing", and "flight" do not include a person's reasonable attempt to travel to a safe place, allowing the pursuing law-enforcement officer to maintain appropriate surveillance, for the purpose of complying with the officer's direction to stop.

(m) The revisions to subsections (e), (f), (g), and (h) of this section enacted during the 2010 regular legislative session shall be known as the Jerry Alan Jones Act.

(n) (1) No person, with the intent to purposefully deprive another person of emergency services, may interfere with or prevent another person from making an emergency communication, which a reasonable person would consider necessary under the circumstances, to law-enforcement, fire, or emergency medical services personnel.

(2) For the purpose of this subsection, the term "interfere with or prevent" includes, but is not limited to,

seizing, concealing, obstructing access to or disabling or disconnecting a telephone, telephone line, or equipment or other communication device.

(3) For the purpose of this subsection, the term "emergency communication" means communication to transmit warnings or other information pertaining to a crime, fire, accident, power outage, disaster, or risk of injury or damage to a person or property.

(4) A person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for a period of not less than one day nor more than one year or shall be fined not less than $250 nor more than $2,000, or both fined and confined.

(5) A person who is convicted of a second offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than three months nor more than one year or fined not less than $500 nor more than $3,000, or both fined and confined.

(6) A person who is convicted of a third or subsequent offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not less than six months nor more than one year or fined not less than $500 nor more than $4,000, or both fined and confined.

(7) In determining the number of prior convictions for purposes of imposing punishment under this subsection, the court shall disregard all such prior convictions occurring more than 10 years prior to the offense in question.

(o) A person is guilty of filing a false complaint against a law-enforcement officer when, knowing the information reported is false or baseless, he or she:

(1) Initiates a false complaint of improper action of a law-enforcement officer relating to an incident or other circumstance; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with conduct of law-enforcement officers which did not occur, does not in fact exist; or

(3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur.

Any person who violates this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than six months, or both fined and confined.

CHAPTER 83

(Com. Sub. for S. B. 201 - By Senators Weld, Hamilton, Lindsay, Ihlenfeld, Rucker, Woelfel, Baldwin and Romano)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-2-9a of the Code of West Virginia, 1931, as amended, relating generally to the criminal offenses of stalking and harassment; modifying and clarifying elements of offenses; creating new offense of violating a personal safety order where the person against whom the violation is directed is the subject of the order; creating a new offense of harassment to cause a person to physically harm or kill himself or herself; defining terms; enhancing penalties for second and subsequent offenses; authorizing proposal of legislative rules and promulgation of emergency rules by the Governor's Office of Crime, Delinquency, and Correction; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9a. Harassment; penalties; definitions.

(a) Any person who engages in a course of conduct directed at another person with the intent to cause the other person to fear for his or her personal safety, the safety of others, or suffer substantial emotional distress, or causes a third person to so act, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, confined in jail for not more than six months, or both fined and confined.

(b) Any person who harasses or repeatedly makes credible threats against another is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months, or fined not more than $1,000, or both fined and confined.

(c) Notwithstanding any provision of this code to the contrary, any person who violates the provisions of subsection (a) or (b) of this section in violation of an order entered by a circuit court, magistrate court, or family court judge, in effect and entered pursuant to §48-5-501, §48-5-601, or §48-27-403 of this code, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than 90 days nor more than one year, or fined not less than $2,000 nor more than $5,000, or both fined and confined.

(d) A second or subsequent conviction for a violation of subsection (a) or (b) of this section is a felony punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and imprisoned.

(e) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in

effect for injunctive relief pursuant to the provisions of §48-5-608 or §48-27-501 of this code, who has been served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, shall be guilty of a felony and, upon conviction thereof, be imprisoned in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and imprisoned.

(f) Notwithstanding any provision of this code to the contrary, any person against whom a protective order is in effect pursuant to the provisions of §53-8-7 of this code, who has been previously served with a copy of said order, who commits a violation of the provisions of this section, in which the subject in the protective order is the victim, is guilty of a felony and punishable by imprisonment in a state correctional facility for not less than one year nor more than five years, or fined not less than $3,000 nor more than $10,000, or both fined and confined.

(g) Notwithstanding any provision of this code to the contrary, any person who harasses another person with the intent to cause the person to physically injure himself or herself, or to take his or her own life, or who continues to harass another, knowing or having reason to know that the person is likely to physically injure himself or herself, or to take his or her own life based, in whole or in part, on such harassment, is guilty of a felony and, upon conviction, shall be imprisoned in a state correctional facility for a determinate sentence of not less than two years nor more than 10 years.

(h) For the purposes of this section:

(1) "Bodily injury" means substantial physical pain, illness, or any impairment of physical condition;

(2) "Course of conduct" means a pattern of conduct composed of two or more acts in which a defendant directly,

indirectly, or through a third party by any action, method, device, or means:

(A) Follows, monitors, observes, surveils, or threatens a specific person or persons;

(B) Engages in other nonconsensual contact and/or communications, including contact through electronic communication, with a specific person or persons; or

(C) Interferes with or damages a person's property or pet;

(3) "Credible threat" means a threat of bodily injury made with the apparent ability to carry out the threat and with the result that a reasonable person would believe that the threat could be carried out;

(4) "Harasses" means a willful course of conduct directed at a specific person or persons which would cause a reasonable person mental injury or emotional distress and which serves no legitimate or lawful purpose;

(5) "Immediate family" means a spouse, parent, stepparent, mother-in-law, father-in-law, child, stepchild, sibling, or any person who regularly resides in the household or within the prior six months regularly resided in the household; and

(6) "Repeatedly" means on two or more occasions.

(i) Any person convicted under the provisions of this section who is granted probation or for whom execution or imposition of a sentence or incarceration is suspended, shall have as a condition of probation or suspension of sentence that he or she participate in counseling or medical treatment as directed by the court.

(j) Upon conviction, the court may issue an order restraining the defendant from any contact with the victim for a period not to exceed 10 years. The length of any

restraining order shall be based upon the seriousness of the violation before the court, the probability of future violations, and the safety of the victim or his or her immediate family. The duration of the restraining order may be longer than five years only in cases when a longer duration is necessary to protect the safety of the victim or his or her immediate family.

(k) It is a condition of bond for any person accused of the offense described in this section that the person is to have no contact, direct or indirect, verbal or physical, with the alleged victim.

(l) Nothing in this section may be construed to preclude a sentencing court from exercising its power to impose home confinement with electronic monitoring as an alternative sentence.

(m) The Governor's Committee on Crime, Delinquency, and Correction, after consultation with representatives of labor, licensed domestic violence programs, and rape crisis centers which meet the standards of the West Virginia Foundation for Rape Information and Services, is authorized to promulgate legislative rules and emergency rules pursuant to §29A-3-1 *et seq.* of this code, establishing appropriate standards for the enforcement of this section by state, county, and municipal law-enforcement officers and agencies.

CHAPTER 84

(Com. Sub. for S. B. 261 - By Senators Ihlenfeld, Baldwin, Stollings and Maynard)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-3C-3 and §61-3C-4 of the Code of West Virginia, 1931, as amended, all relating to contaminating a computer with ransomware; creating criminal offense of introducing ransomware into any computer, computer system, or computer network with the intent to extort money or other consideration; setting forth the elements of the offense; defining terms; and establishing criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-3. Definitions.

As used in this article, unless the context clearly indicates otherwise:

(1) "Access" means to instruct, communicate with, store data in, retrieve data from, intercept data from, or otherwise make use of any computer, computer network, computer program, computer software, computer data, or other computer resources.

(2) "Authorization" means the express or implied consent given by a person to another to access or use said person's computer, computer network, computer program,

computer software, computer system, password, identifying code, or personal identification number.

(3) "Computer" means an electronic, magnetic, optical, electrochemical, or other high-speed data processing device performing logical, arithmetic, or storage functions and includes any data storage facility or communication facility directly related to, or operating in conjunction with, such device. The term "computer" includes any connected or directly related device, equipment, or facility which enables the computer to store, retrieve, or communicate computer programs, computer data, or the results of computer operations to or from a person, another computer, or another device, file servers, mainframe systems, desktop personal computers, laptop personal computers, tablet personal computers, cellular telephones, game consoles, and any other electronic data storage device or equipment, but such term does not include an automated typewriter or typesetter, a portable hand-held calculator, or other similar device.

(4) "Computer contaminant" means any set of computer instructions that are designed to damage or destroy information within a computer, computer system, or computer network without the consent or permission of the owner of the information. They include, but are not limited to, a group of computer instructions commonly called viruses or worms that are self-replicating or self-propagating and are designed to contaminate other computer programs or computer data, consume computer resources, or damage or destroy the normal operation of the computer.

(5) "Computer data" means any representation of knowledge, facts, concepts, instruction, or other information computed, classified, processed, transmitted, received, retrieved, originated, stored, manifested, measured, detected, recorded, reproduced, handled, or utilized by a computer, computer network, computer program, or computer software, and may be in any medium, including, but not limited to, computer printouts, microfilm,

microfiche, magnetic storage media, optical storage media, punch paper tape, or punch cards, or it may be stored internally in read-only memory or random access memory of a computer or any other peripheral device.

(6) "Computer network" means a set of connected devices and communication facilities, including more than one computer, with the capability to transmit computer data among them through such communication facilities.

(7) "Computer operations" means arithmetic, logical, storage, display, monitoring, or retrieval functions or any combination thereof and includes, but is not limited to, communication with, storage of data in or to, or retrieval of data from any device, and the human manual manipulation of electronic magnetic impulses. A "computer operation" for a particular computer shall also mean any function for which that computer was designed.

(8) "Computer program" means an ordered set of computer data representing instructions or statements, in a form readable by a computer, which controls, directs, or otherwise influences the functioning of a computer or computer network.

(9) "Computer software" means a set of computer programs, procedures, and associated documentation concerned with computer data or with the operation of a computer, computer program, or computer network.

(10) "Computer services" means computer access time, computer data processing, or computer data storage, and the computer data processed or stored in connection therewith.

(11) "Computer supplies" means punch cards, paper tape, magnetic tape, magnetic disks or diskettes, optical disks or diskettes, disk or diskette packs, paper, microfilm, and any other tangible input, output, or storage medium used in connection with a computer, computer network, computer data, computer software, or computer program.

(12) "Computer resources" includes, but is not limited to, information retrieval; computer data processing, transmission, and storage; and any other functions performed, in whole or in part, by the use of a computer, computer network, computer software, or computer program.

(13) "Financial instrument" includes, but is not limited to, a check, draft, warrant, money order, note, certificate of deposit, letter of credit, bill of exchange, credit or debit card, transaction authorization mechanism, marketable security, or any computerized representation thereof.

(14) "Owner" means any person who owns or leases or is a licensee of a computer, computer network, computer data, computer program, computer software, computer resources, or computer supplies.

(15) "Person" means any natural person, general partnership, limited partnership, trust, association, corporation, joint venture, or any state, county, or municipal government and any subdivision, branch, department, or agency thereof.

(16) "Property" includes:

(A) Real property;

(B) Computers and computer networks;

(C) Financial instruments, computer data, computer programs, computer software, and all other personal property regardless of whether they are:

(i) Tangible or intangible;

(ii) In a format readable by humans or by a computer;

(iii) In transit between computers or within a computer network or between any devices which comprise a computer; or

(iv) Located on any paper or in any device on which it is stored by a computer or by a human; and

(D) Computer services.

(17) "Ransomware" means a computer contaminant, or lock placed or introduced without authorization into a computer, computer system, or computer network that restricts access by an authorized user to the computer, computer system, computer network, or any data therein under circumstances in which the person responsible for the placement or introduction of the ransomware demands payment of money or other consideration to remove the computer contaminant, restore access to the computer, computer system, computer network, or data, or otherwise remediate the impact of the computer contaminant or lock.

(18) "Value" means having any potential to provide any direct or indirect gain or advantage to any person.

(19) "Value of property or computer services" shall be: (A) The market value of the property or computer services at the time of a violation of this article; or (B) if the property or computer services are unrecoverable, damaged, or destroyed as a result of a violation of §61-3C-6 or §61-3C-7 of this code, the cost of reproducing or replacing the property or computer services at the time of the violation.

§61-3C-4. Computer fraud; access to Legislature computer; criminal penalties.

(a) Any person who, knowingly and willfully, directly or indirectly, accesses or causes to be accessed any computer, computer services, or computer network for the purpose of: (1) Executing any scheme or artifice to defraud; or (2) obtaining money, property, or services by means of fraudulent pretenses, representations, or promises is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 or imprisoned in a state correctional facility for a determinate sentence of not more than 10 years, or both fined and imprisoned.

(b) Any person who, with intent to extort money or other consideration from another, introduces ransomware into any computer, computer system, or computer network is guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000 or imprisoned in a state correctional facility for a determinate sentence of not more than 10 years, or both fined and imprisoned.

(c) A person is criminally responsible for placing or introducing ransomware into a computer, computer system, or computer network if the person directly places or introduces the ransomware or directs or induces another person to do so, with the intent of demanding payment or other consideration for removing, restoring access, or other remediation of the impact of the ransomware.

(d) (1) Any person who, knowingly and willfully, directly or indirectly, accesses, attempts to access, or causes to be accessed any data stored in a computer owned by the Legislature without authorization is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility for a determinate sentence of not more than five years, or both fined and imprisoned.

(2) Notwithstanding the provisions of §61-3C-17 of this code to the contrary, in any criminal prosecution under this subsection against an employee or member of the Legislature, it shall not be a defense: (A) That the defendant had reasonable grounds to believe that he or she had authorization to access the data merely because of his or her employment or membership; or (B) that the defendant could not have reasonably known he or she did not have authorization to access the data: *Provided*, That the Joint Committee on Government and Finance shall promulgate rules for the respective houses of the Legislature regarding appropriate access of members and staff and others to the legislative computer system.

CHAPTER 85

(Com. Sub. for S. B. 308 - By Senators Weld, Ihlenfeld and Jeffries)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §55-7J-5 of the Code of West Virginia, 1931, as amended; and to amend and reenact §61-2-29b of said code, all relating to creating the criminal offense of violating the terms of protection orders issued for the protection of persons who are victims or potential victims of financial exploitation; requiring orders of protection to state that violations of such orders may result in criminal prosecution; and establishing penalties for such offenses.

Be it enacted by the Legislature of West Virginia:

CHAPTER 55. ACTIONS, SUITS, AND ARBITRATION; JUDICIAL SALE.

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

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

(a) An elderly person, protected person, or incapacitated adult may bring an action to enjoin the alleged commission of financial exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or

assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person, or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to, in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person, or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person, or incapacitated person any real or personal property which was misappropriated; or

(4) Provide for the appointment of a receiver.

(b) In an action under §55-7J-1 of this code, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In an action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant, or other party, or at any later time, the court may require the plaintiff, defendant, claimant, or other party or parties to post security, or additional security, in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment or after appeal.

(d) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-29b. Financial exploitation of an elderly person, protected person, or incapacitated adult; penalties; definitions.

(a) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of less than $1,000 is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.

(b) Any person who financially exploits an elderly person, protected person, or an incapacitated adult in the amount of $1,000 or more is guilty of a felony and, upon conviction thereof, shall be fined not more than $10,000 and imprisoned in a state correctional facility not less than two nor more than 20 years.

(c) Any person convicted of a violation of this section shall, in addition to any other penalties at law, be subject to an order of restitution.

(d) In determining the value of the money, goods, property, or services referred to in subsection (a) of this section, it shall be permissible to cumulate amounts or values where such money, goods, property, or services were fraudulently obtained as part of a common scheme or plan.

(e) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4 of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Department of Health and Human Resources, Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated

above. The requisite agencies shall investigate or cause the investigation of the allegations.

(f) When financial exploitation is suspected and to the extent permitted by federal law, financial institutions and their employees or other business entities required by federal law or regulation to file suspicious activity reports and currency transaction reports shall also be permitted to disclose suspicious activity reports or currency transaction reports to the prosecuting attorney of any county in which the transactions underlying the suspicious activity reports or currency transaction reports occurred.

(g) Any person or entity that in good faith reports a suspected case of financial exploitation pursuant to this section is immune from civil liability founded upon making that report.

(h) For the purposes of this section:

(1) "Incapacitated adult" means a person as defined by §61-2-29 of this code;

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

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

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

(i) Notwithstanding any provision of this code to the contrary, acting as guardian, conservator, trustee, or

attorney for, or holding power of attorney for, an elderly person, protected person, or incapacitated adult shall not, standing alone, constitute a defense to a violation of subsection (a) of this section.

(j) Any person who willfully violates a material term of an order entered pursuant to §55-7J-5 of this code is guilty of a misdemeanor and, upon conviction thereof, shall:

(1) For the first offense, be fined not more than $1,000 or confined in jail not more than 90 days, or both fined and confined; and

(2) For a second or subsequent offense, be fined not more than $2,500 or confined in jail not more than one year, or both fined and confined.

CHAPTER 86

(Com. Sub. for S. B. 490 - By Senators Sypolt, Smith, Rucker, Beach, Baldwin, Jeffries and Pitsenbarger)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-3B-7, relating to creating the offenses of trespass upon an animal or crop facility and conspiracy to trespass upon an animal or crop facility; defining terms; establishing criminal penalties; creating an enhanced felony offense for second and subsequent violations; authorizing double damages for injuries to animal and crop facilities; and allowing injunctive relief.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. TRESPASS.

§61-3B-7. Animal or crop facilities trespass; penalties; injunctive relief.

(a) As used in this section:

(1) "Animal" means poultry, livestock, domestic animals, and captive cervids owned and possessed by persons licensed pursuant to §19-2H-1 *et seq.* of this code. The term does not include an animal used for illegal gaming.

(2) "Animal or crop facility" means a facility that is used in the production, management, sale, or processing of animals or crops. The term includes, but is not limited to:

(A) A building, greenhouse, structure, laboratory, pasture, field, paddock, pond, impoundment, or premises where animals or crops are located;

(B) A managed bee colony;

(C) A livestock market;

(D) A facility used for the preparation of, or processing of, animals, crops, or value-added foods for sale; and

(E) A facility used to carry out any agritourism activity, as that term is defined and used in §19-36-1 *et seq.* of this code.

(3) "Crop" means a shrub, vine, tree, seedling, shoot, slip, or other plant capable of producing food, fiber, medicine, nursery stock, floral products, or aesthetic beauty.

(b) Any person who willfully trespasses on the property of another which constitutes an animal or crop facility with the intent to commit larceny, destroy property, or disrupt the operation of the facility is guilty of willful trespass upon an animal or crop facility.

(c) Any person who conspires with one or more persons to violate subsection (b) of this section and commits an overt act in furtherance thereof is guilty of conspiracy to willfully trespass upon an animal or crop facility.

(d) Any person who violates subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 nor more than $1,000 or confined in jail not more than 30 days, or both fined and confined.

(e) Notwithstanding the provisions of subsection (d) of this section, any person convicted of a second or subsequent violation of subsection (b) or a violation of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not less than $5,000 nor more than $10,000 or imprisoned in a state correctional facility for not less than one nor more than five years, or both fined and imprisoned.

(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 owner or operator of the animal or crop facility in the amount of twice any damage caused.

(g) The owner or operator of an animal or crop facility may bring an action for injunctive relief against a person who engages in, or threatens to engage in, conduct that constitutes a violation of this section:

(1) The action may be brought in the circuit court of any county in which any part of the conduct or threatened conduct occurs or is threatened to occur.

(2) The circuit court may grant any appropriate injunctive relief to prevent or abate the conduct or threatened conduct, including a temporary restraining order, preliminary injunction, or permanent injunction.

(3) The circuit court may issue injunctive relief without the owner or operator of an animal or crop facility giving security for its issuance.

CHAPTER 87

(S. B. 562 - By Senators Trump, Stollings, Woelfel and Facemire)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-11-26 and §61-11-26a of the Code of West Virginia, 1931, as amended, all relating generally to expungement of certain criminal convictions; allowing a person seeking expungement of convictions in multiple counties to file the petition in his or her county of residence; clarifying that prosecuting attorneys in any county of conviction wherein expungement is sought be provided notice of petition; eliminating the requirement that the chief law-enforcement officer or head of a municipal law-enforcement agency where the offense for which expungement is sought be given notice where such agency was not the arresting agency; modifying non-expungable offenses to allow expungement of burglaries of buildings which are not dwellings; allowing expungement of an unrelated felony if person has a conviction for driving under the influence if said driving under the influence conviction is at least five years old at the time the petition is filed; clarifying that Commissioner of Corrections be served with a copy of the petition for expungement if the petitioner was confined or imprisoned for the offense for which expungement is sought; clarifying that petitioner's burden of proof as to convictions for which expungement is sought are the only convictions against him or her in the state; defining "expungement"; and directing that upon the granting of an order of expungement all public records other than those under court seal are moved and destroyed.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-26. Expungement of certain criminal convictions; procedures; effect.

(a) *Eligibility for expungement.* —

(1) *Misdemeanors.* —

Subject to the limitations set forth in this section, a person convicted of a misdemeanor offense or offenses may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(2) *Nonviolent felonies.* —

Subject to the limitations set forth in this section, a person convicted of a nonviolent felony offense or offenses arising from the same transaction or series of transactions may, pursuant to the provisions of this section, petition the circuit court in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated with the conviction or convictions.

(b) *Temporal requirements.* —

(1) *Misdemeanor.* — A person is not eligible for expungement pursuant to subdivision (1), subsection (a) of this section until one year after conviction, completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) *More than one misdemeanor.* — A person is not eligible for expungement of multiple misdemeanors pursuant to subdivision (1), subsection (a) of this section until two years after the last conviction, completion of any sentence of incarceration, or completion of any period of

supervision ordered for the last conviction, whichever is later in time.

(3) *Nonviolent felonies.* — A person is not eligible for expungement of a nonviolent felony pursuant to subdivision (2), subsection (a) of this section until five years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(c) *Limitations on eligibility for expungement.* — A person is not eligible for expungement pursuant to subsection (a) of this section for convictions of the following offenses:

(1) Any felony offense of violence against the person as defined in subdivision (2), subsection (p) of this section or any misdemeanor offense involving the intentional infliction of physical injury to a minor or law-enforcement officer;

(2) Any felony offense in which the victim of the crime was a minor as defined in subdivision (3), subsection (p) of this section;

(3) Any violation of §61-8B-1 *et seq.* of this code;

(4) Any offense in which the petitioner used or exhibited a deadly weapon or dangerous instrument;

(5) Any violation of §61-2-28 of this code, or any offense which violates §61-2-9(b) or §61-2-9(c) of this code in which the victim was a spouse, a person with whom the person seeking expungement had a child in common, or with whom the person seeking expungement ever cohabited prior to the offense or a violation of §61-2-28(c) of this code;

(6) Any violation of §61-2-29 of this code;

(7) Any offense of driving under the influence of alcohol or a controlled substance;

(8) Any offense which violates §17B-4-3 of this code;

(9) Any offense which violates §61-8-12 or §61-8-19 of this code;

(10) Any violation of §61-2-9a of this code;

(11) Any violation of §61-8B-8 and §61-8B-9 of this code;

(12) Any violation of §61-3-11 of this code involving a structure regularly used as a dwelling;

(13) Any conviction for which the sentencing judge made a written finding that the offense was sexually motivated;

(14) Any offense which violates §17E-1-13(g) of this code; and

(15) Any offense of conspiracy or attempt to commit a felony set forth in subdivisions (1) through (11) and (13), inclusive, of this subsection.

Provided, That a conviction for driving under the influence of alcohol, controlled substances, or drugs shall not preclude expungement of an unrelated and otherwise expungable felony if the conviction for driving under the influence of alcohol, controlled substances, or drugs is at least five years old at the time the petition for expungement is filed.

(d) Content of petition for expungements. — Each petition to expunge a conviction or convictions pursuant to this section shall be verified under oath and include the following information: *Provided*, That a petition for the expungement of multiple misdemeanors shall identify and group such information by circuit court, as applicable, from

which expungement of a particular conviction or convictions is being sought:

(1) The petitioner's current name and all other legal names or aliases by which the petitioner has been known at any time;

(2) All of the petitioner's addresses from the date of the offense in connection with which an expungement order is sought to date of the petition;

(3) The petitioner's date of birth and Social Security number;

(4) The petitioner's date of arrest, the court of jurisdiction, and criminal complaint, indictment, summons, or case number;

(5) The statute or statutes and offense or offenses for which the petitioner was charged and of which the petitioner was convicted;

(6) The names of any victim or victims, or a statement that there were no identifiable victims;

(7) Whether there is any current order for restitution, protection, restraining order, or other no contact order prohibiting the petitioner from contacting the victim or whether there has ever been a prior order for restitution, protection, or restraining order prohibiting the petitioner from contacting the victim. If there is a current order, the petitioner shall attach a copy of that order to his or her petition;

(8) The disposition of the matter and sentence imposed, if any;

(9) The grounds on which expungement is sought, including, but not limited to, employment or licensure purposes;

(10) The steps the petitioner has taken since the time of the offense or offenses toward personal rehabilitation, including treatment, work, or other personal history that demonstrates rehabilitation;

(11) Whether petitioner has ever been granted expungement or similar relief regarding a criminal conviction by any court in this state, by the court of any other state, or by any federal court; and

(12) Any supporting documents, sworn statements, affidavits, or other information supporting the petition for expungement.

(e) *Service of petition for expungement.* — The petitioner shall serve a copy of the petition, with any supporting documentation, pursuant to the rules of the trial court upon the following persons or entities:

(1) The Superintendent of the State Police;

(2) The prosecuting attorney of the county or counties of conviction;

(3) The chief law-enforcement officer of the law-enforcement agency which arrested the petitioner;

(4) The superintendent, warden, or the Commissioner of Corrections of any institution in which the petitioner was confined or imprisoned pursuant to the conviction; and

(5) The circuit court, magistrate court, or municipal court which disposed of the petitioner's criminal charge.

(f) The prosecuting attorney of the county in which expungement is sought shall serve the petition for expungement, accompanying documentation, and any proposed expungement order by first class mail to any identified victims.

(g) *Notice of opposition.* —

(1) Upon receipt of a petition for expungement, the persons and entities listed in subsection (e) of this section, and any other interested person or agency that desires to oppose the expungement may, within 30 days of receipt of the petition, file a notice of opposition with the court with supporting documentation and sworn statements setting forth the reasons for resisting the petition for expungement.

(2) A copy of any notice of opposition with supporting documentation and sworn statements shall be served upon the petitioner in accordance with trial court rules.

(3) The petitioner may file a reply to a notice of opposition no later than 30 days after service of any notice of opposition to the petition for expungement.

(h) *Burden of proof.* — The burden of proof shall be on the petitioner seeking an order of expungement to prove by clear and convincing evidence:

(1) That the conviction or convictions for which expungement is sought are the only convictions for that specified offense or offenses against the petitioner in this state and that the conviction or convictions are not excluded from expungement by the provisions of this section;

(2) That the requisite time has passed since the conviction or convictions or the completion of any sentence of incarceration or period of supervision as set forth in subsection (b) of this section;

(3) That the petitioner has no criminal charges pending against him or her;

(4) That the expungement is consistent with the public welfare;

(5) That the petitioner has, by his or her behavior since the conviction or convictions, evidenced that he or she has been rehabilitated and is law-abiding; and

(6) Any other facts considered appropriate or necessary by the court to make a determination regarding the petition for expungement.

(i) *Court procedure for petition for expungement.* — Within 60 days of the filing of a petition for expungement the circuit court shall:

(1) Summarily grant the petition;

(2) Return the petition to the petitioner to supply incomplete information or correct obvious errors in order to permit consideration of the petition on its merits;

(3) Set the matter for hearing; or

(4) Summarily deny the petition if the court determines the petition discloses on its face or, based upon supporting documentation and sworn statements filed in opposition to the petition, discloses that the petitioner, as a matter of law, is not entitled to expungement.

(j) *Hearing on petition for expungement.* —

If the court sets the matter for hearing, all interested parties who have filed a notice of opposition shall be notified. At the hearing, the court may inquire into the background of the petitioner and shall have access to any reports or records relating to the petitioner that are on file with any law-enforcement authority, the institution of confinement, if any, and parole authority or other agency which was in any way involved with the petitioner's arrest, conviction, sentence, and post-conviction supervision, including any record of arrest or conviction in any other state or federal court. The court may hear testimony of witnesses and any other matter the court considers proper and relevant to its determination regarding the petition. The court shall enter an order reflecting its ruling on the petition for expungement with appropriate findings of fact and conclusions of law.

(k) *Sealing of records.* — If the court grants the petition for expungement, it shall order the sealing of all records in the custody of the court and expungement of any records in the custody of any other agency or official, including law-enforcement records. Every agency with records relating to the arrest, charge, or other matters arising out of the arrest or conviction that is ordered to expunge records shall certify to the court within 60 days of the entry of the expungement order that the required expungement has been completed. All orders enforcing the expungement procedure shall also be sealed.

(l) *Disclosure of expunged matters.* —

(1) Subject to the exceptions set forth in this section, upon expungement, the proceedings in the matter shall be considered, as a matter of law, never to have occurred. The court and other agencies shall reply to any inquiry that no record exists on the matter. The person whose record is expunged shall not have to disclose the fact of the record or any matter relating to the record on an application for employment, credit, or other type of application: *Provided*, That any person applying for a position in which he or she would be engaging in the prevention, detection, investigation, prosecution, or incarceration of persons for violations of the law shall disclose any and all convictions to his or her prospective employer, regardless of whether the conviction or convictions have been expunged pursuant to this section.

(2) A person for whom an order of expungement has been entered pursuant to this section may not be found guilty of perjury or otherwise giving a false statement, under any provision of this code, because of that person's failure to recite or acknowledge the arrest, indictment, information, trial, or conviction, as long as the person is in compliance with subdivision (1) of this subsection.

(3) Notwithstanding any provisions of this code to the contrary, any person required by state or federal law to

obtain a criminal history record check on a prospective employee are authorized to have knowledge of any convictions expunged under this section.

(m) *Inspection of sealed records.* — Inspection of the sealed records in the court's possession may thereafter be permitted by the court only upon a motion by the person who is the subject of the records or upon a petition filed by a prosecuting attorney that inspection and possible use of the records in question are necessary to the investigation or prosecution of a crime in this state or another jurisdiction. If the court finds that there is a legitimate reason for access and the interests of justice will be served by granting a petition to inspect the sealed record, it may grant access under the terms and conditions determined by the court.

(n) *Fees for filing petition for expungement and processing orders of expungement.* — The clerk of the circuit court shall charge and collect in advance the same fee for a petition for expungement as is charged for instituting a civil action pursuant to §59-1-11(a)(1) of this code. A person obtaining an order of expungement pursuant to the provisions of this section shall pay a fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement deposited into a special revenue account within the State Treasurer's office to be known as the West Virginia State Police Criminal History Account.

(o) Notwithstanding any provision of this code to the contrary, a person may only obtain the relief of expungement afforded by the provisions of this section and §61-11-26a of this code once.

(p) For the purposes of this section:

(1) "Court record" means an official record of a court about a proceeding that the clerk of the court or other court personnel maintains. "Court record" includes an index, a docket entry, a petition or other pleading, a memorandum, a

transcription of proceedings, an electronic recording, an order, and a judgment.

(2) "Expungement" means the removal from all public records, other than those specifically exempted therefrom by the provisions of this section and §61-11-26a of this code, all evidence that a person has been charged or convicted of a crime.

(3) "Felony crime of violence against the person" means those felony offenses set forth in §61-2-1 *et seq.*, §61-3E-1 *et seq.*, §61-8B-1 *et seq.*, and §61-8D-1 *et seq.* of this code.

(4) "Felony offenses in which the victim was a minor" means felony violations of §61-3C-14b, §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code.

(5) "Nonviolent felony" means a felony that:

(A) Is not an offense listed in subsection (c) of this section;

(B) Is not an offense involving the intentional infliction of serious bodily injury;

(C) Is an offense the conviction of which is based on facts and circumstances of which the circuit court finds to be consistent with the purposes of this article; and

(D) Is an offense the conviction of which the circuit court finds does not involve violence or potential violence to another person or the public.

(6) "Records" do not include the records of the Governor, the Legislature, or the Secretary of State that pertain to a grant of pardon. Records that pertain to a grant of pardon are not subject to an order of expungement.

(7) "Seal" means removing information from public inspection in accordance with this section.

(8) "Sealing" means:

(A) For a record kept in a courthouse, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access;

(B) For electronic information about a proceeding on the website maintained by a magistrate court, circuit court, or the Supreme Court of Appeals, removing the record from the public website; and

(C) For a record maintained by any law-enforcement agency, removing the record to a separate, secure area to which persons who do not have a legitimate reason for access are denied access.

(q) *Statutory construction.* — Nothing in this section may be construed to allow a person obtaining relief pursuant to this section to be eligible for reinstatement of any retirement or employment benefit which he or she lost or forfeited due to the conviction or convictions expunged.

(r) The enactment of this section during the 2019 regular session of the Legislature includes the repeal of the provisions of §61-11B-1 *et seq.* of this code. Any person that had a sentence reduction pursuant to the provisions of §61-11B-1 *et seq.* of this code may petition the court of record to have the criminal offense reduction order converted into an order of expungement. Upon verification by the court that the petitioner qualifies, the court shall enter an order of expungement of the petitioner's conviction.

§61-11-26a. Expungement of certain criminal convictions with approved treatment or recovery and job program.

(a) Notwithstanding any provisions of §61-11-26 of this code to the contrary, any person who has been convicted of a nonviolent felony offense or multiple misdemeanors and that would be eligible for expungement pursuant to the provisions of §61-11-26 of this code and who: (1) Has a medically documented history of substance abuse and of

successful compliance with a substance abuse treatment or recovery and counseling program approved by the Secretary of the Department of Health and Human Resources; or (2) graduates from a West Virginia Department of Education-approved job readiness adult training course, or both, if applicable, may petition the circuit court or circuit courts in which the conviction or convictions occurred for expungement of the conviction or convictions and the records associated therewith as provided in §61-11-26 of this code as follows:

(1) Any person who has been convicted of a single misdemeanor that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section, is eligible for expungement pursuant to §61-11-26(a)(1) of this code upon successful compliance with an approved substance abuse treatment and recovery and counseling program for 90 days or upon completion of an approved job readiness adult training course, or both, if applicable, but after the completion of any sentence of incarceration or completion of any period of supervision, whichever is later in time.

(2) Any person who has been convicted of multiple misdemeanors that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(1) of this code until one year after the last conviction, completion of any sentence of incarceration, or completion of any period of supervision ordered for the last conviction, whichever is later in time.

(3) Any person who has been convicted of a nonviolent felony offense that would be eligible for expungement pursuant to §61-11-26 of this code and satisfies the requirements of this section is not eligible for expungement pursuant to §61-11-26(a)(2) of this code until three years after conviction, completion of any sentence of incarceration, or completion of any period of supervision, whichever is later in time.

(b) In addition to the required content of a petition for expungement as required by §61-11-26(d) of this code, any person petitioning for an expungement pursuant to the provisions of this section shall also include the following, if applicable:

(1) Documentation of compliance with an approved treatment or recovery and counseling program; and

(2) Certificate of graduation from an approved job readiness adult training course.

(c) The fee of $100 to the records division of the West Virginia State Police for the cost of processing the order of expungement required in §61-11-26(n) of this code is waived for petitions of expungement filed pursuant to the provisions of this section.

CHAPTER 88

(S. B. 765 - By Senators Weld and Woelfel)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-11-18 and §61-11-19 of the Code of West Virginia, 1931, as amended, all relating to provisions of the Habitual Offender statute; modifying provisions addressing eligibility of certain crimes for consideration; listing offenses which qualify to enhance a sentence; maintaining penalty for persons having two or more prior qualifying offenses; treating crimes arising from the same transaction or series of transactions as one offense; requiring the most recent prior conviction to be less than 20 years old to be counted; and requiring plea agreements to address applicability of habitual offender provisions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. Punishment for second or third offense of felony.

(a) For purposes of this section, "qualifying offense" means any offenses or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) §60A-4-401(i) and §60A-4-401(ii);

(2) §60A-4-406;

(3) §60A-4-409(b)(1), §60A-4-409(2), and §60A-4-409(3);

(4) §60A-4-411;

(5) §60A-4-414;

(6) §60A-4-415;

(7) §60A-4-416(a);

(8) §61-2-1;

(9) §61-2-4;

(10) §61-2-7;

(11) §61-2-9(a);

(12) §61-2-9a(d) and §61-2-9a(e);

(13) §61-2-9b;

(14) §61-2-9d;

(15) §61-2-10;

(16) §61-2-10b(b) and §61-2-10b(c);

(17) Felony provisions of §61-2-10b(d);

(18) §61-2-12;

(19) Felony provisions of §61-2-13;

(20) §61-2-14;

(21) §61-2-14a(a) and §61-2-14a(d);

(22) §61-2-14c;

(23) §61-2-14d(a) and §61-2-14d(b);

(24) §61-2-14f;

(25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);

(26) §61-2-16a(a) and §61-2-16a(b);

(27) Felony provisions of §61-2-16a(c);

(28) §61-2-28(d);

(29) §61-2-29(d) and §61-2-29(e);

(30) §61-2-29a;

(31) §61-3-1;

(32) §61-3-2;

(33) §61-3-3;

(34) §61-3-4;

(35) §61-3-5;

(36) §61-3-6;

(37) §61-3-7;

(38) §61-3-11;

(39) §61-3-13(a);

(40) §61-3-27;

(41) §61-3C-14b;

(42) §61-3E-5;

(43) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);

(44) §61-5-27;

(45) §61-6-24;

(46) Felony provisions of §61-7-7;

(47) §61-7-12;

(48) §61-7-15;

(49) §61-7-15a;

(50) §61-8-12;

(51) §61-8-19(b);

(52) §61-8B-3;

(53) §61-8B-4;

(54) §61-8B-5;

(55) §61-8B-7;

(56) §61-8B-10;

(57) §61-8C-2;

(58) §61-8C-3;

(59) §61-8C-3a;

(60) §61-8D-2;

(61) §61-8D-2a;

(62) §61-8D-3;

(63) §61-8D-3a;

(64) §61-8D-4;

(65) §61-8D-4a;

(66) §61-8D-5;

(67) §61-8D-6;

(68) §61-10-31;

(69) §61-11-8;

(70) §61-11-8a;

(71) §61-14-2; and

(72) §17C-5-2(b), driving under the influence causing death.

(b) Except as provided by subsection (c) of this section, when any person is convicted of a qualifying offense and is subject to confinement in a state correctional facility therefor, and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in the United States of a crime punishable by confinement in a penitentiary, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence.

(c) Notwithstanding any provision of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19

of this code, that such person had been before convicted in this state of first degree murder, second degree murder, or a violation of section three, §61-8B-3 of this code or has been so convicted under any law of the United States or any other state for an offense which has the same elements as any offense described in this subsection, such person shall be punished by confinement in a state correctional facility for life and is not eligible for parole.

(d) When it is determined, as provided in §61-11-19 of this code, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary which has the same elements as a qualifying offense, the person shall be sentenced to imprisonment in a state correctional facility for life: *Provided*, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: *Provided, however*, That an offense which would otherwise constitute a qualifying offense for purposes of this subsection and subsection (b) of this section shall not be considered if more than 20 years have elapsed between that offense and the conduct underlying the current charge.

§61-11-19. Procedure in trial of persons for second or third offense.

A prosecuting attorney, when he or she has knowledge of a former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary, may give information thereof to the court immediately upon conviction and before sentence. Said court shall, before expiration of the next term at which such person was convicted, cause such person or prisoner to be brought before it, and upon an information filed by the prosecuting attorney, setting forth the records of conviction and sentence, or convictions and sentences, as the case may be, and alleging the identity of the prisoner with the person named in each, shall require the prisoner to say whether he or she is the same person or not. If he or she says he or she is not, or remains silent, his or her plea, or the fact of his or her silence, shall be entered of record, and a jury shall be

impaneled to inquire whether the prisoner is the same person mentioned in the several records. If the jury finds that he or she is not the same person, he or she shall be sentenced upon the charge of which he or she was convicted as provided by law; but if they find that he or she is the same, or after being duly cautioned if he or she acknowledged in open court that he or she is the same person, the court shall sentence him or her to such further confinement as is prescribed by §61-11-18 of this code on a second or third conviction as the case may be: *Provided*, That where the person is convicted pursuant to a plea agreement, the agreement shall address whether or not the provisions of this section and §61-11-18 of this code are to be invoked.

The clerk of such court shall transmit a copy of said information to the Commissioner of the Division of Corrections and Rehabilitation, together with the other papers required by the provisions of §62-8-10 of this code.

Nothing contained herein shall be construed as repealing the provisions of §62-8-4 of this code, but no proceeding shall be instituted by the warden, as provided therein, if the trial court has determined the fact of former conviction or convictions as provided herein.

CHAPTER 89

(Com. Sub. for H. B. 2602 - By Delegates Miller, Canestraro, N. Brown, D. Kelly, Foster and Steele)

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §61-3-18 of the Code of West Virginia, 1931, as amended, relating to criminalizing possession of property when a person knows or has reason to know it is stolen; making possession of stolen property

larceny; and clarifying that possession of stolen property while acting in cooperation with law enforcement or at law enforcement's request is not a crime.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. CRIMES AGAINST PROPERTY.

§61-3-18. Receiving or transferring stolen goods.

If any person buys or receives from another person, or aids in concealing, or transfers to a person other than the owner thereof, or possesses any stolen goods or other thing of value, which he or she knows or has reason to believe has been stolen, that person is guilty of the larceny thereof, and may be prosecuted although the principal offender has not been convicted: *Provided*, That possession of stolen goods while acting at the request of law enforcement or in cooperation with law enforcement does not constitute a violation of this section.

CHAPTER 90

(Com. Sub. for H. B. 4362 - By Delegates Bibby, Hardy, Kump, Waxman, Espinosa, Householder, Barrett, Wilson, Barnhart, S. Brown and Hanna)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-8D-5a, relating to creating the offense of verbal abuse of a noncommunicative child; setting forth elements of the offense; establishing criminal penalties; and defining terms.

Be it enacted by the Legislature of West Virginia:

§61-8D-5a. Verbal abuse of noncommunicative child; penalties.

The amendments made to this section during the 2020 Regular Session of the Legislature shall be known as "Adri's, Owen's, and Emma's Law".

(a) Any person, 18 years of age or older, who has supervisory responsibility over a noncommunicative minor child, who repeatedly engages in verbal conduct toward the child in an insulting, demeaning or threatening manner, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less that $500 nor more that $2,500 or confined in jail not more than six months, or both fined and confined.

(b) As used in section (a) of this section:

(1) "Noncommunicative child" means a child who, due to physical or developmental disabilities is unable to communicate verbally, in writing, or through a recognized sign language;

(2) "Repeatedly" means on two or more occasions;

(3) "Supervisory responsibility" means any situation where an adult has direct supervisory decision-making, oversight, instructive, academic, evaluative, or advisory responsibilities regarding the child. Supervisory responsibility can occur in a residence, in or out of a school setting, institutional setting, and in curricular, co-curricular, or extra-curricular settings.

CHAPTER 91

(H. B. 4393 - By Delegates Rohrbach, Lovejoy, Linville, Maynard and Porterfield)

[Passed February 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §61-2-9d of the Code of West Virginia, 1931, as amended, relating to creating the criminal offenses of suffocation and asphyxiation; and establishing criminal penalties therefor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-9d. Strangulation; suffocation and asphyxiation; definitions; penalties.

(a) As used in this section:

"Bodily injury" means substantial physical pain, illness or any impairment of physical condition;

"Strangle" means knowingly and willfully restricting another person's air intake or blood flow by the application of pressure on the neck or throat;

"Suffocate" means knowingly and willfully restricting the normal breathing or circulation of blood by blocking the nose or mouth of another; and

"Asphyxiate" means knowingly and willfully restricting the normal breathing or circulation of blood by the application of pressure on the chest or torso.

(b) Any person who strangles, suffocates or asphyxiates another without that person's consent and thereby causes the other person bodily injury or loss of consciousness is guilty of a felony and, upon conviction thereof, shall be fined not more than $2,500 or imprisoned in a state correctional facility not less than one year or more than five years, or both fined and imprisoned.

CHAPTER 92

(Com. Sub. for H. B. 4615 - By Delegates J. Kelly, Anderson, D. Kelly, Westfall, Azinger, Sypolt, Jennings, Atkinson and Barnhart)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §61-10-34, relating to establishing the West Virginia Critical Infrastructure Protection Act; defining terms; creating criminal offenses of trespass upon property containing a critical infrastructure facility, trespassing upon property containing a critical infrastructure facility with intent to interrupt the lawful operations of the facility, and for trespass with the intent to willfully cause damage to a critical infrastructure facility; defining elements of offenses; establishing criminal offense of conspiracy to commit various trespass; establishing criminal penalties; creating exceptions and defenses; providing for civil liability; and providing nothing in this section will be construed to prevent lawful assembly and petition for redress of grievances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. CRIMES AGAINST PUBLIC POLICY.

§61-10-34. Critical Infrastructure Protection Act; prohibiting certain acts, including trespass and conspiracy to trespass against property designated a critical Infrastructure facility; criminal penalties; and civil action.

(a) This section may be referred to as the "West Virginia Critical Infrastructure Protection Act".

(b) For purposes of this section:

"Critical Infrastructure" means systems and assets, whether physical or virtual, so vital to the United States of America or the State of West Virginia that the incapacity or destruction of such systems and assets would have a debilitating impact on security, national economic security, state economic security, national public health or safety, state public health or safety, or any combination of those matters, whether such systems or assets are in operation or are under any state of construction.

"Critical infrastructure facility" means one of the following, if completely enclosed by a fence or other physical barrier that is obviously designed to exclude intruders, or if clearly marked with a sign or signs that are posted on the property that are reasonably likely to come to the attention of intruders and indicate that entry is forbidden without site authorization:

(1) A petroleum or alumina refinery;

(2) An electrical power generating facility, substation, switching station, electrical control center or electric power lines and associated equipment infrastructure;

(3) A chemical, polymer or rubber manufacturing facility;

(4) A water intake structure, water treatment facility, wastewater treatment plant or pump station;

(5) A natural gas compressor station;

(6) A liquid natural gas terminal or storage facility;

(7) Wireline and wireless telecommunications infrastructure;

(8) A port, railroad switching yard, trucking terminal, or other freight transportation facility;

(9) A gas processing plant, including a plant used in the processing, treatment, or fractionation of natural gas or natural gas liquids;

(10) A transmission facility used by a federally licensed radio or television station;

(11) A steelmaking facility that uses an electric arc furnace to make steel;

(12) A facility identified and regulated by the United States Department of Homeland Security Chemical Facility Anti-Terrorism Standards (CFATS) program;

(13) A dam that is regulated by the state or federal government;

(14) A natural gas distribution utility facility including, but not limited to, pipeline interconnections, a city gate or town border station, metering station, below- or above-ground pipeline or piping and truck loading or offloading facility, a natural gas storage facility, a natural gas transmission facility, or a natural gas utility distribution facility;

(15) A crude oil or refined products storage and distribution facility including, but not limited to, valve sites, pipeline interconnections, pump station, metering station, below- or above-ground pipeline or piping, and truck loading or offloading facility;

(16) Military facilities, including national guard facilities and equipment storage areas where non-military personnel are prohibited;

(17) Department of Highways facilities and locations near or on roads or highways where the public is prohibited;

(18) Health care facilities;

(19) Any above-ground portion of an oil, gas, hazardous liquid or chemical pipeline, tank, or other storage facility that is enclosed by a fence, other physical barrier or is clearly marked with signs prohibiting trespassing, that are obviously designed to exclude intruders; or

(20) A commercial service airport as defined by the Federal Aviation Administration.

(c)(1) Any person who willfully and knowingly trespasses or enters property containing a critical infrastructure facility without permission by the owner of the property or lawful occupant thereof is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not less than $250 nor more than $1,000, or confined in jail not less than 30 days nor more than one year, or both fined and confined. If the intent of the trespasser is to willfully damage, destroy, vandalize, deface, tamper with equipment, or impede or inhibit operations of the critical infrastructure facility, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000, or confined in a jail for not more than one year, or both fined and confined.

(2) Any person who willfully damages, destroys, vandalizes, defaces, or tampers with equipment in a critical infrastructure facility causing damage in excess of $2,500 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 a term of not

less than one year nor more than five years, or both fined and imprisoned.

(3) Any person who conspires with any person to commit the offense of trespass against a critical infrastructure facility in violation of subdivision (1) of subsection (c) of this section and the trespass actually occurs is guilty of a misdemeanor and, upon conviction thereof, shall be fined in an amount of not less than $2,500 nor more than $10,000. Any person who conspires with any person to willfully damage, destroy, vandalize, deface, or tamper with equipment in a critical infrastructure facility and the damage, destruction, vandalization, defacing or tampering causes damage in excess of $2,500 is guilty of a felony and, shall, upon conviction thereof, be fined not less than $5,000 nor more than $20,000.

(d)(1) Any person who is arrested for or convicted of an offense under this section may be held civilly liable for any damages to personal or real property while trespassing, in addition to the penalties imposed by this section.

(2) Any person or entity that compensates, provides consideration to, or remunerates a person for trespassing as described in subdivision (1) of subsection (c) of this section may also be held liable for damages to personal or real property committed by the person compensated or remunerated for trespassing.

(e) The provisions of this section do not apply to:

(1) Any person or organization:

(i) Monitoring or attentive to compliance with public or worker safety laws, or, wage and hour requirements;

(ii) Picketing at the workplace that is otherwise lawful and arises out of a bona fide labor dispute, including any controversy concerning wages, salaries, hours, working conditions, or benefits, including health and welfare, sick leave, insurance, and pension or retirement provisions, the

managing or maintenance of collective bargaining agreements, and the terms to be included in those agreements;

(iii) Engaging in union organizing or recruitment activities, including attempting to reach workers verbally, in writing with pamphlets and investigation of non-union working conditions, or both.

(2) The right to free speech or assembly, including, but not limited to, protesting and picketing.

(3) A contractor who has a contractual relationship with a critical infrastructure facility and the contractor's employees are acting within their scope of employment performing work at a critical infrastructure facility.

CHAPTER 93

(H. B. 4618 - By Delegates Steele, Dean, Howell, Householder, Summers, Pack, Phillips, Kessinger, J. Jeffries, Foster and Graves)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-7-10 of the Code of West Virginia, 1931, as amended, relating to removing from the code, language prohibiting the public display and offering for rent or sale to a passersby on a street, road or alley, any deadly weapon, machine gun, submachine gun or other fully automatic weapon, any rifle, shotgun, or ammunition for same.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-10. Deadly weapons for sale or hire; sale to prohibited persons; penalties.

(a) Any person who violates the provisions of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000 or confined in jail for not more than one year, or both fined and confined, except that where the person violating subsection (b) is other than a natural person, the person shall be fined not more than $10,000.

(b) A person may not knowingly sell, rent, give or lend, or, where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend, any deadly weapon other than a firearm to a person prohibited from possessing a deadly weapon other than a firearm by any provision of this article.

(c) A person may not knowingly sell, rent, give or lend, or where the person is other than a natural person, knowingly permit an employee thereof to knowingly sell, rent, give or lend a firearm or ammunition to a person prohibited by any provision of this article or the provisions of 18 U.S.C. §922.

(d) Any person who violates any of the provisions of subsection (c) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than $100,000, imprisoned in a state correctional facility for a definite term of years of not less than three years nor more than 10 years, or both fined and imprisoned, except that where the person committing an offense punishable under this subsection is other than a natural person, the person shall be fined not more than $250,000.

(e) Any person who knowingly solicits, persuades, encourages or entices a licensed dealer or private seller of firearms or ammunition to transfer a firearm or ammunition under circumstances which the person knows would violate the laws of this state or the United States is guilty of a

felony. Any person who willfully procures another to engage in conduct prohibited by this subsection shall be punished as a principal. This subsection does not apply to a law-enforcement officer acting in his or her official capacity. Any person who violates the provisions of this subsection is guilty of a felony and, upon conviction thereof, shall be fined not more than $5,000, imprisoned in a state correctional facility for a definite term or not less than one year nor more than five years, or both fined and imprisoned.

CHAPTER 94

(Com. Sub. for H. B. 4668 - By Delegates Miley, Lovejoy, Evans, Caputo, Waxman, Rohrbach, Worrell and Pushkin)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §61-3B-2 of the Code of West Virginia, 1931, as amended, relating to creating the misdemeanor crime of trespass for entering a structure that has been clearly marked as condemned by a municipality as unfit for human habitation; providing criminal penalty; removing inconsistent language as to intent; and providing that for a first offense, a municipal judge or magistrate may impose community service or pretrial diversion in lieu of a fine or confinement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3B. TRESPASS.

§61-3B-2. Trespass in structure or conveyance.

(a) Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized,

licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of the owner or tenant, and refuses to do so, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than $100.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100, or confined in jail not more than six months, or both fined and confined: *Provided*, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.

(c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in the structure or conveyance at the time the offender knowingly trespasses, the offender, notwithstanding the provisions of §61-7-1 of this code, is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than $100 nor more than $500, or be confined in jail for not more than one year, or both fined and confined.

CHAPTER 95

(Com. Sub. for S. B. 125 - By Senators Trump, Ihlenfeld and Woelfel)

[Passed March 4, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-8B-11 of the Code of West Virginia, 1931, as amended, relating generally to evidence in prosecution for sexual offenses; prohibiting a victim from being subjected to certain physical examinations; providing that a victim's refusal to undergo certain physical examinations does not preclude admission of evidence regarding other physical examinations; and defining the term "sexual offense".

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11. Sexual offenses; evidence.

(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: *Provided*, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admissible: *Provided*, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(c) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

(d) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is 11 years old or less to use anatomically correct dolls, mannequins, or drawings to assist such child in testifying.

(e)(1) A court may not order or otherwise require an alleged victim in a prosecution for a sexual offense to submit to or undergo a gynecological or physical examination of the breasts, buttocks, anus, or any part of the sex organs.

(2) The refusal of an alleged victim to undergo an examination described in subdivision (1) of this subsection may not serve as the basis to exclude evidence obtained from other relevant examinations of the victim, except where constitutionally required.

(3) For the purposes of this subsection, the term "sexual offense" means any offense in which sexual intercourse, sexual contact, or sexual intrusion is an element of the offense, and includes any prosecution under this article, §61-8-12, or §61-8D-5 of this code.

CHAPTER 96

(Com. Sub. for S. B. 311 - By Senators Clements, Trump, Cline, Hamilton, Woelfel, Baldwin and Maynard)

[Passed February 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §62-4-16 of the Code of West Virginia, 1931, as amended, relating to court-ordered community service; designating supervisor of person sentenced to court-ordered community service; and providing state and political subdivisions immunity from certain suits from individuals participating in court-ordered community service.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. RECOVERY OF FINES IN CRIMINAL CASES.

§62-4-16. Community service work may be substituted in lieu of a fine in municipal court and magistrate court; immunity from suit.

(a) Notwithstanding any provision of this code to the contrary, a municipal judge or a magistrate may substitute, in lieu of the imposition of a sentence of incarceration or imposition of a fine, community service work for such incarceration or fine. Where community service work is ordered as a substitute on a sentence of incarceration, an eight-hour work day shall extinguish one day of any sentence of incarceration. The minimum wage established by the prevailing federal minimum wage in effect at the time sentencing is imposed shall be used to compute the amount of community service work necessary to extinguish the fine.

In the discretion of the court, the sentence credits may run concurrently or consecutively.

(b) Any community service ordered pursuant to the provisions of this section shall be performed for government entities or charitable or nonprofit entities.

(c) Any person who is sentenced to court-ordered community service under this section by a municipal court shall be supervised by the chief of police, or his or her designee. Any person who is sentenced to court-ordered community service under this section by a magistrate shall be supervised by the sheriff or other person designated by the county commission.

(d) Persons sentenced under the provisions of this section remain under the jurisdiction of the sentencing court. The court may withdraw the community service sentence at any time by order entered with or without notice and order a person previously sentenced to community service to serve the term of incarceration or to pay the fine available to the court upon the person's conviction: *Provided*, That any community service work performed before the community service sentence is withdrawn shall be credited against any term of incarceration or fine imposed.

(e) This section does not create any additional cause of action for individuals who appear in municipal or magistrate court. Any person who participates in court-ordered community service is limited to the remedies contained in §29-12A-1 *et seq.* of this code, subject to any defenses, immunities, and limitations of liability contained therein.

CHAPTER 97

(S. B. 848 - By Senators Azinger, Baldwin, Beach, Clements, Cline, Hardesty, Jeffries, Lindsay, Maynard, Pitsenbarger, Romano, Rucker, Smith, Weld, Woelfel and Trump)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-16-5 of the Code of West Virginia, 1931, as amended, relating to providing that persons charged with certain offenses related to driving under the influence of alcohol or drugs are not eligible to participate in the Military Service Members Court.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. THE MILITARY SERVICE MEMBERS COURT ACT.

§62-16-5. Eligibility; written agreement.

(a) *Eligibility.* — A military service member offender, who is eligible for probation based upon the nature of the offense for which he or she has been charged, and in consideration of his or her criminal background, if any, may, upon application, be admitted into a court program only upon the agreement of the prosecutor and the offender. Additionally, the court must also determine whether the offense is in any way attributable to the offender's military service.

(b) A military service member offender may not participate in the court program if he or she has been charged with any of the following offenses:

(1) A sexual offense, including, but not limited to, a violation of the felony provisions of §61-8-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-8D-1 *et seq.* of this code or a criminal offense where the judge has made a written finding that the offense was sexually motivated;

(2) A felony violation of the provisions of §61-8D-2, §61-8D-2a, or §61-8D-3a of this code;

(3) A felony violation of the provisions of §61-14-3 or §61-14-4 of this code;

(4) A felony violation of §61-2-9b or §61-2-14 of this code;

(5) A felony violation of §61-2-28 of this code;

(6) If he or she has previously been convicted in this state, another state, or in a federal court for any of the offenses enumerated above; or

(7) A violation of §17C-5-2 of this code.

(c) *Written agreement.* — Participation in a Military Service Members Court program, with the consent of both the prosecutor and the court, shall be pursuant to a written agreement. This written agreement shall set forth all of the agreed upon provisions to allow the military service member offender to proceed in the court. The offender shall execute a written agreement with the court as to his or her participation in the program and shall agree to all of the terms and conditions of the program, including, but not limited to, the possibility of sanctions or incarceration for failing to comply with the terms of the program.

(d) Upon successful completion of a court program, the judge shall dispose of an offender's case in the manner prescribed by the written agreement and by the applicable policies and procedures adopted by the court. Disposition may include, but is not limited to, withholding criminal charges, dismissal of charges, probation, deferred

sentencing, suspended sentencing, split sentencing, or a reduced period of incarceration: *Provided*, That a military service member court may not enter an order or take any action to mask a charge or conviction, divert a charge, or modify the records of a charge or conviction in a manner that would prevent an offense from appearing on an offender's commercial driving record.

CHAPTER 98

(Com. Sub. for H. B. 2419 - By Delegates Shott, Householder and Porterfield)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-1C-1a of the Code of West Virginia, 1931, as amended, relating to bail generally; authorizing the release of a person charged with a misdemeanor criminal violation when first appearing before a judicial officer; establishing that a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless charged with certain offenses; establishes that in certain instances and with certain conditions the arrested person is entitled to the least restrictive bail conditions determined to be reasonably necessary to assure appearance as well as ensure safety of persons in the community and maintenance of evidence; establishing that in certain circumstances the arrested person is entitled to bail under least restrictive further conditions; identifying least restrictive further conditions; establishing considerations to determine whether to release an individual without bail, the reasonable amount of bail, or imposition of other conditions of release; establishing that in all misdemeanor cases, cash bail cannot exceed the maximum fine for the offense;

requiring review of bail of an incarcerated person unable to meet the requirements of a secured bond; requiring the presence of a prosecuting attorney and, if not waived, defense counsel at hearings, other than the hearing at which conditions of release are initially set, where bail is at issue; prohibiting judicial officer recommending the services of a surety who is a relative; and, further providing that a judicial officer may modify the conditions of release at any time.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. BAIL.

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

(a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless that person is charged with:

(A) A misdemeanor offense of actual violence or threat of violence against a person;

(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;

(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;

(D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in chapter 60A of this code;

(E) Misdemeanor offenses of sexual abuse;

(F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or

(G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer or receiving of stolen property when alleged value on the property involved exceeds $250.

(2) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community or the safety and maintenance of evidence. Further conditions may include that the person charged shall:

(A) Not violate any criminal law of this state, another state, or the United States;

(B) Remain in the custody of a person designated by the judicial officer, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;

(C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;

(D) Participate in an electronic monitoring program if one is available where the person is charged or will reside.

(E) Maintain employment, or, if unemployed, actively seek employment;

(F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;

(G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a licensed medical practitioner;

(H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;

(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or

(J) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the arrested person, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

(3) Proper considerations in determining whether to release the arrested person on an unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of release are:

(A) The ability of the arrested person to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the arrested person faces;

(D) Whether the alleged acts were violent in nature;

(E) The arrested person's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the arrested person;

(G) The character and strength of the evidence which has been presented to the judicial officer:

(H) Whether the arrested person is currently on probation, extended supervision, or parole;

(I) Whether the arrested person is already on bail or subject to other release conditions in other pending cases;

(J) Whether the arrested person has been bound over for trial after a preliminary examination;

(K) Whether the arrested person has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of arrested persons pending trial set forth in this section.

(b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, cash bail may not exceed three times the highest maximum fine of the charged offenses.

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial appearance, due to the inability to meet the requirements of a secured bond, the magistrate or judge who set the secured bond shall hold a hearing within 72 hours of setting the initial bail to determine if there is a condition or combination of conditions which can meet the

considerations set forth in subdivision (2), subsection (a) of this section.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the proceeding at which the conditions of release are initially set.

(f) No judicial officer may recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.

CHAPTER 99

(Com. Sub. for H. B. 2892 - By Delegates Canestraro, Miller, D. Kelly, N. Brown, Steele and Fast)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §62-1A-2 of the Code of West Virginia, 1931, as amended, relating to including electronic and digital information in the definition of property that can be searched and seized by a search warrant and clarifying that a search warrant issued for a computer, computer network, or other device containing electronic or digital information includes the search of the contents of that device; requiring particularity regarding items, applications, property and information to be served; clarifying that search warrants for electronic or digital information may be served or executed in any county of this state or in any state where the information

to be seized is stored or where the person or entity storing the information does business or resides.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. SEARCH AND SEIZURE.

§62-1A-2. Same — Grounds for issuance; property defined.

(1) A warrant may be issued under this article to search for and seize any property

(a) Stolen, embezzled, or obtained by false pretenses;

(b) Designed or intended for use or which is or has been used as a means of committing a criminal offense; or

(c) Manufactured, sold, kept, concealed, possessed, controlled, or designed or intended for use or which is or has been used, in violation of the criminal laws of this state.

(2) As used in this section, the term "property" includes documents, books, papers, electronic and digital information, including, but not limited to, social media accounts, and any other tangible objects.

(a) For purposes of this section, "electronic and digital information" means any transfer of signs, signals, writing, images, sounds, data, or intelligence of any nature transmitted in whole or in part by a wire, radio, electromagnetic, photoelectronic, or photo-optical system, but does not include (1) any wire or oral communication; (2) any communication made through a tone-only paging device; or (3) the radio portion of a cordless telephone communication that is transmitted between the cordless telephone handset and the base unit.

(b) A search warrant issued for the search and seizure of a computer, computer network, or other device containing electronic or digital information shall state with particularity the item, application, program, or information sought.

(c) A search warrant issued pursuant to this section or Rule 41 of the Rules of Criminal Procedure may be executed or served to the extent it is constitutionally permissible anywhere the electronic or digital information is stored, capable of being produced or where the person or entity in possession of the electronic or digital information does business or resides.

CHAPTER 100

(H. B. 4166 - By Delegates Foster, Phillips, Bibby, Steele, Butler, Waxman, Espinosa, Porterfield, Kessinger, Lovejoy and Bartlett)

[Passed February 17, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend and reenact §62-12-26 of the Code of West Virginia, 1931, as amended, relating to prohibiting certain sex offenders from being in a supervisory position over children.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-26. Extended supervision for certain sex offenders; sentencing; conditions; supervision provisions; supervision fee.

(a) Notwithstanding any other provision of this code to the contrary, any defendant convicted after the effective date of this section of a violation of §61-8-12 of this code or a felony violation of the provisions of §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code shall, as part of the sentence imposed at final disposition, be required to serve, in addition to any other penalty or condition imposed by the court, a period of supervised release of up to 50 years:

Provided, That the period of supervised release imposed by the court pursuant to this section for a defendant convicted after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, of a violation of §61-8B-3 or §61-8B-7 of this code and sentenced pursuant to §61-8B-9a* of this code, shall be no less than 10 years: *Provided, however*, That a defendant designated after the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, as a sexually violent predator pursuant to the provisions of §15-12-2a of this code shall be subject, in addition to any other penalty or condition imposed by the court, to supervised release for life: *Provided further*, That pursuant to the provisions of §62-12-26(h) of this code, a court may modify, terminate, or revoke any term of supervised release imposed pursuant to §62-12-26(a) of this code.

(b) Any person required to be on supervised release between the minimum term of 10 years and life pursuant to the provisos of §62-12-26(a) of this code also shall be further prohibited from:

(1) Establishing a residence or accepting employment within one thousand feet of a school or child care facility or within one thousand feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted;

(2) Loitering within 1,000 feet of a school or child care facility or within 1,000 feet of the residence of a victim or victims of any sexually violent offenses for which the person was convicted: *Provided*, That the imposition of this prohibition shall apply to a defendant convicted after the effective date of this section as amended and reenacted during the regular session of the Legislature, 2015: *Provided, however*, That as used herein "loitering" means to enter or remain on property while having no legitimate purpose or, if a legitimate purpose exists, remaining on that property beyond the time necessary to fulfill that purpose:

***NOTE:** Correction of apparent word to number translation error.

Provided further, That nothing in this subdivision shall be construed to prohibit or limit a person's presence within 1,000 feet of a location or facility referenced in this subdivision if the person is present for the purposes of supervision, counseling, or other activity in which the person is directed to participate as a condition of supervision or where the person has the express permission of his supervising officer to be present;

(3) Establishing a residence or any other living accommodation in a household in which a child under 16 resides if the person has been convicted of a sexually violent offense against a child, unless the person is one of the following:

(i) The child's parent;

(ii) The child's grandparent; or

(iii) The child's stepparent and the person was the stepparent of the child prior to being convicted of a sexually violent offense, the person's parental rights to any children in the home have not been terminated, the child is not a victim of a sexually violent offense perpetrated by the person, and the court determines that the person is not likely to cause harm to the child or children with whom such person will reside: *Provided*, That nothing in this subsection shall preclude a court from imposing residency or employment restrictions as a condition of supervised release on defendants other than those subject to the provision of this subsection.

(c) In addition to any other prohibitions, any person found guilty of violating the provisions of §61-8B-3 or §61-8B-7 of this code is also prohibited from being in a supervisory position, playing a supervisory role or being responsible for groups of children, including, but not limited to, religious organizations, Boy Scouts, Girl Scouts, 4H organizations, sporting and scholastic teams, music,

sporting, and theatre groups and camps, and summer day camps.

(d) The period of supervised release imposed by the provisions of this section shall begin upon the expiration of any period of probation, the expiration of any sentence of incarceration or the expiration of any period of parole supervision imposed or required of the person so convicted, whichever expires later.

(e) Any person sentenced to a period of supervised release pursuant to the provisions of this section shall be supervised by a multijudicial circuit probation officer, if available. Until such time as a multijudicial circuit probation officer is available, the offender shall be supervised by the probation office of the sentencing court or of the circuit in which he or she resides.

(f) A defendant sentenced to a period of supervised release shall be subject to any or all of the conditions applicable to a person placed upon probation pursuant to the provisions of §62-12-9 of this code: *Provided*, That any defendant sentenced to a period of supervised release pursuant to this section shall be required to participate in appropriate offender treatment programs or counseling during the period of supervised release unless the court deems the offender treatment programs or counseling to no longer be appropriate or necessary and makes express findings in support thereof.

Within 90 days of the effective date of this section as amended and reenacted during the first extraordinary session of the Legislature, 2006, the Secretary of the Department of Health and Human Resources shall propose rules and emergency rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code establishing qualifications for sex offender treatment programs and counselors based on accepted treatment protocols among licensed mental health professionals.

(g) The sentencing court may, based upon defendant's ability to pay, impose a supervision fee to offset the cost of supervision. Said fee shall not exceed $50 per month. Said fee may be modified periodically based upon the defendant's ability to pay.

(h) *Modification of conditions or revocation.* — The court may:

(1) Terminate a term of supervised release and discharge the defendant released at any time after the expiration of two years of supervised release, pursuant to the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation, if it is satisfied that such action is warranted by the conduct of the defendant released and the interests of justice;

(2) Extend a period of supervised release if less than the maximum authorized period was previously imposed or modify, reduce, or enlarge the conditions of supervised release, at any time prior to the expiration or termination of the term of supervised release, consistent with the provisions of the West Virginia Rules of Criminal Procedure relating to the modification of probation and the provisions applicable to the initial setting of the terms and conditions of post-release supervision;

(3) Revoke a term of supervised release and require the defendant to serve in prison all or part of the term of supervised release without credit for time previously served on supervised release if the court, pursuant to the West Virginia Rules of Criminal Procedure applicable to revocation of probation, finds by clear and convincing evidence that the defendant violated a condition of supervised release, except that a defendant whose term is revoked under this subdivision may not be required to serve more than the period of supervised release;

(4) Order the defendant to remain at his or her place of residence during nonworking hours and, if the court so

directs, to have compliance monitored by telephone or electronic signaling devices, except that an order under this paragraph may be imposed only as an alternative to incarceration.

(i) *Written statement of conditions.* — The court shall direct that the probation officer provide the defendant with a written statement at the defendant's sentencing hearing that sets forth all the conditions to which the term of supervised release is subject and that it is sufficiently clear and specific to serve as a guide for the defendant's conduct and for such supervision as is required.

(j) *Supervised release following revocation.* — When a term of supervised release is revoked and the defendant is required to serve a term of imprisonment that is less than the maximum term of supervised release authorized under §62-12-26(a) of this code, the court may include a requirement that the defendant be placed on a term of supervised release after imprisonment. The length of such term of supervised release shall not exceed the term of supervised release authorized by this section less any term of imprisonment that was imposed upon revocation of supervised release.

(k) *Delayed revocation.* — The power of the court to revoke a term of supervised release for violation of a condition of supervised release and to order the defendant to serve a term of imprisonment and, subject to the limitations in §62-12-26(j) of this code a further term of supervised release extends beyond the expiration of the term of supervised release for any period necessary for the adjudication of matters arising before its expiration if, before its expiration, a warrant or summons has been issued on the basis of an allegation of such a violation.

CHAPTER 101

(S. B. 51 - By Senators Cline, Baldwin, Romano, Jeffries and Pitsenbarger)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §48-10-802 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §48-10-803, all relating to specifying forms of grandparent visitation; allowing daytime and overnight visits as well as electronic communication; and defining the term "electronic communication".

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. GRANDPARENT VISITATION.

§48-10-802. Grandparent visitation orders.

In the court's discretion, an order granting visitation privileges to a grandparent may provide for daytime visits, overnight visits and electronic communications. For the purposes of this section, the term "electronic communications" includes, but is not limited to, communications by telephone, email, Skype, Facetime, text messaging and instant messaging.

§48-10-803. Supervised visitation; conditions on visitation.

In the court's discretion, an order granting visitation privileges to a grandparent may require supervised visitation or may place such conditions on visitation that it finds are in the best interests of the child, including, but not limited to, the following:

(1) That the grandparent not attempt to influence any religious beliefs or practices of the children in a manner contrary to the preferences of the child's parents;

(2) That the grandparent not engage in, permit or encourage activities, or expose the grandchild to conditions or circumstances that are contrary to the preferences of the child's parents; or

(3) That the grandparent not otherwise act in a manner to contradict or interfere with child-rearing decisions made by the child's parents.

CHAPTER 102

(H. B. 3039 - By Delegates Foster, Phillips, D. Jeffries, Mandt, Wilson and Williams)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44-10-4 of the Code of West Virginia, 1931, as amended; and to amend and reenact §48-9-206 and §48-9-402 of said code, all relating to a court's consideration of the right of a minor to nominate his or her guardian and to a court's consideration of the expression of a preference by a child in certain child custody matters; and giving the court discretion to consider the preferences of a child under the age of fourteen years who is sufficiently matured that he or she can intelligently express a voluntary preference.

Be it enacted by the Legislature of West Virginia:

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-4. Right of minor to nominate guardian.

(a) If the minor is above the age of fourteen years, he or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, shall be appointed accordingly.

(b) If the minor is below the age of fourteen years and, if the court determines it is in the best interests of the minor, the court may consider the firm and reasonable preferences of a minor who, in the discretion of the court, is sufficiently matured that he or she can intelligently express a preference. He or she may in the presence of the circuit or family court, or in writing acknowledged before any officer authorized to take the acknowledgment of a deed, nominate his or her own guardian, who, if approved by the court, after giving that preference the weight warranted by the circumstances, shall be appointed accordingly.

(c) If the guardian nominated by the minor is not appointed by the court, or if the minor resides outside the state, or if, after being summoned, the minor neglects to nominate a suitable person, the court may appoint the guardian in the same manner as if the minor were under the age of fourteen years.

CHAPTER 48. DOMESTIC RELATIONS.

ARTICLE 9. ALLOCATION OF CUSTODIAL RESPONSIBILITY AND DECISION-MAKING RESPONSIBILITY OF CHILDREN.

§48-9-206. Allocation of custodial responsibility.

(a) Unless otherwise resolved by agreement of the parents under §48-9-201 of this code or unless harmful to the child, the court shall allocate custodial responsibility so

that, except to the extent required under §48-9-209 of this code, the custodial time the child spends with each parent may be expected to achieve any of the following objectives:

(1) To permit the child to have a meaningful relationship with each parent who has performed a reasonable share of parenting functions;

(2) To accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child who is 14 years of age or older; and to accommodate, if the court determines it is in the best interests of the child, the firm and reasonable preferences of a child under 14 years of age, but sufficiently matured that he or she can intelligently express a voluntary preference for one parent;

(3) To keep siblings together when the court finds that doing so is necessary to their welfare;

(4) To protect the child's welfare when, under an otherwise appropriate allocation, the child would be harmed because of a gross disparity in the quality of the emotional attachments between each parent and the child, or in each parent's demonstrated ability or availability to meet a child's needs;

(5) To take into account any prior agreement of the parents that, under the circumstances as a whole, including the reasonable expectations of the parents in the interest of the child, would be appropriate to consider;

(6) To avoid an allocation of custodial responsibility that would be extremely impractical or that would interfere substantially with the child's need for stability in light of economic, physical, or other circumstances, including the distance between the parents' residences, the cost and difficulty of transporting the child, the parents' and child's daily schedules, and the ability of the parents to cooperate in the arrangement;

(7) To apply the principles set forth in §48-9-403(d) of this code if one parent relocates or proposes to relocate at a distance that will impair the ability of a parent to exercise the amount of custodial responsibility that would otherwise be ordered under this section;

(8) To consider the stage of a child's development; and

(9) To consider which parent will encourage and accept a positive relationship between the child and the other parent, including which parent is more likely to keep the other parent involved in the child's life and activities.

(b) The court may consider the allocation of custodial responsibility arising from temporary agreements made by the parties after separation if the court finds, by a preponderance of the evidence, that such agreements were consensual. The court shall afford those temporary consensual agreements the weight the court believes the agreements are entitled to receive, based upon the evidence. The court may not consider the temporary allocation of custodial responsibility imposed by a court order on the parties.

(c) If the court is unable to allocate custodial responsibility under §48-9-206(a) of this code because the allocation under §48-9-206(a) of this code would be harmful to the child, or because there is no history of past performance of caretaking functions, as in the case of a newborn, or because the history does not establish a pattern of caretaking sufficiently dispositive of the issues of the case, the court shall allocate custodial responsibility based on the child's best interest, taking into account the factors in considerations that are set forth in this section and in §48-9-209 and §48-9-403(d) of this code and preserving to the extent possible this section's priority on the share of past caretaking functions each parent performed.

(d) In determining how to schedule the custodial time allocated to each parent, the court shall take account of the

economic, physical, and other practical circumstances such as those listed in §48-9-206(a)(6) of this code.

§48-9-402. Modification without showing of changed circumstances.

(a) The court shall modify a parenting plan in accordance with a parenting agreement, unless it finds that the agreement is not knowing and voluntary or that it would be harmful to the child.

(b) The court may modify any provisions of the parenting plan without the showing of change circumstances required by §48-9-401(a) if the modification is in the child's best interests, and the modification:

(1) Reflects the de facto arrangements under which the child has been receiving care from the petitioner, without objection, in substantial deviation from the parenting plan, for the preceding six months before the petition for modification is filed, provided the arrangement is not the result of a parent's acquiescence resulting from the other parent's domestic abuse;

(2) Constitutes a minor modification in the plan; or

(3) Is necessary to accommodate the reasonable and firm preferences of a child who, has attained the age of fourteen; or

(4) Is necessary to accommodate the reasonable and firm preferences of a child who, is under the age of fourteen and, in the discretion of the court, is sufficiently matured that he or she can intelligently express a voluntary preference.

(c) Evidence of repeated filings of fraudulent reports of domestic violence or child abuse is admissible in a domestic relations action between the involved parties when the allocation of custodial responsibilities is in issue, and the fraudulent accusations may be a factor considered by the court in making the allocation of custodial responsibilities.

CHAPTER 103

(Com. Sub. for H. B. 4129 - By Delegates Summers, Hill, Pack, Espinosa, Hanna, Rowan, Worrell, Estep-Burton, Fleischauer, C. Thompson and Walker)

[Passed February 12, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §48-22-201 and §48-22-501 of the Code of West Virginia, 1931, as amended, all relating to adoption; providing for the location of the adoption hearing; and eliminating a waiting period.

Be it enacted by the Legislature of West Virginia:

CHAPTER 48. DOMESTIC RELATIONS.

PART 2. PERSONS WHO MAY ADOPT.

ARTICLE 22. ADOPTION.

§48-22-201. Persons who may petition for decree of adoption.

Any person not married or any person, with his or her spouse's consent, or any husband and wife jointly, may petition a circuit court of the county wherein such person or persons reside for a decree of adoption of any minor child or person who may be adopted by the petitioner or petitioners: *Provided*, That if the minor child to be adopted has been removed from a prior home due to an abuse or neglect proceeding, the petition may be filed in the same county as the original abuse and neglect proceeding regarding the minor child.

PART 5. PETITION FOR ADOPTION.

§48-22-501. Filing of petition for adoption.

The petition for adoption may be filed at any time after the child who is the subject of the adoption is born, the adoptive placement determined and all consents or relinquishments that can be obtained have been executed. The hearing on the petition may be held only after the child has lived with the adoptive parent or parents for a period of six months, proper notice of the petition has been given and all necessary consents or relinquishments have been executed and submitted or the rights of all nonconsenting birth parents have otherwise been terminated.

CHAPTER 104

(Com. Sub. for H. B. 4001 - By Delegates Hanshaw (Mr. Speaker), Mandt, Atkinson, Toney, Pack, Linville, Espinosa, Williams, Skaff, Miley and Bates)

[Passed March 5, 2020; in effect from passage.]
[Approved by the Governor on March 12, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-6E-1, §12-6E-2, §12-6E-3, §12-6E-4, §12-6E-5, §12-6E-6, §12-6E-7, §12-6E-8, §12-6E-9, §12-6E-10, and §12-6E-11, all relating to creating West Virginia Impact Fund, Investment Committee and Mountaineer Impact Office to invest funds in certain projects with the goal of furthering economic development, infrastructure development, and job creation in the State of West Virginia, generally; providing definitions; creating West Virginia Impact Fund; providing for the transfer of funds to Investment Committee and the purposes for the expenditure of the funds; providing purpose and goal and investment standards; creating Investment Committee and providing for its membership, appointments, terms, removals, vacancies,

and quorums; providing for powers and duties of Investment Committee; requiring disclosures of interest; establishing standard of care; creating Mountaineer Impact Office and providing for powers, duties, staffing, management, and processes for proposing and administering investments in projects approved by Investment Committee; providing for audits and reports; providing opportunity for consultation with West Virginia Investment Management Board; providing for immunities and exemptions; prohibiting political activities; and providing for confidentiality of information.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6E. WEST VIRGINIA IMPACT FUND.

§12-6E-1. Definitions.

As used in this article, unless a different meaning clearly appears from the context:

"Approved investment" means a proposed investment in a final project as approved by the Investment Committee.

"Approved project proposal" means a project proposal that has been approved by the Investment Committee.

"Final project" means the final project or investment product developed by a selected manager.

"Investment Committee" means the committee established in §12-6E-4 of this code.

"Investment Management Board" means the West Virginia Investment Management Board established under §12-6-1, *et seq.* of this code.

"Mountaineer Impact Office" means the agency and government instrumentality of the State of West Virginia established under §12-6E-6 of this code to implement, invest and administer the assets transferred from the West Virginia Impact Fund to the Investment Committee.

"Project proposal" means a proposal for a particular project identified by the Mountaineer Impact Office to implement the goal of the West Virginia Impact Fund described in §12-6E-3 of this code.

"Selected manager" means one or more asset or project managers selected by the Mountaineer Impact Office under §12-6E-6 of this code.

"West Virginia Impact Fund" means the fund established in §12-6E-2 of this code.

§12-6E-2. West Virginia Impact Fund.

(a) There is hereby created within the State Treasury a special revenue account, designated the "West Virginia Impact Fund" to be administered by the Governor for the purposes set forth in this article.

(b) The fund shall consist of all moneys made available for the purposes of this article from any source, including, but not limited to, any moneys that may be appropriated and designated for those purposes by the Legislature; all interest or other return earned or received from investment of the fund; any moneys which the fund is authorized to receive under any provision of this code for the purposes of this article; all gifts, grants, bequests or transfers made to the fund from any source; all interest or other return received from the Investment Committee's deposits or investments, as provided by this article; and any other funds which the Investment Committee directs to be deposited into the fund. Expenditures from the fund shall be made by transfer to the Investment Committee solely for the purposes set forth in this article pursuant to resolution of the Investment Committee adopted under §12-6E-3 of this code. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this article. The funds

contained in the fund shall be available for appropriation by the Legislature.

§12-6E-3. Purpose and goal; investment standards.

(a) The purpose of this article is to continue the efforts of this state to further economic development, infrastructure development, and job creation in the State of West Virginia for the public benefit. It is not the intent of this article that the state compete with private entities by investing in projects to further economic development, infrastructure development and job creation for the public benefit where private capital investment is available for that purpose, but where private capital is not available for major investments to further that purpose, it is in the public interest that the state act to facilitate those major investments. To that end, it is necessary that the state provide the opportunity and support for major investments of capital in this state for projects that would not otherwise be expected to attract private investment in the usual course of business transactions without state sponsorship of and partnership in the investments. The establishment and functions of the West Virginia Impact Fund, the Investment Committee, and the Mountaineer Impact Office as provided in this article are intended to facilitate these investments.

(b) The assets of the West Virginia Impact Fund, upon transfer to the Investment Committee as provided by this article, may be:

(1) Invested in any final project presented by the Mountaineer Impact Office under this article that is approved by resolution of the Investment Committee that requires an aggregate investment of moneys in the project of not less than $25 million by either the Investment Committee, as sole investor, or by the Investment Committee and one or more co-investors, public or private, with the goal of furthering economic development, infrastructure development and job creation in the State of West Virginia; and

(2) Expended by the Investment Committee in such amounts necessary to provide for the payment of expenses incurred in the administration of this article.

(c) The Mountaineer Impact Office shall identify specific project proposals for projects, which may be single target companies, blind pool investment funds or other, to implement the goal of the West Virginia Impact Fund.

(d) The Mountaineer Impact Office shall present such project proposals for approval or disapproval to the Investment Committee pursuant to §12-6E-6 of this code.

(e) When determining whether to approve a final project, the Investment Committee shall take into consideration:

(1) The ability of the project to leverage other sources of funding;

(2) Whether investment funding for the project from other sources, public or private, is available or could otherwise reasonably be expected to be available without the state's participation in the investment made under this article;

(3) The ability of the project to create or retain jobs, considering the number of jobs, the type of jobs, whether benefits are or will be paid, the type of benefits involved, and the compensation reasonably anticipated to be paid to persons filling new jobs or the compensation currently paid to persons whose jobs would be retained;

(4) Whether, and the extent to which, the project will promote economic development, infrastructure development, and job creation in the state; and

(5) Whether the project is in the best interest of the public.

(f) The Investment Committee may not approve a project or accept funding from or participation in any investment by a potential partner, investor, or entity when such approval or participation would violate the laws of the United States or the laws of the State of West Virginia, or where such approval or participation would provide aid or comfort to any designated enemy of the United States or the agent of any regime determined by the United States Government to be a narcotics trafficking, human trafficking, sponsor of terrorism, totalitarian, or other criminal regime.

§12-6E-4. Establishment of the Investment Committee; appointments; removal; vacancy; quorum.

(a) There is hereby created the Investment Committee, as an agency of the State of West Virginia, to manage the investment of the assets transferred to the Investment Committee from the West Virginia Impact Fund.

(b) The Investment Committee shall consist of seven voting members. The President of the Senate and the Speaker of the House of Delegates shall serve ex officio as non-voting members. The voting members shall consist of:

(1) The Governor and the Secretary of the Department of Commerce, or their designees shall serve as members of the Investment Committee. They shall serve by virtue of their office and are not entitled to compensation under the provisions of this article. The Governor and the Secretary of the Department of Commerce or their designees are subject to all duties, responsibilities and requirements of the provisions of this article, including, but not limited to, the provisions of paragraph (A), subdivision (2) of this subsection and subdivision (3) of this subsection.

(2)(A) Five members of the Investment Committee shall be appointed by the Governor, with the advice and consent of the Senate. The terms of the appointed members shall be three years, subject to the following: The initial appointment of one member shall be for a term of one year; the initial

appointment of two members shall be for terms of two years; and the initial appointment of two members shall be for terms of three years. At the end of each member's term, the Governor may reappoint, or appoint a successor, who shall serve for a term ending on the thirty-first day of January in the third year following the year of his or her appointment. Except for vacancy appointments made pursuant to this paragraph, all subsequent appointments shall be for terms ending on the thirty-first day of January in the third year following the expiration of the prior term for the position to which the appointment is made. No more than three of the five appointed members may belong to the same political party. In the event of a vacancy among the trustees, the Governor shall promptly make an appointment to fill the unexpired term.

(B) The Governor may remove any appointed member in case of gross negligence or misfeasance and may declare that position vacant and may appoint a person for the vacancy as provided in this subsection. A removal by the Governor must be in writing and must state the reason for the removal. A member who is removed by the Governor may not participate in Investment Committee business and may not be counted for purposes of establishing a quorum after the member receives written notice of removal from the Governor.

(C) The appointed members may not hold any other state or federal office, position or employment, either elective or appointive, except as a member of the armed forces of either the United States or of this state or as a member of a governing board of an institution of higher education of this state, and must have recognized competence and experience in finance, investments, or other business management-related fields.

(3) Each appointed member is entitled to receive and, at the member's option, the Investment Committee shall pay to the member compensation in the amount of $400 for each day on which the member attended a meeting of the

Investment Committee. In addition, all appointed members shall receive reasonable and necessary expenses actually incurred in discharging member duties pursuant to this article.

(c) The Investment Committee may continue to act notwithstanding any vacancy.

(d) The presence of four voting members of the Investment Committee shall constitute a quorum for the exercise of any authority granted to the Investment Committee in this article. Action may be taken only upon affirmative vote of four voting members of the Investment Committee, which vote may be in person or in writing.

§12-6E-5. Powers and duties of Investment Committee; disclosure of interests; standard of care.

(a) The Investment Committee shall have the authority to (1) appoint the managing director of the Mountaineer Impact Office, (2) approve or disapprove project proposals, (3) approve or disapprove the negotiated terms of any proposed investment of funds held by the Investment Committee in any final project, (4) approve or disapprove of the managing director's appointment of employees and retention of consultants to carry out the duties of the Mountaineer Impact Office, (5) initiate the formation of legal entities with their own governance structure to facilitate the development of projects; and (6) participate in the formation of legal entities with their own governance structure to facilitate the development of projects.

(b) The Investment Committee shall approve or disapprove project proposals and the negotiated terms of a proposed investment in any final project solely pursuant to its determination of whether the projects or the negotiated terms of the proposed investment in the final project meet the goal prescribed in §12-6E-3 of this code.

(c) The Investment Committee may, in its own right or through the Mountaineer Impact Office:

(1) Adopt and use a common seal and alter it at pleasure;

(2) Sue and be sued;

(3) Enter into contracts and execute and deliver instruments;

(4) Acquire (by purchase, gift or otherwise), hold, use and dispose of real and personal property, deeds, mortgages, and other instruments;

(5) Notwithstanding any other provision of law, retain and employ legal, accounting, financial and investment advisors, and consultants;

(6) Maintain accounts with banks, securities dealers, and financial institutions both within and outside this state;

(7) Exercise all powers generally granted to and exercised by the holders of investment securities with respect to management of the investment securities;

(8) Contract with one or more banking institutions in or outside the state for the custody, safekeeping and management of securities held by the committee;

(9) Make and, from time to time, amend and repeal bylaws, rules and procedures consistent with the provisions of this article;

(10) Hire its own employees, consultants, managers, and advisors as it considers necessary and fix their compensation and prescribe their duties;

(11) Develop, implement and maintain its own banking accounts and investments; and

(12) Do all things necessary to implement and operate the Investment Committee and the Mountaineer Impact Office and carry out the intent of this article.

(d) *Disclosure of interests.* — If a member of the Investment Committee acquires, owns, or controls an interest, direct or indirect, in any final project in which West Virginia Impact Fund assets are invested or proposed to be invested, the member shall immediately disclose the interest to the Investment Committee and shall be recused from voting on the matter in accordance with the provisions of the West Virginia Governmental Ethics Act. The disclosure is a matter of public record and shall be included in the minutes of the Investment Committee meeting next following the disclosure.

(e) *Standard of care.* — When making decisions, the Investment Committee shall exercise the judgment and care under the circumstances then prevailing that an institutional investor of ordinary prudence, discretion, and intelligence exercises in the designation and management of large investments entrusted to it, not in regard to speculation, but in regard to the permanent disposition of funds, considering preservation of the purchasing power of the West Virginia Impact Fund over time, while maximizing the expected total return from both income and the appreciation of capital and accomplishing the goal of the West Virginia Impact Fund as set forth in §12-6E-3 of this code.

§12-6E-6. Establishment of the Mountaineer Impact Office; managing director; project proposals; monitoring performance; consultation with Investment Management Board; insurance.

(a) There is hereby created the Mountaineer Impact Office. The Mountaineer Impact Office is an agency and instrumentality of the State of West Virginia managed by the Investment Committee. The purpose of the Mountaineer Impact Office is to implement, invest and administer the assets transferred to the Investment Committee from the West Virginia Impact Fund.

(b) The Investment Committee shall appoint a managing director, as a state employee, to manage the

affairs of the Mountaineer Impact Office. The managing director shall have a strong background in business and significant experience in investments and the development of projects.

(c) The salary of the managing director is not restricted by state compensation rules but shall be determined by the Governor in accordance with customary salaries for officers and directors with similar responsibilities and experience in the private sector.

(d) The managing director may, with the approval of the Investment Committee, appoint permanent or temporary employees and/or retain consultants to carry out the duties of the Mountaineer Impact Office. An employee of the Mountaineer Impact Office, including the managing director, may not be a member of the Investment Committee.

(e) The Mountaineer Impact Office shall identify specific proposals for projects, which may be single target companies, blind pool investment funds or other, to implement the goal prescribed in §12-6E-3 of this code.

(f) The Mountaineer Impact Office shall present such project proposals for approval or disapproval to the Investment Committee.

(g) The Mountaineer Impact Office shall establish a procurement process for selecting one or more selected managers to develop final projects in accordance with each approved project proposal. This procurement process shall be streamlined and efficient and is not required to comply with §5A-3-1 *et seq.* of this code. Pursuant to the procurement process, the Mountaineer Impact Office shall identify, procure and enter into a non-binding memorandum of understanding with a selected manager to develop a final project in accordance with each approved project proposal.

(h) The Mountaineer Impact Office shall, with the selected manager, negotiate the terms and amount of any proposed investment of funds held by the Investment Committee in any final project.

(i) The Mountaineer Impact Office shall present such final negotiated terms and amount of a proposed investment in a final project for approval or disapproval to the Investment Committee, together with any disclosures of conflicts of interest in the proposed investment as required pursuant to §12-6E-5(d) of this code.

(j) The Mountaineer Impact Office shall monitor the qualitative and quantitative performance of each approved investment on an ongoing basis, with respect to the goal of investments prescribed in §12-6E-3 of this code, including without limitation, the exit and termination of each approved investment.

(k) The Mountaineer Impact Office may consult the Investment Management Board about investments made or proposed under this article.

(l) The Mountaineer Impact Office may exercise all powers necessary or appropriate to carry out the duties or responsibilities conferred upon it by law or the Investment Committee under the provisions of this article.

(m) The Mountaineer Impact Office shall procure and maintain in effect, for the benefit of the members of the Investment Committee, commercially customary property, liability, crime, and other insurance to cover risks of loss from the operations of the Investment Committee. The types and amounts of the insurance coverages shall be determined by the Mountaineer Impact Office, from time to time, in its reasonable discretion, with reference to the types and amounts of insurance coverages purchased or maintained by other public institutions performing functions similar to those performed by the Investment Committee, and in an amount of not less than $10 million.

The Investment Committee may require that appropriate types and amounts of insurance be procured and maintained by, or a fiduciary or surety bond from a surety company qualified to do business in this state for, any person who has charge of, or access to, any securities, funds or other moneys held by the Investment Committee and the amount of the fiduciary or surety bond shall be fixed by the Investment Committee. The premiums payable on any insurance or fiduciary or surety bonds that the Committee may require, from time to time, shall be an expense of the Committee.

§12-6E-7. Computation of income; audits; annual report.

(a) The Mountaineer Impact Office shall cause the income from investments made by the Investment Committee to be deposited back into the West Virginia Impact Fund, net of amounts determined by the Investment Committee to be necessary to provide for the payment of expenses incurred in the administration of this article.

(b) The Mountaineer Impact Office shall compute the net income of the Investment Committee's investments annually as of the last day of the fiscal year in accordance with generally accepted accounting principles, excluding any unrealized gains or losses.

(c) The Mountaineer Impact Office shall annually cause combined annual financial and compliance audits of the assets in the West Virginia Impact Fund, and of the moneys transferred to and held by the Investment Committee, to be made by a certified public accounting firm which has a minimum staff of ten certified public accountants and which is a member of the American Institute of Certified Public Accountants and, if doing business in West Virginia, a member of the West Virginia Society of Certified Public Accountants. The Mountaineer Impact Office shall cause copies of the audits report to be furnished to the Governor, State Treasurer, State Auditor, President of the Senate, and the Speaker of the House of Delegates.

(d) By December 1 of each year, the Mountaineer Impact Office shall publish a report of the Investment Committee investments for distribution to the Governor, the President of the Senate, the Speaker of the House of Delegates, and the public. The Mountaineer Impact Office shall notify the Legislature that the report is available and otherwise comply with §4-1-23 and §5-1-20 of this code.

(e) The report published pursuant to subsection (d) of this section must include financial statements audited by independent outside auditors, a statement of the amount of money received by the Investment Committee and the West Virginia Impact Fund from each investment during the period covered, a statement of investments by the Investment Committee, including an appraisal at market value, a description of investment activities during the period covered by the report, a comparison of the investment performance with the intended goal contained in §12-6E-3 of this code and any other information the Mountaineer Impact Office determines would be in the public interest upon which the efforts of the Investment Committee and the Mountaineer Impact Office to meet the goals and objectives of this article may be measured.

(f) The reports described in this section shall be public record.

§12-6E-8. Role of the Investment Management Board; immunity from liability.

The Investment Committee or the Mountaineer Impact Office may consult the Investment Management Board regarding their activities. To the extent the Investment Management Board determines that to do so is not inconsistent with its duties and responsibilities imposed by this code, it may consult with Investment Committee or the Mountaineer Impact Office regarding those activities. The Investment Management Board's trustees, advisors, officers and employees are not liable personally, either jointly or severally, for any debt or obligation created by the

Investment Committee or the Mountaineer Impact Office, nor shall the Investment Management Board or its trustees, advisors, officers or employees be liable for any consultative advice, guidance or services that it may provide from time to time under this article.

§12-6E-9. Immunities of Investment Committee and Mountaineer Impact Office; exemptions.

(a) The doctrine and principles of sovereign immunity extend to the West Virginia Impact Fund, the Mountaineer Impact Office, the Investment Committee and their operations.

(b) The members, advisors, officers, and employees of the Investment Committee and the Mountaineer Impact Office are not liable personally, either jointly or severally, for any debt or obligation created by the Investment Committee or the Mountaineer Impact Office: *Provided*, That the members, advisors, officers, and employees are liable for acts of misfeasance or gross negligence.

(c) The assets held by the Investment Committee in any account are exempt from all taxes and assessments in the State of West Virginia. All security instruments issued by the Investment Committee or the Mountaineer Impact Office, their transfer, and their income are exempt from all taxes and assessments in the State of West Virginia. No provision of this section may be construed to exempt from taxation any property, real or personal, that may be owned or otherwise held as a result of an investment made under this article. No provision of this section may be construed to exempt from taxation any income or other return derived by any entity other than the state as the result of an investment made under this article. No provision of this section may be construed to exempt from taxation any business activities resulting from an investment made under this article.

§12-6E-10. Political activities.

(a) The resources of the West Virginia Impact Fund, the Investment Committee and the Mountaineer Impact Office may not be used to finance or influence political activities.

(b) A public official, or an immediate family member thereof, shall not intentionally or knowingly hold a financial interest in any project pursuant to this article, or hold a financial interest in a holding company, affiliate, intermediary or subsidiary thereof that owns an interest in a project authorized pursuant to this article, while the individual is a public official and for one year following termination of the individual's status as a public official. For the purposes of this section, the term "financial interest" does not include ownership of shares of mutual funds or other similar investment instruments in which the owner of such shares of mutual fund or other similar investment instrument has no decision making authority to what business decisions are made by those managing the investment.

§12-6E-11. Confidential information.

The reports described in §12-6E-7 of this code shall be public record. If the standard confidentiality agreements, policies or procedures of a private enterprise or investor with which an investment in a project is proposed or made prohibit, restrict or limit the disclosure of information pertaining to the investment, the information is confidential and shall not form part of the public record and is exempt from disclosure under the provisions of chapter twenty-nine-b of this code. Such information may be publicly disclosed only for the purposes of an official law enforcement investigation or when its production is required in a court proceeding.

CHAPTER 105

(Com. Sub. for H. B. 4634 - By Delegates Evans, Bates, Toney, Dean, Paynter and Porterfield)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-1B-1, §5B-1B-2, §5B-1B-3 and §5B-1B-4, all relating to establishing the Southern West Virginia Lake Development Study Commission; providing legislative findings; establishing the commission and designating its membership; defining components of commission study; authorizing the commission to create committees and utilize university and other state government resources; providing for expense reimbursement for certain commission members; and requiring reports to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. SOUTHERN WEST VIRGINIA LAKE DEVELOPMENT STUDY COMMISSION.

§5B-1B-1. Southern West Virginia Lake Development Study Commission Act.

This article shall be known as the "Southern West Virginia Lake Development Study Commission Act."

§5B-1B-2. Legislative findings.

(a) The Legislature finds that the southern coalfields of West Virginia, long one of the most productive coal producing areas of the world, having provided untold millions of dollars to the state economy, and having been

the financial backbone of the state's economy for over a century, is now in the midst of a long decline in coal production and population, and because of rugged terrain and remoteness from surrounding regions, suffers from high unemployment and deteriorating infrastructure and economic base, and requires innovative and alternative approaches to revitalization; and therefore demands the Legislature look at innovative ideas and alternatives for new industries and businesses that provide sustainable long term development for southern West Virginia.

(b) The natural beauty of the mountainous regions, now popular with outdoor enthusiasts for its Hatfield McCoy Trail System, would be an ideal location for a large recreational lake or lakes, constructed with hundreds of miles of lake front property, tens of thousands of acres of lake surface, near a four lane highway and situated near large tracts of developable property, with carefully considered design and development, could create a new and exciting recreational area of the state, and provide a myriad of opportunities for further development and with creative initiative could revitalize this area of our state. Such a proposal is worthy of careful study and marshalling the forces of our state and federal governments to thoroughly evaluate and consider this development, maximizing the design and use of a lake or lake system to provide a variety of benefits, potentially including hydro-electric generation, resort developments, housing, and economic opportunities that would create diversity and renewal to this long neglected and deserving area of our state.

§5B-1B-3. Commission created; undertake study; report to the Legislature.

(a) There is hereby created the Southern West Virginia Lake Development Study Commission within the West Virginia Development Office. The commission shall consist of the following members:

(1) The president of the West Virginia Economic Development Council, who will serve as chair of the commission;

(2) Six members designated by each of the county commissions of Boone, Logan, McDowell, Mercer, Mingo, and Wyoming Counties;

(3) One member representing the Department of Environmental Protection, to be appointed by the Governor;

(4) One member representing the Division of Natural Resources, to be appointed by the Governor;

(5) One member representing and having expertise in each of the following fields, to be appointed by the Governor:

(A) Geology;

(B) Land use planning;

(C) Law;

(D) Natural resource management;

(E) Tourism development;

(F) Public recreation;

(G) Hydrology; and

(H) Ecology; and

(6) Six citizen members representing Boone, Logan, McDowell, Mercer, Mingo, and Wyoming to be appointed by the Governor.

(b) The West Virginia University Bureau of Business and Economic Research and the Marshall University Center for Business and Economic Research shall assist the commission by undertaking the study of topics as directed

by this section and by the commission. Working with the commission, the two research groups shall investigate lake developments across the region and country to identify what makes large lake developments successful, types of unique amenities and development sites that would promote economic growth, alternative uses for the lake and its resources in power generation, regional resource preservation and integration, enhancement of the Hatfield and McCoy ATV Trail System, and other outdoor recreational opportunities.

(c) The commission shall oversee studies that evaluate where a lake can be located to maximize economic benefits and assess environmental impacts, property ownership assessment and purchasing costs, impacts to mineral ownership and development impacts, and other issues as identified by the commission. The commission is empowered to form specialized committees of experts in various fields of law, science, economic development, geological, mineral, and natural resources to make recommendations and provide expertise in their respective fields regarding viability and implications of lake construction, road location, and resource preservation.

(d) The commission is directed to undertake the inclusion of federal resources for assistance in the study of the feasibility and implementation recommendations. The commission shall pursue federal funding for undertaking the study and the subsequent construction of this project upon the finding of viability of the study project.

(e) The commission may call upon other officers, departments, and agencies of state government to assist in its investigation. Upon the request of the commission, the Attorney General of the state shall render legal research and analysis on legal issues associated with developing recommendations for lawful land development construction and compliance with state and federal laws associated with land acquisition and lake construction, to the commission.

(f) All actual and necessary travel expenses of the members of the commission shall be reimbursed by the member's employing agency. All other expenses incurred by the commission shall be paid by the Development Office.

§5B-1B-4. Report to the Legislature.

The commission shall provide regular updates to the Legislature, through the Joint Committee on Government and Finance, and shall complete this study and its recommendations by July 1, 2022. The report shall include at a minimum, recommendations for any necessary legislation, funding recommendations, and analysis of the implications and costs associated with the development project provided in this article.

CHAPTER 106

(H. B. 4959 - By Delegates Howell, C. Martin, Staggers, Jennings, Tomblin and Barnhart)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-15-5 and §31-15-6 of the Code of West Virginia, 1931, as amended, relating to clarifying the ability of the Economic Development Authority Board of Directors to enter into any contracts necessary to carry out its duties; clarifying the ability of the Board of Directors to delegate to the Executive Director the authority to enter into said contracts; and to clarify the exemption from the requirements to use the Purchasing Division for contracts made in furtherance of the agency's statutory purpose.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-5. West Virginia economic development authority; composition; appointment; terms; delegation of authority by chairman; voting; compensation and expenses.

(a) The West Virginia economic development authority is continued as a body corporate and politic, constituting a public corporation and government instrumentality.

(b) The authority shall be composed of a board of members consisting of a chairman, who shall be the Governor, or his or her designated representative, the Tax Commissioner and seven members who shall be appointed by the Governor, by and with the advice and consent of the Senate, and who shall be broadly representative of the geographic regions of the state. One member of the House of Delegates to be appointed by the Speaker and one member of the Senate to be appointed by the President shall serve on the board in an advisory capacity as ex officio, nonvoting members. The board shall direct the exercise of all the powers given to the authority in this article. The Governor shall also be the chief executive officer of the authority, and shall designate the treasurer and the secretary of the board.

(c) As appointments expire, each subsequent appointment shall be for a full four-year term. Any 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 member is eligible for reappointment.

(d) The Governor may, by written notice filed with the secretary of the authority, from time to time, delegate to any subordinate the power to represent him or her at any meeting of the authority. In that case, the subordinate has the same power and privileges as the Governor and may vote on any question.

(e) Members of the authority 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.

(f) A majority of the members constitutes a quorum for the purpose of conducting business. Except in the case of a loan or insurance application or unless the bylaws require a larger number, action may be taken by majority vote of the members present. Approval or rejection of a loan or insurance application shall be made by majority vote of the full membership of the board.

(g) The board shall manage the property and business of the authority and may prescribe, amend, adopt and repeal bylaws and rules and regulations governing the manner in which the business of the authority is conducted.

(h) The board shall, without regard to the provisions of civil service laws applicable to officers and employees of the State of West Virginia, appoint any necessary managers, assistant managers, officers, employees, attorneys and agents for the transaction of its business, fix their compensation, define their duties and provide a system of organization to fix responsibility and promote efficiency. Any appointee of the board may be removed at the discretion of the board. The authority may reimburse any state spending unit for any special expense actually incurred in providing any service or the use of any facility to the authority.

(i) The board may delegate to the Executive Director the authority to make and execute all contracts and other agreements or instruments necessary for the exercise of its powers or to carry out its corporate purpose.

(j) In cases of any vacancy in the office of a voting member, the vacancy shall be filled by the Governor. Any member appointed to fill a vacancy in the board occurring

prior to the expiration of the term for which his or her predecessor was appointed shall be appointed for the remainder of the term.

(k) The Governor may remove a member in the case of incompetence, neglect of duty, gross immorality or malfeasance in office, and may declare the member's office vacant and appoint a person for the vacancy as provided in other cases of vacancy.

(l) The secretary of the board shall keep a record of the proceedings of the board and perform any other duties determined appropriate by the board. The treasurer shall be custodian of all funds of the authority and shall be bonded in the amount designated by other members of the board.

§31-15-6. General powers of authority.

The authority, as a public corporation and governmental instrumentality exercising public powers of the state, shall have and may exercise all powers necessary or appropriate to carry out the purposes of this article, including the power:

(a) To cooperate with industrial development agencies in efforts to promote the expansion of industrial, commercial, manufacturing and tourist activity in this state.

(b) To determine, upon the proper application of an industrial development agency or an enterprise, whether the declared public purposes of this article have been or will be accomplished by the establishment by such agency or enterprise of a project in this state.

(c) To conduct examinations and investigations and to hear testimony and take proof, under oath or affirmation, at public or private hearings, on any matter relevant to this article and necessary for information on the establishment of any project.

(d) To issue subpoenas requiring the attendance of witnesses and the production of books and papers relevant

to any hearing before such authority or one or more members appointed by it to conduct any hearing.

(e) To apply to the circuit court having venue of such offense to have punished for contempt any witness who refuses to obey a subpoena, to be sworn or affirmed or to testify or who commits any contempt after being summoned to appear.

(f) To authorize any member of the authority to conduct hearings, administer oaths, take affidavits and issue subpoenas.

(g) To financially assist projects by insuring obligations in the manner provided in this article through the use of the insurance fund.

(h) To finance any projects by making loans to industrial development agencies or enterprises upon such terms as the authority shall deem appropriate: *Provided*, That nothing contained in this subsection (h) or under any other provision in this article shall be construed as permitting the authority to make loans for working capital: *Provided, however*, That nothing contained in this article shall be construed as prohibiting the authority from insuring loans for working capital made to industrial development agencies or to enterprises by financial institutions: *Provided further*, That nothing contained in this subsection or any other provision of this article shall be construed as permitting the authority to refinance existing debt except when such refinancing will result in the expansion of the enterprise whose debt is to be refinanced or in the creation of new jobs.

(i) To issue revenue bonds or notes to fulfill the purposes of this article, and to secure the payment of such bonds or notes, all as hereinafter provided.

(j) To issue and deliver revenue bonds or notes in exchange for a project.

(k) To borrow money for its purposes and issue bonds or notes for the money and provide for the rights of the holders of the bonds or notes or other negotiable instruments, to secure the bonds or notes by a deed of trust on, or an assignment or pledge of, any or all of its property and property of the project, including any part of the security for loans, and the authority may issue and sell its bonds and notes, by public or private sale, in such principal amounts as it shall deem necessary to provide funds for any purposes under this article, including the making of loans for the purposes set forth in this article.

(l) To maintain such sinking funds and reserves as the board shall determine appropriate for the purposes of meeting future monetary obligations and needs of the authority.

(m) To sue and be sued, implead and be impleaded, and complain and defend in any court.

(n) To adopt, use and alter at will a corporate seal.

(o) To make, amend, repeal and adopt both bylaws and rules and regulations for the management and regulation of its affairs.

(p) To appoint officers, agents and employees and to contract for and engage the services of consultants.

(q) To make contracts of every kind and nature to execute all instruments necessary or convenient for carrying on its business: *Provided*, That the provisions of §5A-3-3 of this code do not apply to contracts made pursuant to this subdivision.

(r) To accept grants and loans from and enter into contracts and other transactions with any federal agency.

(s) To take title by conveyance or foreclosure to any project where acquisition is necessary to protect any loan previously made by the authority and to sell, by public or

private sale, transfer, lease or convey such project to any enterprise.

(t) To participate in any reorganization proceeding pending pursuant to the United States Code (being the act of Congress establishing a uniform system of bankruptcy throughout the United States, as amended) or in any receivership proceeding in a state or federal court for the reorganization or liquidation of an enterprise. The authority may file its claim against any such enterprise in any of the foregoing proceedings, vote upon any questions pending therein which requires the approval of the creditors participating in any reorganization proceeding or receivership, exchange any evidence of such indebtedness for any property, security or evidence of indebtedness offered as a part of the reorganization of such enterprise or of any other entity formed to acquire the assets thereof and may compromise or reduce the amount of any indebtedness owing to it as a part of any such reorganization.

(u) To acquire, construct, maintain, improve, repair, replace and operate projects within this state, as well as streets, roads, alleys, sidewalks, crosswalks and other means of ingress and egress to and from projects located within this state.

(v) To acquire, construct, maintain, improve, repair and replace and operate pipelines, electric transmission lines, waterlines, sewer lines, electric power substations, waterworks systems, sewage treatment and disposal facilities and any combinations thereof for the use and benefit of any enterprise located within this state.

(w) To acquire watersheds, water and riparian rights, rights-of-way, easements, licenses and any and all other property, property rights and appurtenances for the use and benefit of any enterprise located within this state.

(x) To acquire, by purchase, lease, donation or eminent domain, any real or personal property, or any right or

interest therein, as may be necessary or convenient to carry out the purposes of the authority. Title to all property, property rights and interests acquired by the authority shall be taken in the name of the authority.

(y) To issue renewal notes, or security interests, to issue bonds to pay notes or security interests and, whenever it deems refunding expedient, to refund any bonds or notes by the issuance of new bonds or notes, whether the bonds or notes to be refunded have or have not matured and whether or not the authority originally issued the bonds or notes to be refunded.

(z) To apply the proceeds from the sale of renewal notes, security interests or refunding bonds or notes to the purchase, redemption or payment of the notes, security interests or bonds or notes to be refunded.

(aa) To accept gifts or grants of property, funds, security interests, money, materials, labor, supplies or services from the United States of America or from any governmental unit or any person, firm or corporation, and to carry out the terms or provisions of, or make agreements with respect to, or pledge, any gifts or grants, and to do any and all things necessary, useful, desirable or convenient in connection with the procuring, acceptance or disposition of gifts or grants.

(bb) To the extent permitted under its contracts with the holders of bonds, security interests or 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 bond, security interests, note or contract or agreement of any kind to which the authority is a party.

(cc) To sell loans, security interests or other obligations in the loan portfolio of the authority. Such security interests shall be evidenced by instruments issued by the authority. Proceeds from the sale of loans, security interests, or other

obligations may be used in the same manner and for the same purposes as bond and note revenues.

(dd) To procure insurance against any losses in connection with its property, operations or assets in such amounts and from such insurers as the authority deems desirable.

(ee) To sell, license, lease, mortgage, assign, pledge or donate its property, both real and personal, or any right or interest therein to another or authorize the possession, occupancy or use of such property or any right or interest therein by another, in such manner and upon such terms as it deems appropriate.

(ff) To participate with the state and federal agencies in efforts to promote the expansion of commercial and industrial development in this state.

(gg) To finance, organize, conduct, sponsor, participate and assist in the conduct of special institutes, conferences, demonstrations and studies relating to the stimulation and formation of business, industry and trade endeavors.

(hh) To conduct, finance and participate in technological, business, financial and other studies related to business and economic development.

(ii) To conduct, sponsor, finance, participate and assist in the preparation of business plans, financing plans and other proposals of new or established businesses suitable for support by the authority.

(jj) To prepare, publish and distribute, with or without charge as the authority may determine, such technical studies, reports, bulletins and other materials as it deems appropriate, subject only to the maintenance and respect for confidentiality of client proprietary information.

(kk) To exercise such other and additional powers as may be necessary or appropriate for the exercise of the powers herein conferred.

(ll) To exercise all of the powers which a corporation may lawfully exercise under the laws of this state.

(mm) To contract for the provision of legal services by private counsel, and notwithstanding the provisions of article three, chapter five, such counsel may, but is not limited to, represent the authority in court, negotiate contracts and other agreements on behalf of the authority, render advice to the authority on any matter relating thereto, prepare contracts and other agreements, and provide such other legal services as may be requested by the authority.

(nn) To develop, maintain, operate and apply for the establishment of foreign trade zones pursuant to and in accordance with all applicable provisions of federal law.

(oo) To exercise the powers and responsibilities previously vested in the state building commission by section eleven-a, article six, chapter five including, but not limited to, the authority to refund bonds issued in accordance with that section.

CHAPTER 107

(S. B. 42 - By Senators Maynard and Cline)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to permitting the county boards of education to include faith-based and nonfaith-based

electives for drug awareness in classrooms; and requiring the State Board of Education to promulgate a rule.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7b. Programs in drug prevention and violence reduction.

(a) In order for the schools to become healthy learning environments and to provide a strong defense against drug use and violence, the State Board of Education shall prescribe programs within the existing health and physical education program which teach resistance and life skills to counteract societal and peer pressure to use drugs, alcohol, and tobacco, and shall include counselors, teachers, and staff in full implementation of the program. The board shall also prescribe programs to coordinate violence reduction efforts in schools and between schools and their communities and to train students, teachers, counselors, and staff in conflict resolution skills. The program shall be comprehensive, interdisciplinary, and shall begin in elementary school.

(b) No later than the start of the 2018-2019 school year, a county board shall implement comprehensive drug awareness and prevention programs for students in grades K through 12 to receive instruction regarding the dangers of substance abuse. The purpose of the drug awareness and prevention program is to:

(1) Keep students from illegally using alcohol, tobacco, or other drugs;

(2) Reduce or eliminate the incidence and prevalence of student's alcohol, tobacco, and other drug abuse;

(3) Reduce the factors that place students at risk of abusing alcohol, tobacco, or other drugs through school and a community-based planning processes;

(4) Contribute to the development of school environments and alternative activities that are alcohol, tobacco, and drug-free;

(5) Increase the knowledge and skills of students, staff, and community members for avoiding the harmful effects of alcohol, tobacco, and drug use, and of blood borne pathogens;

(6) Actively involve staff, students, parents, and community members in the development and implementation of the drug awareness and prevention program plans;

(7) Facilitate an understanding and appreciation of the risks to, duties of, and likely actions by law-enforcement officers when conducting investigations; and

(8) Instruct how to respond to an officer during a vehicular or other stop or police interaction, including problematic or dangerous action and behaviors that could result in a person being detained or arrested.

(c) The county board shall coordinate the delivery of instruction to meet the purposes of subsection (b) of this section with educators, drug rehabilitation specialists, and law-enforcement agencies to periodically provide age appropriate student education on their experiences with the impacts of illegal alcohol and drug use.

(d) Beginning with the 2018-2019 school year, instruction required pursuant to §18-2-9 of this code in the subject of health education in any of the grades six through 12 as considered appropriate by the county board shall include at least 60 minutes of instruction for each student on the dangers of opioid use, the additive characteristics of opioids, and safer alternatives to treat pain.

(e) Beginning with the 2020-2021 school year, comprehensive drug awareness and prevention programs for students in grades K through 12 may include faith-based

electives, along with nonfaith-based electives, for drug awareness in classrooms. The state board shall promulgate a rule on how the faith-based electives can be offered in a way that is consistent with constitutional requirements.

CHAPTER 108

(Com. Sub. for S. B. 230 - By Senators Weld, Cline, Baldwin, Lindsay, Roberts, Stollings, Jeffries and Maroney)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18-2-40 of the Code of West Virginia, 1931, as amended, relating to suicide prevention awareness training and dissemination of information; providing findings; requiring State Board of Education to provide routine education in suicide prevention under guidelines established by board; requiring dissemination of information; and naming provisions of section "Jamie's Law."

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-40. Suicide prevention awareness training; dissemination of information.

(a)(1) *Legislative findings.* — The Legislature recognizes that the state of West Virginia has one of the highest rates of suicide in the nation, and that suicide serves as one of the leading causes of death in our state.

(2) The Legislature further finds that nationwide, suicide rates amongst adolescents and young adults are on the rise. As a result of disrupted families, poverty, and the

opioid crises which have severely affected a significant number of families across this state, West Virginia's students face a number of issues which may increase their risk of suicide.

(3) Consequently, the Legislature finds that it is imperative that those in our education system closest to our students receive training to increase their ability to better recognize students who may be exhibiting signs that they are at risk of suicide.

(b) On or before September 1, 2020, and each year thereafter, the State Board of Education shall provide for the routine education of all professional educators, including principals and administrators, and those service personnel having direct contact with students on warning signs and resources to assist in suicide prevention under guidelines established by the state board. The education may be accomplished through self-review of suicide prevention materials and resources approved by the state board.

(c) On or before September 1, 2020, and each year thereafter, a public middle and high school administrator shall disseminate and provide opportunities to discuss suicide prevention awareness information to all middle and high school students. The information may be obtained from the Bureau for Behavioral Health and Health Facilities or from a commercially developed suicide prevention training program approved by the State Board of Education in consultation with the bureau to assure the accuracy and appropriateness of the information.

(d) The provisions of this section shall be known as "Jamie's Law."

CHAPTER 109

(Com. Sub. for S. B. 241 - By Senators Baldwin, Roberts, Rucker and Stollings)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-9A-7a, relating to requiring State Board of Education to propose revisions to calculation of allowance for service personnel to provide additional positions to meet student transportation needs of certain lower population density districts; and requiring a report to the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-7a. Report on alternate method for funding student transportation costs required.

(a) The Legislature finds that the present method of calculating the allowance for service personnel in §18-9A-5 may not provide sufficient funding to meet the student transportation needs of lower-population density districts covering a large geographic area.

(b) The State Board of Education shall propose revisions to the calculation of the allowance for service personnel in §18-9A-5 to provide additional funded service personnel positions for the districts described in subsection (a) of this section and shall report the proposal to the Legislature before September 1, 2020.

CHAPTER 110

(Com. Sub. for S. B. 303 - By Senators Rucker and Cline)

[Passed March 7, 2020; in effect January 1, 2021.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-10P-1, §18-10P-2, §18-10P-3, §18-10P-4, §18-10P-5, and §18-10P-6, all relating to enacting the Students' Right-to-Know Act; declaring purpose of helping high school students make more informed decisions about their futures and ensuring they are adequately aware of the cost and benefits of certificate programs, vocational programs, two-year college, four-year college, and other alternative career paths; requiring the State Board of Education to collect and the State Superintendent of Schools to distribute certain career landscape information; allowing the State Board of Education to execute a memorandum of understanding with any department, agency, or division for information required to be collected; requiring any department, agency, or division that possesses certain required information to provide that information to the State Board of Education annually; and establishing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10P. STUDENTS' RIGHT-TO-KNOW ACT.

§18-10P-1. Short title.

1 This article shall be known and may be cited as the
2 Students' Right-to-Know Act.

§18-10P-2. Purpose.

The purpose of this article is to help high school students make more informed decisions about their futures and ensure they are adequately aware of the costs and benefits of certificate programs, vocational programs, two-year college, four-year college, and other alternative career paths.

§18-10P-3. Career landscape information collection.

The following information, to the extent available, shall be collected and compiled by the State Board of Education, in collaboration with the Higher Education Policy Commission and the Council for Community and Technical College Education, on an annual basis:

(1) The most in-demand occupations in the state, including entry wage and common degree levels (e.g., associate's, bachelor's, or master's) for entering the occupation;

(2) The average cost of two and four-year colleges, universities, and vocational schools in the state by type of institution;

(3) The federal and state scholarship, merit, and need-based aid programs available for attending two and four-year colleges, universities, and vocational schools in the state by type of institution;

(4) The average monthly student loan payment and the average total amount of student loans for individuals who attend all two and four-year colleges, universities, and vocational schools in the state by the type of institution;

(5) The average student loan default rate for two and four-year colleges, universities, and vocational schools in the state by type of institution;

(6) Information relating to the availability of paid internship and externship opportunities for students attending two and four-year colleges, universities, and vocational schools in the state by type of institution;

(7) The average graduation rate for two and four-year colleges, universities, and vocational schools in the state by type of institution;

(8) The completion rates for apprenticeship programs, high school credential programs, and career and technical education programs;

(9) The percentage of college graduates working in an occupation that does not require a college degree for each major;

(10) Median annual wages for public college/university graduates by degree level and degree area;

(11) The average starting salary of career-technical education completers;

(12) The number of military first-term enlistments and each branch's starting salary;

(13) Contact information for each of the two and four-year colleges, universities, and vocational schools in the state, and each branch of the U.S. armed forces, National Guard, and reserves; and

(14) Any other information the State Board of Education, the Higher Education Policy Commission, or the Council for Community and Technical College Education deem appropriate to assist high school students in weighing the costs and benefits of post-high school training and education.

§18-10P-4. Information distribution.

No later than October 15 of each year, the State Superintendent shall distribute the information collected by the State Board of Education in §18-10P-3 of this code:

(1) To every public high school in the state for distribution to students by school guidance counselors; and

(2) To the public by making it readily available through publishing on the Department of Education's website.

§18-10P-5. Data sharing.

The State Board of Education may execute a memorandum of understanding with any department, agency, or division for information required to be collected by this article. Any department, agency, or division that possesses information required to be collected by this article, at least including the Department of Commerce and the Higher Education Policy Commission, shall provide that information to the State Board of Education annually.

§18-10P-6. Effective date.

The requirements of this article are effective on January 1, 2021.

CHAPTER 111

(Com. Sub. for S. B. 614 - By Senators Rucker, Cline, Roberts and Maynard)

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-5-48 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18-20-11 of said code, all relating to giving county boards of education, during a specified time period, flexibility to spend the safe schools allocation at any school within the district requiring cameras in special education classrooms; requiring the West Virginia Department of Education, during a

specified time period, to first allocate the funding appropriated for the Safe Schools Fund based on the remaining need for video cameras in each district; removing appropriation of funds by the Legislature as a prerequisite to the requirement for video cameras in self-contained classrooms; and clarifying that any available funds may be used to comply with the camera requirements.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-48. Safety and security measures for school facilities; Safe Schools Fund created.

(a) Each county board of education and multicounty vocational center shall annually assess the safety and security of each of the school facilities within its boundaries. Safety and security measures of each facility shall be upgraded when necessary to ensure, to the best of the county board's ability, the safety of the students within each facility. Each county board of education shall report annually the safety and security measures it has put in place, including upgrades thereto, to the State Department of Education. Annually, the State Department of Education shall compile the information from the county boards of education and report the information to the Legislative Oversight Commission on Education Accountability.

(b) As used in this section, "safety and security measures" means action taken by a county board of education or multicounty vocational center that improves the security of a school facility and the safety of the students within such facility, including, but not limited to, hiring a school resource officer, installing weapon detection systems, upgrading facility doors or windows.

(c) There is hereby created in the State Treasury a special revenue fund to be known as the Safe Schools Fund. The fund shall consist of all moneys received from legislative appropriations and other sources to further the

purpose of this section: *Provided*, That annually, the West Virginia Department of Education shall request an appropriation based on the requests of the county boards of education. Subject to legislative appropriation, the funds appropriated annually to the School Safety Fund shall be distributed to the county boards of education and multicounty vocational centers, with the funding amount per school determined by dividing the total annual appropriation by the total number of public schools throughout the state. All moneys distributed from this fund shall be used to support the purpose and intent of this section and all moneys must be spent to support the school for which the funding was derived: *Provided, however*, That moneys distributed from this fund also may be used for the purposes of §18-20-11 of this code, relating to video cameras in certain special education classrooms: *Provided further*, That for any distributions for the 2019-2020 year and continuing until such time that all districts have fully complied with the special education video camera requirements, county boards shall have the flexibility to spend the safe schools allocation at any school within the district requiring cameras in special education classrooms. The West Virginia Department of Education shall first allocate the funding appropriated for the Safe Schools Fund for the 2020-2021 year based on the remaining need for video cameras in each district. After all districts have been provided sufficient funds to meet the special education video camera requirements, the funding distribution shall return to the previously specified method based on the number of public schools. Any moneys remaining in the fund at the close of the fiscal year shall be carried forward for use in the next fiscal year. Fund balances shall be invested with the state's Consolidated Investment Fund and any and all interest shall be used solely for the purposes that moneys deposited in the fund may be used pursuant to this article.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-11. Video cameras required in certain special education classrooms.

(a) A county board of education shall ensure placement of video cameras in self-contained classrooms as defined in state board policy.

(b) As used in this section:

(1) "Incident" means a raised suspicion by a teacher, aide, parent, or guardian of a child, of bullying, abuse, or neglect of a child or of harm to an employee of a public school by:

(A) An employee of a public school or school district; or

(B) Another student;

(2) "Self-contained classroom" means a classroom at a public school in which a majority of the students in regular attendance are provided special education instruction and as further defined in state board policy; and

(3) "Special education" means the same as defined in §18-20-1 *et seq.* of this code.

(c) A county board of education shall provide a video camera to a public school for each self-contained classroom that is a part of that school which shall be used in every self-contained classroom. The principal of the school shall be the custodian of the video camera, all recordings generated by the video camera, and access to those recordings pursuant to this section.

(d)(1) Every public school that receives a video camera under this section shall operate and maintain the video camera in every self-contained classroom that is part of that school.

(2) If there is an interruption in the operation of the video camera for any reason, a written explanation should

be submitted to the school principal and the county board explaining the reason and length for which there was no recording. The explanation shall be maintained at the county board office for at least one year.

(e)(1) A video camera placed in a self-contained classroom shall be capable of:

(A) Monitoring all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes; and

(B) Recording audio from all areas of the self-contained classroom, including, without limitation, a room attached to the self-contained classroom and used for other purposes;

(2) A video camera placed in a self-contained classroom shall not monitor a restroom or any other area in the self-contained classroom where a student changes his or her clothes except for incidental monitoring of a minor portion of a restroom or other area where a student changes his or her clothes because of the layout of the self-contained classroom.

(3) A video camera placed in a self-contained classroom is not required to be in operation during the time in which students are not present in the self-contained classroom.

(f) Before a public school initially places a video camera in a self-contained classroom pursuant to this section, the public school shall provide written notice of the placement to:

(1) The parent or legal guardian of a student who is assigned to the self-contained classroom;

(2) The county board; and

(3) The school employee(s) who is assigned to work with one or more students in the self-contained classroom.

(g)(1) A public school shall retain video recorded from a camera placed under this section for at least three months after the date the video was recorded, after which the recording shall be deleted or otherwise made unretrievable.

(2) If a person requests to view a recording under subsection (k) of this section, the public school shall retain the recording from the date of the request until:

(A)(i) Except as provided in §18-20-11(g)(2)(A)(ii) of this code, the person views the recording;

(ii) A person who requests to view a recording shall make himself or herself available for viewing the recording within 30 days after being notified by the public school that the person's request has been granted; and

(B) Any investigation and any administrative or legal proceedings that result from the recording have been completed, including, without limitation, the exhaustion of all appeals.

(h) This section does not:

(1) Waive any immunity from liability of a public school district or employee of a public school district; or

(2) Create any liability for a cause of action against a public school or school district or employee of a public school or school district.

(i) A public school or school district shall not:

(1) Allow regular, continuous, or continual monitoring of video recorded under this section; or

(2) Use video recorded under this section for:

(A) Teacher evaluations; or

(B) Any purpose other than the promotion of the health, wellbeing, and safety of students receiving special

education and related services in a self-contained classroom.

(j) Except as provided under subsections (k) and (l) of this section, a video recording of a student made under this section is confidential and shall not be released or viewed.

(k) Within seven days of receiving a request, a public school or school district shall allow viewing of a video recording by:

(1) A public school or school district employee who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district;

(2) A parent or legal guardian of a student who is involved in an alleged incident that is documented by the video recording and has been reported to the public school or school district;

(3) An employee of a public school or school district as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the public school or school district;

(4) A law-enforcement officer as part of an investigation into an alleged incident that is documented by the video recording and has been reported to the law-enforcement agency; or

(5) The Department of Health and Human Resources as part of a child abuse and neglect investigation: *Provided*, That any access provided to the Department of Health and Human Resources pursuant to this subdivision shall comply with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g.

(l) When a video is under review as part of the investigation of an alleged incident, and the video reveals a student violating a disciplinary code or rule of the school,

which violation is not related to the alleged incident for which the review is occurring, and which violation is not already the subject of a disciplinary action against the student, the student is not subject to disciplinary action by the school for such unrelated violation unless it reveals a separate incident as described in §18-20-11(b)(1) of this code.

(m) It is not a violation of subsection (j) of this section if a contractor or other employee of a public school or school district incidentally views a video recording under this section if the contractor or employee of a public school or school district is performing job duties related to the:

(1) Installation, operation, or maintenance of video equipment; or

(2) Retention of video recordings.

(n) This section does not limit the access of a student's parent or legal guardian to a video recording regarding the student under the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(o) A public school or school district shall:

(1) Take necessary precautions to conceal the identity of a student who appears in a video recording but is not involved in the alleged incident documented by the video recording for which the public school allows viewing under subsection (j) of this section, including, without limitation, blurring the face of the uninvolved student; and

(2) Provide procedures to protect the confidentiality of student records contained in a video recording in accordance with the Family Educational Rights and Privacy Act of 1974, 20 U.S.C. §1232g, or any other law.

(p)(1) Any aggrieved person may appeal to the State Board of Education an action by a public school or school

158 district that the person believes to be in violation of this
159 section.

160 (2) The state board shall grant a hearing on an appeal
161 under this subsection within 45 days of receiving the appeal.

162 (q)(1) A public school or school district may use funds
163 distributed from the Safe Schools Fund created in §18-5-48
164 of this code or any other available funds to meet the
165 requirements of this section.

166 (2) A public school or school district may accept gifts,
167 grants, or donations to meet the requirements of this section.

168 (r) The state board may promulgate a rule in accordance
169 with §29A-3B-1 *et seq.* of this code to clarify the
170 requirements of this section and address any unforeseen
171 issues that might arise relating to the implementation of the
172 requirements of this section.

CHAPTER 112

(Com. Sub. for S. B. 707 - By Senators Rucker, Cline, Maroney, Plymale, Takubo and Stollings)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-11a, relating to making a nursing career pathway available to students statewide; setting forth legislative findings; requiring that a nursing career pathway workgroup be convened; charging the workgroup with developing a career pathway to address the unmet need for nursing assistants, licensed practical nurses, registered nurses, and registered nurses with

a bachelor's degree in nursing; requiring the nursing career pathway to be made available to students statewide; requiring report to the Legislative Oversight Commission on Education Accountability, as requested, but at least annually, on the progress in implementing the career pathway; and requiring consideration of certain specified ideas in establishing the pathway.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2E. HIGH QUALITY EDUCATIONAL PROGRAMS.

§18-2E-11a. Nursing career pathway.

(a) The Legislature finds that:

(1) There are numerous reports relating that the nursing shortage is causing currently employed nurses to be overworked and that hospitals are bringing in travel nurses from other states;

(2) While the recent passage of the Advance Career Education and West Virginia Invests Grant programs legislation would address nursing shortages along with addressing other shortage areas, having a sufficient number of qualified nurses is of such importance to the health of the citizens of the state that additional efforts should be made to ensure that there is an adequate number of nurses to meet the state's health care needs as soon as possible; and

(3) Providing a seamless process for students pursuing careers in nursing from high school through attainment of a nursing credential or degree would assist in ensuring an adequate nursing workforce.

(b) The State Superintendent of Schools, the Chancellor for the Higher Education Policy Commission, and the Chancellor for the Community and Technical College System shall convene the West Virginia Nursing Career Pathway Workgroup consisting of:

(1) Representatives of health care providers that need nurses and could potentially provide clinical space. Due to the importance of health care providers providing clinical space, as many representatives of health care providers as possible, especially the largest health care providers, shall be invited to be members of the workgroup, provide input, and be encouraged to provide clinical space. Invitations to join the workgroup at least shall be extended to the West Virginia Health Care Association and the West Virginia Hospital Association;

(2) A representative of the West Virginia Department of Education;

(3) A representative of the Higher Education Policy Commission;

(4) A representative of the Council for Community and Technical College Education;

(5) Representatives of institutions of higher education in West Virginia;

(6) A representative of the Board for Registered Professional Nurses;

(7) A representative of the Board of Examiners for Licensed Practical Nurses; and

(8) Any other persons that the State Superintendent, the Chancellor for Higher Education, and the Chancellor for Community and Technical College Education determine beneficial.

(c) The West Virginia Nursing Career Pathway Workgroup shall be charged with developing a career pathway to address the unmet need for nursing assistants, licensed practical nurses, registered nurses, and registered nurses with a bachelor's degree in nursing. The nursing program of study will begin in high school and progress through college, providing employment opportunity with

industry partners and pathway re-entry at specified student attainment points: Nursing assistant certification, licensed practical nurse diploma and licensure, registered nurse associate degree and licensure, and bachelor of science in nursing completion. The career pathway shall align affordable, effective, and sustainable secondary to post-secondary nursing programs to increase credential attainment for a broad and diverse student population.

(1) The career pathway shall include participating high school students enrolling in a specified curriculum of college preparatory, career and technical health science courses, or dual college-high school credit courses, as well as participating in career experiences through a health care provider or a work-based learning clinical experience.

(2) Students shall have the opportunity to apply for admission to a practical nursing program at a community and technical college or career and technical education center.

(3) Upon completion of a practical nursing program, students shall have the opportunity to apply for admission to a licensed practical nursing to registered nurse associate degree program.

(4) Upon completion of a licensed practical nursing to registered nurse associate degree program, students then shall have the opportunity to apply for admission to a registered nurse to bachelor of science in nursing program.

(5) The career pathway shall be made available to students statewide beginning with the cohort of students entering ninth grade during the 2021-2022 school year.

(d) The State Superintendent, the Chancellor for Higher Education, the Chancellor for Community and Technical College Education, or any combination thereof, shall report to the Legislative Oversight Commission on Education Accountability, as requested, but at least annually, on the

progress in implementing the career pathway up until such time as the career pathway is fully implemented statewide.

(e) In establishing the nursing career pathway, the State Superintendent, the Chancellor for Higher Education, the Chancellor of Community and Technical College Education, and the workgroup created pursuant to subsection (c) of this section shall consider the following:

(1) If the career pathway is difficult to implement due to nursing programs being at full capacity, the workgroup shall explore the use of online programs currently in existence or the creation of new online programs in overcoming any lack of capacity in the current nursing programs and to make programs more accessible to students; and

(2) The nursing career pathway shall include the use of any available financial assistance in order to minimize, or if possible, eliminate tuition costs for students and their families. This assistance can include, if a student is eligible, the Federal Pell Grant Program, the Higher Education Grant Program, the PROMISE Scholarship Program, the West Virginia Invests Grant Program, and any other grants or scholarships that might be available. Health care providers in need of nurses also shall be encouraged to establish scholarship programs to help cover tuition costs.

CHAPTER 113

(S. B. 723 - By Senators Rucker, Cline, Stollings and Roberts)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-43, relating to requiring Department of Education to analyze statewide data collected on school disciplinary action and, based on the findings of this data, develop a statewide program intended to address the number of disciplinary actions taken by school personnel and county boards; requiring information by subgroups; requiring county board implementation with goal of improving disciplinary outcomes; requiring the Department of Education to prepare a report on the findings and provide a summary of the progress of the statewide and individual county programs; and present these findings to the Legislative Oversight Commission on Education Accountability every two years.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-43. Addressing disciplinary action in West Virginia schools.

(a) The Department of Education shall analyze statewide data collected on school disciplinary action and, based on the findings of this data, develop a statewide program intended to address the number of disciplinary actions taken by school personnel and county school boards against students enrolled in grades K-12. This program will

include information by subgroup, including, but not limited to, race, gender, and disability.

(b) County boards of education shall implement the program outlined in subsection (a) of this section with the ultimate goal of improving disciplinary outcomes.

(c) The Department of Education shall prepare a report on the findings of statewide disciplinary data and, in addition to these findings, provide a summary of the progress of the statewide program and individual county programs, evaluating the extent to which the programs have successfully led to making a positive impact in disciplinary actions in West Virginia school systems. The Department of Education shall present these findings to the Legislative Oversight Commission on Education Accountability every two years starting in the year 2022.

CHAPTER 114

(S. B. 750 - By Senators Rucker and Cline)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§18-2-7f, relating to establishing alternative educational opportunities for elective course credit; setting forth legislative findings; requiring the state board to promulgate a rule requiring county boards to develop alternative educational opportunities policies; requiring county boards to adopt alternative educational opportunities policies and setting forth parameters therefore; authorizing county boards to approve or deny alternative educational programs and to audit the same; and requiring the Department of Education to report to the Legislative Oversight Commission on Education Accountability after three years of implementation.

† Redesignated

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

†§18-2-7f. Alternative educational opportunities for elective course credit.

1 (a) The Legislature finds and declares that:

2 (1) Programs outside of the traditional classroom have
3 educational value;

4 (2) Many entities, including, but not limited to,
5 nonprofit organizations, afterschool programs, businesses,
6 and trade associations, may have an interest in offering
7 programs outside of the traditional classroom that are
8 attractive to students and contain educational value;

9 (3) Learning opportunities that are designed to address
10 the interests and aptitudes of the individual student will
11 enable students to discover, develop, and apply their
12 individual talents to realize their full potential;

13 (4) Policies that allow for educational opportunities
14 outside of the traditional classroom exist in other states;

15 (5) Providing credit for alternative educational
16 opportunities will enrich the learning environment of
17 students and develop well-rounded individuals ready for a
18 life of learning, productive work, and community
19 involvement.

20 (b) The State Board of Education shall promulgate a rule
21 requiring county boards of education to develop an
22 alternative educational opportunities policy that provides
23 students involved in educational opportunities outside of the
24 traditional classroom to receive elective course credit.

25 (c) The county boards of education shall adopt an
26 alternative educational opportunities policy that recognizes
27 learning opportunities outside of the traditional classroom
28 and grants elective course credit. The policy shall:

† Redesignated

(1) Provide for an application process for entities to submit proposals for alternative educational programs that will qualify for elective course credit;

(2) Define which entities are eligible to submit applications for alternative educational programs: *Provided*, That entities which are deemed eligible shall be broadly defined and shall include, but not be limited to:

(A) Nonprofit organizations;

(B) Businesses with established locations in the state;

(C) Trade associations;

(D) Parents of students involved in programs that may otherwise qualify as an alternative educational program;

(E) Teachers involved in programs outside of the traditional classroom; and

(F) School personnel involved in programs outside of the traditional classroom;

(3) Provide for the criteria to be used to evaluate the alternative educational program;

(4) Describe any communication and collaboration needed between the local school, county board, or State Board of Education to implement alternative educational opportunities;

(5) Place requirements on the entity, such as background checks for key personnel, and minimum accountability standards; and

(6) Provide a process for student credit transfer.

(d) The county boards of education shall have the authority to approve or deny an application for an alternative educational program: *Provided*, That if the application is denied, the county board shall provide a

detailed explanation of the reasons for its denial and suggest ways to improve the application that will assist its more favorable view by the county board.

(e) The county boards of education shall have the authority to audit approved alternative educational programs at any time. If the audit results in findings that an approved program is not meeting the provisions of this section or the policy outlined in subsection (c) of this section, then the county board may disqualify the program immediately.

(f) The Department of Education shall prepare a report of data analysis and an overview of the alternative learning opportunities to the Legislative Oversight Commission on Education Accountability after three years of implementation.

CHAPTER 115

(S. B. 842 - By Senators Azinger, Baldwin, Boley, Cline, Pitsenbarger, Plymale, Roberts, Romano, Stollings, Trump, Unger, Weld and Rucker)

[Passed March 6, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-3-13, relating to requiring the State Superintendent of Schools to immediately establish a Behavior Interventionist Pilot Program in limited number of county school districts for the duration of three years; making findings; setting forth criteria to be used in the selection of the county school districts; allowing the county school districts to immediately create a new behavior interventionist position; requiring the county

superintendent to convene an advisory committee consisting of certain school personnel and the education organizations to advise on qualifications and hiring; requiring behavior interventionists to be designated by the county board as either a professional person or a service person; setting a minimum pay grade in case of service person position; requiring the designated county school districts to establish the qualifications and training requirements; and requiring annual report and final report with certain information to the Legislative Oversight Commission on Education Accountability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. STATE SUPERINTENDENT OF SCHOOLS.

§18-3-13. Behavior Interventionist Pilot Program.

(a) The Legislature finds that:

(1) Behavior problems of special education students can be better addressed by personnel who specialize in addressing student behavior issues;

(2) With the advent of the opioid crisis in recent years in West Virginia, behavior problems in the state's elementary and secondary education system have increased significantly;

(3) Behavior problems impact not just the student who is misbehaving, but also other students at the school;

(4) The state should explore various ways to address this issue;

(5) One such method of successfully addressing behavioral problems could be through the use of behavior interventionists; and

(6) A behavior interventionist who is trained to address student behavior issues at a school could free classroom teachers from having to address behavior issues and allow

them to focus exclusively on teaching students which could result in academic achievement increases for other students in the classroom.

(b) The state superintendent shall immediately establish a Behavior Interventionist Pilot Program to be implemented in not less than two nor more than 10 county school districts for the duration of three years. In selecting the county school districts, the state superintendent shall select districts meeting the following criteria:

(1) The districts shall have among the highest number in the state of students with an individual education program;

(2) The districts designated by the state superintendent for the pilot program shall have schools that have a significant number of students enrolled with behavior issues; and

(3) The districts shall have the resources to hire and train personnel who specialize in addressing students with behavior issues.

(c) The county school districts designated for the pilot programs pursuant to this section may immediately create a new employment position, entitled "behavior interventionist", which is a school-based position that specializes in addressing behavior issues at a school. Once the counties are chosen, the county superintendent shall convene an advisory committee consisting of principals, teachers, classroom aides, and the education organizations to advise the county superintendent and county board on qualifications and hiring. Behavior interventionists shall be designated by the county board as either a professional person or a service person. If the behavior interventionist is designated as a service person, he or she shall be assigned a pay grade D, at a minimum, for the purpose of the salary schedule set forth in §18A-4-8a of this code. The county school districts designated for the pilot programs shall

establish the qualifications for personnel employed in the behavior interventionist position and shall establish the initial and continuing training requirements for the personnel employed in the position.

(d) Annually, for the duration of the pilot programs and once after the conclusion of the pilot programs, the county superintendents of the county school districts designated for the pilot programs shall report to the Legislative Oversight Commission on Education Accountability on:

(1) Progress toward and methods of implementation of the pilot programs, including the required qualifications and training for personnel employed in the behavior interventionist position;

(2) Indicators of the success of the pilot programs, which may include reductions in disciplinary actions and increases in student achievement at the schools in which the behavior interventionists are assigned;

(3) Their recommendation on whether the pilot programs should continue beyond the current duration of the pilot programs; and

(4) Their recommendation on whether the pilot programs should be replicated in other school districts that have a high percentage of students with an individual education program, that have schools with significant student behavior problems, or both, and if so, how the pilot programs could best be replicated based on the experience and knowledge gained from the pilot programs established pursuant to this section.

CHAPTER 116

(Com. Sub. for H. B. 3127 - By Delegates Ellington, Porterfield, Kessinger, Fast, Wilson, Jennings and Worrell)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the Secondary School Activities Commission and participation by home schooled students in extracurricular activities; setting forth eligibility requirements for home schooled students to participate in extracurricular activities at member schools under certain circumstances; providing that member-to-member transfer protocols apply and providing that reasonable fees may be charged.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

*§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.

The county boards of education shall exercise the control, supervision and regulation of all interscholastic athletic events, and other extracurricular activities of the students in public secondary schools, and of those schools

*NOTE: This section was also amended by H. B. 4925 (Chapter 123), which passed subsequent to this act.

of their respective counties. The county board of education may delegate control, supervision and regulation of interscholastic athletic events and band activities to the West Virginia Secondary School Activities Commission.

The West Virginia Secondary School Activities Commission is composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to the commission. The West Virginia Secondary School Activities Commission may exercise the control, supervision and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities Commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all instances be subject to the prior approval of the state board. The West Virginia Secondary School Activities Commission, may, with the consent of the State Board of Education, incorporate under the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock corporation under the provisions of chapter 31 of this code. County boards of education may expend moneys for and pay dues to the West Virginia Secondary School Activities Commission, and all moneys paid to the commission, as well as moneys derived from any contest or other event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.*, of this code, and the funds of the commission are subject to an annual audit by the State Tax Commissioner.

The West Virginia Secondary School Activities Commission shall promulgate reasonable rules providing

for the control, supervision and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools as elect to delegate to the commission control, supervision and regulation, upon the same terms and conditions, subject to the same rules and requirements and upon the payment of the same fees and charges as those provided for public secondary schools. Any such private or parochial secondary school shall receive any monetary or other benefits in the same manner and in the same proportion as any public secondary school.

Notwithstanding any other provision of this section or the commission's rules, the commission shall consider eligible for participation in interscholastic athletic events and other extracurricular activities of secondary schools a student who is receiving home instruction pursuant to §18-8-1(c) of this code and who:

(1) Has demonstrated satisfactory evidence of academic progress for one year in compliance with the provisions of that subsection: *Provided*, That the student's average test results are within or above the fourth stanine in all subject areas;

(2) Is enrolled in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policy of the county board in which the home-schooled student lives and the State Board;

(3) Has not reached the age of 19 by August 1 of the current school year;

(4) Is an amateur who receives no compensation, but participates solely for the educational, physical, mental and social benefits of the activity;

(5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School Activities Commission

and the county board in which the home-schooled student lives; and

(6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission governing awards, all-star games, parental consents, physical examinations and vaccinations applicable to all high school athletes.

Eligibility is limited to participation in interscholastic athletic events and other extracurricular activities at the public secondary school serving the attendance zone in which the student lives: *Provided*, That home-schooled students who leave a member school during the school year are subject to the same transfer protocols that apply to member-to-member transfers. Reasonable fees may be charged to the student to cover the costs of participation in interscholastic athletic events and other extracurricular activities.

CHAPTER 117

(Com. Sub. for H. B. 4069 - By Delegates Howell, D. Kelly, Sypolt, Pack, Atkinson, Hill, Butler, Boggs, Rowan and Summers)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §18-33-1, §18-33-2, §18-33-3, §18-33-4, §18-33-5, §18-33-6, §18-33-7, and §18-33-8, all relating to creating the West Virginia Student Religious Liberties Act; providing that public school district shall not discriminate against students or parents on the basis of a religious viewpoint or religious expression; providing that

students may express their beliefs about religion in homework, artwork and other written assignments without being penalized or rewarded; providing that students in public schools may pray or engage in religious activities or religious expression before, during or after the school day; setting forth how a school district is to treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject; allowing students to express their beliefs about religion in assignments free from discrimination based on the religious content; allowing students to organize prayer groups, religious clubs, and religious gatherings to the same extent that students are permitted to organize other noncurricular student activities and groups; allowing public school students to wear certain items that display religious messages or religious symbols in the same manner and to the same extent that other types of those items that display messages or symbols are permitted; providing that the act may not require participation in religious activity or violate a person's constitutional rights; ensuring that public schools may still maintain order and discipline, protect the safety of students, employees, and visitors of the public school, and adopt and enforce policies and procedures; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 33. STUDENT RELIGIOUS LIBERTIES.

§18-33-1. West Virginia Student Religious Liberties Act.

1 This article shall be known and may be cited as the
2 "West Virginia Student Religious Liberties Act."

§18-33-2. Student expression.

1 A public school district shall not discriminate against
2 students or parents on the basis of a religious viewpoint or
3 religious expression. A school district shall treat a student's
4 voluntary expression of a religious viewpoint, if any, on an
5 otherwise permissible subject in the same manner the
6 district treats a student's voluntary expression of a secular

or other viewpoint on an otherwise permissible subject and may not discriminate against the student based on a religious viewpoint expressed by the student on an otherwise permissible subject.

§18-33-3. Religious expression in class assignments.

As more fully set forth in §18-33-5(b) of this code, students may express their beliefs about religion in homework, artwork, and other written and oral assignments free from discrimination and may not be penalized or rewarded on account of the religious content of their work: *Provided*, That a student may express disagreement and offer opposing views regarding any issue based on religious beliefs, but may not be excused from answering a test question or other assignment correctly because the answer to that question that was provided in course content is counter to the religious beliefs of the student.

§18-33-4. Freedom to organize and advertise religious groups and activities.

As more fully set forth in §18-33-5(c) and §18-33-5(d) of this code, students in public schools may pray or engage in religious activities or religious expression before, during, and after the school day in the same manner and to the same extent that students may engage in nonreligious activities or expression.

§18-33-5. Student expression of religious viewpoints; religious expression in class assignments; freedom to organize and advertise religious groups and activities; displaying religious messages or symbols.

(a) *Student expression of religious viewpoints.* — The school district shall treat a student's voluntary expression of a religious viewpoint, if any, on an otherwise permissible subject in the same manner the district treats a student's voluntary expression of a secular or other viewpoint on an otherwise permissible subject and may not discriminate

7 against the student based on a religious viewpoint expressed
8 by the student on an otherwise permissible subject.

9 (b) *Religious expression in class assignments.* —
10 Students may express their beliefs about religion in
11 homework, artwork, and other written and oral assignments
12 free from discrimination based on the religious content of
13 the students' submissions. Homework and classroom work
14 shall be judged by ordinary academic standards of substance
15 and relevance and against other legitimate pedagogical
16 concerns identified by the school. Students may not be
17 penalized or rewarded on account of religious content. If a
18 teacher's assignment involves writing a poem, the work of
19 a student who submits a poem in the form of a prayer (for
20 example, a psalm) should be judged on the basis of
21 academic standards, including literary quality, and not
22 penalized or rewarded on account of its religious content.

23 (c) *Freedom to organize and advertise religious groups*
24 *and activities.* — Students may organize prayer groups,
25 religious clubs, "see you at the pole" gatherings, and other
26 religious gatherings before, during, and after school to the
27 same extent that students are permitted to organize other
28 noncurricular student activities and groups. Religious
29 groups must be given the same access to school facilities for
30 assembling as is given to other noncurricular groups,
31 without discrimination based on the religious content of the
32 group's expression. If student groups that meet for
33 nonreligious activities are permitted to advertise or
34 announce the groups' meetings, for example, by advertising
35 in a student newspaper, putting up posters, making
36 announcements on a student activities bulletin board or
37 public address system, religious groups must also be
38 permitted to advertise or announce group meetings.

39 (d) *Displaying religious messages or symbols.* —
40 Students in public schools may wear clothing, accessories,
41 and jewelry that display religious messages or religious
42 symbols in the same manner and to the same extent that

other types of clothing, accessories, and jewelry that display messages or symbols are permitted.

§18-33-6. Certain acts restricted.

This act may not be construed to authorize this state or any of its political subdivisions to do either of the following:

(1) Require any person to participate in prayer or in any other religious activity; or

(2) Violate the constitutional rights of any person.

§18-33-7. Certain authority may not be limited.

This act shall not be construed to limit the authority of any public school to do any of the following:

(1) Maintain order and discipline on the campus of the public school in a content- and viewpoint-neutral manner;

(2) Protect the safety of students, employees, and visitors of the public school; and

(3) Adopt and enforce policies and procedures regarding student speech at school, provided that the policies and procedures do not violate the rights of students as guaranteed by the United States and West Virginia constitutions and laws.

§18-33-8. First school year affected.

This act shall be in force beginning with the 2020-2021 school year.

CHAPTER 118

(Com. Sub. for H. B. 4165 - By Delegates Hanna, Higginbotham, Jennings, Bibby and Waxman)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-8b, relating to public education; establishing the West Virginia Remembers Program; and authorizing the State Board of Education to promulgate a rule providing for maintaining of lists by county boards of veteran volunteers to speak in the public schools.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-8b. West Virginia Remembers Program; rulemaking.

(a) There is hereby created the "West Virginia Remembers Program" whereby children in the public schools may learn about military service, patriotism and courage in the defense of our country from veterans who volunteer to share their experiences in the educational setting. Participation in the program by classroom teachers is voluntary and may not be considered a course requirement or mandatory in any other way.

(b) The state board may promulgate a rule in accordance with §29A-3B-1 *et seq.* of this code to implement this section with regard to solicitation of speakers from veterans' groups and maintenance of lists by county boards of available speakers.

CHAPTER 119

(Com. Sub. for H. B. 4497 - By Delegates Mandt, Atkinson, Criss, Hill, Lovejoy, Miller, Linville, Worrell, Hornbuckle, Rohrbach and Ellington)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-25c, relating to requiring the West Virginia Secondary School Activities Commission to require that an automated external defibrillator device, as well as a posted emergency action plan, be present on the school or event grounds during the duration of all athletic events and practices under the control, supervision and regulation of the commission, and that appropriate school sports personnel be trained in the use of the device; requiring that rules be proposed for promulgation by the state board of education; providing that no individual or entity be held liable for civil damages when the individual or entity in good faith attempted to comply with certain requirements; and naming the law The Alex Miller Law.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-25c. Defibrillator required at certain events.

(a) In memory of Alex Miller, a Roane County football player who collapsed and died during a school football game, this law shall be known as The Alex Miller Law.

(b) By the 2021-2022 school year, the West Virginia Secondary School Activities Commission shall require that an automated external defibrillator device, as well as a

posted emergency action plan, be present on the school or event grounds during the duration of all athletic events and practices under the control, supervision, and regulation of the commission, and that appropriate school sports personnel be trained in the use of the device.

(c) The commission shall propose rules for promulgation by the State Board in accordance with §29A-3B-1 *et seq.* of this code to implement the provisions of this section including proximity.

(d) No individual, school, county board of education, or other entity shall be held liable for civil damages when such individual, school, county board of education, or other entity in good faith attempted to comply with the requirements of this section or rules promulgated pursuant thereto.

CHAPTER 120

(H. B. 4519 - By Delegates Espinosa, Hanna, Higginbotham, Ellington and Mandt)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-2D-8; and to amend said code by adding thereto a new section, designated §18-2-7e, all relating to partnerships for improving student engagement and preparation in the changing world of work; establishing a summer youth intern pilot program within Department of Commerce; authorizing diverse stakeholder working group and external champions for development and support of future-ready graduate profile for success in occupations and entrepreneurship; suggesting action steps; and suggesting roles for local school improvement councils.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2D. WEST VIRGINIA GUARANTEED WORK FORCE PROGRAM.

§5B-2D-8. Summer youth intern pilot program.

A summer youth intern pilot program is established within the Department of Commerce to provide high school students with internship opportunities that allow these youths to explore and prepare for high-demand careers, gain work experience, and develop the life characteristics necessary for success in occupations and entrepreneurship. The Department of Commerce shall work with employers, nonprofit organizations, and educational institutions to provide for the placement of youth in internships primarily in high-demand career fields with a prioritization of offering equitable opportunities for all students. Subject to an appropriation by the Legislature for this purpose, the Department of Commerce may award grants to assist employers with costs of the summer youth intern pilot projects on a competitive basis subject to the following:

(1) The Department of Commerce shall annually issue a request for proposals to the public, specifying the expectations, requirements, and qualifications for the summer youth intern pilot program grant, including, but not limited to, the provision of facilities, programming, staffing, and outcomes; and

(2) The Department of Commerce shall give full and fair consideration to each proposal submitted under subdivision (1) of this subsection and shall award grants after considering, at a minimum, the following:

(A) The bidder's history and experience in the community;

(B) The capacity to serve a substantial number of youths;

(C) The suitability of the available facilities;

(D) The bidder's contacts and partnerships in the community that can be leveraged to maximize opportunity for project participants; and

(E) The capacity to provide employability skills, including but not limited to training relating to soft skills, financial literacy, and career development.

CHAPTER 18. EDUCATION.

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7e. Business and community partnerships for improving student engagement and preparation; roles of school district leadership and local school improvement councils; future-ready graduate profile.

(a) The purpose of this section is to complement the delivery of programs in workforce preparation set forth in §18-2-7d of this code by providing a framework for schools, school systems, and communities to:

(1) Engage their local stakeholders in developing a shared vision of the knowledge, college, and career skills, and life characteristics that a future-ready graduate of their school system will need for success in occupations and entrepreneurship in the changing world of work;

(2) Build strategic partnerships that instill within students an awareness of the changing world of work, build an appreciation of the relevancy of academic subject matter for future success, nurture the whole child, and promote student acquisition of the knowledge, skills, and characteristics needed for success; and

(3) Provide an opportunity for students to gain valuable experience and skills in a workplace environment while still exploring their interests and abilities.

(b) A county board may establish a diverse stakeholder working group which may include, but is not limited, to educators from both public and higher education, businesses and business organizations, associations and authorities, families, students, community leaders, and any other stakeholders they may choose. Working with the school system leadership, the purpose of the stakeholder working group is to assist in the development of a succinct profile of a future-ready graduate of the school system containing the knowledge, college and career skills, and life characteristics that they agree are needed for success in occupations and entrepreneurship in the changing world of work. The school system leadership may include the stakeholders in creating visibility and support for their unique, shared vision of a future-ready graduate and in setting the stage for planning and action steps that may be necessary to prepare future-ready graduates. The school system leadership may engage external champions who are committed to the shared vision of a future-ready graduate to help generate community awareness and support for the project and to build strategic partnerships for program implementation. The action steps should include clearly articulating the profile of the future-ready graduate to participating schools, parents and the community, nurturing the whole child, and beginning the development of foundational knowledge, skills, and characteristics beginning in the early years of school, and establishing multiple paths toward college and career readiness for students that include internships, externships, and credentialing.

(c) Local school improvement councils can play a key role in the implementation of programs at the age appropriate grade levels by engaging the school's business and community partners, including two-year and four-year institutions of higher education, to help develop within

students an awareness of the changing world of work and an appreciation of the relevancy of academic subject matter for success in various occupations and entrepreneurship. This may include, but is not limited to, presentations by guest speakers, demonstrations, hands-on creative projects, virtual or on-site visits to work places, and internships, externships, and credentialing appropriate for the grade levels of the school to reinforce the competencies students will need for success. Local school improvement councils may exercise their authority pursuant to §18-5A-3 of this code to seek waivers from rules, policies, interpretations, and statutes for plan implementation.

CHAPTER 121

(Com. Sub. for H. B. 4780 - By Delegates Bartlett, D. Jeffries, Fast, P. Martin, Dean, C. Martin, Porterfield, Waxman, Foster, Butler and Rodighiero)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2-9a, relating to allowing county boards of education to offer students in grade nine or above an elective social studies course on Hebrew Scriptures, Old Testament of the Bible, New Testament of the Bible, or Hebrew Scriptures and New Testament of the Bible; setting forth the purposes of the course; permitting students to use a translation of their choice; requiring county board of education to submit to the West Virginia Department of Education the course standards, including the teacher qualifications and required professional development; and imposing requirements applicable to the course, the county board of education, and the State Board of Education.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-9a. Elective courses of instruction on the Bible.

(a) County boards of education may offer to students in grade nine or above:

(1) An elective social studies course on the Hebrew Scriptures, Old Testament of the Bible;

(2) An elective social studies course on the New Testament of the Bible; or

(3) An elective social studies course on the Hebrew Scriptures and the New Testament of the Bible.

(b) The purpose of a course under this section is to:

(1) Teach students knowledge of biblical content, characters, poetry, and narratives that are prerequisites to understanding the development of American society and culture, including literature, art, music, mores, oratory, and public policy; and

(2) Familiarize students with, as applicable:

(A) The contents of the Hebrew Scriptures or New Testament;

(B) The history of the Hebrew Scriptures or New Testament;

(C) The literary style and structure of the Hebrew Scriptures or New Testament; and

(D) The influence of the Hebrew Scriptures or New Testament on law, history, government, literature, art, music, customs, morals, values, and culture.

(c) A student may not be required to use a specific translation as the sole text of the Hebrew Scriptures or New

Testament and may use as the basic textbook a different translation of the Hebrew Scriptures or New Testament from that chosen by the county board or school.

(d) The county board of education shall submit to the West Virginia Department of Education the course standards for any elective to be offered pursuant to subsection (a), of this section including the teacher qualifications and required professional development.

(e) A course offered under this section shall follow applicable law and all federal and state guidelines in maintaining religious neutrality and accommodating the diverse religious views, traditions, and perspectives of students in the school. A course under this section may not endorse, favor, promote, disfavor, or show hostility toward, any particular religion or nonreligious faith or religious perspective. Any county board offering a course under this section, shall not violate any provision of the United States Constitution or federal law, the West Virginia Constitution or any state law, any administrative regulations of the United States Department of Education, or any rule of the state board. The state board shall provide guidance to the county boards on complying with the requirements of this subsection.

CHAPTER 122

(H. B. 4790 - By Delegates Ellington, Higginbotham, Atkinson, Hanna, Toney, Waxman, Hornbuckle, Campbell, Lavender-Bowe, R. Thompson and Zukoff)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18-2-7d of the Code of West Virginia, 1931, as amended, relating to Career Technical Education for middle school students; broadening workforce preparedness information to be communicated to students to include the knowledge, skills and characteristics needed for success in occupations and entrepreneurship; integration with career exploration beginning in middle school grades; and requiring county boards to provide elective Career Technical Education courses for middle school students beginning 2022-2023 school year.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

§18-2-7d. Program in workforce preparedness.

(a) The Legislature finds that, in addition to specialized skills relating to specific professions and trades, students will be better prepared to enter the workforce and succeed in their chosen fields of employment or education by having the opportunity to participate in training related to general workforce preparedness, productive workplace skills and processes, time management and efficiency, and teamwork and leadership competencies in the workplace. The Legislature further finds that employers in the state are the

best source for articulating the general skills and attributes they, in common, seek in future employees and that employers may collaborate in the development of a graduate profile incorporating these skills and attributes.

(b) The state board shall promulgate a rule pursuant to §29A-3B-1 *et seq.* of this code that adopts a program of instruction in general workforce and career preparedness for all students. The program of instruction shall include guidelines for schools working through their local school improvement councils and business partners to communicate to students the knowledge, college and career skills and life characteristics needed for success in occupations and entrepreneurship in the changing world of work. At the middle school level, the program may be integrated with comprehensive career exploration which also may include, but is not limited to, Career Technical Education foundational courses, stand-alone Career Exploration courses and mini courses, field trips, guest speakers, and career mentors as provided in the state board rule.

(c) Beginning with the school year 2022-2023, county boards of education shall provide elective Career Technical Education courses for middle school students that may include, but are not limited to, foundational Career Technical Education courses, Career Technical Education courses developed with a focus on high need occupational areas within the area or region, agriculture, industrial arts and family and consumer sciences.

CHAPTER 123

(Com. Sub. for H. B. 4925 - By Delegates Kessinger, Hornbuckle, Maynard and Campbell)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-2-25 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Secondary School Activities Commission; providing for participation by home schooled students in extracurricular activities; setting forth eligibility requirements for home schooled students to participate in extracurricular activities at member schools under certain circumstances; providing that member-to-member transfer protocols apply and providing that reasonable fees may be charged; and requiring the West Virginia Secondary School Activities Commission to recognize certain preparatory athletic programs as nonparticipating members of the commission solely for the purpose of competing on the national level.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BOARD OF EDUCATION.

*§18-2-25. Authority of county boards to regulate athletic and other extracurricular activities of secondary schools; delegation of authority to West Virginia Secondary School Activities Commission; authority of commission; approval of rules by state board; incorporation; funds; participation by private and parochial schools and by home-schooled students.

1 (a) The county boards of education shall exercise the
2 control, supervision, and regulation of all interscholastic

*NOTE: This section was also amended by H. B. 3127 (Chapter 116), which passed prior to this act.

athletic events, and other extracurricular activities of the students in public secondary schools, and of those schools of their respective counties. The county board of education may delegate control, supervision, and regulation of interscholastic athletic events and band activities to the West Virginia Secondary School Activities Commission.

(b) The West Virginia Secondary School Activities Commission is composed of the principals, or their representatives, of those secondary schools whose county boards of education have certified in writing to the State Superintendent of Schools that they have elected to delegate the control, supervision, and regulation of their interscholastic athletic events and band activities of the students in the public secondary schools in their respective counties to the commission. The West Virginia Secondary School Activities Commission may exercise the control, supervision, and regulation of interscholastic athletic events and band activities of secondary schools, delegated to it pursuant to this section. The rules of the West Virginia Secondary School Activities Commission shall contain a provision for a proper review procedure and review board and be promulgated in accordance with the provisions of chapter 29A of this code, but shall, in all instances, be subject to the prior approval of the state board. The West Virginia Secondary School Activities Commission, may, with the consent of the State Board of Education, incorporate under the name of West Virginia Secondary School Activities Commission, Inc., as a nonprofit, nonstock corporation under the provisions of chapter 31 of this code. County boards of education may expend moneys for and pay dues to the West Virginia Secondary School Activities Commission, and all moneys paid to the commission, as well as moneys derived from any contest or other event sponsored by the commission, are quasi-public funds as defined in §18-5-1 *et seq.* of this code, and the funds of the commission are subject to an annual audit by the State Tax Commissioner.

(c) The West Virginia Secondary School Activities Commission shall promulgate reasonable rules providing for the control, supervision, and regulation of the interscholastic athletic events and other extracurricular activities of private and parochial secondary schools as elect to delegate to the commission control, supervision, and regulation, upon the same terms and conditions, subject to the same rules and requirements and upon the payment of the same fees and charges as those provided for public secondary schools. Any such private or parochial secondary school shall receive any monetary or other benefits in the same manner and in the same proportion as any public secondary school.

(d) Notwithstanding any other provision of this section, or the commission's rules, the commission shall consider eligible for participation in interscholastic athletic events and other extracurricular activities of secondary schools a student who is receiving home instruction pursuant to §18-8-1(c) of this code and who:

(1) Has demonstrated satisfactory evidence of academic progress for one year in compliance with the provisions of that subsection: *Provided*, That the student's average test results are within or above the fourth stanine in all subject areas;

(2) Is enrolled in at least one virtual instructional course per semester, consistent with the applicable virtual instruction policy of the county board in which the home-schooled student lives and the State Board;

(3) Has not reached the age of 19 by August 1 of the current school year;

(4) Is an amateur who receives no compensation but participates solely for the educational, physical, mental and social benefits of the activity;

(5) Agrees to comply with all disciplinary rules of the West Virginia Secondary School Activities Commission and the county board in which the home-schooled student lives; and

(6) Agrees to obey all rules of the West Virginia Secondary School Activities Commission governing awards, all-star games, parental consents, physical examinations, and vaccinations applicable to all high school athletes.

Eligibility is limited to participation in interscholastic athletic events and other extracurricular activities at the public secondary school serving the attendance zone in which the student lives: *Provided*, That home-schooled students who leave a member school during the school year are subject to the same transfer protocols that apply to member-to-member transfers. Reasonable fees may be charged to the student to cover the costs of participation in interscholastic athletic events and other extracurricular activities.

(e) The West Virginia Secondary School Activities Commission shall recognize preparatory athletic programs, whose participants attend a secondary school in West Virginia for academic instruction, as nonparticipating members of the commission solely for the purpose of competing on the national level: *Provided*, That the preparatory athletic program shall pay the same fees as member schools. Such recognition does not entitle the preparatory athletic program to compete against a member school during the regular season or in any commission state championship events. The commission may promulgate an emergency rule pursuant to subsection (b) of this section, if necessary, to carry out the intent of this subsection.

CHAPTER 124

(Com. Sub. for S. B. 94 - By Senators Trump, Weld, Azinger, Baldwin, Beach, Clements, Cline, Hardesty, Jeffries, Lindsay, Maynard, Pitsenbarger, Romano, Rucker, Smith, Takubo, Woelfel, Hamilton, Stollings, Ihlenfeld and Sypolt)

[Passed January 24, 2020; in effect from passage.]
[Approved by the Governor on February 3, 2020.]

AN ACT to amend and reenact §3-3-1, §3-3-2, §3-3-2b, §3-3-4, §3-3-5, and §3-3-6 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §3-3-1a, all relating generally to absentee voting; clarifying that voters with disabilities prevented from voting in person may vote by mail-in absentee ballot; providing that voters with physical disabilities may vote by electronic absentee ballot; clarifying that certain overseas military members and citizens may vote by electronic absentee ballot; defining terms; providing that a voter with a physical disability may electronically submit an application to vote absentee; establishing that a voter may be on the special absentee voting list while the voter has a physical disability; providing that the information collected in the application to be placed on the special absentee voting list include whether a voter with a physical disability requests an electronic absentee ballot; clarifying that a voter with a physical disability can receive assistance to vote in certain circumstances; establishing requirements and deadlines for transmission, submission, and acceptance of electronic absentee ballots; and updating obsolete terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot during the period of early voting in person.

(b) Registered voters and other qualified voters in the county are authorized to vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Disability, illness, injury, or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention: *Provided*, That the underlying conviction is not for a crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery in an election;

(2) Any voter who is absent from the county throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university, or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including

members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty, and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States;

(4) Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because of:

(A) Serving as an elected or appointed federal or state officer; or

(B) Serving in any other documented employment assignment of specific duration of four years or less;

(5) Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability; and

(6) Any voter who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code.

(c) Registered voters and other qualified voters in the county are authorized to vote an electronic absentee ballot in the following circumstances:

(1) The voter has a physical disability, as defined in §3-3-1a of this code; or

(2) The voter is absent from the county throughout the period and available hours for voting in person and is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, spouses and dependents of those members on active duty, and persons who reside outside the

United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States.

(d) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than 30 days;

(3) Any voter who becomes confined, on or after the seventh day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: *Provided*, That the county clerk may require a written confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse that the voter meets the criteria of this subdivision before permitting such voter to vote an emergency absentee ballot; and

(4) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

§3-3-1a. Definitions.

For the purposes of this article, the following terms have the following definitions:

(1) "Disability" means a physical or mental impairment that substantially limits one or more major life activities.

(2) "Physical disability" means a physical impairment that substantially limits one or more major life activities and renders a person unable to vote in person, at the polls, without assistance.

§3-3-2. Authority to conduct absentee voting; absentee voting application; form.

(a) Absentee voting is to be supervised and conducted by the proper official for the political division in which the election is held, in conjunction with the ballot commissioners appointed from each political party, as follows:

(1) For any election held throughout the county, within a political subdivision or territory other than a municipality, or within a municipality when the municipal election is conducted in conjunction with a county election, the clerk of the county commission; or

(2) The municipal recorder or other officer authorized by charter or ordinance provisions to conduct absentee voting, for any election held entirely within the municipality, or in the case of annexation elections, within the area affected. The terms "clerk" or "clerk of the county commission" or "official designated to supervise and conduct absentee voting" used elsewhere in this article means municipal recorder or other officer in the case of municipal elections.

(b) A person authorized and desiring to vote a mail-in absentee ballot or an electronic absentee ballot in any primary, general, or special election is to make application in the proper form to the proper official as follows:

(1) The completed application is to be on a form prescribed by the Secretary of State and is to contain the name, date of birth, and political affiliation of the voter,

residence address within the county, the address to which the ballot is to be mailed, the authorized reason, if any, for which the absentee ballot is requested and, if the reason is illness or hospitalization, the name and telephone number of the attending physician, the signature of the voter to a declaration made under the penalties for false swearing as provided in §3-3-9 of this code that the statements and declarations contained in the application are true, any additional information which the voter is required to supply, any affidavit which may be required, and an indication as to whether it is an application for voting in person, by mail, or electronically;

(2) For any person authorized to vote an absentee ballot under the provisions of 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the completed application may be on the federal postcard application for absentee ballot form issued under authority of that act, submitted by mail or electronically; and

(3) For any voter with a physical disability, the completed application may be submitted by mail or electronically, in a form prescribed by the Secretary of State;

(4) For any person unable to obtain the official form for absentee balloting at a reasonable time before the deadline by which an application for an absentee ballot is to be received by the proper official, the completed application may be in a form set out by the voter, containing all information that would otherwise be required on the appropriate application and the signature of the voter requesting the ballot; or

(5) For any person authorized to vote an absentee ballot who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code, application may be made to the program manager within the office of the Secretary of State to vote a mail-in absentee ballot. The

program manager will notify the designated county contact to coordinate the application and the provision of an absentee ballot to the program participant.

§3-3-2b. Special absentee voting list.

(a) Any person who is registered and otherwise qualified to vote and who is physically disabled and unable to vote in person at the polls in an election may apply to the official designated to supervise and conduct absentee voting for placement on the special absentee voting list.

(b) Any person who is registered and otherwise qualified to vote and who is participating in the Address Confidentiality Program, as established by §48-28A-103 of this code, may apply to the program manager within the office of the Secretary of State for placement on the special absentee voting list. The program manager will notify the designated county contact to coordinate the provision of an absentee ballot to the program participant.

(c) The application is to be on a form prescribed by the Secretary of State which is to include:

(1) The voter's name and signature;

(2) The voter's residence address, unless the applicant is a participant in the Address Confidentiality Program as established by §48-28A-103 of this code;

(3) (A) A statement that the voter has a physical disability and would be unable to vote in person at the polls in any election, a description of the nature of that disability, and a statement signed by a physician to that effect; or

(B) A statement that the voter is a program participant in the Address Confidentiality Program; and

(4) If the voter has a physical disability, whether the voter requests a mail-in absentee ballot or an electronic absentee ballot.

(d) Upon receipt of a properly completed application, the official designated to supervise and conduct absentee voting shall enter the name on the special absentee voting list which is to be maintained in a secure and permanent record. The person's name will remain active on the list until: (1) The person requests in writing that his or her name be removed; (2) the person is no longer a resident of the county, is purged from the voter registration books, or otherwise becomes ineligible to vote; (3) a ballot mailed to the address provided on the application is returned undeliverable by the United States Postal Service; (4) the person no longer has a physical disability; (5) the person dies; or (6) in the case of an Address Confidentiality Program participant, the person withdraws or is removed from that program.

(e) The official designated to supervise and conduct absentee voting shall, not later than 46 days before each election:

(1) Deliver an absentee ballot by mail to each voter active on the special absentee voting list due to a physical disability who requested a mail-in absentee ballot on the application; and

(2) Electronically transmit an absentee ballot to each voter on the special absentee voting list due to a physical disability who requested an electronic absentee ballot on the application.

(f) The Address Confidentiality Program manager shall, in coordination with the designated county contact, mail to each person on the special absentee voting list due to participation in the Address Confidentiality Program an absentee ballot by mail not later than 46 days before each election.

§3-3-4. Assistance to voter in voting an absentee ballot by personal appearance; penalties.

(a) Any registered voter who requires assistance to vote by reason of blindness, physical disability, advanced age, or inability to read and write may be given assistance by a person of the voter's choice: *Provided*, That the assistance may not be given by the voter's present or former employer or agent of that employer, by the officer or agent of a labor union of which the voter is a past or present member, or by a candidate on the ballot.

(b) Any voter who requests assistance in voting an absentee ballot but who is determined by the official designated to supervise and conduct absentee voting not to be qualified for assistance under the provisions of this section and §3-1-34 of this code may vote a provisional absentee ballot with the assistance of any person authorized to render assistance pursuant to this section. The official designated to supervise and conduct absentee voting shall, in this case, challenge the absentee ballot on the basis of his or her determination that the voter is not qualified for assistance.

(c) Any one or more of the election commissioners or poll clerks in the precinct to which an absentee ballot has been sent may challenge the ballot on the grounds that the voter received assistance in voting the ballot when in his or their opinion: (1) The person who received the assistance in voting the absentee ballot did not require assistance; or (2) the person who provided the assistance in voting did not make an affidavit as required by this section. The election commissioner or poll clerk or commissioners or poll clerks making a challenge shall enter the challenge and reason for the challenge on the form and in the manner prescribed or authorized by this article.

(d) Before entering the voting booth or compartment, the person who intends to provide a voter assistance in voting by personal appearance shall make an affidavit, the form of which is to be prescribed by the Secretary of State, that he or she will not in any manner request, seek to persuade, or induce the voter to vote any particular ticket or

for any particular candidate or for or against any public question; that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment; and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, which ticket the voter voted, how the voter voted on any public question, or anything occurring within the voting booth, compartment, or voting machine booth, except when required, pursuant to law, in a judicial proceeding.

(e) In accordance with instructions issued by the Secretary of State, the official designated to supervise and conduct absentee voting shall complete a form entitled "List of Assisted Voters", which list is to be divided into two parts, as follows:

(1) Part A is to be entitled "Unchallenged Assisted Voters"; and Part B is to be entitled "Challenged Assisted Voters".

(2) Under Part A, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving unchallenged assistance in voting an absentee ballot, the address of the voter assisted, the nature of the disability which qualified the voter for assistance in voting an absentee ballot, the name of the person providing the voter with assistance in voting an absentee ballot, the fact that the person rendering the assistance in voting made and subscribed the affidavit required by this section, and the signature of the official designated to supervise and conduct absentee voting, certifying to the fact that he or she had determined that the voter who received assistance in voting an absentee ballot was qualified to receive the assistance under the provisions of this section.

(3) Under Part B, the official designated to supervise and conduct absentee voting shall enter the name of each voter receiving challenged assistance in voting, the address of the voter receiving challenged assistance, the reason for

the challenge, and the name of the person providing the challenged voter with assistance in voting. At the close of the period provided for voting an absentee ballot by personal appearance, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath on the list that the list is correct in all particulars.

(4) If no voter has been assisted in voting an absentee ballot as provided in this section, the official designated to supervise and conduct absentee voting shall make and subscribe to an oath of that fact on the list.

(5) The "List of Assisted Voters" is to be available for public inspection in the office of the official designated to supervise and conduct absentee voting during regular business hours throughout the period provided for voting an absentee ballot by personal appearance and, unless otherwise directed by the Secretary of State, the official shall transmit the list, together with the affidavits, applications, and absentee ballots, to the precincts on election day.

(f) Following the election, the affidavits required by this section from persons providing assistance in voting, together with the "List of Assisted Voters", are to be returned by the election commissioners to the clerk of the county commission, along with the election supplies, records, and returns. The clerk shall make the oaths and the "List of Assisted Voters" available for public inspection and shall preserve the oaths and list for 22 months or, if under order of the court, until their destruction or other disposition is authorized or directed by the court.

(g) Any person making an affidavit required under the provisions of this section who knowingly swears falsely in the affidavit or any person who counsels or advises, aids, or abets another in the commission of false swearing under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in

jail for a period of not more than one year, or both fined and confined.

(h) Any person who provides a voter assistance in voting an absentee ballot in the office of the official designated to supervise and conduct absentee voting who is not qualified or permitted by this section to provide assistance is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

(i) Any official designated to supervise and conduct absentee voting, election commissioner, or poll clerk who authorizes or allows a voter to receive or to have received unchallenged assistance in voting an absentee ballot when the voter is known to the official designated to supervise and conduct absentee voting or election commissioner or poll clerk not to be or have been authorized by the provisions of this section to receive or to have received assistance in voting is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for a period of not more than one year, or both fined and confined.

§3-3-5. Voting an absentee ballot by mail or electronically; penalties.

(a) Upon oral or written request, the official designated to supervise and conduct absentee voting shall provide to any voter of the county, in person, by mail, or electronically, the appropriate application for voting absentee as provided in this article. The voter shall complete and sign the application in his or her own handwriting or, if the voter is unable to complete the application because of illiteracy or physical disability:

(1) The person assisting the voter and witnessing the mark of the voter shall sign his or her name in the space provided; or

(2) The person, if eligible to vote by electronic absentee ballot due to physical disability, may complete and verify the application by available electronic means prescribed by the Secretary of State.

(b) Completed applications for voting an absentee ballot by mail are to be accepted when received by the official designated to supervise and conduct absentee voting in person, by mail, or electronically within the following times:

(1) For persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to absent uniformed services and overseas voters, not earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth day preceding the election, which application is to, upon the voter's request, be accepted as an application for the ballots for all elections in the calendar year; and

(2) For all other persons eligible to vote an absentee ballot by mail or electronically, not earlier than January 1 of an election year or 84 days preceding the election, whichever is earlier, and not later than the sixth day preceding the election.

(c) Upon acceptance of a completed application, the official designated to supervise and conduct absentee voting shall determine whether the following requirements have been met:

(1) The application has been completed as required by law;

(2) The applicant is duly registered to vote in the precinct of his or her residence and, in a primary election, is qualified to vote the ballot of the political party requested;

(3) The applicant is authorized for the reasons given in the application to vote an absentee ballot by mail or electronically;

(4) The address to which a ballot is to be mailed is an address outside the county if the voter is applying to vote by mail under the provisions of §3-3-1(b)(2)(A), §3-3-1(b)(2)(B), §3-3-1(b)(3), or §3-3-1(b)(4) of this code;

(5) The applicant is not making his or her first vote after having registered by postcard registration or, if the applicant is making his or her first vote after having registered by postcard registration, the applicant is subject to one of the exceptions provided in §3-2-10 of this code; and

(6) No regular and repeated pattern of applications for an absentee ballot by mail for the reason of being out of the county during the entire period of voting in person exists to suggest that the applicant is no longer a resident of the county.

(d) (1) If the official designated to supervise and conduct absentee voting determines that the required conditions have been met for voting an absentee ballot by mail, two representatives that are registered to vote with different political party affiliations shall sign their names in the places indicated on the back of the official ballot. If the official designated to supervise and conduct absentee voting determines the required conditions have not been met or has evidence that any of the information contained in the application is not true, the official shall give notice to the voter that the voter's absentee ballot will be challenged as provided in this article and shall enter that challenge.

(2) If the official designated to supervise and conduct electronic voting determines that a voter is eligible to submit an electronic ballot because the voter is an absent uniformed services voter or overseas voter or a person with a physical disability, the official designated to supervise absentee voting shall cause the absentee ballot to be transmitted electronically in the manner required for the electronic ballot marking tool or other electronic means.

(e)(1) Beginning on the 46th day prior to election day, within one day after the official designated to supervise and conduct absentee voting has both the completed application and the ballot, the official shall provide to the voter at the address given on the application, or by the appropriate electronic delivery method, the following items as required and as prescribed by the Secretary of State:

(A) One of each type of official absentee ballot the voter is eligible to vote, prepared according to law;

(B) For persons voting absentee ballot by mail, one envelope, unsealed, which may have no marks except the designation "Absent Voter's Ballot Envelope No. 1" and printed instructions to the voter;

(C) For persons voting absentee ballot by mail, one postage paid envelope, unsealed, designated "Absent Voter's Ballot Envelope No. 2";

(D) Instructions for voting absentee by mail or electronically;

(E) For electronic systems or transmission, an electronic means by which eligible voters with physical disabilities may mark the absentee ballot without assistance, as prescribed by the Secretary of State; and

(F) Notice that a list of write-in candidates is available upon request.

(2) If the voter is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. §1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, the official designated to supervise and conduct absentee voting shall transmit the ballot to the voter via mail, or electronically, as requested by the voter. If the voter does not designate a preference for transmittal, the clerk may select either method of transmittal for the ballot. If the ballot is transmitted electronically pursuant to this

subdivision, the official designated to supervise and conduct absentee voting shall also transmit electronically:

(A) A waiver of privacy form, to be promulgated by the Secretary of State;

(B) Instructions for voting absentee by mail or electronically;

(C) Notice that a list of write-in candidates is available upon request; and

(D) A statement of the voter affirming the voter's current name and address and whether or not he or she received assistance in voting.

(f) The voter shall mark the ballot alone: *Provided*, That the voter may have assistance in voting according to the provisions of §3-3-6 of this code.

(1) After the voter has voted the ballot or ballots to be returned by mail, the voter shall:

(A) Place the ballot or ballots in envelope no. 1 and seal that envelope;

(B) Place the sealed envelope no. 1 in envelope no. 2 and seal that envelope;

(C) Complete and sign the forms on envelope no. 2; and

(D) Return that envelope to the official designated to supervise and conduct absentee voting.

(2) If the ballot was transmitted electronically as provided in subdivisions (1) or (2), subsection (e) of this section, the voter shall return the ballot electronically, in the manner prescribed by the Secretary of State, or the voter may return the ballot by United States mail, along with a signed privacy waiver form.

(g) Except as provided in subsection (h) of this section, absentee ballots returned by United States mail or other express shipping service are to be accepted if:

(1) The ballot is received by the official designated to supervise and conduct absentee voting no later than the day after the election; or

(2) The ballot bears a postmark of the United States Postal Service dated no later than election day and the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(h) Absentee ballots received through the United States mail from persons eligible to vote an absentee ballot under the provisions of §3-3-1(b)(3) of this code, relating to uniform services and overseas voters, are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the hour at which the board of canvassers convenes to begin the canvass.

(i) Voted ballots submitted electronically are to be accepted if the ballot is received by the official designated to supervise and conduct absentee voting no later than the close of polls on election day: *Provided*, That for uniform services and overseas voters, the Secretary of State's office shall enter into an agreement with the Federal Voting Assistance Program of the United States Department of Defense to transmit the ballots to the county clerks at a time when two individuals of opposite political parties are available to process the received ballots. For persons casting absentee ballots electronically due to physical disability, the county clerk shall designate two individuals of opposite political parties to process the received ballots in the manner required by the particular electronic ballot marking tool or other electronic means of returning the electronic absentee ballot.

(j) Ballots received after the proper time which cannot be accepted are to be placed unopened in an envelope marked for the purpose and kept secure for 22 months following the election, after which time they are to be destroyed without being opened.

(k) Absentee ballots which are hand delivered are to be accepted if they are received by the official designated to supervise and conduct absentee voting no later than the day preceding the election: *Provided*, That no person may hand deliver more than two absentee ballots in any election and any person hand delivering an absentee ballot is required to certify that he or she has not examined or altered the ballot. Any person who makes a false certification violates the provisions of §3-9-1 *et seq.* of this code and is subject to those provisions.

(l) Upon receipt of the sealed envelope, the official designated to supervise and conduct absentee voting shall:

(1) Enter onto the envelope any other required information;

(2) Enter the challenge, if any, to the ballot;

(3) Enter the required information into the permanent record of persons applying for and voting an absentee ballot in person; and

(4) Place the sealed envelope into a ballot box that is secured by two locks with a key to one lock kept by the president of the county commission and a key to the other lock kept by the county clerk.

(m) Upon receipt of a ballot submitted electronically pursuant to subdivision (2), subsection (f) of this section, the official designated to supervise and conduct absentee voting shall place the ballot in an envelope marked "Absentee by Electronic Means" with the completed waiver when appropriate: *Provided*, That no ballots are to be

processed without the presence of two individuals of opposite political parties.

(n) All ballots received electronically prior to the close of the polls on election day are to be tabulated in the manner prescribed for tabulating absentee ballots submitted by mail to the extent that those procedures are appropriate for the applicable voting system. The clerk of the county commission shall keep a record of absentee ballots sent and received electronically.

§3-3-6. Assistance to voter in voting an absentee ballot by mail.

(a) No voter shall receive any assistance in voting an absentee ballot by mail unless he or she shall make a declaration at the time he or she makes application for an absentee ballot that because of blindness, physical disability, advanced age, or inability to read or write he or she requires assistance in voting an absentee ballot.

(b) Upon receipt of an absentee ballot by mail, the voter who requires assistance in voting such ballot and who has indicated he or she requires such assistance and the reasons therefor on the application may select any eligible person to assist him or her in voting.

(c) The person providing assistance in voting an absentee ballot by mail shall make an affidavit on a form as may be prescribed by the Secretary of State, that he or she will not in any manner request, seek to persuade, or induce the voter to vote any particular ticket or for any particular candidate or for or against any public question; that he or she will not keep or make any memorandum or entry of anything occurring within the voting booth or compartment; and that he or she will not, directly or indirectly, reveal to any person the name of any candidate voted for by the voter, which ticket the voter voted, or how the voter voted on any public question, or anything occurring within the voting

24 booth, compartment, or voting machine booth, except when
25 required, pursuant to law, in a judicial proceeding.

26 (d) The term "assistance in voting", as used in this
27 section, means assistance in physically marking the official
28 absentee ballot for a voter or reading or directing the voter's
29 attention to any part of the official absentee ballot.

CHAPTER 125

(Com. Sub. for S. B. 785 - By Senators Trump and Cline)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §3-3-2a of the Code of West Virginia, 1931, as amended, relating generally to early voting locations; exempting the county commission from public notice requirements regarding the intent to designate a community voting location under certain circumstances if the location has been previously designated; and prohibiting electioneering activities within 100 feet from the outside entrance of community voting locations during early voting periods.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. VOTING BY ABSENTEES.

§3-3-2a. Early voting areas; prohibition against display of campaign material.

1 (a) The county commission shall designate the
2 courthouse or annex to the courthouse as the primary
3 location for early in-person voting and, in addition, the

commission may designate other locations as provided in subsection (b) of this section.

(b) The county commission may, with the approval of the county clerk or other official charged with the administration of elections, designate community voting locations for early in-person voting, other than the county courthouse or courthouse annex, by a majority of the members of the county commission voting to adopt the same at a public meeting called for that purpose.

(1) The county commission shall publish a notice of its intent to designate a community voting location at least 30 days prior to the designation. Notice shall be by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq.* of this code. The publication area is the county in which the community voting location or locations are designated;

(2) Community voting locations shall comply with requirements of this article for early in-person voting, criteria prescribed by the Secretary of State, and the following criteria:

(A) The location can be scheduled for use during the early voting period;

(B) The location has the physical facilities necessary to accommodate early voting requirements;

(C) The location has adequate space for voting equipment, poll workers, and voters; and

(D) The location has adequate security, public accessibility, and parking.

(3) The county executive committees of the two major political parties may nominate sites to be used as community voting locations during the early voting period;

(4) Upon the designation of a community voting location, the county clerk shall, not less than 30 days prior to an election, give notice of the community voting location address and the dates and times when the location will be open for early voting by publication as a Class II-0 legal advertisement in compliance with provisions of §59-3-1 *et seq.* of this code;

(5) Voting shall be conducted at each designated community voting location for a period of not less than five consecutive days during the early in-person voting period authorized by §3-3-3 of this code, but need not be conducted at each location for the entire period of early in-person voting;

(6) The county commission, with the approval of the county clerk, may authorize community voting locations on a rotating basis, wherein a community voting location may be used for less than the full period of early in-person voting.

(7) If more than one community voting location is designated, each location shall be used for an equal number of voting days and permit voting for the same number of hours per day; and

(8) Once a community voting location is designated it may continue to be used in subsequent elections without complying with the public notice requirements of subdivision (1) of this subsection if the county commission finds, and the county clerk agrees, at least 50 days, but not more than 80 days prior to the election, that the location continues to qualify under this section.

(c) The Secretary of State shall propose legislative and emergency rules in accordance with the provisions of §29A-3-1 *et seq.* of this code as may be necessary to implement the provisions of this section. The rules shall include establishment of criteria to assure neutrality and security in the selection of community voting locations.

(d) Throughout the period of early in-person voting, the official designated to supervise and conduct early in-person voting shall make the following provisions for voting:

(1) The official shall provide a sufficient number of voting booths or devices appropriate to the voting system at which voters may prepare their ballots. The booths or devices are to be in an area separate from, but within clear view of, the public entrance area of the official's office or other area designated by the county commission for early in-person voting and are to be arranged to ensure the voter complete privacy in casting the ballot.

(2) The official shall make the voting area secure from interference with the voter and shall ensure that voted and unvoted ballots are at all times secure from tampering. No person, other than a person lawfully assisting the voter according to the provisions of this chapter, may be permitted to come within five feet of the voting booth while the voter is voting. No person, other than the officials or employees of the official designated to supervise and conduct early in-person voting or members of the board of ballot commissioners assigned to conduct early in-person voting, may enter the area or room set aside for voting.

(3) (A) The official designated to supervise and conduct early in-person voting shall request the county commission designate another area within the county courthouse, any annex of the courthouse or any other designated as early in-person community voting locations within the county, as a portion of the official's office, for the purpose of early in-person voting in the following circumstances:

(i) If the voting area is not accessible to voters with physical disabilities;

(ii) If the voting area is not within clear view of the public entrance of the office of the official designated to supervise and conduct early in-person voting; or

(iii) If there is no suitable area for early in-person voting within the office.

(B) Any designated area is subject to the same requirements as the primary location for early in-person voting.

(4) The official designated to supervise and conduct early in-person voting shall have at least two representatives to assist with early in-person voting: *Provided*, That the two representatives may not be registered with the same political party affiliation or be two persons registered with no political party affiliation. The representatives may be full-time employees, temporary employees hired for the period of early in-person voting in person, or volunteers.

(5) No person may do any electioneering nor may any person display or distribute in any manner, or authorize the display or distribution of, any literature, posters, or material of any kind which tends to influence the voting for or against any candidate or any public question on the property of the county courthouse, any annex facilities, or within 100 feet of the outside entrance of any other designated early voting locations within the county during the entire period of regular early in-person voting. The official designated to supervise and conduct early in-person voting is authorized to remove the material and to direct the sheriff of the county to enforce the prohibition.

CHAPTER 126

(Com. Sub. for H. B. 4137 - By Delegates Higginbotham, Hamrick, Barnhart, Hanna and Foster)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §3-2-4, §3-2-5, and §3-2-29 of the Code of West Virginia,1931, as amended, relating to allowing counties to store and maintain voter registration records in a digital format; directing the clerk of the county commission to follow designated statutory record destruction process and digital copy creation requirements; providing that physical voter registration records may be destroyed under designated statutory process; and, providing that following approval of the Secretary of State the clerk of the county commission may destroy original registration records, if digital or facsimile copies are made and stored in an electronic format in a designated secure manner.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-4. Authority and responsibility of the clerk of the county commission and of the county commission relating to voter registration.

(a) Subject to the authority of the Secretary of State, the clerk of the county commission shall be the chief registration authority in each respective county and all subdivisions therein, and shall supervise their deputies, employees, and registrars in the performance of their respective duties.

(b) The county commission of each county shall allocate sufficient resources for the proper and efficient performance of duties relating to voter registration as required by law, and shall provide for temporary clerical assistance necessary for systematic purging procedures or other duties of short duration required by the provisions of this article.

(c) The county commission shall have authority on its own motion to summon and examine any person concerning the registration of voters, to investigate any irregularities in registration, to summon and examine witnesses, to require the production of any relevant books and papers, and to conduct hearings on any matters relating to the registration of voters.

(d) The clerk of the county commission shall be responsible for the administration of voter registration within the county and shall establish procedures and practices which ensure the full implementation of the requirements of federal and state laws and rules relating to voter registration, and which ensure nondiscriminatory practices. The clerk of the county commission, at his or her discretion, may maintain and store all voter registration records in a digital format: *Provided*, That prior to destroying any physical voter registration records, the clerk of the county commission shall follow the records destruction process and digital copy creation requirements set forth in W.Va. Code § 3-2-29.

§3-2-5. Forms for application for registration; information required and requested; types of application forms; notices.

(a) (1) All state forms for application for voter registration shall be prescribed by the Secretary of State and shall conform with the requirements of 42 U. S. C.§1973gg, *et seq.*, the National Voter Registration Act of 1993 and the requirements of the provisions of this article. Separate application forms may be prescribed for voter registration conducted by the clerk of the county commission,

8 registration by mail, registration in conjunction with an
9 application for motor vehicle driver's license and
10 registration at designated agencies. These forms may
11 consist of one or more parts, may be combined with other
12 forms for use in registration by designated agencies or in
13 conjunction with driver licensing and may be revised and
14 reissued as required by the Secretary of State to provide for
15 the efficient administration of voter registration.

16 (2) Notwithstanding any provisions of subdivision (1)
17 of this subsection to the contrary, the federal postcard
18 application for voter registration issued pursuant to 42 U. S.
19 C.§1973, *et seq.*, the Uniformed and Overseas Citizens
20 Absentee Voting Act of 1986 and the mail voter registration
21 application form prescribed by the Federal Election
22 Commission pursuant to 42 U. S. C.§1973gg, *et seq.*, the
23 National Voter Registration Act of 1993, are accepted as
24 valid forms of application for registration pursuant to the
25 provisions of this article.

26 (3) The Secretary of State is authorized to promulgate
27 procedures to permit persons to register to vote through a
28 secure electronic voter registration system.

29 (b) Each application form for registration shall include:

30 (1) A statement specifying the eligibility requirements
31 for registration and an attestation that the applicant meets
32 each eligibility requirement;

33 (2) Any specific notice or notices required for a specific
34 type or use of application by 42 U. S. C.§1973gg, *et seq.*,
35 the National Voter Registration Act of 1993;

36 (3) A notice that a voter may be permitted to vote the
37 partisan primary election ballot of a political party only if
38 the voter has designated that political party on the
39 application for registration unless the political party has
40 determined otherwise;

(4) The applicant's driver's license number or an identification number issued by the Division of Motor Vehicles. If the applicant does not have a driver's license or an identification card issued by the Division of Motor Vehicles, then the last four digits of the applicant's Social Security number; and

(5) Any other instructions or information essential to complete the application process.

(c) Each application form shall require that the following be provided by the applicant, under oath, and an application which does not contain each of the following is incomplete:

(1) The applicant's legal name, including the first name, middle or premarital name, if any, and last name;

(2) The month, day, and year of the applicant's birth;

(3) The applicant's residence address including the number and street or route and city and county of residence except:

(A) In the case of a person eligible to register under the provisions of 42 U. S. C.§1973ff, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act, the address at which he or she last resided before leaving the United States or entering the uniformed services, or if a dependent child of such a person, the address at which his or her parent last resided;

(B) In the case of a homeless person having no fixed residence address who nevertheless resides and remains regularly within the county, the address of a shelter, assistance center or family member with whom he or she has regular contact or other specific location approved by the clerk of the county commission for the purposes of establishing a voting residence; or

(C) In the case of a participant in the Address Confidentiality Program administered by the Secretary of State in accordance with section one hundred three, article twenty-eight (a), chapter forty-eight of this code, the designated address assigned to the participant by the Secretary of State; and

(4) The applicant's signature, under penalty of perjury as provided in section thirty-six of this article, to the attestation of eligibility to register to vote and to the truth of the information given. The clerk may accept the electronically transmitted signature kept on file with another approved state database for an applicant who applies to register to vote using an approved electronic voter registration system in accordance with procedures promulgated by the Secretary of State.

(d) The applicant shall be requested to provide the following information but no application may be rejected for lack of this information:

(1) An indication whether the application is for a new registration, change of address, change of name or change of party affiliation;

(2) The applicant's choice of political party affiliation, if any, or an indication of no affiliation. An applicant who does not enter a choice of political party affiliation is listed as having no party affiliation on the voting record;

(3) The applicant's residence mailing address if different than the residence street address;

(4) The last four digits of the applicant's Social Security number;

(5) The applicant's telephone number;

(6) The applicant's e-mail address;

(7) The address where the applicant was last registered to vote, if any, for the purpose of cancelling or transferring the previous registration; and

(8) The applicant's gender.

(e) The Secretary of State shall prescribe the printing specifications of each type of voter registration application and the voter registration application portion of any form which is part of a combined agency form: *Provided*, That any physical voter registration records created under this article may be destroyed under the process described in W.Va. Code §3-2-29.

(f) Application forms prescribed in this section may refer to various public officials by title or official position but in no case may the actual name of an officeholder be printed on the voter registration application or on any portion of a combined application form.

(g) No later than July 1 of each odd-numbered year, the Secretary of State shall submit the specifications of the voter registration application by mail for statewide bidding for a contract period beginning September 1 of each odd-numbered year and continuing for two calendar years. The successful bidder shall produce and supply the required mail voter registration forms at the contract price to all purchasers of the form for the period of the contract.

§3-2-29. Custody of original registration records.

(a) All original registration records in paper format shall remain in the custody of the county commission, by its clerk, or, electronically, in the statewide voter registration database and shall not be removed except for use in an election or by the order of a court of record or in compliance with a subpoena duces tecum issued by the Secretary of State pursuant to the provisions of section six, article one-a of this chapter.

(b) All original voter registration records shall be retained for a minimum of five years following the last recorded activity relating to the record, except that any application which duplicates and does not alter an existing registration shall be retained for a minimum of two years following its receipt: *Provided*, That following approval by the Secretary of State pursuant to subsection (c) of this section, the clerk of the county commission may destroy original registration records that have been retained for a period of time if an exact digital or facsimile copy of each of the records is made and stored in an electronic format in a secure manner on one or more servers under the control of the clerk of the county commission. Digital or facsimile copies may include but are not limited to PDF or JPEG formats. The Secretary of State shall promulgate rules pursuant to the provisions of chapter twenty-nine-a of this code for the specific retention times and procedures required for original voter registration records.

(c) Prior to the destruction of original voter registration applications or registration cards of voters whose registration has been canceled at least five years previously, the clerk of the county commission shall notify the Secretary of State of the intention to destroy those records. If the Secretary of State determines, within ninety days of the receipt of the notice, that those records are of sufficient historical value that microfilm or other permanent data storage is desirable, the Secretary of State may require that the records be delivered to a specified location for processing at state expense.

(d) Active, inactive, pending, rejected, and canceled registration records shall be maintained as a permanent record, as follows:

(1) Individual canceled registration records shall be maintained in the statewide voter registration database for a period of at least five years following cancellation. Upon the expiration of five years, those individual records may be removed from the statewide voter registration database and

disposed of in accordance with the appropriate document retention policy.

(2) Rejected registration records shall be maintained in the same manner as provided for cancelled registration records.

CHAPTER 127

(Com. Sub. for H. B. 4593 - By Delegate Higginbotham)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §3-1-5 and §3-1-30 of the Code of West Virginia, 1931, as amended, all relating to authorizing the assignment of members of a standard receiving board to serve on the standard receiving board for more than one precinct in certain circumstances.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-5. Voting precincts and places established; number of voters in precincts; precinct map; municipal map.

(a) The precinct is the basic territorial election unit. The county commission shall divide each magisterial district of the county into election precincts, shall number the precincts, shall determine and establish the boundaries thereof and shall designate one voting place in each precinct, which place shall be established as nearly as possible at the point most convenient for the voters of the precinct. Each magisterial district shall contain at least one

voting precinct and each precinct shall have but one voting place therein.

Each precinct within any urban center shall contain not less than three hundred nor more than one thousand five hundred registered voters. Each precinct in a rural or less thickly settled area shall contain not less than two hundred nor more than seven hundred registered voters. A county commission may permit the establishment or retention of a precinct less than the minimum numbers allowed in this subsection upon making a written finding that to do otherwise would cause undue hardship to the voters. If, at any time the number of registered voters exceeds the maximum number specified, the county commission shall rearrange the precincts within the political division so that the new precincts each contain a number of registered voters within the designated limits: *Provided*, That any precincts with polling places that are within a one mile radius of each other on or after July 1, 2014, may be consolidated, at the discretion of the county clerk and county commission into one or more new precincts that contain not more than three thousand registered voters in any urban center, nor more than one thousand five hundred registered voters in a rural or less thickly settled area: *Provided, however*, That no precincts may be consolidated pursuant to this section if the consolidation would create a geographical barrier or path of travel between voters in a precinct and their proposed new polling place that would create an undue hardship to voters of any current precinct.

If a county commission fails to rearrange the precincts as required, any qualified voter of the county may apply for a writ of mandamus to compel the performance of this duty: *Provided*, That when in the discretion of the county commission, there is only one place convenient to vote within the precinct and when there are more than seven hundred registered voters within the existing precinct, the county commission may designate two or more precincts with the same geographic boundaries and which have voting places located within the same building. The county

commission shall designate alphabetically the voters who are eligible to vote in each precinct so created. Each precinct shall be operated separately and independently with separate voting booths, ballot boxes, election commissioners and clerks, and whenever possible, in separate rooms. No two precincts may use the same standard receiving board, except as permitted by the provisions of §3-1-30(j) of this code.

(b) In order to facilitate the conduct of local and special elections and the use of election registration records therein, precinct boundaries shall be established to coincide with the boundaries of any municipality of the county and with the wards or other geographical districts of the municipality except in instances where found by the county commission to be wholly impracticable so to do. Governing bodies of all municipalities shall provide accurate and current maps of their boundaries to the clerk of any county commission of a county in which any portion of the municipality is located.

(c) To facilitate the federal and state redistricting process, precinct boundaries shall be comprised of intersecting geographic physical features or municipal boundaries recognized by the U. S. Census Bureau. For purposes of this subsection, geographic physical features include streets, roads, streams, creeks, rivers, railroad tracks and mountain ridge lines. The county commission of every county shall modify precinct boundaries to follow geographic physical features or municipal boundaries and submit changes to the Joint Committee on Government and Finance by June 30, 2007, and by June 30, every ten calendar years thereafter. The county commission shall also submit precinct boundary details to the U.S. Census Bureau upon request.

(d) The county commission shall keep available at all times during business hours in the courthouse at a place convenient for public inspection a map or maps of the county and municipalities with the current boundaries of all precincts.

§3-1-30. Nomination and appointment of election officials and alternates; notice of appointment; appointment to fill vacancies in election boards.

(a) For any primary, general or special election held throughout a county, poll clerks and election commissioners may be nominated as follows:

(1) The county executive committee for each of the two major political parties may, by a majority vote of the committee at a duly called meeting, nominate one qualified person for each team of poll clerks and one qualified person for each team of election commissioners to be appointed for the election;

(2) The appointing body shall select one qualified person as the additional election commissioner for each board of election officials;

(3) Each county executive committee shall also nominate qualified persons as alternates for at least 10 percent of the poll clerks and election commissioners to be appointed in the county and is authorized to nominate as many qualified persons as alternates as there are precincts in the county to be called upon to serve in the event any of the persons originally appointed fail to accept appointment or fail to appear for the required training or for the preparation or execution of their duties;

(4) When an executive committee nominates qualified persons as poll clerks, election commissioners or alternates, the committee, or its chair or secretary on its behalf, shall file in writing with the appointing body, no later than the 70th day before the election, a list of those persons nominated and the positions for which they are designated.

(b) For any municipal primary, general or special election, the poll clerks and election commissioners may be nominated as follows:

(1) In municipalities which have municipal executive committees for the two major political parties in the municipality, each committee may nominate election officials in the manner provided for the nomination of election officials by county executive committees in subsection (a) of this section;

(2) In municipalities which do not have executive committees, the governing body shall provide by ordinance for a method of nominating election officials or shall nominate as many eligible persons as are required, giving due consideration to any recommendations made by voters of the municipality or by candidates on the ballot.

(c) The governing body responsible for appointing election officials is:

(1) The county commission for any primary, general or special election ordered by the county commission and any joint county and municipal election;

(2) The board of education for any special election ordered by the board of education conducted apart from any other election;

(3) The municipal governing body for any primary, general or special municipal election ordered by the governing body.

(d) The qualifications for persons nominated to serve as election officials may be confirmed prior to appointment by the clerk of the county commission for any election ordered by the county commission or for any joint county and municipal election and by the official recorder of the municipality for a municipal election.

(e) The appropriate governing body shall appoint the election officials for each designated election board no later than the 49th day before the election as follows:

(1) Those eligible persons whose nominations for poll clerk and election commissioner were timely filed by the executive committees and those additional persons selected to serve as an election commissioner are to be appointed;

(2) The governing body shall fill any positions for which no nominations were filed.

(f) At the same time as the appointment of election officials or at a subsequent meeting the governing body shall appoint persons as alternates. However, no alternate may be eligible for compensation for election training unless the alternate is subsequently appointed as an election official or is instructed to attend and actually attends training as an alternate and is available to serve on election day. Alternates shall be appointed and serve as follows:

(1) Those alternates nominated by the executive committees shall be appointed;

(2) The governing body may appoint additional alternates who may be called upon to fill vacancies after all alternates designated by the executive committees have been assigned, have declined to serve or have failed to attend training; and

(3) The governing body may determine the number of persons who may be instructed to attend training as alternates.

(g) The clerk of the county commission shall appoint qualified persons to fill all vacancies existing after all previously appointed alternates have been assigned, have declined to serve or have failed to attend training.

(h) Within seven days following appointment, the clerk of the county commission shall notify, by first-class mail, all election commissioners, poll clerks and alternates of the fact of their appointment and include with the notice a response notice form for the appointed person to return

indicating whether or not he or she agrees to serve in the specified capacity in the election.

(i) The position of any person notified of appointment who fails to return the response notice or otherwise confirm to the clerk of the county commission his or her agreement to serve within 14 days following the date of appointment is considered vacant and the clerk shall proceed to fill the vacancies according to the provisions of this section.

(j) If the governing body and the clerk of the county commission are unable to nominate a sufficient number of qualified persons agreeing to serve on a standard receiving board for each precinct, the clerk may assign members of one precinct's standard receiving board to serve simultaneously on the standard receiving board of another precinct where the polling places of both precincts are located within the same physical building or facility: *Provided*, That no more than three precincts within the same building or facility may share board members in this manner.

(k) If an appointed election official fails to appear at the polling place by 45 minutes past five o'clock a.m. on election day, the election officials present shall contact the office of the clerk of the county commission for assistance in filling the vacancy. The clerk shall proceed as follows:

(1) The clerk may attempt to contact the person originally appointed, may assign an alternate nominated by the same political party as the person absent if one is available or, if no alternate is available, may appoint another eligible person;

(2) If the election officials present are unable to contact the clerk within a reasonable time, they shall diligently attempt to fill the position with an eligible person of the same political party as the party that nominated the person absent until a qualified person has agreed to serve;

(3) If two teams of election officials, as defined in §3-1-29 of this code, are present at the polling place, the person appointed to fill a vacancy in the position of the additional commissioner may be of either political party.

(l) In a municipal election, the recorder or other official designated by charter or ordinance to perform election responsibilities shall perform the duties of the clerk of the county commission as provided in this section.

CHAPTER 128

(Com. Sub. for H. B. 2086 - By Delegate Storch)

[Amended and again passed February 28, 2020; as a result of the objections of the Governor; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §39A-4-1, §39A-4-2, §39A-4-3, §39A-4-4, §39A-4-5, §39A-4-6, and §39A-4-7, all relating to creating the Uniform Real Property Electronic Recording Act; providing short title; defining terms; clarifying validity of electronic documents and electronic signatures; providing for recording of electronic documents; requiring any county clerk implementing the provisions of the act to comply with established standards; authorizing county clerks to receive, index, store, archive and transmit electronic documents; authorizing county clerks to allow public access, search and retrieval of electronic documents; allowing county clerks to convert paper documents accepted for recording into electronic documents; authorizing county clerks to collect electronically any tax or fee relating to electronic recording of real property documents they are authorized by law to collect; authorizing county clerks to agree with other jurisdictions on procedures or processes necessary for electronic recording of

documents; creating the Real Property Electronic Recording Standards Advisory Committee to develop the standards necessary to electronically record real property documents; authorizing a legislative rule; providing for a report and recommendations to the Legislature; providing that members of the Real Property Electronic Recording Standards Advisory Committee pay their own expenses; setting forth areas for consideration when adopting or changing standards; providing for uniformity of application and construction of the act; and providing that the article modifies, limits and supersedes certain parts of the federal Electronic Signatures in Global and National Commerce Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. UNIFORM REAL PROPERTY ELECTRONIC RECORDING ACT.

§39A-4-1. Short title.

This article may be cited as the Uniform Real Property Electronic Recording Act.

§39A-4-2. Definitions.

For purposes of this article, the following terms shall have the meanings stated below:

(1) "Document" means information that is:

(A) Inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form; and

(B) Eligible to be recorded in the land records maintained by the clerk of the county commission, herein after "county clerk" or "clerk".

(2) "Electronic" means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities.

(3) "Electronic document" means a document that is received by the county clerk in an electronic form.

(4) "Electronic signature" means an electronic sound, symbol, or process attached to or logically associated with a document and executed or adopted by a person with the intent to sign the document.

(5) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, public corporation, government or governmental subdivision, agency, instrumentality or any other legal or commercial entity.

(6) "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.

§39A-4-3. Validity of electronic documents.

(a) If a law requires, as a condition for recording, that a document be an original, be on paper or another tangible medium or be in writing, the requirement is satisfied by an electronic document satisfying the requirements of this article.

(b) If a law requires, as a condition for recording, that a document be signed, the requirement is satisfied by an electronic signature.

(c) A requirement that a document or a signature associated with a document be notarized, acknowledged, verified, witnessed, or made under oath is satisfied if the electronic signature of the person authorized to perform that act, and all other information required to be included, is attached to or logically associated with the document or signature. A physical or electronic image of a stamp, impression, or seal need not accompany an electronic signature on a document that complies with the electronic

notarization procedure under §39-4-19 of this code and §153 CSR 45.

§39A-4-4. Recording of documents.

(a) In this section, "paper document" means a document that is received by the county clerk in a form that is not electronic.

(b) A county clerk:

(1) Who implements any of the functions listed in this section shall do so in compliance with standards established by the Real Property Electronic Recording Standards Advisory Committee pursuant to §39A-4-5 of this code;

(2) May receive, index, store, archive, and transmit electronic documents;

(3) May provide for access to, and search and retrieval of, documents and information by electronic means;

(4) Who accepts electronic documents for recording shall continue to accept paper documents as authorized by state law and shall place entries for both types of documents in the same index;

(5) May convert paper documents accepted for recording into electronic form;

(6) May convert information recorded before the clerk began to record electronic documents into electronic form;

(7) May accept electronically any fee or tax relating to electronic recording of real property documents that the clerk is authorized to collect; and

(8) May agree with other officials of a state or a political subdivision thereof, or of the United States, on procedures or processes to facilitate the electronic satisfaction of prior approvals and conditions precedent to recording and the electronic payment of fees and taxes.

§39A-4-5. Administration and standards.

(a) For the purpose of keeping the standards and practices of county clerks in this state in harmony with the standards and practices of recording offices in other jurisdictions that enact substantially the Uniform Real Property Electronic Recording Act, and to keep the technology used by clerks in this state compatible with technology used by recording offices in other jurisdictions that enact substantially this act, the Secretary of State shall establish the Real Property Electronic Recording Standards Advisory Committee, developed pursuant to this article, to assist in the adoption, amendment, and repeal of standards and practices.

(b) The Secretary of State shall appoint at least 18 persons to serve on the committee. In selecting persons to serve on the committee, the Secretary of State shall appoint:

(1) At least one person who is an attorney who specializes in title work;

(2) At least one person who is a specialist in geographic information system (GIS) mapping;

(3) A representative of the Division of Highways;

(4) A representative of the County Clerks' Association;

(5) A representative of the County Commissioners' Association;

(6) A representative of the State Auditor;

(7) A representative of the Governor's Office of Technology;

(8) A representative of the Division of Culture and History;

(9) A representative of the Community Bankers of West Virginia;

(10) A representative of the West Virginia Bankers' Association;

(11) A representative of the West Virginia Housing Development Fund;

(12) A representative of the Real Estate Division of the Department of Administration;

(13) A representative of the Property Tax Division of the Department of Tax and Revenue;

(14) A representative of the West Virginia Board of Professional Surveyors;

(15) A representative of the West Virginia Real Estate Commission;

(16) At least one representative representing the mineral extraction industry;

(17) A representative of the West Virginia University College of Law with experience in real property law; and

(18) A representative of the Real Estate Lawyers Division of the West Virginia State Bar Association.

(c) In establishing, amending, and repealing standards and practices for the recording of documents in electronic form, storing electronic records, and setting up systems for searching for and retrieving these land records, the committee shall consider:

(1) Standards and practices of other jurisdictions;

(2) The most recent standards promulgated by national standard-setting bodies such as the Property Records Industry Association;

(3) The views of interested persons and governmental officials and entities;

(4) The needs of counties of varying size, population, and resources; and

(5) Standards requiring adequate information security protection to ensure that electronic documents are accurate, authentic, adequately preserved, and resistant to tampering.

(d) The Secretary of State, or his or her designee, shall serve as chair of the Real Property Electronic Recording Standards Advisory Committee.

(e) The Secretary of State shall:

(1) Provide administrative support to the committee; and

(2) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code that contain the standards to implement this article.

(f) Each person, agency, board, and organization on the committee shall cover his or her own expenses necessitated by participation on the committee.

(g) The Secretary of State shall submit a report to the Joint Committee on Government and Finance on or before January 1 of each year until its tasks are complete. The report shall include its efforts to adopt standards in accordance with the requirements of this article and recommendations for further legislative action necessary to effectuate the purposes of this article.

§39A-4-6. Uniformity of application and construction.

In applying and construing the Uniform Real Property Electronic Recording Act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§39A-4-7. Relation to electronic signatures in global and national commerce act.

This article modifies, limits, and supersedes the federal Electronic Signatures in Global and National Commerce Act (15 U.S.C. §7001, *et seq.*) but does not modify, limit or supersede §101(c) of that act (15 U.S.C. §7001(c)) or authorize electronic delivery of any of the notices described in §103(b) of that act (15 U.S.C. §7003(b)).

CHAPTER 129

(Com. Sub. for S. B. 120 - By Senators Romano and Facemire, *original sponsors*)*

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-10-6 of the Code of West Virginia, 1931, as amended, relating to the establishment of priorities for expenditures for plugging abandoned oil and gas wells; requiring that a bond posted for a well shall first be used to plug the well and mitigate environmental issues related to oil and gas development on the land where the well is located, if the bond is forfeited as a result of failure to plug the abandoned well, repair the well that is causing immediate threat to the environment, or which hinders or impedes the development of mineral resources of this state, or the well operator was cited for and then failed to correct an immediate threat to the environment or hinderance or impediment to the development of mineral resources of this state, or the operator failed to reclaim the surface disturbance causing immediate threat to the environment or which hinders or impedes the development of mineral resources of this state.

***NOTE:** Senators Jeffries and Rucker were also sponsors of this bill.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. ABANDONED WELL ACT.

§22-10-6. Establishment of priorities for plugging expenditures.

(a) The director shall promulgate legislative rules establishing a priority system by which available funds from the Oil and Gas Reclamation Fund, established pursuant to §22-6-29 of this code, will be expended to plug abandoned wells. The rules shall, at a minimum, establish three primary classifications to be as follows:

(1) Wells which are an immediate threat to the environment or which may hinder or impede the development of mineral resources of this state so as to require immediate plugging;

(2) Wells which are not an immediate threat to the environment or which do not hinder or impede the development of mineral resources of this state, but which should be plugged consistent with available resources; and

(3) Wells which are not a threat to the environment and which do not hinder or impede the development of mineral resources of this state and for which plugging may be deferred for an indefinite period.

(b) The classifications shall, among other things, take into consideration the following factors, as appropriate:

(1) The age of the well;

(2) The length of time the well has been abandoned;

(3) The casing remaining in the well;

(4) The presence of any leaks either at the surface or underground;

(5) The possibility or existence of groundwater contamination;

(6) Whether the well is located in an area to be developed for enhanced recovery;

(7) Whether the well hinders or impedes mineral development; and

(8) Whether the well is located in close proximity to population.

(c) Notwithstanding the other provisions of this section, the bond posted for the well shall first be used to plug the well and mitigate environmental issues related to oil and gas development on the land where the well is located if:

(1) The bond is forfeited as a result of failure to plug the abandoned well, repair the well that is causing immediate threat to the environment, or which hinders or impedes the development of mineral resources of this state; or

(2) The well operator was cited for and then failed to correct an immediate threat to the environment or hinderance or impediment to the development of mineral resources of this state; or

(3) The operator failed to reclaim the surface disturbance causing immediate threat to the environment or which hinders or impedes the development of mineral resources of this state.

CHAPTER 130

(S. B. 552 - By Senators Maynard and Cline)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §22C-1-6 of the Code of West Virginia, 1931, as amended, relating to requiring contracts of $25,000 or more to be competitively bid.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. WATER DEVELOPMENT AUTHORITY.

§22C-1-6. Powers, duties, and responsibilities of authority generally.

The Water Development Authority has and may exercise all powers necessary or appropriate to carry out and effectuate its corporate purpose. The authority has the power and capacity to:

(1) Adopt and, from time-to-time, amend and repeal bylaws necessary and proper for the regulation of its affairs and the conduct of its business and rules to implement and make effective its powers and duties, such rules to be promulgated in accordance with the provisions of chapter 29A of this code.

(2) Adopt an official seal.

(3) Maintain a principal office and, if necessary, regional suboffices at locations properly designated or provided.

(4) Sue and be sued in its own name and plead and be impleaded in its own name and particularly to enforce the obligations and covenants made under §22C-1-9, §22C-1-10, and §22C-1-16 of this code. Any actions against the authority shall be brought in the circuit court of Kanawha County in which the principal office of the authority shall be located.

(5) Make loans and grants to governmental agencies for the acquisition or construction of water development projects by any such governmental agency and, in accordance with the provisions of chapter 29A of this code, adopt rules and procedures for making such loans and grants.

(6) Acquire, construct, reconstruct, enlarge, improve, furnish, equip, maintain, repair, operate, lease or rent to, or contract for operation by a governmental agency or person, water development projects and, in accordance with the provisions of chapter 29A of this code, adopt rules for the use of such projects.

(7) Make available the use or services of any water development project to one or more persons, one or more governmental agencies, or any combination thereof.

(8) Issue water development revenue bonds and notes and water development revenue refunding bonds of the state, payable solely from revenues as provided in §22C-1-9 of this code unless the bonds are refunded by refunding bonds, for the purpose of paying all or any part of the cost of, or financing by loans to governmental agencies, one or more water development projects or parts thereof.

(9) Acquire by gift or purchase, hold and dispose of real and personal property in the exercise of its powers and the performance of its duties as set forth in this article.

(10) Acquire in the name of the state, by purchase or otherwise, on such terms and in such manner as it deems

proper, or by the exercise of the right of eminent domain in the manner provided in chapter 54 of this code, such public or private lands, or parts thereof or rights therein, rights-of-way, property, rights, easements, and interests it deems necessary for carrying out the provisions of this article, but excluding the acquisition by the exercise of the right of eminent domain of any public water facilities, stormwater systems, or wastewater facilities, operated under permits issued pursuant to the provisions of §22-11-1 *et seq.* of this code and owned by any person or governmental agency, and compensation shall be paid for public or private lands so taken.

(11) Make and enter into all contracts and agreements and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers. When the cost under any such contract or agreement, other than compensation for personal services, involves an expenditure of more than $25,000, the authority shall make a written contract with the lowest responsible bidder after public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, the publication area for such publication to be the county wherein the work is to be performed or which is affected by the contract, which notice shall state the general character of the work and the general character of the materials to be furnished, the place where plans and specifications therefor may be examined, and the time and place of receiving bids, but a contract or lease for the operation of a water development project constructed and owned by the authority or an agreement for cooperation in the acquisition or construction of a water development project pursuant to §22C-1-16 of this code is not subject to the foregoing requirements and the authority may enter into such contract or lease or such agreement pursuant to negotiation and upon such terms and conditions and for such period as it finds to be reasonable and proper under the circumstances and in the best interests of proper operation or of efficient acquisition or construction of such project.

The authority may reject any and all bids. A bond with good and sufficient surety, approved by the authority, is required of all contractors in an amount equal to at least 50 percent of the contract price, conditioned upon the faithful performance of the contract.

(12) Employ managers, superintendents, and other employees, who are covered by the state civil service system, and retain or contract with consulting engineers, financial consultants, accounting experts, architects, attorneys, and such other consultants and independent contractors as are necessary in its judgment to carry out the provisions of this article and fix the compensation or fees thereof. All expenses thereof are payable solely from the proceeds of water development revenue bonds or notes issued by the authority, from revenues, and from funds appropriated for such purpose by the Legislature.

(13) Receive and accept from any federal agency, subject to the approval of the Governor, grants for or in aid of the construction of any water development project or for research and development with respect to public water facilities, stormwater systems, or wastewater facilities and receive and accept aid or contributions from any source of money, property, labor, or other things of value to be held, used and applied only for the purposes for which such grants and contributions are made.

(14) Engage in research and development with respect to public water facilities, stormwater systems, or wastewater facilities.

(15) Purchase property coverage and liability insurance for any water development project and for the principal office and suboffices of the authority, insurance protecting the authority and its officers and employees against liability, if any, for damage to property or injury to or death of persons arising from its operations and any other insurance the authority may agree to provide under any resolution

authorizing the issuance of water development revenue bonds or in any trust agreement securing the same.

(16) Charge, alter, and collect rentals and other charges for the use or services of any water development project as provided in this article and charge and collect reasonable interest, fees, and charges in connection with the making and servicing of loans to governmental agencies in the furtherance of the purposes of this article.

(17) Establish or increase reserves from moneys received or to be received by the authority to secure or to pay the principal of and interest on the bonds and notes issued by the authority pursuant to this article.

(18) Administer on behalf of the Department of Environmental Protection the Dam Safety Rehabilitation Revolving Fund Loan Program pursuant to the provisions of §22-14-1 *et seq.* of this code. Revenues or moneys designated by this code or otherwise appropriated for use by the authority pursuant to the provisions of this article may not be used for the Dam Safety Rehabilitation Revolving Fund Loan Program and moneys in the Dam Safety Rehabilitation Revolving Fund shall be kept separate from all revenues and moneys of the authority.

(19) Do all acts necessary and proper to carry out the powers expressly granted to the authority in this article.

CHAPTER 131

(S. B. 727 - By Senators Clements, Ihlenfeld, Maroney, Romano, Hardesty, Roberts, Stollings and Plymale)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended, relating to disbursement of the funds in the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund for highway road repair; providing that money from the fund is to be expended within the district where gas field and horizontal drilling waste is deposited; and updating grammatical style throughout the section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. SOLID WASTE MANAGEMENT ACT.

§22-15-11. Solid waste assessment fee; penalties.

(a) *Imposition.* — A solid waste assessment fee is hereby imposed upon the disposal of solid waste at any solid waste disposal facility in this state in the amount of $1.75 per ton or part thereof of solid waste. The fee imposed by this section is in addition to all other fees and taxes levied by law and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility.

(b) *Collection, return, payment, and records.* — The person disposing of solid waste at the solid waste disposal facility shall pay the fee imposed by this section, whether or not the person owns the solid waste, and the fee shall be

collected by the operator of the solid waste facility who shall remit it to the Tax Commissioner.

(1) The fee imposed by this section accrues at the time the solid waste is delivered to the solid waste disposal facility.

(2) The operator shall remit the fee imposed by this section to the Tax Commissioner on or before the 15th day of the month next succeeding the month in which the fee accrued. Upon remittance of the fee, the operator is required to file returns on forms and in the manner as prescribed by the Tax Commissioner.

(3) The operator shall account to the state for all fees collected under this section and shall hold them in trust for the state until remitted to the Tax Commissioner.

(4) If any operator fails to collect the fee imposed by this section, he or she is personally liable for the amount as he or she failed to collect, plus applicable additions to tax, penalties, and interest imposed by §11-10-1 *et seq.* of this code.

(5) Whenever any operator fails to collect, truthfully account for, remit the fee, or file returns with the fee as required in this section, the Tax Commissioner may serve written notice requiring the operator to collect the fees which become collectible after service of the notice, to deposit the fees in a bank approved by the Tax Commissioner, in a separate account, in trust for and payable to the Tax Commissioner, and to keep the amount of the fees in the account until remitted to the Tax Commissioner. The notice remains in effect until a notice of cancellation is served on the operator or owner by the Tax Commissioner.

(6) Whenever the owner of a solid waste disposal facility leases the solid waste facility to an operator, the operator is primarily liable for collection and remittance of

the fee imposed by this section and the owner is secondarily liable for remittance of the fee imposed by this section. However, if the operator fails, in whole or in part, to discharge his or her obligations under this section, the owner and the operator of the solid waste facility are jointly and severally responsible and liable for compliance with the provisions of this section.

(7) If the operator or owner responsible for collecting the fee imposed by this section is an association or corporation, the officers thereof are liable, jointly and severally, for any default on the part of the association or corporation, and payment of the fee and any additions to tax, penalties, and interest imposed by §11-10-1 *et seq.* of this code may be enforced against them as against the association or corporation which they represent.

(8) Each person disposing of solid waste at a solid waste disposal facility and each person required to collect the fee imposed by this section shall keep complete and accurate records in the form as the Tax Commissioner may require in accordance with the rules of the Tax Commissioner.

(c) *Regulated motor carriers.* — The fee imposed by this section and §7-5-22 of this code is considered a necessary and reasonable cost for motor carriers of solid waste subject to the jurisdiction of the Public Service Commission under chapter 24A of this code. Notwithstanding any provision of law to the contrary, upon the filing of a petition by an affected motor carrier, the Public Service Commission shall, within 14 days, reflect the cost of said fee in said motor carrier's rates for solid waste removal service. In calculating the amount of said fee to said motor carrier, the commission shall use the national average of pounds of waste generated per person per day as determined by the United States Environmental Protection Agency.

(d) *Definition of solid waste disposal facility.* — For purposes of this section, the term "solid waste disposal

facility" means any approved solid waste facility or open dump in this state, and includes a transfer station when the solid waste collected at the transfer station is not finally disposed of at a solid waste disposal facility within this state that collects the fee imposed by this section. Nothing herein authorizes in any way the creation or operation of or contribution to an open dump.

(e) *Exemptions.* — The following transactions are exempt from the fee imposed by this section:

(1) Disposal of solid waste at a solid waste disposal facility by the person who owns, operates, or leases the solid waste disposal facility if the facility is used exclusively to dispose of waste originally produced by the person in his or her regular business or personal activities or by persons utilizing the facility on a cost-sharing or nonprofit basis;

(2) Reuse or recycling of any solid waste;

(3) Disposal of residential solid waste by an individual not in the business of hauling or disposing of solid waste on the days and times as designated by the secretary is exempt from the solid waste assessment fee; and

(4) Disposal of solid waste at a solid waste disposal facility by a commercial recycler which disposes of 30 percent or less of the total waste it processes for recycling. In order to qualify for this exemption each commercial recycler must keep accurate records of incoming and outgoing waste by weight. The records must be made available to the appropriate inspectors from the division, upon request.

(f) *Procedure and administration.* — Notwithstanding §11-10-3 of this code, each and every provision of the West Virginia Tax Procedure and Administration Act set forth in §11-10-1 *et seq.* of this code shall apply to the fee imposed by this section with like effect as if said act were applicable

only to the fee imposed by this section and were set forth in extenso herein.

(g) *Criminal penalties.* — Notwithstanding §11-9-2 of this code, §11-3-3 through §11-3-17, inclusive, of this code shall apply to the fee imposed by this section with like effect as if said sections were applicable only to the fee imposed by this section and were set forth in extenso herein.

(h) *Dedication of proceeds.* — The net proceeds of the fee collected by the Tax Commissioner pursuant to this section shall be deposited at least monthly in an account designated by the secretary. The secretary shall allocate 25 cents for each ton of solid waste disposed of in this state upon which the fee imposed by this section is collected and shall deposit the total amount so allocated into the Solid Waste Reclamation and Environmental Response Fund to be expended for the purposes hereinafter specified. The first $1 million of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Enforcement Fund and expended for the purposes hereinafter specified. The next $250,000 of the net proceeds of the fee imposed by this section collected in each fiscal year shall be deposited in the Solid Waste Management Board Reserve Fund, and expended for the purposes hereinafter specified: *Provided*, That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is adequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause no less than $50,000 nor more than $250,000 to be deposited to the fund: *Provided, however*, That in any year in which the Water Development Authority determines that the Solid Waste Management Board Reserve Fund is inadequate to defer any contingent liability of the fund, the Water Development Authority shall so certify to the secretary and the secretary shall then cause not less than $250,000 nor more than $500,000 to be deposited in the fund: *Provided further*, That

if a facility owned or operated by the State of West Virginia is denied site approval by a county or regional solid waste authority, and if the denial contributes, in whole or in part, to a default, or drawing upon a reserve fund, on any indebtedness issued or approved by the Solid Waste Management Board, then in that event the Solid Waste Management Board or its fiscal agent may withhold all or any part of any funds which would otherwise be directed to the county or regional authority and shall deposit the withheld funds in the appropriate reserve fund. The secretary shall allocate the remainder, if any, of said net proceeds among the following three special revenue accounts for the purpose of maintaining a reasonable balance in each special revenue account, which are hereby continued in the State Treasury:

(1) The Solid Waste Enforcement Fund which shall be expended by the secretary for administration, inspection, enforcement, and permitting activities established pursuant to this article;

(2) The Solid Waste Management Board Reserve Fund which shall be exclusively dedicated to providing a reserve fund for the issuance and security of solid waste disposal revenue bonds issued by the Solid Waste Management Board pursuant to §22C-3-1 *et seq.* of this code; and

(3) The Solid Waste Reclamation and Environmental Response Fund which may be expended by the secretary for the purposes of reclamation, cleanup, and remedial actions intended to minimize or mitigate damage to the environment, natural resources, public water supplies, water resources, and the public health, safety, and welfare which may result from open dumps or solid waste not disposed of in a proper or lawful manner.

(i) *Findings.* — In addition to the purposes and legislative findings set forth in §22-15-1 of this code, the Legislature finds as follows:

(1) In-state and out-of-state locations producing solid waste should bear the responsibility of disposing of said solid waste or compensate other localities for costs associated with accepting the solid waste;

(2) The costs of maintaining and policing the streets and highways of the state and its communities are increased by long distance transportation of large volumes of solid waste; and

(3) Local approved solid waste facilities are being prematurely depleted by solid waste originating from other locations.

(j) The Gas Field Highway Repair and Horizontal Drilling Waste Study Fund is hereby created as a special revenue fund in the State Treasury to be administered by the West Virginia Division of Highways and to be expended only on the improvement, maintenance, and repair of public roads of three lanes or less located in the Division of Highways district where the waste is deposited that are identified by the Commissioner of Highways as having been damaged by trucks and other traffic associated with horizontal well drilling sites or the disposal of waste generated by the sites, and that experience congestion caused, in whole or in part, by the trucks and traffic that interferes with the use of said roads by residents in the vicinity of the roads: *Provided*, That up to $750,000 from the fund shall be made available to the Department of Environmental Protection from the same fund to offset contracted costs incurred by the Department of Environmental Protection while undertaking the horizontal drilling waste disposal studies mandated by the provisions of §22-15-8(j) of this code. Any balance remaining in the special revenue account at the end of any fiscal year shall not revert to the General Revenue Fund but shall remain in the special revenue account and shall be used solely in a manner consistent with this section. The fund shall consist of the fee provided for in subsection (k) of this section.

(k) *Horizontal drilling waste assessment fee.* — An additional solid waste assessment fee is hereby imposed upon the disposal of drill cuttings and drilling waste generated by horizontal well sites in the amount of $1 per ton, which fee is in addition to all other fees and taxes levied by this section or otherwise and shall be added to and constitute part of any other fee charged by the operator or owner of the solid waste disposal facility: *Provided,* That the horizontal drilling waste assessment fee shall be collected and administered in the same manner as the solid waste assessment fee imposed by this section, but shall be imposed only upon the disposal of drill cuttings and drilling waste generated by horizontal well sites.

CHAPTER 132

(Com. Sub. for S. B. 810 - By Senators Smith and Cline)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-5-20 of the Code of West Virginia, 1931, as amended, relating to adoption of a state plan implementing the federal Affordable Clean Energy rule pursuant to section 111(d) of the federal Clean Air Act.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. AIR POLLUTION CONTROL.

§22-5-20. Development of a state plan relating to carbon dioxide emissions from existing fossil fuel-fired electric generating units.

The West Virginia Department of Environmental Protection shall propose a legislative rule for promulgation

in accordance with §29A-3-1 of this code to implement the Affordable Clean Energy rule, consisting of Emission Guidelines for Greenhouse Gas, Emissions from Existing Electric Utility Generating Units (EGUs) pursuant to the federal Clean Air Act, section 111(d). The proposed rule shall be filed with the Secretary of State in time for consideration during the 2021 legislative session. Notwithstanding any provision to the contrary, the agency shall submit a complete or partial state compliance plan to the federal Environmental Protection Agency no later than September 1, 2020, which may be comprised of one or more EGU facilities that are voluntarily prepared to move forward with a compliance plan for one or more of their EGUs.

CHAPTER 133

(Com. Sub. for H. B. 4090 - By Delegates Anderson, J. Kelly, Graves, Boggs, Pethtel, Hartman, Evans, Porterfield, Hott, Nelson and Cadle)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 23, 2020.]

AN ACT to amend and reenact §11-13A-3a of the Code of West Virginia, 1931, as amended, and to amend said code by adding thereto a new section, designated §22-6-29a, all relating to creating and funding the Oil and Gas Abandoned Well Plugging Fund for use by the West Virginia Department of Environmental Protection to plug abandoned oil and gas wells without responsible operators; lowering the severance tax collected on production from certain defined marginal oil and natural gas wells; requiring the collected lower severance taxes to be deposited in the fund; providing for a cap on the balance of the fund which can trigger a further reduction in

the severance taxes on these certain defined marginal wells; providing an effective date for the lower tax rate; maintaining prior exemptions from the severance tax; providing for administration of the fund; providing specific purposes and limitations for use of the fund; providing reporting requirements for two funds, the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund; deleting a subsection of the code which expired by its own terms; and providing a short title.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit or commercial use, there is levied and shall be collected from every person exercising the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section: *Provided,* That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) for a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year

in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2020:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer;

(2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is two and five tenths percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting shale formations,

which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.

(c) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons severing gas or oil in this state, and is in addition to all other taxes imposed by law.

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer must calculate the actual production of such well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in such calendar year.

(e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of $6 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant to this subsection.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 6. OFFICE OF OIL AND GAS; OIL AND GAS WELLS.

§22-6-29a. Oil and Gas Abandoned Well Plugging Fund.

(a)(1) This section may be referred to as the Oil and Gas Abandoned Well Plugging Fund Act. There is established within the Treasury of the State of West Virginia the special use fund known as the Oil and Gas Abandoned Well Plugging Fund.

(2) The Oil and Gas Abandoned Well Plugging Fund shall be administered by the secretary solely for the purposes of carrying out the provisions of this section.

(3) Any balance remaining in the Oil and Gas Abandoned Well Plugging Fund at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account and may be used only as provided in this section. The revenues deposited in the Oil and Gas Abandoned Well Plugging Fund may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(b)(1) Using funds from the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund, the secretary shall plug and reclaim abandoned oil and gas wells without a responsible operator in accordance with plans and specifications developed pursuant to the provisions of this article relating to the plugging and reclamation of wells, and the rules establishing well plugging standards adopted thereunder.

(2) Funds from the Oil and Gas Abandoned Well Plugging Fund may only be used to plug abandoned oil and gas wells without a responsible operator and to reclaim the property disturbed from the plugging.

(3) On or before July 1 of each year, the secretary shall make an annual report to the Governor and the Legislature as to the use of the Oil and Gas Abandoned Well Plugging Fund and the Oil and Gas Reclamation Fund. The report shall include the balance in both funds on June 1 of each year. The secretary's annual report shall set forth the number of wells reclaimed or plugged through the use of the Oil and Gas Reclamation Fund and the Oil and Gas Abandoned Well Plugging Fund in the previous year. The report shall identify each reclamation and plugging project, state the number of wells plugged thereby, show the county in which the wells are located, and make a detailed accounting of all expenditures from the Oil and Gas Reclamation Fund and from the Oil and Gas Abandoned Well Plugging Fund. The annual report shall also include a five-year plan detailing current and future projects and activities to plug and reclaim wells.

(4) Wells shall be plugged, and plugged wells reclaimed by contract entered into by the secretary on a competitive bid basis as provided for under the provisions of §5A-3-1 *et seq.* of this code and the rules promulgated thereunder.

CHAPTER 134

(Com. Sub. for H. B. 4091 - By Delegates Anderson, J. Kelly, Porterfield, Hartman, Pethtel, Boggs, Evans, Tomblin, Phillips, Azinger and Hott)

[Passed February 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 17, 2020.]

AN ACT to amend and reenact §22-6A-7 of the Code of West Virginia, 1931, as amended, relating to allowing for expedited oil and gas well permitting for certain wells under the Natural Gas Horizontal Well Control Act upon payment of applicable

expedited fees; allowing expedited oil and gas well permit modifications under the same Act upon the payment of applicable expedited fees; permitting one half of any residual fees to be deposited in the Oil and Gas Operating Permit and Processing Fund; permitting one half of any residual fees to be deposited in the Oil and Gas Reclamation Fund; providing for the daily pro rata refund of the horizontal well expedited fee if the permit is not approved between day 45 and day 60 after the submission of a permit application; providing for the daily pro rata refund of the modification fees between day 20 and day 30 after the submission of a permit modification application; providing for a maximum cap amount of $1 million for all residual fees from this article to be deposited in the Oil and Gas Operating Permit and Processing Fund; and providing that any balance in the Oil and Gas Reclamation Fund at the end of a fiscal year remain in the special revenue account and not be remitted to the General Revenue Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6A. NATURAL GAS HORIZONTAL WELL CONTROL ACT.

§22-6A-7. Horizontal well permit required; permit fee; application; soil erosion control plan; well site safety plan; site construction plan; water management plan; permit fee; installation of permit number; suspension and transfer of a permit.

(a) It is unlawful for any person to commence any well work, including site preparation work which involves any disturbance of land, for a horizontal well without first securing from the secretary a well work permit pursuant to this article.

(b) Every permit application filed under this section shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain the following information:

(1) The names and addresses of: (A) The well operator; (B) the agent required to be designated under subsection (k) of this section; and (C) every person whom the applicant shall notify under any section of this article, together with a certification and evidence that a copy of the application and all other required documentation has been delivered to all such persons;

(2) The names and addresses of every coal operator operating coal seams under the tract of land on which the well is or may be located, and the coal seam owner of record and lessee of record required to be given notice by §22-6A-5(a)(6) of this code, if any, if the owner or lessee is not yet operating the coal seams;

(3) The number of the well or other identification the secretary may require;

(4) The well work for which a permit is requested;

(5) The approximate total depth to which the well is to be drilled or deepened, or the actual depth if the well has been drilled; the proposed angle and direction of the well; the actual depth or the approximate depth at which the well to be drilled deviates from vertical, the angle, and direction of the nonvertical well bore until the well reaches its total target depth or its actual final depth; and the length and direction of any actual or proposed horizontal lateral or well bore;

(6) Each formation in which the well will be completed if applicable;

(7) A description of any means used to stimulate the well;

(8) If the proposed well work will require casing or tubing to be set, the entire casing program for the well, including the size of each string of pipe, the starting point and depth to which each string is to be set and the extent to which each such string is to be cemented;

(9) If the proposed well work is to convert an existing well, all information required by this section, all formations from which production is anticipated, and any plans to plug any portion of the well;

(10) If the proposed well work is to plug or replug the well, all information necessary to demonstrate compliance with the legislative rules promulgated by the secretary in accordance with §22-6A-13 of this code;

(11) If the proposed well work is to stimulate a horizontal well, all information necessary to demonstrate compliance with the requirements of §22-6A-5(a)(7) of this code;

(12) The erosion and sediment control plan required under subsection (c) of this section for applications for permits to drill;

(13) A well site safety plan to address proper safety measures to be employed for the protection of persons on the site as well as the general public. The plan shall encompass all aspects of the operation, including the actual well work for which the permit was obtained, completion activities and production activities, and shall provide an emergency point of contact for the well operator. The well operator shall provide a copy of the well site safety plan to the local emergency planning committee established pursuant to §15-5A-7 of this code for the emergency planning district in which the well work will occur at least seven days before commencement of well work or site preparation work that involves any disturbance of land;

(14) A certification from the operator that: (A) It has provided the owners of the surface described in §22-6A-10(b)(1), §22-6A-10(b)(2), and §22-6A-10(b)(4) of this code, the information required by §22-6A-16(b) and §22-6A-16(c) of this code; (B) that the requirement was deemed satisfied as a result of giving the surface owner notice of entry to survey pursuant to §22-6A-10(a) of this code; or

(C) the notice requirements of §22-6A-16(b) of this code were waived in writing by the surface owner; and

(15) Any other relevant information which the secretary may reasonably require.

(c)(1) An erosion and sediment control plan shall accompany each application for a well work permit under this article. The plan shall contain methods of stabilization and drainage, including a map of the project area indicating the amount of acreage disturbed. The erosion and sediment control plan shall meet the minimum requirements of the West Virginia Erosion and Sediment Control Manual as adopted and from time to time amended by the department. The erosion and sediment control plan shall become part of the terms and conditions of any well work permit that is issued pursuant to this article and the provisions of the plan shall be carried out where applicable in the operation. The erosion and sediment control plan shall set out the proposed method of reclamation which shall comply with the requirements of §22-6A-14 of this code.

(2) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the erosion and sediment control plan submitted in accordance with this section shall be certified by a registered professional engineer.

(d) For well sites that disturb three acres or more of surface, excluding pipelines, gathering lines and roads, the operator shall submit a site construction plan that shall be certified by a registered professional engineer and contains information that the secretary may require by rule.

(e) In addition to the other requirements of this section, if the drilling, fracturing, or stimulating of the horizontal well requires the use of water obtained by withdrawals from waters of this state in amounts that exceed 210,000 gallons during any 30-day period, the application for a well work permit shall include a water management plan, which may

be submitted on an individual well basis or on a watershed basis, and which shall include the following information:

(1) The type of water source, such as surface or groundwater, the county of each source to be used by the operation for water withdrawals and the latitude and longitude of each anticipated withdrawal location;

(2) The anticipated volume of each water withdrawal;

(3) The anticipated months when water withdrawals will be made;

(4) The planned management and disposition of wastewater after completion from fracturing, refracturing, stimulation, and production activities;

(5) A listing of the anticipated additives that may be used in water utilized for fracturing or stimulating the well. Upon well completion, a listing of the additives that were actually used in the fracturing or stimulating of the well shall be submitted as part of the completion log or report required by §22-6A-5(a)(14) of this code;

(6) For all surface water withdrawals, a water management plan that includes the information requested in subdivisions (1) through (5) of this subsection and the following:

(A) Identification of the current designated and existing water uses, including any public water intakes within one mile downstream of the withdrawal location;

(B) For surface waters, a demonstration, using methods acceptable to the secretary, that sufficient in-stream flow will be available immediately downstream of the point of withdrawal. A sufficient in-stream flow is maintained when a pass-by flow that is protective of the identified use of the stream is preserved immediately downstream of the point of withdrawal; and

(C) Methods to be used for surface water withdrawal to minimize adverse impact to aquatic life; and

(7) This subsection is intended to be consistent with and does not supersede, revise, repeal, or otherwise modify §22-11-1 *et seq.*, §22-12-1 *et seq.*, or §22-26-1 *et seq.* of this code and does not revise, repeal, or otherwise modify the common law doctrine of riparian rights in West Virginia law.

(f) An application may propose and a permit may approve two or more activities defined as well work; however, a separate permit shall be obtained for each horizontal well drilled.

(g) The application for a permit under this section shall be accompanied by the applicable bond as required by §22-6A-15 of this code, the applicable plat required by §22-6A-5(a)(6) of this code, and a permit fee of $10,000 for the initial horizontal well drilled at a location and a permit fee of $5,000 for each additional horizontal well drilled on a single well pad at the same location.

(h)(1) An applicant may enter into an expedited permit application process with the secretary for a well permit and pay an additional expedited permit fee of $20,000 for the initial horizontal well drilled at a location and an additional expedited permit fee of $10,000 for each additional horizontal well drilled on a single well pad at the same location: *Provided*, That deep well permitting is excluded from this expedited permit process due to the independent board review and approval requirement which is outside the secretary's control.

(2) Upon entering into an expedited permit process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit within 45 days of the submission of a permit application under this article, unless the secretary seeks additional information or modification from the applicant, which would toll the 45 day period until the

secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds: (A) The 45-day deadline for approval or denial of an expedited initial horizontal well drilled, the secretary shall refund $1,333.33 per day up to and including day 60 after the submission of a permit application until the expedited fee is reduced to the normal permit fee amount; or (B) the 45-day deadline for approval or denial of an expedited permit for any additional horizontal well drilled on a single well pad at the same location, the secretary shall be required to refund $666.66 per day up to and including day 60 after the submission of a permit application, until the expedited fee is reduced to the normal permit fee amount.

(4)(A) After all refunds are paid by the secretary, one half of the additional expedited permit fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed $1 million annually in combination with proceeds received through §22-6A-7(i)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(h)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the additional expedited permit fee, plus any residuary as set forth in §22-6A-7(h)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(i)(1) An applicant may enter into an expedited permit modification application process with the secretary for a well permit and pay an expedited permit modification fee of $5,000 for the modification of the permit for any horizontal well drilled at a location: *Provided*, That deep well permit modifications are excluded from this expedited permit

modification process if the modification is subject to independent board review and approval.

(2) Upon entering into an expedited permit modification process and meeting all the criteria set forth in this article, the secretary shall issue or deny a permit modification within 20 days of the submission of a permit modification application under this article, unless the secretary seeks additional information or further modification from the applicant, which would toll the 20 day period until the secretary receives the required responsive information from the applicant.

(3) Each day the agency exceeds the 20-day deadline for approval or denial of an expedited horizontal well permit modification, the secretary shall refund $500 per day up to and including day 30 after the submission of an expedited permit modification application, until the expedited permit modification fee of $5,000 is reduced to zero.

(4)(A) After all refunds are paid by the secretary, one half of the expedited permit modification fee shall be deposited in the Oil and Gas Operating Permit and Processing Fund and shall be used by the agency to cover costs to review, process, and approve or deny the applicable horizontal well permit applications and modifications pending before the agency, but not to exceed $1 million annually in combination with proceeds received through §22-6A-7(h)(4)(A) of this code and any residuary fee proceeds to be distributed as set forth in §22-6A-7(i)(4)(B) of this code.

(B) After all refunds are paid by the secretary, one half of the expedited permit modification fee, plus any residuary as set forth in §22-6A-7(i)(4)(A) of this code, shall be deposited in the Oil and Gas Reclamation Fund and used specifically for the reclamation and plugging of orphaned oil or gas wells.

(j) Any balance in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code, which remains at the end of any state fiscal year does not revert to the General Revenue Fund but shall remain in the special revenue account as indicated and may be used only as provided in §22-6-29(b) of this code. The revenues deposited in the Oil and Gas Reclamation Fund, earmarked specifically for the reclamation and plugging of orphaned oil or gas wells pursuant to §22-6A-7(h)(4)(B) and §22-6A-7(i)(4)(B) of this code may not be designated as nonaligned state special revenue funds under §11B-2-32 of this code.

(k) The well operator named in the application shall designate the name and address of an agent for the operator who is the attorney-in-fact for the operator and who is a resident of the State of West Virginia upon whom notices, orders, or other communications issued pursuant to this article or §22-11-1 *et seq.* of this code may be served, and upon whom process may be served. Every well operator required to designate an agent under this section shall, within five days after the termination of the designation, notify the secretary of the termination and designate a new agent.

(l) The well owner or operator shall install the permit number as issued by the secretary and a contact telephone number for the operator in a legible and permanent manner to the well upon completion of any permitted work. The dimensions, specifications, and manner of installation shall be in accordance with the rules of the secretary.

(m) The secretary may waive the requirements of this section and §22-6A-8, §22-6A-10, §22-6A-11, and §22-6A-24 of this code in any emergency situation if the secretary considers the action necessary. In that case the secretary may issue an emergency permit which is effective for not more than 30 days, unless reissued by the secretary.

(n) The secretary shall deny the issuance of a permit if the secretary determines that the applicant has committed a substantial violation of a previously issued permit for a

horizontal well, including the applicable erosion and sediment control plan associated with the previously issued permit, or a substantial violation of one or more of the rules promulgated under this article, and in each instance has failed to abate or seek review of the violation within the time prescribed by the secretary pursuant to the provisions of §22-6A-5(a)(1) and §22-6A-5(a)(2) of this code and the rules promulgated hereunder, which time may not be unreasonable.

(o) If the secretary finds that a substantial violation has occurred and that the operator has failed to abate or seek review of the violation in the time prescribed, the secretary may suspend the permit on which the violation exists, after which suspension the operator shall forthwith cease all well work being conducted under the permit. However, the secretary may reinstate the permit without further notice, at which time the well work may be continued. The secretary shall make written findings of the suspension and may enforce the same in the circuit courts of this state. The operator may appeal a suspension pursuant to the provisions of §22-6A-5(a)(23) of this code. The secretary shall make a written finding of any such determination.

(p) Any well work permit issued in accordance with this section may be transferred with the prior written approval of the secretary upon his or her finding that the proposed transferee meets all requirements for holding a well work permit, notwithstanding any other provision of this article or rule adopted pursuant to this article. Application for the transfer of any well work permit shall be upon forms prescribed by the secretary and submitted with a permit transfer fee of $500. Within 90 days of the receipt of approval by the secretary, the transferee shall give notice of the transfer to those persons entitled to notice in §22-6A-10(b) of this code by personal service or by registered mail or by any method of delivery that requires a receipt or signature confirmation, and shall further update the emergency point of contact provided pursuant to subdivision (13), subsection (b) of this section.

CHAPTER 135

(Com. Sub. for H. B. 4484 - By Delegates Anderson, J. Kelly, Hansen, Miley, Evans, Pethtel, Westfall, Azinger, Cadle, Porterfield and Pyles)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §22-18-22 of the Code of West Virginia, 1931, as amended, relating to the Hazardous Waste Management Fund; extending the termination date from June 30, 2020, to June 30, 2025, thereby allowing the continuance of the annual certification fees for facilities that manage hazardous waste and allowing the continuance of the fund into which the fees are deposited.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18. HAZARDOUS WASTE MANAGEMENT ACT.

§22-18-22. Appropriation of funds; Hazardous Waste Management Fund.

(a) The net proceeds of all fines, penalties and forfeitures collected under this article shall be appropriated as directed by section five, article XII of the Constitution of West Virginia. For the purposes of this section, the net proceeds of the fines, penalties and forfeitures are considered the proceeds remaining after deducting therefrom those sums appropriated by the Legislature for defraying the cost of administering this article. All permit application fees collected under this article shall be paid into the State Treasury into a special fund designated the Hazardous Waste Management Fund. In making the appropriation for defraying the cost of administering this

article, the Legislature shall first take into account the sums included in that special fund prior to deducting additional sums as may be needed from the fines, penalties and forfeitures collected pursuant to this article.

(b) Effective on July 1, 2003, there is imposed an annual certification fee for facilities that manage hazardous waste, as defined by the federal Resource Conservation and Recovery Act, as amended. The secretary shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish the certification fee. The rule shall be a product of a negotiated rule-making process with the facilities subject to the rule. The rule shall, at a minimum, establish different fee rates for facilities based on criteria established in the rule. The total amount of fees generated raise no more funds than are necessary and adequate to meet the matching requirements for all federal grants which support the hazardous waste management program, but shall not exceed $700,000 per year.

(c) The revenues collected from the annual certification fee shall be deposited in the State Treasury to the credit of the Hazardous Waste Management Fee Fund, which is continued. Moneys of the fund, together with any interest or other return earned on the fund, shall be expended to meet the matching requirements of federal grant programs which support the hazardous waste management program. Expenditures from the fund are for the purposes set forth in this article and are not authorized from collections, but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §5A-2-1 *et seq.* of this code. Amounts collected which are found, from time to time, to exceed the funds needed for purposes set forth in this article may be transferred to other accounts by appropriation of the Legislature.

(d) The fee provided in subsection (b) of this section and the fund established in subsection (c) of this section shall terminate on June 30, 2025. The department shall, by December 31 of each year, report to the Joint Committee on Government and Finance regarding moneys collected into the Hazardous Waste Management Fee Fund and expenditures by the agency, including any federal matching moneys received and providing an accounting on the collection of the fee by type of permit activity, funds being expended and current and future projected balances of the fund.

CHAPTER 136

(Com. Sub. for S. B. 195 - By Senator Sypolt)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §44-1-29 of the Code of West Virginia, 1931, as amended, relating to authorization for a personal representative, trustee, administrator, or executor of a deceased person's estate to transfer or amend deeds of conservation or preservation easements; removing authorization to execute deeds of conservation and preservation easements where a decedent did not sign or complete the deed or easement; defining the duty of the personal representative, trustee, administrator, or executor; and establishing conditions for the exercise of the authority to transfer or amend.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. PERSONAL REPRESENTATIVES.

§44-1-29. Authority of personal representative concerning conservation and preservation easements.

(a) Subject to the requirements and conditions of subsection (b) of this section, a personal representative, trustee, administrator, or executor of a decedent or a decedent's estate is hereby granted the authority to:

(1) Sell a conservation or preservation easement under §8A-12-1 *et seq.* of this code or §20-12*-1 *et seq.* of this code;

(2) Donate a conservation or preservation easement under §8A-12-1 *et seq.* of this code or §20-12*-1 *et seq.* of this code; or

(3) Amend a conservation or preservation easement created prior to the decedent's death under §8A-12-1 *et seq.* of this code or §20-12*-1 *et seq.* of this code and recorded on the decedent's real property as may be permitted by applicable law and the conservation or preservation easement.

(b) The personal representative, trustee, administrator, or executor shall ensure that the sale, donation, amendment, or transfer, of a conservation or preservation easement complies with the following:

(1) The proposed sale, donation, transfer or amendment satisfies the requirements set forth in the provisions of §8A-12-1* *et seq.* of this code or §20-12-1* *et seq.* of this code, as applicable to the particular easement;

(2) The proposed sale, donation, transfer, or amendment is to a qualified conservation organization or holder and the organization or holder agrees to accept the conservation or preservation easement; and

(3) The sale, donation, transfer, or amendment must meet one of the following conditions:

***NOTE:** Correction of apparent word to number translation error.

(A) In the case of an administrator of a decedent's intestate estate, all heirs with interests in the real estate affected provide written consent which shall be recorded with the easement; or

(B) In the case of a personal representative or executor of a decedent's testate estate, or the trustee of a trust, the will, trust, or other governing instrument authorizes or directs the personal representative, executor, or trustee to sell or donate a conservation or preservation easement; or

(C) The sale, donation, transfer, or amendment of the conservation or preservation easement is authorized pursuant to a legal proceeding in a court of law with jurisdiction over the property.

CHAPTER 137

(Com. Sub. for S. B. 213 - By Senator Trump)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44D-1-103, §44D-1-105, and §44D-1-108 of the Code of West Virginia, 1931, as amended; to amend and reenact §44D-6-603 of said code; to amend and reenact §44D-7-703 of said code; to amend and reenact §44D-8-808 of said code; and to amend said code by adding thereto a new article, designated §44D-8A-801, §44D-8A-802, §44D-8A-803, §44D-8A-804, §44D-8A-805, §44D-8A-806, §44D-8A-807, §44D-8A-808, §44D-8A-809, §44D-8A-810, §44D-8A-811, §44D-8A-812, §44D-8A-813, §44D-8A-814, §44D-8A-815, §44D-8A-816, and §44D-8A-817, all relating to the administration of trusts; providing definitions; establishing default and mandatory rules; establishing when terms of a trust designating the principal place of administration are

valid; permitting a trustee to follow a direction contrary to the terms of a trust instrument; enacting the West Virginia Uniform Directed Trust Act; specifying applicability; setting forth exclusions; establishing powers, duties and liabilities of a trust director; providing limitations on trust director power; establishing duties and liabilities of a directed trustee; establishing duty of trustees and trust directors to provide certain information to a trust director or trustee; providing limitations on duties of trustee's and trust directors; providing that the terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power; providing limitations on actions against a trust director; establishing defenses in actions against a trust director; establishing personal jurisdiction of West Virginia courts over a trust director; providing that certain statutory rules apply to a trust director; and providing an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§44D-1-103. Definitions.

1 In this chapter:

2 (a) "Action", with respect to an act of a trustee, includes
3 a failure to act.

4 (b) "Ascertainable standard" means a standard relating
5 to an individual's health, education, support, or
6 maintenance within the meaning of Section 2041(b)(1)(A)
7 or 2514(c)(1) of the Internal Revenue Code.

8 (c) "Beneficiary" means a person that:

9 (1) Has a present or future beneficial interest in a trust,
10 vested or contingent;

11 (2) In a capacity other than that of trustee, holds a power
12 of appointment over trust property; or

(3) A charitable organization that is expressly designated in the terms of the trust instrument to receive distributions.

(d) "Charitable trust" means a trust, or portion of a trust, created for a charitable purpose described in §44D-4-405 of this code.

(e) "Conservator" means a person appointed by the court to administer the estate and financial affairs of a protected person.

(f) "Court" means a court of this state having proper jurisdiction under §44D-2-203 of this code, and venue under §44D-2-204 of this code.

(g) "Current beneficiary" means a beneficiary that, on the date the beneficiary's qualification is determined, is a distributee or permissible distributee of trust income or principal.

(h) "Environmental law" means a federal, state, or local law, rule, regulation, or ordinance relating to protection of the environment.

(i) "Grantor" means a person, including a testator, who creates, or contributes property to a trust. If more than one person creates or contributes property to a trust, each person is a grantor of the portion of the trust property attributable to that person's contribution except to the extent another person has the power to revoke or withdraw that portion.

(j) "Guardian" means a person appointed by the court who is responsible for the personal affairs of a protected person or a parent to make decisions regarding the support, care, education, health, and welfare of a minor. The term does not include a guardian ad litem.

(k) "Interested person" means heirs, devisees, children, spouses, creditors, beneficiaries and any others having a property right in or claim against a trust or the property in a

trust. It also includes persons having priority for appointment as personal representative and other fiduciaries representing interested persons. The meaning as it relates to particular persons may vary from time to time and must be determined according to the particular purposes of, and matter involved, in any proceeding.

(l) "Interests of the beneficiaries" means the beneficial interests provided in the terms of the trust.

(m) "Internal Revenue Code" or "Internal Revenue Code of 1986" has the same meaning as when used in a comparable context in the laws of the United States then in effect relating to income, estate, generation-skipping transfer and other taxes including all amendments made to the laws of the United States and amendments which have been adopted and incorporated into West Virginia law by the West Virginia Legislature in §11-21-9 of this code.

(n) "Jurisdiction" with respect to a geographic area, includes a state or country.

(o) "Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture, unincorporated nonprofit association, charitable organization, government, governmental subdivision, agency, or instrumentality, public corporation, or any other legal or commercial entity.

(p) "Power of withdrawal" means a presently exercisable general power of appointment other than a power:

(1) Exercisable by a trustee and limited by an ascertainable standard; or

(2) Exercisable by another person only upon consent of the trustee or a person holding an adverse interest.

(q) "Property" means anything that may be the subject of ownership, whether real or personal, legal or equitable or any interest therein.

(r) "Qualified beneficiary" means a beneficiary who, on the date the beneficiary's qualification is determined:

(1) Is a distributee or permissible distributee of trust income or principal;

(2) Would be a distributee or permissible distributee of trust income or principal if the interests of the distributees described in paragraph (1) of this subdivision terminated on that date without causing the trust to terminate; or

(3) Would be a distributee or permissible distributee of trust income or principal if the trust terminated on that date.

(s) "Revocable", as applied to a trust, means revocable by the grantor without the consent of the trustee or a person holding an adverse interest.

(t) "Spendthrift provision" means a term of a trust which restrains both voluntary and involuntary transfer of a beneficiary's interest.

(u) "State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands or any territory or insular possession subject to the jurisdiction of the United States. The term includes an Indian tribe or band recognized by federal law or formally acknowledged by a state.

(v) "Terms of a trust" means:

(1) Except as otherwise provided in subparagraph (2); and the manifestation of the grantor's intent regarding a trust's provisions as:

(A) Expressed in the trust instrument; or

(B) Established by other evidence that would be admissible in a judicial proceeding; or

(2) The trust's provisions as established, determined, or amended by:

(i) A trustee or trust director in accordance with applicable law;

(ii) A court order; or

(iii) A nonjudicial settlement agreement under §44D-1-111 of this code.

(w) "Trust instrument" means a writing, including a will, executed by the grantor that contains terms of the trust, including any amendments thereto.

(x) "Trustee" includes an original, additional, successor trustee and a cotrustee.

(y) "Writing" or "written instrument" does not include an electronic record or electronic signature as provided in §39A-1-1 *et seq.* of this code.

§44D-1-105. Default and mandatory rules.

(a) Except as otherwise provided in the terms of the trust instrument, this chapter governs the duties and powers of a trustee, relations among trustees, and the rights and interests of a beneficiary.

(b) The terms of a trust prevail over any provision of this chapter except:

(1) The requirements for creating a trust;

(2) The duty of a trustee to act in good faith and in accordance with the terms and purposes of the trust but subject to the provisions of §44D-8A-901, §44D-8A-1101, and §44D-8A-1201 of this code;

(3) The requirement that a trust and its terms have a purpose that is lawful, not contrary to public policy, and possible to achieve;

(4) The power of the court to modify or terminate a trust under §44D-4-410 through §44D-4-416 of this code;

(5) The effect of a spendthrift provision and the rights of certain creditors and assignees to reach a trust as provided in §44D-5-501 *et seq.* of this code;

(6) The power of the court under §44D-7-702 of this code to require, dispense with, or modify or terminate a bond;

(7) The power of the court under §44D-7-708(b) of this code to adjust a trustee's compensation specified in the terms of the trust instrument which is unreasonably low or high;

(8) The effect of an exculpatory term under §44D-10-1008 of this code;

(9) The rights under §44D-10-1010 through §44D-10-1013 of this code of a person other than a trustee or beneficiary;

(10) Periods of limitation for commencing a judicial proceeding;

(11) The power of the court to take action and exercise jurisdiction as may be necessary in the interests of justice; and

(12) The subject-matter jurisdiction of the court and venue for commencing a proceeding as provided in §44D-2-203 and §44D-2-204 of this code.

§44D-1-108. Principal place of administration.

(a) Without precluding other means for establishing a sufficient connection with the designated jurisdiction, terms

of a trust designating the principal place of administration are valid and controlling if:

(1) A trustee's principal place of business is located in, or a trustee is a resident of the designated jurisdiction;

(2) A trust director's principal place of business is located in, or a trust director is a resident of the designated jurisdiction; or

(3) All or part of the administration occurs in the designated jurisdiction.

(b) Without precluding the right of the court to order, approve, or disapprove a transfer, the trustee may transfer the trust's principal place of administration to another state or to a jurisdiction outside of the United States that is appropriate to the trust's purposes, its administration, and the interests of the beneficiaries.

(c) When the proposed transfer of a trust's principal place of administration is to another state or to a jurisdiction outside of the United States, the trustee shall notify the current beneficiaries of a proposed transfer of a trust's principal place of administration not less than 60 days before initiating the transfer. A corporate trustee that maintains a place of business in West Virginia where one or more trust officers are available on a regular basis for personal contact with trust customers and beneficiaries has not transferred its principal place of administration merely because all or a significant portion of the administration of the trust is performed outside West Virginia. The notice of proposed transfer must include:

(1) The name of the jurisdiction to which the principal place of administration is to be transferred;

(2) The address and telephone number at the new location at which the trustee can be contacted;

(3) An explanation of the reasons for the proposed transfer;

(4) The date on which the proposed transfer is anticipated to occur; and

(5) The date, not less than 60 days after the giving of the notice, by which the current beneficiary must notify the trustee of an objection to the proposed transfer.

(d) The authority of a trustee under this section to transfer a trust's principal place of administration to another state or to a jurisdiction outside the United States terminates if a current beneficiary notifies the trustee of an objection to the proposed transfer on or before the date specified in the notice.

(e) In connection with a transfer of the trust's principal place of administration, the trustee may transfer some or all of the trust property to a successor trustee designated in the terms of the trust instrument or appointed pursuant to §44D-7-704 of this code.

ARTICLE 6. REVOCABLE TRUSTS.

§44D-6-603. Grantor's powers; powers of withdrawal.

(a) While a trust is revocable and the grantor has capacity to revoke the trust, rights of the beneficiaries are subject to the control of, and the duties of the trustee are owed exclusively to, the grantor.

(b) During the period the power may be exercised, the holder of a power of withdrawal has the rights of a grantor of a revocable trust under this section to the extent of the property subject to the power.

(c) When a trust is revocable, the trustee may follow a direction of the grantor that is contrary to the terms of the trust instrument.

ARTICLE 7. OFFICE OF THE TRUSTEE.

§44D-7-703. Cotrustees.

(a) Unless otherwise provided in the terms of the trust instrument, cotrustees who are unable to reach a unanimous decision may act by majority decision. Unless otherwise provided by the trust instrument, when a dispute arises among trustees as to the exercise or nonexercise of any of their powers and there is no agreement by a majority of them, the court in its discretion upon a petition filed by any of the trustees, the grantor, if living, a qualified beneficiary, or any interested person, may direct the exercise or nonexercise of the power as it considers necessary for the best interest of the trust.

(b) If a vacancy occurs in a cotrusteeship, the remaining cotrustees may act for the trust, unless otherwise provided in the terms of the trust instrument.

(c) Subject to the provisions of §44D-8A-801 *et seq.* of this code, a cotrustee must participate in the performance of a trustee's function unless the cotrustee is unavailable to perform the function because of absence, illness, disqualification under other law, or other temporary incapacity or the cotrustee has properly delegated the performance of the function to another trustee.

(d) If a cotrustee is unavailable to perform duties because of absence, illness, disqualification under other law, or other temporary incapacity, and prompt action is necessary to achieve the purposes of the trust or to avoid injury to the trust property, the remaining cotrustee or a majority of the remaining cotrustees may act for the trust.

(e) A trustee may delegate to a cotrustee the performance of a function other than a function that the terms of the trust expressly require to be performed by the trustees jointly. Unless a delegation was irrevocable, a trustee may revoke a delegation of a function previously made.

(f) Except as otherwise provided in subsection (g) of this section, a trustee who does not join in an action of another trustee is not liable for the action.

(g) Subject to the provisions of §44D-8A-801 *et seq.* of this code, each trustee shall exercise reasonable care to:

(1) Prevent a cotrustee from committing a serious breach of trust; and

(2) Compel a cotrustee to redress a serious breach of trust.

(h) A dissenting trustee who joins in an action at the direction of the majority of the trustees and who notifies any cotrustee of the dissent at or before the time of the action is not liable for the action unless the action is a serious breach of trust.

ARTICLE 8. DUTIES AND POWERS OF TRUSTEE.

§44D-8-808. Powers to direct.

The terms of a trust instrument which confer upon a person other than the grantor of a revocable trust power to direct certain actions of the trustee are governed by the provisions of the West Virginia Uniform Directed Trust Act contained in §44D-8A-801 *et seq.* of this code.

ARTICLE 8A. WEST VIRGINIA UNIFORM DIRECTED TRUST ACT.

§44D-8A-801. Short title.

This article may be cited as the West Virginia Uniform Directed Trust Act.

§44D-8A-802. Definitions.

In addition to the definitions contained in §44D-1-103 of this code, as used in this article:

(1) "Breach of trust" means a violation by a trust director or trustee of a duty imposed on that director or

trustee by the terms of the trust, this article, or law of this state, other than this article pertaining to trusts.

(2) "Directed trust" means a trust for which the terms of the trust grant a power of direction.

(3) "Directed trustee" means a trustee that is subject to a trust director's power of direction.

(4) "Power of direction" means a power over a trust granted to a person by the terms of the trust to the extent the power is exercisable while the person is not serving as a trustee. The term includes a power over the investment, management, or distribution of trust property or other matters of trust administration. The term excludes the powers described in §44D-8A-501(b) of this code.

(5) "Trust director" means a person that is granted a power of direction by the terms of a trust to the extent the power is exercisable while the person is not serving as a trustee. The person is a trust director whether or not the terms of the trust refer to the person as a trust director and whether or not the person is a beneficiary or grantor of the trust.

(6) "Knowingly" means known by the trustee based on the contents of the direction and any information provided by the trust director to the trustee.

(7) "Willful misconduct" means intentional malicious conduct or conduct intentionally designed to defraud or seek an unconscionable advantage and which is not mere negligence, gross negligence, or recklessness.

§44D-8A-803. Application; principal place of administration.

The provisions of the West Virginia Uniform Directed Trust Act apply to a trust, whenever created, that has its principal place of administration in this state, subject to the following rules:

(a) If the trust was created before the effective date of this article, this article applies only to a decision or action occurring on or after the effective date of this article.

(b) If the principal place of administration of the trust is changed to this state on or after the effective date of this article, this article applies only to a decision or action occurring on or after the date of the change.

§44D-8A-804. Common law and principles of equity.

The common law and principles of equity supplement this article, except to the extent modified by this article or law of this state other than this article.

§44D-8A-805. Exclusions.

(a) In this section, "power of appointment" means a power that enables a person acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over trust property.

(b) This article does not apply to a:

(1) Power of appointment;

(2) Power to appoint or remove a trustee or trust director;

(3) Power of a grantor over a trust to the extent the grantor has a power to revoke the trust;

(4) Power of a beneficiary over a trust to the extent the exercise or nonexercise of the power affects the beneficial interest of:

(A) The beneficiary; or

(B) Another beneficiary represented by the beneficiary under §44D-3-301, §44D-3-302, §44D-3-303, §44D-3-304, and §44D-3-305 of this code with respect to the exercise or nonexercise of the power; or

(5) Power over a trust if:

(A) The terms of the trust provide that the power is held in a nonfiduciary capacity; and

(B) The power must be held in a nonfiduciary capacity to achieve the grantor's tax objectives under the United States Internal Revenue Code of 1986 and regulations issued thereunder.

(c) Unless the terms of a trust provide otherwise, a power granted to a person to designate a recipient of an ownership interest in or power of appointment over trust property which is exercisable while the person is not serving as a trustee is a power of appointment and not a power of direction.

§44D-8A-806. Powers of trust director.

(a) Subject to §44D-8A-807 of this code, the terms of a trust may grant a power of direction to a trust director.

(b) Unless the terms of a trust provide otherwise:

(1) A trust director may exercise any further power appropriate to the exercise or nonexercise of a power of direction granted to the director under subsection (a) of this section; and

(2) Trust directors with joint powers must act by majority decision.

§44D-8A-807. Limitations on trust director.

A trust director is subject to the same rules as a trustee in a like position and under similar circumstances in the exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code regarding:

(1) A payback provision in the terms of a trust necessary to comply with the reimbursement requirements of Medicaid law in Section 1917 of the Social Security Act, 42

U.S.C. Section 1396p(d)(4)(A) and regulations issued thereunder; and

(2) A charitable interest in the trust, including notice regarding the interest to the Attorney General of the State of West Virginia.

§44D-8A-808. Duty and liability of trust director.

(a) Subject to subsection (b) of this section, with respect to a power of direction or further power under §44D-8A-806(b)(1) of this code:

(1) A trust director has the same fiduciary duty and liability in the exercise or nonexercise of the power:

(A) If the power is held individually, as a sole trustee in a like position and under similar circumstances; or

(B) If the power is held jointly with a trustee or another trust director, as a cotrustee in a like position and under similar circumstances; and

(2) The terms of the trust may vary the director's duty or liability to the same extent the terms of the trust could vary the duty or liability of a trustee in a like position and under similar circumstances.

(b) Unless the terms of a trust provide otherwise, if a trust director is licensed, certified, or otherwise authorized or permitted by law other than in §44D-8A-801 *et seq.* of this code to provide health care in the ordinary course of the director's business or practice of a profession, to the extent the director acts in that capacity, the director has no duty or liability under this article.

(c) The terms of a trust may impose a duty or liability on a trust director in addition to the duties and liabilities under this section.

§44D-8A-809. Duty and liability of directed trustee.

(a) Subject to subsection (b) of this section, a directed trustee shall take reasonable action to comply with a trust director's exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code, and the trustee is not liable for the action.

(b) A directed trustee must not comply with a trust director's exercise or nonexercise of a power of direction or further power under §44D-8A-806(b)(1) of this code to the extent that the directed trustee is thereby directed knowingly to violate the laws or regulations of any jurisdiction applicable to the trust. The directed trustee may reasonably rely upon the advice of legal counsel to determine what actions would be consistent with or contrary to applicable law. Reasonable expenses incurred by the directed trustee in good faith for legal advice concerning an instruction from a trust director or a petition to the court for instructions shall be proper expenses of the trust.

(c) An exercise of a power of direction under which a trust director may release a trustee or another trust director from liability for breach of trust is not effective if:

(1) The breach involved the trustee's or other director's willful misconduct;

(2) The release was induced by improper conduct of the trustee or other director in procuring the release; or

(3) At the time of the release, the director did not know the material facts relating to the breach.

(d) A directed trustee that has reasonable doubt about its duty under this section may petition the court for instructions.

(e) The terms of a trust may impose a duty or liability on a directed trustee in addition to the duties and liabilities under this section.

§44D-8A-810. Duty to provide information to trust director or trustee.

(a) Subject to §44D-8A-811 of this code, a trustee shall provide information to a trust director to the extent the information is reasonably related both to:

(1) The powers or duties of the trustee; and

(2) The powers or duties of the director.

(b) Subject to §44A-8A-811 of this code, a trust director shall provide information to a trustee or another trust director to the extent the information is reasonably related both to:

(1) The powers or duties of the director; and

(2) The powers or duties of the trustee or other director.

(c) A trustee that acts in reliance upon information provided by a trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trustee engages in willful misconduct.

(d) A trust director that acts in reliance upon information provided by a trustee or another trust director is not liable for a breach of trust to the extent the breach resulted from the reliance, unless by so acting the trust director engages in willful misconduct.

§44D-8A-811. No duty to monitor, inform, or advise.

(a) Unless the terms of a trust provide otherwise:

(1) A trustee does not have a duty to:

(A) Monitor a trust director; or

(B) Inform or give advice to a grantor, beneficiary, trustee, or trust director concerning an instance in which the trustee might have acted differently than the director; and

(2) By taking an action described in §44D-8A-811(a)(1) of this code, a trustee does not assume the duty excluded by §44D-8A-811(a)(1) of this code.

(b) Unless the terms of a trust provide otherwise:

(1) A trust director does not have a duty to:

(A) Monitor a trustee or another trust director; or

(B) Inform or give advice to a grantor, beneficiary, trustee, or another trust director concerning an instance in which the director might have acted differently than a trustee or another trust director; and

(2) By taking an action described in §44D-8A-811(b)(1) of this code, a trust director does not assume the duty excluded by §44D-8A-811(b)(1) of this code.

§44D-8A-812. Application to cotrustee.

The terms of a trust may relieve a cotrustee from duty and liability with respect to another cotrustee's exercise or nonexercise of a power of the other cotrustee to the same extent that in a directed trust a directed trustee is relieved from duty and liability with respect to a trust director's power of direction under §44D-8A-809, §44D-8A-810, and §44D-8A-811 of this code.

§44D-8A-813. Limitation of action against trust director.

(a) An action against a trust director for breach of trust must be commenced within the same limitation period as provided in §44D-10-1005 of this code for an action for breach of trust against a trustee in a like position and under similar circumstances.

(b) A report or accounting has the same effect on the limitation period for an action against a trust director for breach of trust that the report or accounting would have under §44D-10-1005 of this code in an action for breach of

trust against a trustee in a like position and under similar circumstances.

§44D-8A-814. Defenses in action against trust director.

In an action against a trust director for breach of trust, the director may assert the same defenses a trustee in a like position and under similar circumstances could assert in an action for breach of trust against the trustee.

§44D-8A-815. Jurisdiction over trust director.

(a) By accepting appointment as a trust director of a trust subject to this article, the director submits to personal jurisdiction of the courts of this state regarding any matter related to a power or duty of the director.

(b) §44D-8A-815 of this code does not preclude other methods of obtaining jurisdiction over a trust director.

§44D-8A-816. Office of trust director.

Unless the terms of a trust provide otherwise, the rules applicable to a trustee apply to a trust director regarding the following matters:

(1) Acceptance under §44D-7-701 of this code;

(2) Giving of bond to secure performance under §44D-7-702 of this code;

(3) Reasonable compensation under §44D-7-708 of this code;

(4) Resignation under §44D-7-705 of this code;

(5) Removal under §44D-7-706 of this code; and

(6) Vacancy and appointment of successor under §44D-7-704 of this code.

§44D-8A-817. Effective date.

This article takes effect on July 1, 2020.

CHAPTER 138

(S. B. 321 - By Senator Trump)

[Passed February 12, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 2, 2020.]

AN ACT to amend and reenact §11-10-11 of the Code of West Virginia, 1931, as amended; and to amend and reenact §11-15-18a of said code, all relating to the collection of tax and the priority of distribution of an estate or property in receivership and the liability of the fiduciary.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. WEST VIRGINIA TAX PROCEDURE AND ADMINISTRATION ACT.

§11-10-11. Collection of tax.

(a) *General.* — The Tax Commissioner shall collect the taxes, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable. In addition to all other remedies available for the collection of debts due this state, the Tax Commissioner may proceed by foreclosure of the lien provided in §11-10-12 of this code, or by levy and distraint under §11-10-13 of this code.

(b) *Prerequisite to final settlement of contracts with nonresident contractor; user personally liable.* —

(1) Any person contracting with a nonresident contractor subject to the taxes imposed by §11-13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code, shall withhold payment, in the final settlement of the contract, of a sufficient amount, not exceeding six percent of the

contract price, as will in the person's opinion be sufficient to cover the taxes, until the receipt of a certificate from the Tax Commissioner to the effect that the above referenced taxes imposed against the nonresident contractor have been paid or provided for.

(2) If any person shall fail to withhold as provided in subdivision (1) of this subsection, that person is personally liable for the payment of all taxes attributable to the contract, not to exceed six percent of the contract price. The taxes attributable shall be recoverable by the Tax Commissioner by appropriate legal proceedings, which may include issuance of an assessment under this article.

(c) *Prerequisite for issuance of certificate of dissolution or withdrawal of corporation.* — The Secretary of State shall withhold the issuance of any certificate of dissolution or withdrawal in the case of any corporation organized under the laws of this state, or organized under the laws of another state and admitted to do business in this state, until the receipt of a certificate from the Tax Commissioner to the effect that every tax administered under this article imposed against any corporation has been paid or provided for, or that the applicant is not liable for any tax administered under this article.

(d) *Prerequisite to final settlement of contract with this state or political subdivision; penalty.* — All state, county, district, and municipal officers and agents making contracts on behalf of this state or any political subdivision thereof shall withhold payment, in the final settlement of any contract, until the receipt of a certificate from the Tax Commissioner to the effect that the taxes imposed by §11-13-1 *et seq.*, §11-21-1 *et seq.*, and §11-24-1 *et seq.* of this code against the contractor have been paid or provided for. If the transaction embodied in the contract or the subject matter of the contract is subject to county or municipal business and occupation tax, then the payment shall also be withheld until receipt of a release from the county or municipality to the effect that all county or municipal

business and occupation taxes levied or accrued against the contractor have been paid. Any official violating this section is subject to a civil penalty of $1,000, recoverable as a debt in a civil action brought by the Tax Commissioner.

(e) *Limited effect of Tax Commissioner's certificates.* — The certificates of the Tax Commissioner provided in subsections (b), (c), and (d) of this section shall not bar subsequent investigations, assessments, refunds, and credits with respect to the taxpayer.

(f) *Payment when person sells out or quits business; liability of successor; lien.* —

(1) If any person subject to any tax administered under this article sells out his, her, or its business or stock of goods, or ceases doing business, any tax, additions to tax, penalties, and interest imposed by this article or any of the other articles of this chapter to which this article is applicable shall become due and payable immediately and that person shall, within 30 days after selling out his, her, or its business or stock of goods or ceasing to do business, make a final return or returns and pay any tax or taxes which are due. The unpaid amount of any tax is a lien upon the property of that person.

(2) The successor in business of any person who sells out his, her, or its business or stock of goods, or ceases doing business, is personally liable for the payments of tax, additions to tax, penalties, and interest unpaid after expiration of the 30-day period allowed for payment: *Provided*, That if the business is purchased in an arms-length transaction, and if the purchaser withholds so much of the consideration for the purchase as will satisfy any tax, additions to tax, penalties, and interest which may be due until the seller produces a receipt from the Tax Commissioner evidencing the payment thereof, the purchaser is not personally liable for any taxes attributable to the former owner of the business unless the contract of sale provides for the purchaser to be liable for some or all

of the taxes. The amount of tax, additions to tax, penalties, and interest for which the successor is liable is a lien on the property of the successor, which shall be enforced by the Tax Commissioner as provided in this article.

(g) *Priority in distribution of estate or property in receivership.* — All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person or entity, subject to §38-10C-1 *et seq.* of this code and subject to the priority of taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article.

(h) *Injunction.* — If the taxpayer fails for a period of more than 60 days to fully comply with any of the provisions of this article or of any other article of this chapter to which this article is applicable, the Tax Commissioner may institute a proceeding to secure an injunction to restrain the taxpayer from doing business in this state until the taxpayer fully complies with the provisions of this article or any other articles. No bond is required of the Tax Commissioner in any action instituted under this subsection.

(i) *Costs.* — In any proceeding under this section, upon judgment or decree for the Tax Commissioner, he or she shall be awarded his or her costs.

(j) *Refunds; credits; right to offset.* —

(1) Whenever a taxpayer has a refund or credit due it for an overpayment of any tax administered under this article, the Tax Commissioner may reduce the amount of the refund or credit by the amount of any tax administered under this article, whether it be the same tax or any other tax, which is owed by the same taxpayer and collectible as provided in subsection (a) of this section.

(2) The Tax Commissioner may enter into agreements with the Internal Revenue Service that provide for offsetting state tax refunds against federal tax liabilities; offsetting federal tax refunds against state tax liabilities; and establishing the amount of the offset fee per transaction which both agencies may charge each other: *Provided*, That offsets under subdivision (1) of this subsection shall occur prior to offsets under this subdivision. At the times moneys are received as a result of an offset of a taxpayer's federal tax refund under the provisions of section 6402(e) of the Internal Revenue Code, the taxpayer is given credit against state tax liability for the amount of the offset less a deduction for the offset fee imposed by the Internal Revenue Service: *Provided, however*, That the amount of the offset fee imposed by the Internal Revenue Service shall be added to the taxes, interest, and penalties owed by the taxpayer to this state: *Provided further*, That the amount of the offset fee imposed by the Tax Commissioner shall be deducted from the moneys retained from the taxpayer's state tax refund and then deposited in the special revolving fund which is hereby created and established in the State Treasury and designated as the Tax Offset Fee Administration Fund: *And provided further*, That the fees deposited in the Tax Offset Fee Administration Fund may be expended by the Tax Commissioner for the general administration of the taxes administered under the authority of this article.

(k) *Spouse relieved of liability in certain cases.* —

(1) *In general.* — Under regulations prescribed by the Tax Commissioner, if:

(A) A joint personal income tax return has been made for a taxable year;

(B) On the return there is a substantial understatement of tax attributable to grossly erroneous items of one spouse;

(C) The other spouse establishes that in signing the return he or she did not know, and had no reason to know, that there was a substantial understatement; and

(D) Taking into account all the facts and circumstances, it is inequitable to hold the other spouse liable for the deficiency in tax for the taxable year attributable to the substantial understatement, then the other spouse is relieved of any liability for tax, including interest, additions to tax, and other amounts for the taxable year to the extent the liability is attributable to the substantial understatement.

(2) *Grossly erroneous items.* — For purposes of this subsection, the term "grossly erroneous items" means, with respect to any spouse:

(A) Any item of gross income attributable to a spouse which is omitted from gross income; and

(B) Any claim of a deduction, credit, or basis by a spouse in an amount for which there is no basis in fact or law.

(3) *Substantial understatement.* — For purposes of this subsection, the term "substantial understatement" means any understatement, as defined in regulations prescribed by the Tax Commissioner which exceed $500.

(4) Understatement must exceed specified percentage of spouse's income.

(A) *Adjusted gross income of $20,000 or less.* — If the spouse's adjusted gross income for the readjustment year is $20,000 or less, this subsection applies only if the liability described in subdivision (1) of this subsection is greater than 10 percent of the adjusted gross income.

(B) *Adjusted gross income of more than $20,000.* — If the spouse's adjusted gross income for the readjustment year is more than $20,000, paragraph (A) of this subdivision is applied by substituting "25 percent" for "10 percent".

(C) *Readjustment year.* — For purposes of this subdivision, the term "readjustment year" means the most recent taxable year of the spouse ending before the date the deficiency notice is mailed.

(D) *Computation of spouse's adjusted gross income.* — If the spouse is married to another spouse at the close of the readjustment year, the spouse's adjusted gross income shall include the income of the new spouse whether or not they file a joint return.

(E) *Exception for omissions from gross income.* — This subdivision shall not apply to any liability attributable to the omission of an item from gross income.

(5) *Adjusted gross income.* — For purposes of this subsection, the term "adjusted gross income" means the West Virginia adjusted gross income of the taxpayer, determined under §11-21-1 *et seq.* of this code.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-18a. Receivership; bankruptcy; priority of tax.

All taxes due and unpaid under this article shall be paid from the first money available for distribution, voluntary or compulsory, in receivership, bankruptcy or otherwise, of the estate of any person or entity, subject to §38-10C-1 *et seq.* of this code and subject to the priority of taxes and debts due the United States which under federal law are given priority over the debts and liens created by this article.

CHAPTER 139

(S. B. 510 - By Senators Palumbo, Beach, Jeffries, Lindsay, Plymale, Prezioso, Takubo, Weld, Woelfel, Hamilton and Stollings)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §31-18E-9 of the Code of West Virginia, 1931, as amended, relating to the right of first refusal which land reuse agencies and municipal land banks have on tax-delinquent properties; expanding the circumstances when the right of first refusal may be used; clarifying provisions related to the right of first refusal; authorizing land reuse agencies and municipal land banks to reject adjacent property owner's request to purchase property in certain circumstances; providing a sunset date; and requiring the submission of a report.

Be it enacted by the Legislature of West Virginia:

ARTICLE 18E. WEST VIRGINIA LAND REUSE AGENCY AUTHORIZATION ACT.

§31-18E-9. Acquisition of property.

(a) *Title to be held in its name.* — A land reuse agency or municipal land bank shall hold in its own name all real property it acquires.

(b) *Tax exemption.* — (1) Except as set forth in subdivision (2) of this subsection, the real property of a land reuse agency or municipal land bank and its income and operations are exempt from property tax.

(2) Subdivision (1) of this subsection does not apply to real property of a land reuse agency or municipal land bank after the fifth consecutive year in which the real property is continuously leased to a private third party. However, real property continues to be exempt from property taxes if it is leased to a nonprofit or governmental agency at substantially less than fair market value.

(c) *Methods of acquisition.* — A land reuse agency or municipal land bank may acquire real property or interests in real property by any means on terms and conditions and in a manner the land reuse agency considers proper: *Provided*, That a land reuse agency or municipal land bank may not acquire any interest in oil, gas, or minerals which have been severed from the realty.

(d) *Acquisitions from municipalities or counties.* — (1) A land reuse agency or municipal land bank may acquire real property by purchase contracts, lease purchase agreements, installment sales contracts, and land contracts and may accept transfers from municipalities or counties upon terms and conditions as agreed to by the land reuse agency or municipal land bank and the municipality or county.

(2) A municipality or county may transfer to a land reuse agency or municipal land bank real property and interests in real property of the municipality or county on terms and conditions and according to procedures determined by the municipality or county as long as the real property is located within the jurisdiction of the land reuse agency or municipal land bank.

(3) An urban renewal authority, as defined in §16-18-4 of this code, located within a land reuse jurisdiction established under this article may, with the consent of the local governing body and without a redevelopment contract, convey property to the land reuse agency. A conveyance under this subdivision shall be with fee simple title, free of all liens and encumbrances.

(e) *Maintenance.* — A land reuse agency or municipal land bank shall maintain all of its real property in accordance with the statutes and ordinances of the jurisdiction in which the real property is located.

(f) *Prohibition.* — (1) Subject to the provisions of subdivision (2) of this subsection, a land reuse agency or municipal land bank may not own or hold real property located outside the jurisdictional boundaries of the entities which created the land reuse agency under §31-18E-4(c) of this code.

(2) A land reuse agency or municipal land bank may be granted authority pursuant to an intergovernmental cooperation agreement with a municipality or county to manage and maintain real property located within the jurisdiction of the municipality or county.

(g) *Acquisition of tax-delinquent properties.* — (1) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, a land reuse agency or municipal land bank may acquire an interest in tax-delinquent property through the provisions of chapter 11A of this code. Notwithstanding the provisions of §11A-3-8 of this code, if no person present at the tax sale bids the amount of the taxes, interest, and charges due on any unredeemed tract or lot or undivided interest in real estate offered for sale, the sheriff shall, prior to certifying the real estate to the Auditor for disposition pursuant to §11A-3-44 of this code, provide a list of all of said real estate within a land reuse or municipal land bank jurisdiction to the land reuse agency or municipal land bank and the land reuse agency or municipal land bank shall be given an opportunity to purchase the tax lien and pay the taxes, interest, and charges due for any unredeemed tract or lot or undivided interest therein as if the land reuse agency or municipal land bank were an individual who purchased the tax lien at the tax sale.

(2) Notwithstanding any other provision of this code to the contrary, if authorized by the land reuse jurisdiction which created a land reuse agency or municipal land bank or otherwise by intergovernmental cooperation agreement, the land reuse agency or municipal land bank shall have the right of first refusal to purchase any tax-delinquent property which is within municipal limits, and meets one or more of the following criteria: (A) It has an assessed value of $50,000 or less; (B) there are municipal liens on the property that exceed the amount of back taxes owed in the current tax cycle; (C) the property has been on the municipality's vacant property registry for 24 consecutive months or longer; (D) the property was sold at a tax sale within the previous three years, was not redeemed, and no deed was secured by the previous lien purchaser; or (E) has been condemned: *Provided*, That the land reuse agency or municipal land bank satisfies the requirements of subdivision (3) of this subsection. A list of properties which meet the criteria of this subdivision shall regularly be compiled by the sheriff of the county, and a land reuse agency or municipal land bank may purchase any qualifying tax-delinquent property for an amount equal to the taxes owed and any related fees before such property is placed for public auction.

(3) When a land reuse agency or municipal land bank exercises a right of first refusal in accordance with subdivision (2) of this section, the land reuse agency or municipal land bank shall, within 15 days of obtaining a tax deed, provide written notice to all owners of real property that is adjacent to the tax-delinquent property. Any such property owner shall have a period of 120 days from the receipt of notice, actual or constructive, to express an interest in purchasing the tax-delinquent property from the land reuse agency or municipal land bank for an amount equal to the amount paid for the property plus expenses incurred by the land reuse agency or municipal land bank: *Provided*, That the land reuse agency or municipal land bank may refuse to sell the property to the adjacent property

owner that expressed interest in the tax-delinquent property if that property owner or an entity owned by the property owner or its directors is delinquent on any state and local taxes or municipal fees on any of their property.

(4) Effective July 1, 2025, the provisions of subdivisions (2) and (3) of this subsection shall sunset and have no further force and effect.

(5) Prior to January 1, 2025, any land reuse agency or municipal land bank which exercises the authority granted by this subsection shall submit to the Joint Committee on Government and Finance a report on the entity's activities related to the purchase of tax-delinquent properties and any benefits realized from the authority granted by this subsection.

CHAPTER 140

(Com. Sub. for S. B. 554 - By Senators Smith, Clements, Pitsenbarger, Roberts, Trump, Romano, Hamilton and Maroney)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-4-9b, relating to the termination, expiration, or cancellation of oil or natural gas leases; providing a requirement for a lessee to execute and deliver to the lessor, within a specified time and without cost, a recordable release for terminated, expired, or canceled oil or natural gas leases; providing for a procedure by which a lessor may serve notice to a lessee if a lessee fails to timely provide the release; providing requirements for the content of the notice; requiring a lessee to timely notify the lessor in writing

of a dispute regarding the termination, expiration, or cancellation of the oil and natural gas lease; providing for an affidavit of termination, expiration, or cancellation with specified contents; and providing a requirement that county clerks accept and record said affidavit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. COVENANTS.

§36-4-9b. Release of terminated, expired or canceled oil or natural gas leases.

(a) Unless a different time is required by the lease, within 60 days after the termination, expiration, or cancellation of an oil or natural gas lease, the lessee shall deliver to the lessor, without cost to the lessor, or his or her successors or assigns, a properly executed and notarized release of such lease in recordable form.

(b) If the lessee fails to provide a timely release as required by subsection (a) of this section, the lessor, or his or her successors or assigns, may serve notice of lessee's failure to provide such release. The notice shall be made in good faith and contain the following:

(1) A statement that:

(A) The lease is terminated, expired, or canceled according to its terms, including the date of such termination, expiration, or cancellation;

(B) The lessee has a duty to provide a release pursuant to subsection (a) of this section; and

(C) If the release, or a written dispute to such termination, expiration, or cancellation, is not received by the lessor, or his or her successors or assigns, from the lessee within 60 days from receipt of the notice, the lessor, or his or her successors or assigns, shall have the right to file an

affidavit of termination, expiration, or cancellation under subsection (e) of this section;

(2) The name and address of the lessor, or his or her successors or assigns;

(3) A brief description of the land covered by the lease including, but not limited to, the state, county, tax district, tax map and parcel, watershed, historical farm name, or other identifying information;

(4) If there is a well on the land covered by the lease, the name or API number of the well, if known to the lessor, or his or her successors or assigns;

(5) If located in a unit, the name of the unit, if known, to the lessor, or his or her successors or assigns; and

(6) The recording information for the lease, or a memorandum of lease, in the public records of the county or counties, along with the execution date of the lease, and the identity of the original lessor and lessee under the lease.

(7) The notice when served shall include a service sheet showing the names and addresses of all persons upon whom the notice has been served.

(c) The notice shall be sent to the following persons as are shown by the lessor's reasonable examination of the public records: (1) Lessee; (2) lessee's assignee; (3) all other lessors; and (4) all other persons who have an interest in the leasehold estate or the oil and natural gas leased thereunder. A lessor's inability to afford notice to everyone to whom notice is to be given thereunder does not relieve a lessee of its obligation to respond.

(d) Service of notice under subsections (b) and (c) of this section shall be effected either personally or by certified mail to the recipient's last known business addresses, or, if service cannot reasonably be made by those means, by publication once a week for two weeks in a newspaper of

general circulation in the county or counties in which the lands covered by the lease are located.

(e) If, after receiving a notice of termination, expiration, or cancellation under subsections (b), (c), and (d) of this section, a lessee disputes in good faith that the oil or natural gas lease is terminated, expired, or canceled as stated in the notice, the lessee must, not more than 60 days after receipt of the notice, deliver a written dispute of the contents of the notice to the lessor, or his or her successors or assigns, detailing the good-faith basis for such dispute.

(f) A lessor, or his or her successors or assigns, who has served a notice under subsections (b), (c) and (d) of this section, and who fails to receive a timely dispute from a lessee under subsection (e) of this section, may record an affidavit of termination, expiration, or cancellation of an oil or natural gas lease in the office of the county clerk in the county or counties where the lands covered by the lease are situated. The county clerk of each county shall accept all such affidavits and shall enter and record them in the official records of that county and shall index each in the indices under the names, as they appear in the affidavit, of the original lessor, the original lessee, the lessor seeking the release, and the lessee identified in the affidavit.

(g) An affidavit of termination, expiration, or cancellation of an oil or a natural gas lease shall be in the form of an affidavit and contain the following information:

(1) The name and address of the affiant;

(2) The names and addresses of the lessor and lessee;

(3) If located in a unit, the name of the unit, if known to the affiant;

(4) If there is a well on the land, the name or API number of the well, if known to the affiant;

(5) The recording information for the lease, or a memorandum of same, in the public record of the county or counties where the interest is located, along with the execution date of the lease, and the names of the original lessors and lessees under the lease;

(6) A brief recitation of the facts known to the affiant relating to the termination, expiration, or cancellation of the lease, including relevant dates;

(7) A statement that the lessor, or its successors or assigns, complied with his or her duty to serve proper notice to the lessee under subsections (b), (c), and (d) of this section and that the lessee failed to provide a timely challenge to the notice as provided in subsection (e) of this section. The lessor's affidavit shall have attached to it a copy of the notice made and served under subsections (b), (c), and (d) of this section including therewith a copy of the service sheet accompanying the notice; and

(8) The notarized signature of the affiant.

(h) A person who files an affidavit under this section shall serve a copy of the same upon all persons to whom notice was required to be given under subsections (b), (c), and (d) of this section in the same manner as notice was required to be served. The filing of an affidavit under this section does not constitute a modification of a lease, nor does it limit, waive, or prejudice any claim or defense of any party to the lease in law or in equity.

(i) A lessor's, or his or her successors or assigns, decision not to use the provisions of this section is not evidence that a lease is still in effect.

CHAPTER 141

(Com. Sub. for S. B. 662 - By Senator Sypolt)

[Passed March 4, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44-3-1 of the Code of West Virginia, 1931, as amended, relating to removing language restricting more than two fiduciary commissioners being from the same political party.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FIDUCIARY COMMISSIONERS; POWERS AND DUTIES.

§44-3-1. Fiduciary commissioners.

The office previously known as commissioner of accounts is hereby abolished. The office of fiduciary commissioner is hereby created and any reference in this code to a commissioner of accounts shall, after the effective date of this section, mean fiduciary commissioner. Fiduciary commissioners shall be attorneys admitted to the practice of law in this state or shall meet the qualifications of fiduciary supervisors as set forth in §44-3A-1 *et seq.* of this code.

The county commission of each county shall appoint not more than four fiduciary commissioners. In counties in which there exists a separate tribunal for police and fiscal purposes, that tribunal shall appoint the fiduciary commissioners.

The fiduciary commissioner shall report to and settle accounts with the county clerk. On or before the last day of

March, June, September, and December, the fiduciary commissioner shall file with the county clerk a report on the status and disposition of every active case referred to the fiduciary commissioner. In the next succeeding term of the county commission, the county clerk shall provide a copy of the report to the county commission, and shall inform the county commission of any cases referred to a fiduciary commissioner in which the fiduciary commissioner has not fulfilled duties relating to the case in accordance with deadlines established by law. The county commission shall take appropriate action to ensure that all deadlines established by law are observed including, if necessary, the removal of fiduciary commissioners who consistently fail to meet the deadlines.

CHAPTER 142

(Com. Sub. for S. B. 668 - By Senator Trump)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §44D-8B-1, §44D-8B-2, §44D-8B-3, §44D-8B-4, §44D-8B-5, §44D-8B-6, §44D-8B-7, §44D-8B-8, §44D-8B-9, §44D-8B-10, §44D-8B-11, §44D-8B-12, §44D-8B-13, §44D-8B-14, §44D-8B-15, §44D-8B-16, §44D-8B-17, §44D-8B-18, §44D-8B-19, §44D-8B-20, §44D-8B-21, §44D-8B-22, §44D-8B-23, §44D-8B-24, §44D-8B-25, §44D-8B-26, §44D-8B-27, §44D-8B-28, §44D-8B-29, §44D-8B-30, and §44D-8B-31, all relating to enactment of the Uniform Trust Decanting Act to allow a trustee to distribute assets of one trust into another trust; providing a short title; defining terms; setting forth the scope of the act; setting forth a fiduciary's duty and the fiduciary's

authority to exercise the decanting power; setting forth those trusts to which the act applies; providing for actions or failure to act as a result of reasonable reliance; requiring fiduciary to give notice containing specified information to certain persons before exercising decanting power; providing for notice to representatives and consent of or waiver by a representative; providing for court involvement upon application by a fiduciary or other specified persons; specifying actions which the court may take; requiring a signed record of any exercise of the decanting power; providing for fiduciary's decanting power under expanded distributive discretion and setting forth restrictions on a second trust; providing for fiduciary's decanting power under expanded limited distributive discretion; providing when a special-needs fiduciary may exercise the decanting power for a beneficiary with a disability; requiring fiduciary to protect charitable interests; setting forth first trust limitations which affect decanting; setting forth limitations on a change in a fiduciary's compensation; providing for relief from liability and indemnification of the fiduciary in the second trust instrument; providing for the removal or replacement of an authorized fiduciary through exercise of the decanting power; setting forth tax-related limitations; providing for the duration of the second trust; providing that distribution is not required; setting forth saving provision where second trust does not comply with the act; setting forth requirements regarding a trust for the care of an animal; providing for second trust terms; providing grantor of the first trust is a grantor of the second trust; providing for later-discovered property; providing that obligations of the first trust are obligations of the second trust; providing that application and construction of the act is to be uniform; relating to application of federal act to electronic signatures; and providing for severability and an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8B. WEST VIRGINIA UNIFORM TRUST DECANTING ACT.

§44D-8B-1. Short title.

This article may be cited as the West Virginia Uniform Trust Decanting Act.

§44D-8B-2. Definitions.

In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

(1) "Appointive property" means the property or property interest subject to a power of appointment.

(2) "Authorized fiduciary" means:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) A special fiduciary appointed under §44D-8B-9 of this code; or

(C) A special-needs fiduciary under §44D-8B-13 of this code.

(3) "Charitable interest" means an interest in a trust which:

(A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(4) "Charitable organization" means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(5) "Charitable purpose" means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(6) "Decanting power" or "the decanting power" means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(7) "Expanded distributive discretion" means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(8) "First trust" means a trust over which an authorized fiduciary may exercise the decanting power.

(9) "First-trust instrument" means the trust instrument for a first trust.

(10) "General power of appointment" means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(11) "Power of appointment" means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(12) "Powerholder" means a person in which a donor creates a power of appointment.

(13) "Presently exercisable power of appointment" means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(B) Does not include a power exercisable only at the powerholder's death.

(14) "Reasonably definite standard" means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.

(15) "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.

(16) "Second trust" means:

(A) A first trust after modification under this article; or

(B) A trust to which a distribution of property from a first trust is or may be made under this article.

(17) "Second-trust instrument" means the trust instrument for a second trust.

(18) "Sign" means with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

§44D-8B-3. Scope.

(a) Except as otherwise provided in subsections (b) and (c) of this section, this article applies to an express trust that is irrevocable or revocable by the grantor only with the consent of the trustee or a person holding an adverse interest.

(b) This article does not apply to a trust held solely for charitable purposes.

(c) Subject to §44D-8B-15 of this code, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This article does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this article, common law, a court order, or a nonjudicial settlement agreement.

(e) This article does not affect the ability of a grantor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

§44D-8B-4. Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This article does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this article.

(c) Except as otherwise provided in a first-trust instrument, for purposes of this article and §44D-8-1 and §44D-8-2(a) of this code, the terms of the first trust are considered to include the decanting power.

§44D-8B-5. Application; governing law.

This article applies to a trust created before, on, or after the effective date of this article which:

(1) Has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) Construction of terms of the trust; or

(C) Determining the meaning or effect of terms of the trust.

§44D-8B-6. Reasonable reliance.

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this article, law of this state other than this article, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

§44D-8B-7. Notice; exercise of decanting power.

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends 59 days after the day notice is given.

(b) Except as otherwise provided in this article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

(1) Each grantor of the first trust, if living or then in existence;

(2) Each qualified beneficiary of the first trust;

(3) Each holder of a presently exercisable power of appointment over any part, or all of, the first trust;

(4) Each person that currently has the right to remove or replace the authorized fiduciary;

(5) Each other fiduciary of the first trust;

(6) Each fiduciary of the second trust; and

(7) The West Virginia Attorney General, if §44D-8B-14(b) of this code applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary.

(e) A notice under subsection (c) of this section must:

(1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) Specify the proposed effective date for exercise of the power;

(3) Include a copy of the first-trust instrument; and

(4) Include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this

section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under §44D-8B-9 of this code asserting that:

(1) An attempted exercise of the decanting power is ineffective because it did not comply with this article or was an abuse of discretion or breach of fiduciary duty; or

(2) Section 44D-8B-22 of this code applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with that subsection.

§44D-8B-8. Representation.

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter may file an application under §44D-8B-9 of this code on behalf of the person represented.

(d) A grantor may not represent or bind a beneficiary under this article.

§44D-8B-9. Court involvement.

(a) On application of an authorized fiduciary, a person entitled to notice under §44D-8B-7(c) of this code, a beneficiary, or with respect to a charitable interest any other person that has standing to enforce the charitable interest, the court may:

(1) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this article and consistent with the fiduciary duties of the authorized fiduciary;

(2) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this article and to exercise the decanting power;

(3) Approve an exercise of the decanting power;

(4) Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) After applying §44D-8B-22 of this code, the proposed or attempted exercise does not, or did not, comply with this article; or

(B) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) Determine the extent to which §44D-8B-22 of this code applies to a prior exercise of the decanting power;

(6) Provide instructions to the trustee regarding the application of §44D-8B-22 of this code to a prior exercise of the decanting power; or

(7) Order other relief to carry out the purposes of this article.

(b) On application of an authorized fiduciary, the court may approve:

(1) An increase in the fiduciary's compensation under §44D-8B-16 of this code; or

(2) A modification under §44D-8B-18 of this code of a provision granting a person the right to remove or replace the fiduciary.

§44D-8B-10. Formalities.

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by §44D-8B-7 of this code, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

§44D-8B-11. Decanting power under expanded distributive discretion.

(a) In this section:

(1) "Noncontingent right" means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) "Presumptive remainder beneficiary" means a qualified beneficiary other than a current beneficiary.

(3) "Successor beneficiary" means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a

person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) "Vested interest" means:

(A) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) A presently exercisable general power of appointment; or

(E) A right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and §44D-8B-14 of this code, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to §44D-8B-13 of this code, in an exercise of the decanting power under this section, a second trust may not:

(1) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) Reduce or eliminate a vested interest.

(d) Subject to subdivision (3), subsection (c) of this section and §44D-8B-14 of this code, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) Retain a power of appointment granted in the first trust;

(2) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4), inclusive, subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part, but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

§44D-8B-12. Decanting power under limited distributive discretion.

(a) In this section, "limited distributive discretion" means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to §44D-8B-14 of this code, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) The distribution is applied for the benefit of the beneficiary;

(2) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

(3) The distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part, but not all of, the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

§44D-8B-13. Trust for beneficiary with disability.

(a) In this section:

(1) "Beneficiary with a disability" means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated a protected person.

(2) "Governmental benefits" means financial aid or services from a state, federal, or other public agency.

(3) "Special-needs fiduciary" means, with respect to a trust that has a beneficiary with a disability:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute part or all of the principal of a first trust to one, or more current beneficiaries;

(B) If no trustee or fiduciary has discretion under paragraph (A) of this subdivision, a trustee or other fiduciary, other than a grantor, that has discretion to distribute part, or all of, the income of the first trust to one or more current beneficiaries; or

(C) If no trustee or fiduciary has discretion under paragraphs (A) and (B) of this subdivision, a trustee or other fiduciary, other than a grantor, that is required to distribute

23 part, or all of, the income or principal of the first trust to one
24 or more current beneficiaries.

25 (4) "Special-needs trust" means a trust the trustee
26 believes would not be considered a resource for purposes of
27 determining whether a beneficiary with a disability is
28 eligible for governmental benefits.

29 (b) A special-needs fiduciary may exercise the
30 decanting power under §44D-8B-11 of this code over the
31 principal of a first trust as if the fiduciary had authority to
32 distribute principal to a beneficiary with a disability subject
33 to expanded distributive discretion if:

34 (1) A second trust is a special-needs trust that benefits
35 the beneficiary with a disability; and

36 (2) The special-needs fiduciary determines that exercise
37 of the decanting power will further the purposes of the first
38 trust.

39 (c) In an exercise of the decanting power under this
40 section, the following rules apply:

41 (1) Notwithstanding §44D-8B-11(c)(2) of this code, the
42 interest in the second trust of a beneficiary with a disability
43 may:

44 (A) Be a pooled trust as defined by Medicaid law for the
45 benefit of the beneficiary with a disability under 42 U.S.C.
46 §1396p(d)(4)(C); or

47 (B) Contain payback provisions complying with
48 reimbursement requirements of Medicaid law under 42
49 U.S.C. §1396p(d)(4)(A).

50 (2) Section 44D-8B-11(c)(3) of this code does not apply
51 to the interests of the beneficiary with a disability.

52 (3) Except as affected by any change to the interests of
53 the beneficiary with a disability, the second trust, or if there

are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

§44D-8B-14. Protection of charitable interest.

(a) In this section:

(1) "Determinable charitable interest" means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) "Unconditional" means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) Diminish the charitable interest;

(2) Diminish the interest of an identified charitable organization that holds the charitable interest;

(3) Alter any charitable purpose stated in the first-trust instrument; or

(4) Alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) The Attorney General, after receiving notice under §44D-8B-7 of this code, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) The Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) The court approves the exercise of the decanting power.

§44D-8B-15. Trust limitation on decanting.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) The decanting power; or

(2) A power granted by state law to the fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) The decanting power; or

(2) A power granted by state law to a fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this article even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part, or all of, the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

§44D-8B-16. Change in compensation.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) The increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by this chapter unless:

(1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) The increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

§44D-8B-17. Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this article.

§44D-8B-18. Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) The person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) The court approves the modification and the modification grants a substantially similar power to another person.

§44D-8B-19. Tax-related limitations.

(a) In this section:

(1) "Grantor trust" means a trust as to which a grantor of a first trust is considered the owner under 26 U.S.C. §§671-677 or 26 U.S.C. §679.

(2) "Internal Revenue Code" means the United States Internal Revenue Code of 1986.

(3) "Nongrantor trust" means a trust that is not a grantor trust.

(4) "Qualified benefits property" means property subject to the minimum distribution requirements of 26 U.S.C. §401(a)(9), and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b), the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. §2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b) by application of 26 U.S.C. §2503(c), the second-trust instrument must not include or omit a term that,

53 if included or omitted from the trust instrument for the trust
54 to which the property was transferred, would have
55 prevented the transfer from qualifying under 26 U.S.C.
56 §2503(c).

57 (4) If the property of the first trust includes shares of
58 stock in an S corporation, as defined in 26 U.S.C. §1361 and
59 the first trust is, or but for provisions of this article other
60 than this section would be, a permitted shareholder under
61 any provision of 26 U.S.C. §1361, an authorized fiduciary
62 may exercise the power with respect to part or all of the S
63 corporation stock only if any second trust receiving the
64 stock is a permitted shareholder under 26 U.S.C.
65 §1361(c)(2). If the property of the first trust includes shares
66 of stock in an S corporation and the first trust is, or but for
67 provisions of this article other than this section would be, a
68 qualified subchapter-S trust within the meaning of 26
69 U.S.C. §1361(d), the second-trust instrument must not
70 include or omit a term that prevents the second trust from
71 qualifying as a qualified subchapter-S trust.

72 (5) If the first trust contains property that qualified, or
73 would have qualified but for provisions of this article other
74 than this section, for a zero inclusion ratio for purposes of
75 the generation-skipping transfer tax under 26 U.S.C.
76 §2642(c) the second-trust instrument must not include or
77 omit a term that, if included in or omitted from the first-trust
78 instrument, would have prevented the transfer to the first
79 trust from qualifying for a zero inclusion ratio under 26
80 U.S.C. §2642(c).

81 (6) If the first trust is directly or indirectly the
82 beneficiary of qualified benefits property, the second-trust
83 instrument may not include or omit any term that, if
84 included in or omitted from the first-trust instrument, would
85 have increased the minimum distributions required with
86 respect to the qualified benefits property under 26 U.S.C.
87 §401(a)(9) and any applicable regulations, or any similar
88 requirements that refer to 26 U.S.C. §401(a)(9) or the
89 regulations. If an attempted exercise of the decanting power

violates the preceding sentence, the trustee is determined to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and §2201 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. §672(f)(2)(A), the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. §672(f)(2)(A).

(8) In this subdivision, "tax benefit" means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) The first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) The transfer of property held by the first trust or the first trust qualified, or but for provisions of this article other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) Except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) Except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a grantor objects in a signed record delivered to the fiduciary within the notice period and:

(A) The first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the grantor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the grantor or other person; or

(B) The first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the grantor, unless:

(i) The grantor has the power at all times to cause the second trust to cease to be a grantor trust; or

(ii) The first-trust instrument contains a provision granting the grantor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

§44D-8B-20. Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

§44D-8B-21. Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

§44D-8B-22. Saving provision.

(a) If exercise of the decanting power would be effective under this article except that the second-trust instrument in part does not comply with this article, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under this article is void to the extent necessary to comply with this article; and

(2) A provision required by this article to be in the second-trust instrument which is not contained in the instrument is considered to be included in the instrument to the extent necessary to comply with this article.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

§44D-8B-23. Trust for care of animal.

(a) In this section:

(1) "Animal trust" means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) "Protector" means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this article if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under this article of a qualified beneficiary.

(d) Notwithstanding any other provision of this article, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

§44D-8B-24. Terms of second trust.

Any reference in this chapter to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

§44D-8B-25. Grantor.

(a) For purposes of law of this state other than this article and subject to subsection (b) of this section, a grantor of a first trust is considered to be the grantor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining grantor intent with respect to a second trust, the intent of a grantor of the first trust, a grantor of the second trust, and the authorized fiduciary may be considered.

§44D-8B-26. Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first

trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

§44D-8B-27. Obligations.

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

§44D-8B-28. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§44D-8B-29. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 *et seq.*, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in §103(b) of that act, 15 U.S.C. §7003(b).

§44D-8B-30. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§44D-8B-31. Effective date.

This article takes effect on July 1, 2020.

CHAPTER 143

(Com. Sub. for H. B. 4088 - By Delegates Anderson, J. Kelly, Cadle, Hott and Porterfield)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §37-4-9; and to amend and reenact §55-12A-7 of said code, all relating to funding the Oil and Gas Reclamation Fund; providing that proceeds from certain real property interests that are due to persons whose names or addresses are unknown or unlocatable which are being kept in special funds throughout the state, if unclaimed for seven years or more, shall be transferred to the Oil and Gas Reclamation Fund and used to plug orphaned and abandoned oil and natural gas wells; providing and clarifying that certain deed or will provisions purporting to convey or reserve interests created by this article are void; clarifying that receivers include both general and special receivers; providing that certain provisions take effect beginning when funds have been unclaimed for seven years after the Special Commissioner's lease regardless of when the lease was signed; and authorizing rulemaking.

Be it enacted by the Legislature of West Virginia:

CHAPTER 37. REAL PROPERTY.

ARTICLE 4. PARTITION.

§37-4-9. Disposition of funds due to unknown or unlocatable interest owners; rulemaking.

1 Notwithstanding the requirements of §36-8-1 *et seq.* of
2 this code, all funds and proceeds due under this article

before or after the effective date of this section to owners of real property interests with their appurtenant rights, whose name or location is unknown and who does not make a claim for those funds for seven years after the date of the order of the court authorizing the distribution of the funds, shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code. The funds shall be paid by the special or general receiver or other person or entity holding the funds on or before November 1 of each year for all funds that became payable before July 1 of that year. The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 12A. LEASE AND CONVEYANCE OF MINERAL INTERESTS OWNED BY MISSING OR UNKNOWN OWNERS OR ABANDONING OWNERS.

§55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; final report of special Commissioner; unknown owners; transfer of funds; rulemaking.

(a) (1) If an owner of any mineral interest leased under section six of this article remains unknown or missing, or does not disavow the abandonment, for a period of seven years from the date of the special commissioner's lease, the special or general receiver shall report the same to the court, whereupon the court shall enter an order naming those who then appear to be surface owners as additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure, of an opportunity to appear and present proof of ownership in fee of the surface estate. Upon a finding by the court of the present ownership in fee of the surface estate, the court shall (i) order the special Commissioner to convey to the proven surface owner,

subject to the special commissioner's lease, the mineral interest specified in the motion, by a deed substantially in the form specified in subsection (b) of this section and (ii) order the special or general receiver to pay to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 the funds which have accrued to the credit of the mineral interests specified in the motion to the date of his or her report after payment of all allowable fees, expenses and court costs, including special Commissioner's fees paid or to be paid in amounts determined by the court. After the date of the special Commissioner's deed, the surface owner grantee shall be entitled to receive all proceeds under the lease attributable to the mineral interests specified in the deed.

(2) If the boundaries of the mineral tract subject to the special Commissioner's lease encompass two or more surface tracts, a separate deed shall be made for the mineral interest underlying each surface tract. If a surface tract is owned by more than one person, the deed respecting that surface tract shall convey the mineral interest according to the surface estate and interest of each surface owner.

(b) The special Commissioner's deed may be made in the following form, or to the same effect:

This deed, made the _____day of _____, 19___, between _____, special Commissioner, grantor, and _____, grantee,

Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an order of the circuit court of _____ county, West Virginia, entered on the _____day of _____, 19___, in civil action no. _____ therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the special commissioner's

lease mentioned below, and further subject to all other liens and encumbrances of record, that certain mineral interest in _____ county, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order); and being (here specify "all" or "a portion") of the mineral interest described in that certain special commissioner's lease dated _____, 19___, of record in the office of the clerk of _____ county, in _____book_____, at page ____.

Witness the following signature.

_____

Special Commissioner

(c) Upon the delivery of the deed or deeds and the payment or payments as directed in subsection (a) of this section, the special commissioner shall make a final report to the court; and upon approval thereof, the court shall order the discharge of the special commissioner's bond.

(d) Prior to the delivery of the special commissioner's deed, no deed or will from a surface owner to another shall sever ownership of the surface as such from ownership of any benefits under this article. The provisions of any deed or will granting or reserving an interest purporting to create such a severance shall be void.

(e) The amendments to this section made during the 2020 regular session of the Legislature which provided for certain accumulated proceeds to be payable to the Oil and Gas Reclamation Fund, shall take effect July 1, 2020, and any funds shall be transferred that have been unclaimed for seven years or more after the date of the special Commissioner's lease whether or not the special Commissioner's lease was signed before or after the effective date of the amendments to this section.

(f) The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section relating to transfer of funds to the Oil and Gas Reclamation Fund.

CHAPTER 144

(H. B. 4529 - By Delegates Criss and Nelson)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §7-25-22 of the Code of West Virginia, 1931, as amended, relating to the collection of assessments and the priority of liens on property within a resort area district.

Be it enacted by the Legislature of West Virginia:

ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-22. Liens; recording notice of liens; priority; release of lien; notice to future property owners.

(a) With the exception of property exempt from assessment pursuant to §7-25-18 of this code, there shall be a lien on all real property located within the resort area district for the assessments imposed by §7-25-17 of this code, which shall attach to those parcels made subject to the assessment on the date specified in the notice to property owners. A notice of the liens of the assessments referring to the assessing resolution and setting forth a list of the property assessed, described respectively as to amounts of assessment, ownership, and location of the property, shall be certified, by the chair and secretary of the board, to the clerk of the county commission of the county in which the

project is located. The county clerk shall record the notice of the lien in the appropriate trust deed book or other appropriate county lien book and index the lien in the name of each owner of real property assessed. From the date of an assessment, the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, and/or the district has the lien and is entitled to enforce the lien in its, his, her, or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of the assessments and against the property to which the assessment applies, as to any assessment not paid as and when due. The trustee or the district, as an alternative to the enforcement provision set forth in §7-25-21 of this code, are granted all legal remedies necessary to collect the assessment. The assessments are and constitute liens for the benefit of the resort area district or the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, upon the respective lots and parcels of land assessed and have priority over all other liens except: (1) Any liens for land taxes due the state, county, and municipality; (2) any liens for preexisting special assessments provided under this code; and (3) any liens by a lien creditor, including, without limitation, any lien creditor secured by a deed of trust lien, with respect to any of the lots or parcels of land with a lien properly recorded with the Clerk of the County Commission of the county in which the lots or parcels of land are located prior to the time that the notice of the assessment lien is recorded. If any assessment is revised in accordance with this article, the lien created by this section extends to the revised assessment and has the same priority as the priority of the lien created upon the laying of the original assessment. The assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. Following the payment in full of any assessment bonds including any interest thereon, the chair and secretary of the board shall execute a release of all liens and shall certify the release to the county clerk for recondition.

(b) Following the grant of any assessment on property as provided in this article, the seller of the property shall provide reasonable disclosure to the buyer in the real estate contract that an assessment has been granted on the property, the amount of the assessment, and the duration of the assessment.

CHAPTER 145

(Com. Sub. for H. B. 4576 - By Delegates Shott, Nelson, Lovejoy, Canestraro, Steele, Byrd and Pyles)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-3-11, relating to establishing a procedure for correcting errors in deeds, deeds of trust and mortgages; providing definitions; establishing that obvious description errors in a recorded deed, deed of trust or mortgage involving the transfer of interest in real property may be corrected by recorded affidavit; requiring that the correction of an obvious description error may not be inconsistent with the recorded property description; requiring notice be sent to specified persons; providing notice delivery requirements; establishing the contents of the corrective affidavit; establishing the effect of the corrective affidavit once filed; requiring a title insurance company to issue an endorsement to reflect the corrective affidavit; requiring the clerk to record and index the corrective affidavit in the deed book; establishing that a recorded affidavit is prima facie evidence of the facts stated therein; requiring associated costs be paid by the recording party; providing that a person who wrongfully records a corrective deed is liable for actual damages, reasonable costs,

and attorney fees; providing that remedies provided herein are not exclusive; and providing a format for the corrective affidavit and notice of an intent to correct an obvious description error.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; corrective affidavit.

(a) Definitions. As used in this section, unless the context requires a different meaning:

(1) "Attorney" means any person licensed as an attorney in West Virginia by the West Virginia State Bar.

(2) "Corrective affidavit" means an affidavit of an attorney correcting an obvious description error.

(3) "Local entity" means any county, city, town, municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the State of West Virginia.

(4) "Obvious description error" means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where:

(A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat;

(B) The error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and

(C) The deed, deed of trust, or mortgage recites elsewhere the parcel's correct address or tax map identification number.

(D) An "obvious description error" includes:

(i) An error transcribing courses and distances, including the omission of one or more lines of courses, and distances or the omission of angles and compass directions;

(ii) An error incorporating an incorrect recorded plat or a deed reference;

(iii) An error in a lot number or designation; or

(iv) An omitted exhibit supplying the legal description of the real property thereby conveyed.

(E) An "obvious description error" does not include:

(i) Missing or improper signatures or acknowledgments; or

(ii) Any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

(5) "Recorded subdivision plat" means a plat that has been prepared by a professional land surveyor licensed pursuant to W. Va. Code §30-13A-1 *et seq.* of this code and recorded in the clerk's office of the circuit court for the jurisdiction where the property is located.

(6) "Title insurance" has the same meaning as set forth in W. Va. §33-1-10(f)(4) of this code.

(7) "Title insurance company" means the company that issued a policy of title insurance for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

(b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting to convey or transfer an interest in real property may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded. A correction of an obvious description error shall not be inconsistent with the description of the property in any recorded subdivision plat.

(c) Prior to recording a corrective affidavit, notice of the intent to record the corrective affidavit, of each party's right to object to the corrective affidavit, and a copy of the corrective affidavit shall be served upon:

(1) All parties to the deed, deed of trust, or mortgage, including the current owner of the property;

(2) The attorney who prepared the deed, deed of trust, or mortgage, if known and if possible;

(3) To the title insurance company, if known;

(4) To the adjoining property owners;

(5) To the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction;

(6) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the county, city, or town attorney for the local entity, if any, and if there is no such attorney, then to the chief executive for the local entity. For the purposes of this section, the term "party" includes any local entity that is a signatory; and

(7) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the Attorney General and to the director, chief executive

officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

(d) The notice and a copy of the corrective affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected that:

(1) Is admitted to record in the office of the clerk of the county commission of the county in which the property is situate and where the deed, deed of trust, or mortgage needing correction was recorded;

(2) Is contained in the deed, deed of trust, or mortgage needing correction;

(3) Has been provided to the attorney who prepared the deed, deed of trust, or mortgage as a forwarding address; or

(4) Has been established with reasonable certainty by other means and to all other persons and entities to whom notice is required to be given.

(e) If no written objection is received from any party disputing the facts recited in the corrective affidavit or objecting to its recordation within 30 days after personal service, or receipt of confirmation of delivery of the notice and copy of the corrective affidavit, the attorney may record the corrective affidavit, and all parties to the deed, deed of trust, or mortgage are bound by the terms of the corrective affidavit.

(f) The corrective affidavit shall:

(1) Be notarized;

(2) Contain a statement that no objection was received from any party within the specified time period;

(3) Confirm that a copy of the notice was sent to all the parties; and,

(4) Contain the attorney's West Virginia State Bar number.

(g) A corrective affidavit recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded.

(h) A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

(i) The clerk shall record the corrective affidavit in the deed book or other book in which deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the corrective affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the corrective affidavit. A corrective affidavit recorded in compliance with this section is prima facie evidence of the facts stated in the corrective affidavit.

(j) Costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party that records the corrective affidavit.

(k) Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to the recordation, including reasonable attorney fees and costs.

(l) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia other than this section.

(m) A corrective affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

This corrective affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be indexed in the names of ..... (grantor(s)) whose addresses are ..... and ..... (grantee(s)), whose addresses are ..... The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a West Virginia attorney.

2. That the deed, deed of trust, or mortgage needing correction was made in connection with a real estate transaction in which ..... purchased real estate from ....., as shown in a deed recorded in the office of the clerk of the county commission of ..... County, West Virginia, in Deed Book ...., Page ...., or as Instrument Number ....; or in which real estate was encumbered, as shown in a deed recorded in the office of the clerk of the county commission of ..... County, West Virginia, in Deed Book ...., Page ...., or as Instrument Number .....

3. That the property description in the aforementioned deed, deed of trust, or mortgage contains an obvious description error.

4. That the property description containing the obvious description error reads:

.....

.....

5. That the correct property description should read:

.....

.....

6. That this corrective affidavit is given pursuant to West Virginia Code §36-3-11 to correct the property description in the aforementioned deed, deed of trust, or mortgage, and such description shall be as stated in paragraph 5 above upon recordation of this corrective affidavit in the office of the clerk of the county commission of ..... County, West Virginia.

7. That notice of the intent to record this corrective affidavit and a copy of this corrective affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to West Virginia Code §36-3-1 and that no objection to the recordation of this corrective affidavit was received within the applicable period of time as set forth in West Virginia Code §36-3-1.

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

The foregoing affidavit was acknowledged before me

This ..... day of ....., 20...., by

206 .....

207 Notary Public

208 My Commission expires .....

209 Notary Registration Number: .....

210 (n) Notice under this section may be made in the
211 following form, or to the same effect:

212 **Notice of Intent to Correct an Obvious Description Error**

213 Notice is hereby given to you concerning the deed, deed
214 of trust, or mortgage described in the corrective affidavit, a
215 copy of which is attached to this notice, as follows:

216 1. The attorney identified below has discovered or has
217 been advised of an obvious description error in the deed,
218 deed of trust, or mortgage recorded as part of your real estate
219 settlement. The error is described in the attached affidavit.

220 2. The undersigned will record an affidavit to correct
221 such error unless the undersigned receives a written
222 objection disputing the facts recited in the affidavit or
223 objecting to the recordation of the affidavit. Your objections
224 must be sent within 30 days of receipt of this notice to the
225 following address:

226 .....

227 (Address)

228 .....

229 (Name of attorney)

230 .....

231 (Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

CHAPTER 146

(H. B. 4929 - By Delegate Shott)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §44-3A-24 of the Code of West Virginia, 1931, as amended, relating to the administrative closing of stale or unprogressed estates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. OPTIONAL PROCEDURE FOR PROOF AND ALLOWANCE OF CLAIMS AGAINST ESTATES OF DECEDENTS; COUNTY OPTION.

§44-3A-24. Reports of delinquent filings.

(a) On the last day of December and June of each year every fiduciary commissioner and special fiduciary commissioner shall file with the fiduciary supervisor a list of all estates referred to him or her since the effective date of this section, either generally or for a limited purpose in which any appraisement or other document required to be filed with him or her in a specified time has not been timely

filed, stating the document whose filing is delinquent and the date the document was due to be filed: *Provided*, That the commissioner shall omit from the list any estate and any document for whose filing a proper continuance has been granted.

(b) On January 5 and July 5 of each year the fiduciary supervisor shall file with the county commission a like list of estates referred to him or her since the effective date of this section in which the filing of any paper is delinquent, and embrace therein the lists required to be filed with him or her on the first day of the month by the various commissioners. In the report filed July 5 of each year the fiduciary supervisor shall further include in the report a list of all estates referred to him or her since the effective date of this section which have not been duly closed within a period of three years from the opening of such estate and in which no progress, or in his or her opinion, unsatisfactory progress, has been made toward settlement, for any cause, within the preceding 12 months.

(c) The county commission, after consultation with the fiduciary supervisor shall take care to require prompt disposition of all matters and causes reported to it by the semiannual reports required herein of delinquent and unprogressed estates; enter an order in the name of the county commission directing the appointed personal representative to file a statement to show cause why the county commission should not find the personal representative delinquent in his or her administration of the respective estate and should not remove the personal representative from office; administratively close the estate; or take such other action against the personal representative as may be proper.

(1) The order to show cause shall be mailed by the fiduciary supervisor to the personal representative at the last known address appearing in the records of the fiduciary supervisor. A copy of the order shall also be mailed to the heirs at law, beneficiaries under the will, any creditors who

have filed claims which are not released, any surety on any bond, and any other person interested in the estate at their last known addresses appearing in the records of the fiduciary supervisor.

(2) The personal representative shall have 30 days after the mailing of the order to show cause to file properly any delinquent documents required for the administration of the estate or to file a verified statement, under oath, stating why he or she should not be found delinquent in the administration of the respective estate and should not be removed from office or the estate administratively closed.

(3) If, within the 30-day time period, the personal representative fails to file properly the delinquent documents, or fails to file a verified statement, or files a verified statement which the fiduciary supervisor upon review finds and determines does not present good cause, the fiduciary supervisor shall give notice of the failure, delinquency, or finding to the county commission, the personal representative, the heirs at law, beneficiaries under the will, any creditors who have filed claims which are not released, any surety on any bond, and any other person interested in the estate and shall advise that the personal representative shall be removed from office and such other appropriate person appointed as personal representative as the county commission may determine or that the estate shall be administratively closed 30 days following the date of the notice at a hearing thereon to be held before the county commission at a date and time fixed for presentation. In addition, on the first Monday of the next month, the fiduciary supervisor shall publish a notice of this action as a Class I-0 legal advertisement.

(4) The personal representative or any person interested may file an objection at, or prior to, the time set by the notice for presentation to the county commission. The commission shall proceed to hear the presentation of the proposed removal or closing and findings and hear interested parties, if any appear, and may enter an appropriate order to

approve, modify and approve, or refuse to approve, the proposed removal or closing and the findings of the fiduciary supervisor. Alternatively, the commission may refer the cause to a fiduciary commissioner generally for supervision or for the purpose of the resolution of any disputed matter. An appeal from the decision of the county commission may, without any formal bill of exceptions, be taken to the circuit court of the county by the personal representative or any interested party. The appeal shall be tried and heard in the circuit court, or before the judge thereof in vacation, on the record made before the fiduciary supervisor and the county commission.

(d) In addition, the fiduciary supervisor and the fiduciary commissioners, shall be empowered, and where appropriate, shall on their own motion, petition the circuit court to compel compliance with the provisions of this chapter, in the same manner and to the same extent heretofore provided in the case of commissioners of accounts, or by any other proper proceeding.

CHAPTER 147

(Com. Sub. for H. B. 4611 - By Delegates J. Jeffries, D. Jeffries, Hanna, Maynard, Porterfield, Phillips, Paynter, Barnhart, C. Martin, Linville and Pack)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-3E-5 and §29-3E-8 of the Code of West Virginia, 1931, as amended, all relating generally to fireworks; requiring the State Fire Marshal to establish a procedure that allows a fireworks retailer to combine and pay all applicable fees in a single payment.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3E. FIREWORKS SAFETY.

§29-3E-5. Consumer fireworks certificate required.

(a) A retailer may not sell consumer fireworks unless the retailer is certified under this article.

(b) To be certified to sell consumer fireworks a retailer shall:

(1) Submit an application to the State Fire Marshal;

(2) Submit with the application a copy of his or her current business registration certificate;

(3) Pay a fee of $500 for each temporary retail sales location and $1000 for each permanent retail sales location to the State Fire Marshal;

(4) Provide the State Fire Marshal proof that the retailer maintains at all times public liability and product liability insurance with minimum coverage limits of $1 million to cover losses, damages or injuries that might result from selling consumer fireworks; and

(5) Provide other information as the State Fire Marshal may require by legislative rule.

(c) A consumer fireworks certificate is valid from April 1 through March 31 of the next calendar year.

(d) A consumer fireworks certificate is not transferable.

(e) A retailer shall post the certificate in a conspicuous place at the location of the business.

(f) A separate certificate is required for each location of the business.

(g) A certificate holder may also sell sparkling devices and novelties at the same location without additionally obtaining a sparkling devices and novelties registration.

(h) A retailer who sells consumer fireworks shall comply with the regulations provided in NFPA 1124.

(i) A retailer who sells consumer fireworks shall comply with all regulations provided in NFPA 1124. The State Fire Marshal may by legislative rule, promulgate rules to supplement those rules established in NFPA 1124.

(j) A retailer shall sell the consumer fireworks only from a permanent building or structure that meets the specifications in NFPA 1124 or a temporary facility or structure that meets the specifications of NFPA 1124.7.3.5.

(k) Any fees collected pursuant to this section shall be deposited in the State Fire Marshal Fees Fund established by the provisions of §29-3-12b of this code.

(l) Notwithstanding any provision of this article to the contrary, no retailer may offer consumer fireworks for sale before June 1, 2016.

§29-3E-8. State Fire Marshal's Rule-making Authority.

The State Fire Marshal may promulgate emergency rules and shall propose legislative rules for promulgation, in accordance with §29A-3-1 *et seq.* of this code, to implement this article, including:

(1) Adopting by reference the most recent edition of APA Standard 87-1;

(2) Adopting by reference the most recent edition of NFPA 1123, Code for Fireworks Display;

(3) Adopting by reference NFPA 1124, code for the manufacture, transportation, storage and retail sales of fireworks and pyrotechnic articles;

(4) Adopting by reference the most recent edition of NFPA 1126, standard for the use of pyrotechnics before a proximate audience;

(5) Procedures for the issuance and renewal of a registration, certificate and permit;

(6) A fee schedule;

(7) Establishing insurance or bond requirements;

(8) Establishing additional criteria for the granting of a registration, certificate, or permit under this article;

(9) Registration of manufacturers, wholesalers and distributors; and

(10) Establishing a procedure that allows a retailer to combine and pay all applicable fees in a single payment.

CHAPTER 148

(H. B. 4955 - By Delegates Householder, Barrett, Criss, Espinosa, Cowles, Boggs, Graves, Anderson, Hartman and Pack)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §61-7-4 and §61-7-4a of the Code of West Virginia, 1931, as amended, all relating to reducing the cost of the fees for state licenses to carry concealed deadly weapons and provisional state licenses to carry concealed deadly weapons; eliminating the partial fee deposits in the Courthouse Facilities Improvement Fund for both licenses; reducing the fee deposits for both licenses into the Concealed Weapons License Administration Fund, and exempting

honorably discharged veterans of the armed forces of the United States from payment of certain fees for state licenses to carry concealed deadly weapons.

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 $25. 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) Twenty-five 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 an honorably discharged veteran of the armed forces of the United States or 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 or an honorably discharged veteran of the armed forces of the United States 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.

§61-7-4a. Provisional license to carry deadly weapons; how obtained.

(a) Any person who is at least eighteen years of age and less than twenty-one years of age who desires to obtain a state license to carry a concealed deadly weapon shall apply to the sheriff of his or her county for a provisional license, and pay to the sheriff, at the time of application, a fee of $15. Provisional licenses may only be issued for pistols or 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 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 at least eighteen years of age and less than twenty-one years of age;

(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 section within 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 under either section twenty-eight, article two of this chapter or subsection (b) or (c), section nine, article two of this chapter 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 section seven of this article 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;

(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 provisional license 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 provisional license may not be issued unless the issuing sheriff has verified through the National Instant Criminal Background Check System that the information available does not indicate that receipt of or possession of a firearm by the applicant would be in violation of the provisions of section seven of this article or federal law, including 18 U. S. C. §922(g) or (n).

(c) Fifteen dollars of the application fee and any fees for replacement of lost or stolen provisional 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 said fund are to be expended by the sheriff to pay the costs associated with issuing concealed weapons provisional 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 provisional 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 included 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 proof of current or former service in the United States armed forces, armed forces reserves 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. Certificates, affidavits or other documents submitted to show completion of a course or class shall include instructor information and proof of instructor certification, including, if applicable, the instructor's NRA instructor certification number.

(e) All provisional license applications must be notarized by a notary public duly licensed under article four, chapter twenty-nine of this code. Falsification of any portion of the application constitutes false swearing and is punishable under section two, article five of this chapter.

(f) The sheriff shall issue a provisional license unless the sheriff 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 forty-five days after the application is filed once 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 $15 which the sheriff shall forward to the Superintendent of the West Virginia State Police within thirty days of receipt. The provisional license is valid until the licensee turns twenty-one years of age, unless sooner revoked.

(h) Each provisional 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 provisional 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. Duplicate license cards issued shall be uniform across all fifty-five counties in size, appearance and information and must feature a photograph

of the licensee. The provisional license shall be readily distinguishable from a license issued pursuant to section four of this article and shall state: "NOT NICS EXEMPT. This license confers the same rights and privileges to carry a concealed pistol or revolver on the lands or waters of this state as a license issued pursuant to section four, article seven, chapter sixty-one of this code, except that this license does not satisfy the requirements of 18 U. S. C. §922(t)(3). A NICS check must be performed prior to purchase of a firearm from a federally licensed firearm dealer."

(i) The Superintendent of the West Virginia State Police, in coordination with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for provisional licenses and license cards showing that the license has been granted and shall perform any other act required to protect the state and to enforce 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 provisional 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 thirty days of the denial. The court shall then determine whether the applicant is entitled to the issuance of a provisional 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 provisional 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 provisional concealed weapon license moves from the address named in the application to another county within the state, the license remains valid until the licensee turns twenty-one years of age unless the sheriff of the new county has determined that the person is no longer eligible for a provisional concealed weapon license under this article, and the sheriff shall issue a new provisional license bearing the person's new address and the original expiration date for a fee not to exceed $5: *Provided*, That the licensee within twenty 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 provisional license is granted, 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 provisional licenses issued in the county. The Superintendent of the West Virginia State Police shall maintain a registry of all persons who have been issued provisional concealed weapon licenses.

(n) The sheriff shall deny any application or revoke any existing provisional 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 provisional license does not incur any civil liability as the result of the lawful performance of his or her duties under this article.

(p) 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 provisional license, is confidential: *Provided*, That this information may be disclosed to a law enforcement agency or officer: (i) To determine the validity of a provisional 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.

(q) Except as restricted or prohibited by the provisions of this article or as otherwise prohibited by law, the issuance of a provisional 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.

CHAPTER 149

(Com. Sub. for S. B. 232 - By Senator Weld)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §47-21-2, §47-21-20, and §47-21-26 of the Code of West Virginia, 1931, as amended, all relating to charitable raffles; removing outdated prohibitions against electronic or mechanical ticket dispensers and readers and associated digital fundraising platforms; limiting types and numbers of mechanical or electronic ticket dispenser systems; and removing restriction that a licensee may only use raffle equipment obtained from another licensee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. CHARITABLE RAFFLES.

§47-21-2. Definitions.

For purposes of this article, unless specified otherwise:

(a) "Charitable or public service activity or endeavor" means any bona fide activity or endeavor which directly benefits a number of people by:

(1) Contributing to educational or religious purposes;

(2) Relieving them from disease, distress, suffering, constraint, or the effects of poverty;

(3) Increasing their comprehension of, and devotion to, the principles upon which this nation was founded and to the principles of good citizenship;

(4) Making them aware of, or educating them about, issues of public concern so long as the activity or endeavor is not aimed at supporting or participating in the campaign of any candidate for public office;

(5) Lessening the burdens borne by government or voluntarily supporting, augmenting or supplementing services which government would normally render to the people;

(6) Providing or supporting nonprofit community activities for youth, senior citizens, or the disabled;

(7) Providing or supporting nonprofit cultural or artistic activities; or

(8) Providing or supporting any political party executive committee.

(b) "Charitable or public service organization" means a bona fide, not for profit, tax-exempt, benevolent,

educational, philanthropic, humane, patriotic, civic, religious, fraternal, or eleemosynary, incorporated or unincorporated association or organization; or a volunteer fire department, rescue unit, or other similar volunteer community service organization or association; but does not include any nonprofit association or organization, whether incorporated or not, which is organized primarily for the purposes of influencing legislation or supporting or promoting the campaign of any single candidate for public office.

(c) "Commissioner" means the State Tax Commissioner.

(d) "Concession" means any stand, booth, cart, counter, or other facility, whether stationary or movable, where beverages, both alcoholic and nonalcoholic, food, snacks, cigarettes or other tobacco products, newspapers, souvenirs, or any other items are sold to patrons by an individual operating the facility. Notwithstanding anything contained in §60-7-12(a)(2) of this code to the contrary, "concession" includes beverages which are regulated by and are subject to the provisions of chapter 60 of this code.

(e) "Conduct" means to direct the actual holding of a raffle by activities including, but not limited to, handing out tickets, collecting money, drawing the winning numbers or names, announcing the winning numbers or names, posting the winning numbers or names, verifying winners, and awarding prizes.

(f) "Expend net proceeds for charitable or public service purposes" means to devote the net proceeds of a raffle occasion or occasions to a qualified recipient organization or as otherwise provided by this article and approved by the commissioner pursuant to §47-21-15 of this code.

(g) "Gross proceeds" means all moneys collected or received from the conduct of a raffle or raffles at all raffle occasions held by a licensee during a license period; this term shall not be determined to include any moneys

collected or received from the sale of concessions at raffle occasions.

(h) "Joint raffle occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by two or more licensees.

(i) "Licensee" means any organization or association granted an annual or limited occasion license pursuant to the provisions of this article.

(j) "Net proceeds" means all moneys collected or received from the conduct of raffle or raffles at occasions held by a licensee during a license period after payment of the raffle expenses authorized by §47-21-11, §47-21-13, and §47-21-15 of this code; this term shall not be determined to include moneys collected or received from the sale of concessions at raffle occasions.

(k) "Person" means any individual, association, society, incorporated or unincorporated organization, firm, partnership, or other nongovernmental entity or institution.

(l) "Patron" means any individual who attends a raffle occasion other than an individual who is participating in the conduct of the occasion or in the operation of any concession, whether or not the individual is charged an entrance fee or participates in any raffle.

(m) "Qualified recipient organization" means any bona fide, not for profit, tax-exempt, as defined in subdivision (p) of this section, incorporated or unincorporated association or organization which is organized and functions exclusively to directly benefit a number of people as provided in paragraphs (1) through (7), inclusive, subdivision (a), of this section. "Qualified recipient organization" includes, without limitation, any licensee which is organized and functions exclusively as provided in this subdivision.

(n) "Raffle" means a game involving the selling or distribution of paper tickets, entitling the holder or holders to participate in a raffle game for a chance on a prize or prizes: *Provided*, That any mechanical or electronic raffle ticket system of whatever design or function is prohibited except as provided in paragraph (2) of this subdivision. This subdivision shall not be interpreted to prevent the use of:

(1) Hand-cranked or motorized drum mixers which randomly mix tickets or other indicia together for the purpose of allowing the hand drawing of a ticket or winning indicia;

(2) Mechanical or electronic ticket dispenser systems that produce paper tickets with randomly generated indicia that cannot be redeemed electronically, cannot be used for any other purpose than a one-time raffle, and are limited as follows:

(A) No more than three electronic ticket dispensing units in facilities with a capacity of fewer than 3,000 people; or

(B) No more than one electronic ticket dispensing unit for every 1,000 persons permitted in facilities with a maximum occupancy greater than 3,000 people, not to exceed a total of 10 dispensing units;

(3) A cash register for handling proceeds of sales and other ordinary cash-handling and record-keeping functions of a raffle licensee; or

(4) Accounting and record-keeping software for the purpose of maintaining accounting and reporting records of the licensee, and the computer for running those applications.

(o) "Raffle occasion" or "occasion" means a single gathering or session at which a series of one or more successive raffles is conducted by a single licensee.

(p) "Tax-exempt association or organization" means an association or organization which is, and has received from the Internal Revenue Service a determination letter that is currently in effect stating that the organization is exempt from federal income taxation under subsection 501(a) and described in subsection 501(c)(3), 501(c)(4), 501(c)(8), 501(c)(10), 501(c)(19), or 501(d) of the Internal Revenue Code of 1986, as amended; or is exempt from income taxes under subsection 527(a) of that code.

§47-21-20. Violation of provisions; crime; civil penalties; additional grounds for suspension or revocation.

(a) Any person who knowingly violates any provisions of this article, other than the provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $100 nor more than $1,000; and, upon a second or subsequent conviction thereof, shall be fined not less than $100 nor more than $100,000 or confined in jail not more than one year, or both fined and confined.

(b) On and after July 1, 2010, any person licensed under this article, or any person who operates a raffle without a license under §47-21-3 of this code, who is in possession of any electronic or mechanical raffle ticket system of whatever design or function, other than those machines and apparatus allowed under §47-21-2(n) of this code, that is used or designed to be used as part of a licensed raffle is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a term of not less than one year nor more than three years, and fined not less than $50,000 nor more than $100,000, for each electronic or mechanical raffle ticket system of whatever design or function, other than those machines and apparatus allowed under §47-21-2(n) of this code, in the person's actual or constructive possession in this state. For a person other than an individual, upon conviction, the fine may not be less than $100,000 nor more than $500,000 for each video electronic or mechanical raffle ticket system of

whatever design or function in the person's actual or constructive possession in this state.

(c) A licensee may also have his or her license suspended or revoked for failure to comply with this article and may be required to forfeit the machines or devices to the Tax Commissioner for destruction.

(d) In addition to any other penalty provided by law, any person, licensed or unlicensed under this article, who violates any provisions of this article, or who fails to perform any of the duties or obligations created and imposed upon them by the provisions of this article, other than the provisions of §47-21-18 or §47-21-19 of this code, or subsection (b) of this section, is subject to a civil penalty as may be determined by the Tax Commissioner in an amount not to exceed $10,000.

§47-21-26. Restrictions on use of raffle equipment.

A licensee may use only raffle equipment which it owns, which it borrows without compensation, or which it leases for a reasonable and customary amount.

CHAPTER 150

(Com. Sub. for H. B. 4438 - By Delegates Espinosa, Householder, Barrett, Storch and Hardy)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 23, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §19-23-12e, relating to the licensing of advance deposit wagering; defining terms; providing for source market fees; providing for certain

distribution of source market fees derived from wagers of account holders; providing that advance deposit account wagers are authorized; providing exception from certain provisions of code; conferring jurisdiction to the Racing Commission; providing for the assessment and imposition of licensing and annual renewal fees; providing that applicants may bear certain costs; providing for a special revenue account; providing for a fee to be paid by advance deposit wagering licensees and deposited into the special revenue account; prohibiting advance deposit wagering in West Virginia unless conducted through an advance deposit wagering licensee; exempting advance deposit wagering from certain provisions of code and implementing rules; providing for criminal penalties for accepting advance deposit wagers without a license; providing authority for the Racing Commission to seek civil remedies and damages; providing for a regulatory fee; providing that all advance deposit wagers placed by residents within the state are considered to be wagering within West Virginia subject to the laws of this state and rules of the Racing Commission; providing for an investigation as to whether nonresident account holders of a licensee placed wagers while physically located in West Virginia; providing for an annual report of the Racing Commission; setting forth elements of the report; and authorizing rulemaking and emergency rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 23. HORSE AND DOG RACING.

§19-23-12e. Licensing of advance deposit account wagering.

1 (a) As used in this section:

2 "Account" means an advance deposit wagering (ADW)
3 account owned by an account holder and managed by an
4 ADW licensee that the Racing Commission has determined
5 will maintain a specific identifiable record of account
6 deposits, wagers, credits, debits, and withdrawals, and
7 protect the account holder's confidential information.

"Account holder" means a resident individual, at least 18 years of age who applies for and successfully opens an account with an ADW licensee.

"Advance deposit account wagering" means a method of pari-mutuel wagering that is permissible under the Interstate Horseracing Act, 15 U.S.C. §3001 *et seq.*, in which an individual may establish an account with a person or entity, licensed by the Racing Commission, to place pari-mutuel wagers on horse or greyhound racing with the ADW licensee via electronic media or by telephone, but not including account wagering conducted through a licensee under §19-23-9(a) of this code, and the Racing Commission's rules thereunder with respect to wagering conducted pursuant to Racing Commission Rule §178-5-5.

"Advance deposit account wagering licensee" means an entity licensed by the Racing Commission to conduct advance deposit account wagering that accepts deposits and wagers, issues a receipt or other confirmation to the account holder evidencing the deposits and wagers, and transfers credits and debits to and from an account.

"ADW" means advance deposit account wagering.

"Confidential information" means: (A) The amount of money credited to, debited from, withdrawn from, or present in an account; (B) the amount of money wagered by an account holder on any race or series of races, or the identities of racing associations on which the account holder is wagering or has wagered; (C) the account number and secure personal identification information of an account holder; and (D) unless authorized by the account holder, the name, address, or other information that would identify the account holder to any person or entity other than the Racing Commission or the ADW licensee that manages the account.

"Electronic media" means any electronic communication device or combination of devices,

43 including, but not limited to, personal computers, the
44 Internet, private networks, interactive televisions, and
45 wireless communication technologies or other technologies
46 approved by the Racing Commission.

47 "Licensee" means any racing association holding a
48 license as defined by §19-23-3 of this code;

49 "Located" means, in regard to a resident account holder,
50 where his or her principal residence is located.

51 "Principal residence" means the street address identified
52 by a resident account holder as that individual's residential
53 address, as the address may be verified by the ADW
54 licensee to the satisfaction of the Racing Commission.

55 "Resident" is an individual who: (A) Is domiciled in
56 West Virginia; (B) maintains a place of abode and spends at
57 least 183 days within a calendar year in West Virginia; or
58 (C) lists an address in West Virginia as his or her principal
59 residence when opening an account.

60 "Source market fee" means a fee paid by the ADW
61 licensee which shall be four percent of the total amount
62 wagered through the ADW licensee by residents under this
63 section, excluding refunds and cancellations, payable on a
64 monthly basis to the Racing Commission and distributed as
65 set forth in subsection (b) of this section.

66 "Total handle" means the total annual dollar sales
67 amount of all pari-mutuel wagering on horse and greyhound
68 races conducted at, or generated from, imports or exports of
69 simulcast horse and greyhound races to or from a licensee,
70 including all moneys from wagering conducted under §19-
71 23-9, §19-23-12a, §19-23-12b, and §19-23-12c of this code,
72 but excluding refunds, cancellations, and advance deposit
73 account wagering under this section.

74 (b) The source market fee shall be paid by the ADW
75 licensee on a monthly basis to the Racing Commission and
76 distributed as provided in this subsection. The Racing

Commission shall prorate all source market fees derived from wagers of account holders between the licensees by dividing each licensee's total handle by the total handle of all West Virginia licensees in the prior calendar year, and distribute the prorated amounts as follows:

(1) Ten percent of each horse racing licensee's prorated amount to the West Virginia Thoroughbred Development Fund or 10 percent of each dog racing licensee's prorated amount to the West Virginia Racing Commission Special Account-West Virginia Greyhound Breeding Development Fund;

(2) Forty-five percent to the purse fund of each prorated licensee; and

(3) Forty-five percent to each prorated licensee.

(c) The advance deposit account wagers placed by account holders with an ADW licensee licensed by the Racing Commission in accordance with this section are authorized, and the provisions of §61-10-1 *et seq.* of this code relating to gaming do not apply to advance deposit account wagering conducted in accordance with this section.

(d) The Racing Commission is vested with jurisdiction over any person or entity that solicits account holders or offers advance deposit account wagering in West Virginia. Any person or entity that solicits account holders or offers advance deposit account wagering in West Virginia shall be licensed and the Racing Commission may impose a nonrefundable initial and annual renewal licensing application fee not to exceed $5,000. The Racing Commission may also require any applicant for an initial or renewal ADW license to bear the costs involved in conducting background checks and reviews. If a licensee or an affiliate of a licensee applies for an ADW license under this section, all fees under this subsection shall be deemed paid and an ADW license issued as part of a licensee's

annual licensing, or, if the license application is submitted apart from annual licensing, an ADW license shall be issued at the time the application is submitted.

(e) A person or entity may not conduct advance deposit account wagering in West Virginia unless the person or entity has applied for and been granted an ADW license by the Racing Commission. The Racing Commission shall also ensure that, except for advance deposit account wagering authorized under this section, all pari-mutuel wagering on racing is conducted within the confines of a licensee's racetrack or licensed contiguous hotel, as permitted under §19-23-9(a) and §19-23-12a(1) of this code and implementing rules thereunder, including Racing Commission Rule §178-5-5, or within an authorized gaming facility in a historic resort hotel, as permitted under §19-23-12d of this code and implementing rules thereunder.

(f) Any person who is not licensed as an advance deposit account wagering licensee by the Racing Commission who accepts an advance deposit account wager from a resident is guilty of a felony and, upon conviction thereof, shall be fined not more than $50,000 or imprisoned in a state correctional facility not more than five years, or both fined and imprisoned. Further, the court shall order any convicted person to pay restitution to recover all amounts that would have been payable to the Racing Commission under this section.

(g) The Racing Commission may seek injunctive relief against any person who is not licensed as an advance deposit account wagering licensee by the Racing Commission who accepts or attempts to accept an advance deposit account wager from a resident. The Racing Commission may also seek recovery of all amounts that would have been payable to the Racing Commission under this section, damages equal to three times the amount of recovery, and reasonable costs and attorney fees. Damages recovered by the Racing Commission shall be distributed as source market fees under this section.

(h) There is hereby assessed a regulatory fee paid by the ADW licensee, which shall be one-half percent of the total amount wagered through the ADW licensee by residents under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission for deposit into the Racing Commission's general administrative account.

(i) There is further assessed an additional fee paid by the ADW licensee, which shall be one and one-half percent of the total amount wagered through the ADW licensee by residents under this section, excluding refunds and cancellations, payable on a monthly basis to the Racing Commission for deposit into a special revenue account in the State Treasury to be known as the "Advance Deposit Wagering Account" to be expended pursuant to appropriation of the Legislature.

(j) Advance deposit account wagers placed by residents are considered to be wagering conducted in this state and subject to the laws of this state and the rules of the Racing Commission.

(k) The Racing Commission shall submit a report by December 31, 2020, and annually thereafter to the Joint Committee on Government and Finance detailing the operation of ADW in this state. The report shall include, but is not limited to, the following:

(1) A complete list of ADW licensees offering ADW services;

(2) The total amount of funds paid to the Racing Commission pursuant to subsection (h) of this section;

(3) The total amount deposited in the preceding 12-month period in the special revenue account set forth in subsection (i) of this section;

(4) The amounts distributed as set forth in subdivision (b) of this section;

(5) Beginning with the report due December 31, 2021, a statistical comparison of ADW services to the preceding year; and

(6) The total amount of wagering by West Virginia residents through ADW Licensees.

(l) The Racing Commission may propose legislative rules for promulgation, pursuant to §29A-3-1 *et seq.* of this code, to implement this section and may propose emergency rules to provide conditions for the licensing of advance deposit account wagering. Those rules may include, but are not limited to: (1) Standards, qualifications, and procedures for the issuance of an advance deposit account wagering license in West Virginia; (2) rules establishing initial and renewal license fees and payment of same to the Racing Commission to cover the costs of licensing ADW licensees; (3) provisions regarding the collection and distribution of those fees; (4) provisions regarding access to books and records and submission to investigations and audits by the Racing Commission; (5) standards and procedures for opening, maintaining, operating, and securing ADW accounts, as well as protecting confidential information therein; and (6) any other conditions to ensure an orderly process of accepting ADW wagers in acting in the best interests of the West Virginia horse and dog racing industries.

CHAPTER 151

(H. B. 4647 - By Delegates Shott, Espinosa, Queen, Westfall, Hamrick, Howell, Householder, Barrett, Bates and Miller)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-22B-1107 of the Code of West Virginia, 1931, as amended, relating to limited video lottery permit holders; and giving current permit holders a priority preference to reacquire permits they have, at the minimum stated bid price, before those permits are made available to other applicants.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1107. Bidding process.

(a) Bids for issuance of permits shall be obtained by public notice published as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code.

(b) The second publication of the notice shall appear more than 60 days next preceding the final day for submitting bids.

(c) Each bid shall indicate the number of video lottery terminals for which the permit is sought. The bid shall state the amount bid for each video lottery terminal for which the permit is sought.

(d) No bid may be altered or withdrawn after the appointed hour for the opening of the bids.

(e) Subject to the provisions of subsection (f) of this section, permits shall be awarded to the persons submitting the highest per terminal bids, except that no person may be authorized to directly or indirectly own or lease more than seven and one-half percent of the total number of video lottery terminals authorized in §29-22B-1101 of this code. If a high bidder already holds a permit issued under this section, the bid shall be awarded to that bidder, but only to the extent the total number of video lottery terminals the operator or limited video lottery retailer is authorized to directly or indirectly own or lease does not exceed seven and one-half percent of the number of video lottery terminals authorized for the entire state specified in §29-22B-1101 of this code.

(f) No bid may be considered unless the bond required by §29-22B-1109 of this code accompanies the bid or was submitted to the State Treasurer before the time designated for opening of the bid.

(g) No bid may be considered unless the amount of the bid equals or exceeds the minimum bid amount for a video lottery terminal specified by the commission.

(h) All bids for a permit may be rejected by the commission if the commission determines that the bids are inadequate. In this event, the director shall begin anew the bidding process for the permits.

(i) Whenever there are two or more bids of the same dollar amount and the number of authorizations for which the bids were submitted exceeds the number of authorizations still available to fill the bids, the director shall award the permit based upon the drawing of lots among the bidders.

(j) A person submitting a bid under this article shall deliver one copy to the Director of Purchasing of the Purchasing Division within the Department of Administration. The bid must be received at the designated office location prior to the specified date and time of the bid opening.

(k) The failure to deliver or the nonreceipt of the bid forms at the designated office location prior to the appointed date and hour are grounds for rejection of the bid.

(l) After the award of a permit, the Director of the Lottery shall indicate upon the successful bid that it was the successful bid and the number of video lottery terminals for which a permit is awarded to the bidder. This shall be the number of video lottery terminals for which the bid was submitted, or the remaining number of video lottery terminals to be awarded when the number of video lottery terminals remaining is less than the number of terminals for which the bid was submitted. Thereafter, a copy of the bid and the bidder's application for an operator's license or a limited video lottery retailer license shall be maintained as a public record at the commissions' offices and shall be open to public inspection during its normal business hours. These documents may not be destroyed without the prior written consent of the Legislative Auditor.

(m) Prior to issuing a permit to a successful bidder, the bid price for the number of video lottery terminals authorized in the permit plus the amount of the operator's annual license fee or the limited video lottery retailer's annual license fee for the first license year, as specified in §29-22B-518 of this code shall be paid to the commission by money order, certified check or cashier's check. If the operator's annual license fee or the limited video lottery retailer's license fee was paid for the current license year before the due date of the bid amount, the license fee may not be collected a second time for the same license year. The amount paid shall be deposited into the fund established in §29-22-18a of this code.

(n) All permits shall be signed by the Director of the Lottery in the name of the state.

(o) If the successful bidder fails to pay to the commission the bid price and the operator's annual license fee or the limited video lottery retailer's license fee for the first license year, at the time specified by the commission, the bond provided for in §29-22B-1109 of this code shall be forfeited and the bidder may not be issued the permit.

(p) In the event of a default, as provided in subsection (h) of this section, the commission shall then issue the permit to the next highest bidder for video lottery terminals, or reject all remaining bids and start anew the bidding procedure for the remaining number of video lottery terminals.

(q) If after a permit is awarded, an operator or limited video lottery retailer surrenders the permit, in whole or in part, or the permit is revoked or canceled by operation of law, the commission may seek bids for video lottery terminals for which authorization was surrendered or revoked, subject to the limitations and requirements of this article.

(r) During the fiscal year of the state ending June 30, 2011, the commission shall seek bids for the 10-year period beginning July 1, 2011, and ending June 30, 2021.

(s) For all bids conducted subsequent to June 30, 2011, the commission shall give a priority preference, to allow current permit holders to acquire permits which are held by those permit holders at the minimum stated bid price before those permits are made available for bid to other applicants.

CHAPTER 152

(H. B. 4760 - By Delegates Campbell, Criss, Cooper, Pack, Westfall, Canestraro, Queen, Dean, Paynter, Storch and Lavender-Bowe)

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-22B-1202 of the Code of West Virginia, 1931, as amended, relating to modifying video lottery retailer licensing eligibility requirements; modifying the distance measurements from prohibited structures by equalizing the measurement standards for licensed video lottery licenses with that of the Alcoholic Beverage Commission's distance measurements from certain prohibited locations for private clubs' licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-1202. No limited video lottery retailer license for premises within 150 feet of another licensed premises; no two license retailer locations within a common structure.

(a) A limited video lottery retailer license may not be granted for operation of video lottery terminals on a premises if, at the time of application for the license, the applicant's premises are within 150 feet of, or has an external structural connection not amounting to a common internal wall to, a premises that already has a license for video lottery terminals.

(1) A measurement of the distance between two premises must be taken between the front door and the front door of each location, along the street or streets: *Provided,*

That for the purposes of determining whether a limited video lottery retailer applicant that holds a private club license meets distance requirements for prohibited locations of licensees pursuant to §11-16-8(a)(5) of this code, the applicant's location is deemed compliant upon the issuance of a valid license pursuant to §60-7-1 *et seq.* of this code.

(2) When determining common ownership, the commission shall consider direct as well as indirect ownership.

(b) A premises for which a private club license to dispense alcoholic liquors, under provisions of §60-7-1 *et seq.* of this code, or a Class A nonintoxicating beer license, under the provisions of §11-16-1 *et seq.* of this code, was granted, was applied for, or the transfer of which was validly contracted for prior to January 1, 2001, is not subject to subsections (a) and (c) of this section: *Provided*, That a fraternal organization for which a private club license to dispense alcoholic liquors, under the provisions of §60-7-1 *et seq.* of this code, or a Class A nonintoxicating beer license, under the provisions of §11-16-1 *et seq.* of this code, which was granted prior to January 1, 2001, and which has remained in continuous operation since January 1, 2001, may, for good cause shown, obtain approval to be exempt from subsections (a) and (c) of this section, upon approval of the Commission.

(c) No more than one restricted access adult-only facility shall hold a limited video lottery retailer license to offer video lottery terminals in any single structure under one roof.

CHAPTER 153

(Com. Sub. for S. B. 175 - By Senator Blair)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5F-1-7; to amend and reenact §7-1-3rr of said code; to amend said code by adding thereto a new article, designated §8-39-1; and to amend said code by adding thereto two new sections, designated §17A-2-26 and §17A-2-27, all relating to governmental entities distribution of information; requiring executive branch agencies to maintain websites that contain specific information; requiring county commissions to maintain websites with specific information; requiring county commissions to provide certain information to the Secretary of State; allowing municipalities to maintain websites with specific information available to the public at no charge; providing for exceptions to disclosing certain information in defined circumstances; requiring information to be updated; requiring updated information to be provided to the Office of Technology; requiring the Division of Motor Vehicles to establish and maintain an enrollment list of persons who have communication disabilities; authorizing the Division of Motor Vehicles to promulgate rules; exempting Division of Motor Vehicles enrollment list from the Freedom of Information Act; providing for submission of certain information to the Division of Motor Vehicles; and authorizing the Division of Motor Vehicles to provide enrollment list information to law-enforcement officers through automated data system.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-7. Website content and required information.

Beginning December 31, 2020, each agency shall maintain a website that provides the following information in a searchable form by the public, if applicable:

(1) The office contact information, including office location and mailing address, telephone number, facsimile number, office hours, and a secure electronic means of contacting the office such as a contact portal or other interface;

(2) The contact information of each administrative agency official, including office location and mailing address, office telephone number, facsimile number, and an organizational electronic mail address: *Provided*, That the agency may withhold contact information from disclosure that it deems necessary to protect their safety, the safety of their coworkers, and the integrity of law-enforcement operations;

(3) Organizational chart;

(4) A list of governing statutes and legislative and procedural rules;

(5) Meeting minutes;

(6) Annual reports;

(7) Frequently asked questions and descriptive answers;

(8) Available state grant opportunities to include, but not be limited to:

(A) Available grant information and application information;

(B) Grant eligibility requirements; and

(C) Award ranges and award deadlines; and

(9) State grants that are awarded in an amount greater than $20,000 to include, but not be limited to:

(A) The name and address of the grantee's organization;

(B) The purpose of the award;

(C) The amount of the award;

(D) The effective date and duration of the award; and

(E) Any financial and performance reports that are required by the State of West Virginia.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 1. COUNTY COMMISSIONS GENERALLY.

§7-1-3rr. Accessible county records; required information.

(a) Beginning December 31, 2020, each county commission shall maintain a website that provides the following information without charge:

(1) The title and name of each elected county office holder;

(2) The contact information of each elected county office holder, including office telephone number, facsimile number, office location, and mailing address: *Provided*, That the county commission may withhold contact information from disclosure that it deems necessary to protect their safety, the safety of their coworkers, and the integrity of law-enforcement operations;

(3) A secure electronic means of contacting each elected county office holder;

(4) A copy of each county ordinance in effect;

(5) A copy of the approved meeting minutes; and

(6) A schedule of regular meeting days for each calendar year.

(b) Beginning on or before December 31, 2020, and each year thereafter, each county commission shall provide to the Secretary of State the following information:

(1) A list of each elected county official by title, with the name of the elected official;

(2) The office contact information for each county office holder; and

(3) The website address of the county commission website, where available.

(c) The county commission shall update the information required pursuant to this section within 30 days of the date the change occurs and shall provide the updated information to the Office of Technology who shall update the information on the wv.gov website.

CHAPTER 8. MUNICIPAL CORPORATIONS.

ARTICLE 39. MUNICIPAL WEBSITES.

§8-39-1. Accessible municipal records; required information.

(a) Beginning on or before December 31, 2020, each municipality may maintain a website that provides the following information accessible to the public without charge:

(1) The title and name of each elected office holder;

(2) The contact information of each elected office holder, including office telephone number, facsimile number, office location, office hours, and mailing address:

Provided, That the municipality may withhold contact information from disclosure that it deems necessary to protect their safety, the safety of their coworkers, and the integrity of law-enforcement operations;

(3) A secure electronic means of contacting each elected office holder;

(4) A copy of each municipal ordinance in effect;

(5) A copy of the approved meeting minutes; and

(6) A schedule of regular meeting days for each calendar year.

(b) Each municipality shall update the information required pursuant to this section within 30 days of the date the change occurs and provide the updated information to the Office of Technology who shall update the information on the wv.gov website.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-26. Enrollment of persons with communication disability.

(a) As used in this section:

(1) "Communication disability" has the same meaning as in §17A-2-27 of this code.

(2) "Disability that can impair communication" has the same meaning as in §17A-2-27 of this code.

(3) "Legal guardian" has the same meaning as in §49-1-205 of this code.

8 (4) "Ward" means a person for whom a legal guardian
9 has been appointed.

10 (b) The Division of Motor Vehicles shall establish and
11 maintain an enrollment list of persons who enroll under this
12 section as being diagnosed with a communication disability
13 or a disability that can impair communication.

14 (c) Any person diagnosed with a communication
15 disability or a disability that can impair communication who
16 is 18 years of age or older may enroll with the division for
17 inclusion in the enrollment list by submitting a completed
18 verification form to the division.

19 (d) Any parent or guardian of a minor child or a ward
20 diagnosed with a communication disability or a disability
21 that can impair communication may enroll the minor child
22 or the ward with the division for inclusion in the enrollment
23 list by submitting a completed verification form to the
24 division.

25 (e) (1) The division shall include in the enrollment list
26 information provided on a completed verification form that
27 the division determines is necessary for a law-enforcement
28 officer to identify a person as diagnosed with a
29 communication disability or a disability that can impair
30 communication. The division shall make the enrollment list
31 available to state and local law-enforcement officers
32 through a law-enforcement automated data system.

33 (2) Information in the enrollment list is not a public
34 record subject to inspection or copying under chapter 29B
35 of this code.

36 (f) A person diagnosed with a communication disability
37 or a disability that can impair communication who is
38 included in the enrollment list, or the parent or guardian of
39 a minor child or a ward diagnosed with a communication
40 disability or a disability that can impair communication who
41 is included in the enrollment list, may request removal of

the person, minor, or ward, as applicable, from the enrollment list. The person, parent, or guardian shall do so by completing the verification form with only the information required under §17A-2-27(c)(1), §17A-2-27(c)(2), §17A-2-27(c)(3), §17A-2-27(c)(8), and §17A-2-27(c)(9) of this code, as applicable, and submitting the form to the division. Upon receipt of a properly completed verification form requesting the removal of a person with a communication disability or a disability that can impair communication from the enrollment list, the division shall immediately remove that person from the enrollment list.

(g) The division may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out the requirements of this section.

§17A-2-27. Form for inclusion in enrollment list with a communication disability.

(a) As used in this section:

(1) "Communication disability" means a human condition involving an impairment in the human's ability to receive, send, process, or comprehend concepts or verbal, nonverbal, or graphic symbol systems that may result in a primary disability or may be secondary to other disabilities.

(2) "Disability that can impair communication" means a human condition with symptoms that can impair the human's ability to receive, send, process, or comprehend concepts or verbal, nonverbal, or graphic symbol systems.

(3) "Legal guardian" has the same meaning as in §49-1-205 of this code.

(4) "Health care provider" means a person as defined in §16-30-3 of this code.

(5) "Psychiatrist" means a licensed physician who has satisfactorily completed a residency training program in psychiatry, as approved by the residency review committee

18 of the American Medical Association, the committee on
19 post-graduate education of the American Osteopathic
20 Association, or the American Osteopathic Board of
21 Neurology and Psychiatry.

22 (6) "Psychologist" means a person licensed under the
23 provisions of §30-21-1 *et seq.* of this code.

24 (b) The form shall include the following information:

25 (1) The name of the person diagnosed with a
26 communication disability or a disability that can impair
27 communication;

28 (2) The name of the person completing the form on
29 behalf of the person diagnosed with a communication
30 disability or a disability that can impair communication, if
31 applicable;

32 (3) The relationship between the person completing the
33 form and the person diagnosed with a communication
34 disability or a disability that can impair communication, if
35 applicable;

36 (4) The driver's license number or state identification
37 card number issued to the person diagnosed with a
38 communication disability or a disability that can impair
39 communication, if that person has such a number;

40 (5) The license plate number of each vehicle owned,
41 operated, or regularly occupied by the person diagnosed
42 with a communication disability or a disability that can
43 impair communication, or enrolled in that person's name;

44 (6) A physician's, psychiatrist's, or psychologist's
45 signed certification that the person has been diagnosed with
46 a communication disability or a disability that can impair
47 communication;

(7) The name, business address, business telephone number, and medical license number of the physician, psychiatrist, or psychologist making the certification;

(8) The signature of the person diagnosed with a communication disability or a disability that can impair communication, or the signature of the person completing the form on behalf of such a person, that may indicate the desire to be removed from the database; and

(9) Option to explain – A place where the person or persons may include a short explanation of the type of disability, possible symptoms, and measures which could alleviate or lessen the symptoms.

(c) Any of the following persons may complete the verification form:

(1) Any person diagnosed with a communication disability or a disability that can impair communication who is 18 years of age or older;

(2) The parent or parents of a minor child diagnosed with a communication disability or a disability that can impair communication;

(3) The guardian of a person diagnosed with a communication disability or a disability that can impair communication, regardless of the age of the person.

(d) The Division of Motor Vehicles shall make the verification form electronically available on each of their respective websites.

CHAPTER 154

(Com. Sub. for S. B. 193 - By Senator Tarr)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §5A-3-10 of the Code of West Virginia, 1931, as amended, relating to establishing deadlines for spending units to submit procurements to the Purchasing Division when a continuing procurement for goods and services exceeds $1 million.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10. Competitive bids; publication of solicitations for sealed bids; purchase of products of nonprofit workshops; employee to assist in dealings with nonprofit workshops; continuing procurements over $1 million.

(a) A purchase of and contract for commodities, printing, and services shall be based, whenever possible, on competitive bids.

(b) The director shall solicit sealed bids for the purchase of commodities and printing which is estimated to exceed $25,000. No spending unit shall issue a series of requisitions or divide or plan procurements to circumvent this $25,000 threshold or otherwise avoid the use of sealed bids. Any spending unit which awards multiple contracts for the same or similar commodity or service to an individual vendor over any 12-month period, the total value of which exceeds $25,000, shall file copies of all contracts awarded to the vendor within the 12 preceding months with the director immediately upon exceeding the $25,000 limit, along with

a statement explaining how the multiple contract awards do not circumvent the $25,000 threshold. If the spending unit does not immediately report to the director, the director may suspend the purchasing authority of the spending unit until the spending unit complies with the reporting requirement of this subsection. The director may conduct a review of any spending unit to ensure compliance with this subsection. Following a review, the director shall complete a report summarizing his or her findings and forward the report to the spending unit. In addition, the director shall report to the Joint Committee on Government and Finance on January 1 and July 1 of each year the spending units which have reported under this subsection and the findings of the director.

(c) The director may permit bids by electronic transmission to be accepted in lieu of sealed bids.

(d) Bids shall be solicited by public notice. The notice may be published by any advertising medium the director considers advisable. The director may also solicit sealed bids by sending requests by mail or electronic transmission to prospective vendors.

(e) (1) The director shall, without competitive bidding, purchase commodities and services produced and offered for sale by nonprofit workshops, as defined in §5A-1-1 of this code, which are located in this state: *Provided*, That the commodities and services shall be of a fair market price and of like quality comparable to other commodities and services otherwise available as determined by the director with the advice of the Committee on the Purchase of Commodities and Services from the Handicapped.

(2) To encourage contracts for commodities and services with nonprofit workshops, the director shall employ a person whose responsibilities in addition to other duties are to identify all commodities and services available for purchase from nonprofit workshops, to evaluate the need of the state for commodities and services to coordinate the

various nonprofit workshops in their production efforts, and to make available to the workshops information about available opportunities within state government for purchase of commodities or services which might be produced and sold by such workshops. Funds to employ such a person shall be included annually in the budget.

(f) For all commodities and services in an amount exceeding $1 million, if the procurement of the commodity or service is continuing in nature, 12 months prior to the expiration of the contract or final renewal option, whichever is later, the spending unit shall submit a new procurement for approval and release to the Purchasing Division. This procurement shall be awarded or terminated no later than 180 days after the procurement specifications have been submitted to and approved by the Purchasing Division.

CHAPTER 155

(S. B. 322 - By Senator Maynard)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §5A-3-10e of the Code of West Virginia, 1931, as amended, relating to prequalification of vendors for state contracts; allowing for prequalification agreements for the purchase of services; and removing obsolete terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. PURCHASING DIVISION.

§5A-3-10e. Prequalification agreement; agency-delegated bidding.

(a) Subject to the limitations of this section, the director may permit spending units to procure commodities and

services from a preapproved vendor through a prequalification agreement and delegated prequalification bidding if the director determines the process is fair, economical, and in the best interests of the state.

(b) *Definitions.* — For purposes of this section:

"Prequalification agreement" means an agreement, having a term of no more than three years, between the Purchasing Division and at least two prequalified vendors authorizing a spending unit to purchase a commodity or service on a recurrent basis through the delegated prequalification bidding process defined in the prequalification agreement.

"Prequalified vendor" means a "vendor", as that term is defined in §5A-1-1 of this code, that has entered into a prequalification agreement with the Purchasing Division and may participate in the delegated prequalification bidding subject to the terms and conditions of the prequalification agreement.

"Delegated prequalification bidding" means the competitive bidding process whereby the prequalified vendors that are parties to a prequalification agreement may submit sealed bids directly to spending units to provide a commodity or service identified in the prequalification agreement subject to the limitations set forth in this section.

(c) *Prequalification agreement.* —

(1) For each prequalification agreement, the director shall set forth the requirements, technical or otherwise, under which a vendor may be qualified to supply a commodity or service through the delegated prequalification bidding. For each prequalification agreement, the director shall follow the notice and advertising requirements set forth in §5A-3-10 of this code.

(2) A prequalification agreement may authorize the delegated prequalification bidding for only one type of commodity or service.

(3) A vendor may submit information to the director to establish that it meets the requirements set forth in the prequalification agreement.

(4) If the director determines that a vendor meets the requirements set forth in the prequalification agreement, the vendor may enter into the prequalification agreement as a prequalified vendor.

(d) *Delegated prequalification bidding procedures.* —

(1) A spending unit may commence the delegated prequalification bidding process by issuing a request for a commodity or service identified in the prequalification agreement stating in the request the quantity of the commodity or if a service, the scope of work to be completed, to be procured.

(2) The prequalified vendor that submits the lowest bid in response to the request shall be awarded the procurement.

(3) The delegated prequalification bidding may not be utilized for any request for commodities or services anticipated to cost more than $1 million, unless approved in writing by the Director of Purchasing. The state may not issue a series of orders each anticipated to cost less than $1 million to circumvent the monetary limitation in this subsection. The limit expressed herein applies to each delegated prequalification bid conducted pursuant to the prequalification agreement and not to total spending under the prequalification agreement.

(e) *Rule-making authority.* — The Director of the Purchasing Division shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement this section, including, but not limited to, provisions to establish procedures for the solicitation and authorization of prequalification agreements, prequalification of vendors, and implementation of delegated prequalification bidding.

CHAPTER 156

(S. B. 545 - By Senator Tarr)

[Passed March 4, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §23-2C-16 of the Code of West Virginia, 1931, as amended, relating to authorizing the Insurance Commissioner to transfer moneys from the Insurance Commission Fund, also known as the Commissioner's Operating Fund, into the Workers' Compensation Old Fund to reduce any deficit balance of the Old Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2C. EMPLOYERS' MUTUAL INSURANCE COMPANY.

§23-2C-16. Administration of Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund.

(a) Notwithstanding any provision of this code to the contrary, the company shall be the initial third-party administrator of the Old Fund, Uninsured Employer Fund, Self-Insured Employer Guaranty Risk Pool, Self-Insured Employer Security Risk Pool, and Private Carrier Guaranty Fund from the termination of the commission and thereafter for a term of at least six months but not more than three years pursuant to an agreement to be entered into between the Insurance Commissioner and the company prior to the termination of the commission. The company shall be paid a reasonable fee for services provided. The company's

administrative duties may include, but not be limited to, receipt of all claims, processing said claims, providing for the payment of said claims through the State Treasurer's office or other applicable state agency, and ensuring, through the selection and assignment of counsel, that claims decisions are properly defended. The administration of said funds thereafter shall be subject to the procedures set forth §5A-3-1 *et seq.* of this code.

(b) The Insurance Commissioner shall review claims determined to be payable from said funds and may contest the determination pursuant to the provisions of §23-5-1 *et seq.* of this code.

(c) The Insurance Commissioner may conduct or cause to be conducted an annual audit to be performed on said funds.

(d) The Insurance Commissioner may contract or employ counsel to perform legal services related solely to the collection of moneys due the Old Fund, including the collection of moneys due the Old Fund and enforcement of repayment agreements entered into for the collection of moneys due on or before June 30, 2005, in any administrative proceeding and in any state or federal court.

(e) During the fiscal years beginning July 1, 2019, and July 1, 2020, the Insurance Commissioner may, in his or her discretion, transfer special revenue moneys contained in the Insurance Commission Fund to the Old Fund in any fiscal year in which the Insurance Commissioner has determined, and an independent auditor has attested thereto, that a deficit balance existed in the Old Fund for the prior fiscal year.

CHAPTER 157

(Com. Sub. for S. B. 576 - By Senator Maynard)

[Passed February 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §5A-8-6 and §5A-8-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §5A-8-3, §5A-8-4, §5A-8-5, §5A-8-7, §5A-8-9, §5A-8-10, §5A-8-11, §5A-8-13, §5A-8-14, §5A-8-15, and §5A-8-17 of said code, all relating to records management of public records; defining terms; dissolving the formal advisory committee; updating the authority of the administrator; allowing for records of historical value; updating the authority of agency heads related to records management; providing for electronic storage and electronic formats for records; repealing the requirement that administrator must store agencies' essential records; removing the requirement that administrator notify agencies of essential records destruction; providing that administrator may approve request by agencies to destroy their essential records; and making technical changes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-3. Definitions.

As used in this article:

"Agency" means any department, office, commission, board, or other unit, however designated, of the executive branch of state government.

"Agency Records Manager" means an employee appointed by the agency's chief executive officer or agency head to manage the agency's records inventory and to act as liaison with the administrator.

"Disaster" means any occurrence of fire, flood, storm, earthquake, explosion, epidemic, riot, sabotage, or other condition of extreme peril resulting in substantial damage or injury to persons or property within this state, whether such occurrence is caused by an act of God, nature, or man, including an enemy of the United States.

"Local record" means a record of a county, city, town, authority, or any public corporation or political entity whether organized and existing under charter or under general law unless the record is designated or treated as a state record under state law.

"Preservation duplicate" means a copy of an essential state record which is used for the purpose of preserving such state record pursuant to this article.

"Record" means document, electronic file, book, paper, photograph, sound recording, or other material, regardless of physical form or characteristics, made or received pursuant to law or ordinance or in connection with the transaction of official state government business. Library and museum material made or acquired and preserved solely for reference or exhibition purposes, extra copies of documents preserved only for convenience of reference, and stocks of publications and of processed documents are not included within the definition of records as used in this article.

"State record" means:

(A) A record of a department, office, commission, board, spending unit, or other agency, however designated, of the state government.

(B) A record of the State Legislature.

(C) A record of any court of record, whether of statewide or local jurisdiction.

(D) Any record designated or treated as a state record under state law.

§5A-8-4. Categories of records to be preserved.

State or local records which are within the following categories are essential records which shall be preserved pursuant to this article:

Category A. Records containing information necessary to the operation of government in the emergency created by a disaster.

Category B. Records not within category A but containing information necessary to protect the rights and interest of persons or to establish and affirm the powers and duties of governments in the resumption of operations after a disaster.

Category C. Records with historical value justifying permanent retention.

§5A-8-5. State records administrator.

The Secretary of the Department of Administration is hereby designated the state records administrator, hereinafter called the administrator. The secretary may designate someone within the department to carry out the duties of the administrator. The administrator shall establish and administer in the Department of Administration of the executive branch of state government a records management program, which will apply efficient and economical management methods to the creation, utilization, maintenance, and retention, preservation, and disposal of state records; and shall establish and maintain a program for the selection and preservation of essential state records and shall advise and assist in the establishment of

programs for the selection and preservation of essential local records.

§5A-8-6. Records management and preservation advisory committee.

[Repealed.]

§5A-8-7. Duties of administrator.

The administrator shall, with due regard for the functions of the agencies concerned:

(a) Establish standards, procedures, and techniques for effective management of records;

(b) Make continuing surveys of document operations and recommend improvements in current records management practices including the use of space, technology, equipment, and supplies employed in creating, maintaining, storing, and servicing records;

(c) Establish standards for the preparation of schedules providing for the retention of state records of continuing value and for the prompt and orderly disposal of state records no longer possessing sufficient administrative, legal, or fiscal value to warrant storage;

(d) Solicit input from agencies on essential records and data classification of information contained in the records. In accordance with the rules and regulations promulgated by the administrator, each agency that has custody or control of state records shall: (1) Inventory the state records in his or her custody or control; (2) submit to the administrator a report thereon containing such information as the administrator directs and containing recommendations as to which state records are essential; and (3) periodically review his or her inventory and his or her report and, if necessary, revise the report so that it is current, accurate, and complete; and

(e) Obtain reports from agencies as are required for the administration of the program.

§5A-8-9. Duties of agency heads.

The head of each agency shall:

(a) Establish and maintain an active, continuing program for the economical and efficient management of the records of the agency;

(b) Designate and notify the administrator of an agency records manager to act as a point of contact between the administrator and the agency on issues related to management of the state records within the agency's control or custody;

(c) Make and maintain records containing adequate and proper documentation of the organization, functions, policies, decisions, procedures, and essential transactions of the agency designed to furnish information to protect the legal and financial rights of the state and of persons directly affected by the agency's activities;

(d) Submit to the administrator, in accordance with the standards established by him or her, schedules proposing the length of time each state record series warrants retention for administrative, legal, or fiscal purposes after it has been received by the agency. Each agency records manager also shall submit lists of state records in custody of the agency that are not needed in the transaction of current business and that do not have sufficient administrative, legal, or fiscal value to warrant storage for disposal in conformity with the requirements of §5A-8-10 of this code;

(e) Designate those records of the agency that are essential state records, at least annually, and report the designated essential state records to the administrator;

(f) Provide for the preservation and safekeeping of essential state records in an appropriate manner;

(g) Cooperate with the administrator in the conduct of surveys made pursuant to the provisions of this article;

(h) Comply with the rules, regulations, standards, and procedures issued by the administrator; and

(i) First obtain the administrator's written approval before purchasing or acquiring any equipment, technology, or supplies used or to be used to store or preserve records of the agency.

§5A-8-10. Essential state records – Preservation duplicates.

(a) The agency head may make or cause to be made preservation duplicates or may designate as preservation duplicates existing copies of essential state records. A preservation duplicate shall be durable, accurate, complete, and clear, and a preservation duplicate made by means of photography, microphotography, photocopying, film, microfilm, electronic file, or digital image stored on unalterable media shall be made in conformity with the standards prescribed therefor by the administrator.

(b) A preservation duplicate made by a photographic, photostatic, microfilm, microcard, miniature photographic, electronic file, digital image, or other process which accurately reproduces or forms a durable and unalterable medium for so reproducing the original, shall have the same force and effect for all purposes as the original record whether the original record is in existence or not. A transcript, exemplification, or certified copy of such preservation duplicate shall be deemed for all purposes to be a transcript, exemplification, or certified copy of the original record.

§5A-8-11. Essential state records – Safekeeping.

(a) The administrator shall prescribe a manner of safekeeping of essential state records and preservation duplicates and may establish, with the approval of the Legislature, storage facilities therefor. The administrator may provide for physical storage outside the state or electronic storage.

(b) When in the opinion of the administrator the legally designated or customary location of an essential state record is such that the essential state record may be destroyed or unavailable in the event of a disaster:

(1) The agency with custody of the essential state record shall store a preservation duplicate at another location and permit such state record to remain at its legally designated or customary location; or

(2) The agency shall store such state record at a location other than its legally designated or customary location and deposit at the legally designated or customary location a preservation duplicate for use in lieu of the state record; or

(3) The agency may store such state record at a location other than its legally designated or customary location, without providing for a preservation duplicate, upon a determination that it is impracticable to provide for a preservation duplicate and that the state record is not frequently used. Such determination shall be made by the administrator and the regularly designated custodian of such state record, but if they disagree the determination shall be made by the administrator.

(c) The requirements of subsection (b) of this section shall not prohibit the administrator from removing an essential state record or preservation duplicate from the legally designated or customary location of the state record if a disaster has occurred or is imminent.

§5A-8-12. Essential state records – Maintenance, inspection, and use.

[Repealed.]

§5A-8-13. Essential state records – Confidential records.

Any agency subject to this article shall control and at all times be the owner of its records. When a state record is required by law to be treated in a confidential manner and is an essential state record, the agency, in effectuating the

purpose of this article with respect to such state record, shall protect its confidential nature.

§5A-8-14. Essential state records – Review of program.

The administrator shall review the program at least annually for the selection and preservation of essential state records designated by the agencies, including the classification of records and the provisions for preservation duplicates, and for safekeeping of essential state records or preservation duplicates to ensure that the purposes of this article are accomplished.

§5A-8-15. Records management and preservation of county records; alternate storage of county records; Records Management and Preservation Board; qualifications and appointment of members; reimbursement of expenses; staffing; rule-making authority; study of records management needs of state agencies; grants to counties.

The Legislature finds that the use of electronic technology and other procedures to manage and preserve public records by counties should be uniform throughout the state where possible.

(a) The governing body and the chief elected official of a county, hereinafter referred to as a county government entity, whether organized and existing under a charter or under general law, shall promote the principles of efficient records management and preservation of local records. A county governing entity may, as far as practical, follow the program established for the uniform management and preservation of county records as set out in rules proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code as proposed by the Records Management and Preservation Board.

(b) In the event a county government entity decides to destroy or otherwise dispose of a county record, the county government entity may, prior to destruction or disposal thereof, offer the record to the Director of Archives and

History within the Department of Arts, Culture, and History for preservation of the record as a document of historical value. Unless authorized by the Supreme Court of Appeals, the records of courts of record and magistrate courts are not affected by the provisions of this section.

(c)(1) A preservation duplicate of a county government entity record may be stored in any format approved by the board in which the image of the original record is preserved in a form, including electronic file, in which the image is incapable of erasure or alteration and from which a reproduction of the stored record may be retrieved that truly and accurately depicts the image of the original county government record.

(2) Except for those formats, processes, and systems used for the storage of records on the effective date of this section, no alternate format for the storage of county government entity records described in this section is authorized for the storage of county government entity records unless the particular format has been approved pursuant to a legislative rule promulgated by the board in accordance with the provisions of chapter 29A of this code. The board may prohibit the use of any format, process, or system used for the storage of records upon its determination that the same is not reasonably adequate to preserve the records from destruction, alteration, or decay.

(3) Upon creation of a preservation duplicate that stores an original county government entity record in an approved format that is incapable of erasure or alteration and that may be retrieved in a format that truly and accurately depicts the image of the original record, the county government entity may destroy or otherwise dispose of the original in accordance with the provisions of §57-1-7c of this code.

(d) A Records Management and Preservation Board for county government entities is continued, to be composed of 11 members.

(1) Three members shall serve ex officio. One member shall be the Curator of the Department of Arts, Culture, and History or designee who shall be the chair of the board. One member shall be the Administrator of the Supreme Court of Appeals or designee. One member shall be the Chief Technology Officer or designee.

(2) The Governor shall appoint eight members of the board, with the advice and consent of the Senate. Not more than five appointments to the board may be from the same political party and not more than three members may be appointed from the same congressional district. Of the eight members appointed by the Governor:

(i) Five appointments shall be county elected officials, one of whom shall be a clerk of a county commission, one of whom shall be a circuit court clerk, one of whom shall be a county commissioner, one of whom shall be a county sheriff, and one of whom shall be a county assessor, to be selected from a list of 15 names. The names of three clerks of county commissions and three circuit court clerks shall be submitted to the Governor by the West Virginia Association of Counties. The names of three county commissioners shall be submitted to the Governor jointly by the West Virginia Association of Counties and the West Virginia county commissioners Association. The names of three county sheriffs shall be submitted to the Governor by the West Virginia Sheriff's Association. The names of three county assessors shall be submitted to the Governor by the Association of West Virginia assessors;

(ii) One appointment shall be a county prosecuting attorney to be selected from a list of three names submitted by the West Virginia Prosecuting Attorneys Institute;

(iii) One appointment shall be an attorney licensed in West Virginia and in good standing as a member of the West Virginia State Bar with experience in real estate and mineral title examination, to be selected from a list of three names submitted by the State Bar; and

(iv) One appointment shall be a representative of a local historical or genealogical society.

(e) The members of the board shall serve without compensation but shall be reimbursed for all reasonable and necessary expenses actually incurred in the performance of their duties as members of the board in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration. In the event the expenses are paid, or are to be paid, by a third party, the member shall not be reimbursed by the state.

(f) The staff of the board shall consist of the Director of Archives and History within the Department of Arts, Culture, and History and any additional staff as needed.

(g) The board shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to establish a system of records management and preservation for county governments: *Provided*, That, for the retention and disposition of records of courts of record and magistrate courts, the implementation of the rule is subject to action by the Supreme Court of Appeals of West Virginia. The proposed rules shall include provisions for establishing a program of grants to county governments for making records management and preservation uniform throughout the state.

(h) In addition to the fees charged by the clerk of the county commission under the provisions of §59-1-10 of this code, the clerk shall charge and collect an additional $1 fee for every document containing less than 10 pages filed for recording and an additional $1 fee for each additional 10 pages of document filed for recording. At the end of each month, the clerk of the county commission shall deposit into the Public Records and Preservation Revenue Account as established in the State Treasury all fees collected: *Provided*, That the clerk may retain not more than 10 percent of the fees for costs associated with the collection of the fees. Clerks shall be responsible for accounting for

the collection and deposit in the State Treasury of all fees collected by the clerk under the provisions of this section.

(i) There is hereby created in the State Treasury a special account entitled the Public Records and Preservation Revenue Account. The account shall consist of all fees collected under the provisions of this section, legislative appropriations, interest earned from fees, investments, gifts, grants, or contributions received by the board. Expenditures from the account shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1 *et seq.* of this code.

(j) Subject to the above provision, the board may expend the funds in the account to implement the provisions of this article. In expending funds from the account, the board shall allocate not more than 50 percent of the funds for grants to counties for records management, access, and preservation purposes. The board shall provide for applications, set guidelines, and establish procedures for distributing grants to counties, including a process for appealing an adverse decision on a grant application. Expenditures from the account shall be for the purposes set forth in this section, including the cost of additional staff of the Division of Archives and History.

§5A-8-17. Disposal of records.

(a) Except as provided in §57-1-7a of this code, no record shall be destroyed or otherwise disposed of by any agency of the state, unless it is determined by the administrator and the Director of Archives and History within the Department of Arts, Culture, and History that the record has no further administrative, legal, fiscal, research, or historical value. In the event the administrator is of the opinion that the record has no further administrative, legal, fiscal, research, or historical value, the administrator shall

10 approve, if appropriate, a request for disposal of the records
11 and notify both the Director of Archives and History and the
12 agency that is the custodian of the records that they may be
13 destroyed.

14 (b) The provisions of this section are not applicable to
15 the judicial branch, the West Virginia House of Delegates,
16 the West Virginia Senate, or the Joint Committee on
17 Government and Finance.

CHAPTER 158

(Com. Sub. for S. B. 586 - By Senators Carmichael (Mr. President) and Prezioso) [By Request of the Executive]

[Passed February 28, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §15-5-4 and §15-5-27 of the Code of West Virginia, 1931, as amended; to repeal §29-3-1, §29-3-2, §29-3-3, §29-3-4, §29-3-5, §29-3-5a, §29-3-5b, §29-3-5c, §29-3-5d, §29-3-5e, §29-3-5f, §29-3-6, §29-3-7, §29-3-8, §29-3-9, §29-3-10, §29-3-11, §29-3-12, §29-3-12a, §29-3-12b, §29-3-13, §29-3-14, §29-3-15, §29-3-16, §29-3-16a, §29-3-16b, §29-3-16c, §29-3-16d, §29-3-17, §29-3-18, §29-3-19, §29-3-21, §29-3-22, §29-3-27, §29-3-28, §29-3-29, §29-3-30, and §29-3-32 of said code; to amend and reenact §5F-1-2 of said code; to amend and reenact §5F-2-1 and §5F-2-2 of said code; to amend and reenact §15-1A-3 of said code; to amend and reenact §15-5-3, §15-5-4b, §15-5-4c, §15-5-13, §15-5-20a, §15-5-24, and §15-5-26 of said code; to amend said code by adding thereto a new section, designated §15-5-29; to amend and reenact §15A-1-2 and §15A-1-3 of said code; to amend said code by adding thereto a new section, designated §15A-1-9; to amend said code by adding thereto a new article,

designated §15A-9-1, §15A-9-2, §15A-9-3, §15A-9-4, §15A-9-5, §15A-9-6, and §15A-9-7; to amend said code by adding thereto a new article, designated §15A-10-1, §15A-10-2, §15A-10-3, §15A-10-4, §15A-10-5, §15A-10-6, §15A-10-7, §15A-10-8, §15A-10-9, §15A-10-10, §15A-10-11, §15A-10-12, §15A-10-13, §15A-10-14, §15A-10-15, §15A-10-16, §15A-10-17, §15A-10-18, §15A-10-19, §15A-10-20, §15A-10-21, §15A-10-22, §15A-10-23, §15A-10-24, and §15A-10-25; to amend said code by adding thereto a new article, designated §15A-11-1, §15A-11-2, §15A-11-3, §15A-11-4, §15A-11-5, §15A-11-6, §15A-11-7, §15A-11-8, §15A-11-9, §15A-11-10, and §15A-11-11; to amend and reenact §19-1-4 of said code; to amend and reenact §19-21A-4 of said code; to amend and reenact §20-1-7 of said code; to amend and reenact §22-1-6 of said code; to amend and reenact §29-31-2, §29-31-3, and §29-31-4 of said code; to amend said code by adding thereto a new section, designated §29-31-5; and to amend said code by adding thereto a new section, designated §33-2-23, all relating to reorganizing and redesignating the Department of Military Affairs and Public Safety as the Department of Homeland Security; clarifying the divisions that report to the cabinet secretary of that department; removing the Adjutant General's Office, State Armory Board, and Military Awards Board from the Department of Military Affairs and Public Safety; clarifying the agencies established within the Department of Military Affairs and Public Safety; delineating that the secretary of each state Department cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; requiring that the Adjutant General cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; designating the Department of Homeland Security as the State Administrative Agency for homeland security and emergency management grants; designating the Division of Homeland Security and Emergency Management as the Division of Emergency Management; making the employees of the Division of Emergency Management classified-exempt employees; terminating the West Virginia Disaster Recovery Board; providing that the State Resiliency Officer have the

authority to disburse funds from the Disaster Recovery Trust Fund; granting powers necessary to accomplish such disbursement to the State Resiliency Officer; providing for appropriations and other funding sources to the Disaster Recovery Trust Fund; deleting requirements for government entities with deficiently trained floodplain managers to transfer their floodplain oversight to another governmental entity; amending provisions regarding administration of the Disaster Recovery Trust Fund; providing the State Resiliency Officer need not pay taxes for moneys deposited in the Disaster Recovery Trust Fund or other assets of such fund; repealing the provision for an annual report of the abolished Disaster Recovery Board; providing the Director of the Division of Emergency Management shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; establishing the powers and duties of the Secretary of the Department of Homeland Security; establishing the Office of Administrative Hearings within the Department of Homeland Security; authorizing the appointment of a Chief Hearing Examiner; establishing the organization of the Office of the Chief Hearing Examiner; establishing the jurisdiction of the Office of Administrative Hearings; establishing hearing procedures; establishing rule-making authority; establishing a duty to provide notice of change of address; establishing policies for the transition from divisions of the Department of Homeland Security to the Office of Administrative Hearings; separating the Fire Marshal from the Fire Commission; transferring the Fire Marshal from the State Fire Commission to the Department of Homeland Security; setting forth the appointment process for the Fire Marshal; setting forth qualifications, salary, and responsibilities of the State Fire Marshal; allowing the Fire Marshal to hire employees; allowing the Fire Marshal to hire a deputy, and setting the qualifications of the deputy; requiring new Fire Marshals 1, 2, 3, and deputies to become certified law-enforcement officers; setting forth powers and duties of the State Fire Marshal; setting forth additional powers and duties relating to law enforcement, statewide contracts, penalties, and authority to carry firearms; creating

enforcement standards for the state building and fire codes; creating rule-making authority; allowing the appointment of advisory boards; setting forth the responsibilities of insurance companies in fire loss investigations; allowing the Fire Marshal to set fees; requiring an annual report; setting forth maintenance of fire hazard standards; allowing orders for repair or demolition; allowing orders to contain notice to comply and a right to appeal; providing standards for service of repair or demolition orders; clarifying who is responsible for cost of work or demolition; allowing an action to recover cost; requiring smoke detectors in one- and two- family dwellings; requiring carbon monoxide detectors in residential units, schools, and day care facilities and setting forth penalties; allowing the use of live trees in public buildings under certain circumstances; setting forth safety standards for bed and breakfast establishments; setting forth standards for installation of propane gas systems; setting forth parameters to abate fire hazards; setting forth license denial, limitation, suspension, and revocation standards; creating an independent informal dispute process for licensees upon appeal; establishing demonstration building and equipment standards for educational instruction for fire protection and prevention and abatement; creating crime of false alarm of fires and setting forth penalties; creating tax on insurance companies; setting forth general criminal penalties for violation; setting forth that the parts of the article are construed liberally; creating a severability section; allowing the Fire Marshal to award service weapons to retiring employees under certain conditions; allowing the Fire Marshal to dispose of unused firearms; continuing the Fire Commission; setting forth composition, qualifications, appointment, terms of office, removal, vacancies, and compensation and expenses of commission; establishing chairperson, vice chairperson, meeting, and quorum requirements; creating rule-making authority for fire code, building code, and general rule-making authority; continuing the Hazardous Response Training Program; requiring public hearing and notice prior to promulgation of fire code; setting forth commission's powers and conduct of public hearings; setting forth commission's

powers, duties, and authority; setting forth authority over volunteer fire department training and equipment, and creating rule-making authority for such; continuing courtesy certification of firefighters in surrounding states to serve as volunteer firefighters; continuing the Fire Service Equipment and Training Fund; providing the Commissioner of Agriculture shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the State Conservation Committee shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; relating to additional powers, duties, and services of Director of Division of Natural Resources; creating exception to requirement that Division of Natural Resources payments be deposited in bank within 24 hours; providing the Director of the Division of Natural Resources shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; providing the Secretary of the Department of Environmental Protection shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties; repealing generally now-obsolete provisions relating to the Fire Commission and State Fire Marshal; placing the State Resiliency Office under the Office of the Governor; adding the President of the West Virginia Emergency Management Council, the Secretary of the Department of Homeland Security, and the Director of the Division of Emergency Management on the State Resiliency Office Board; adding two nonvoting member legislators from each house of the Legislature to the State Resiliency Office Board; specifying tenure of office on that board; providing that members of the board serve without compensation, but may collect necessary expenses; providing certain mandatory duties for that board; providing the State Resiliency Officer shall be appointed by the Governor with the advice and consent of the Senate, and setting the duties and qualifications for such officer; providing for the employment of a deputy to the State Resiliency Officer shall be appointed by the Governor with the advice and consent of the Senate, upon presentation from a list of names

by the State Resiliency Office Board, and, setting the duties and qualifications for such officer; providing that the State Resiliency Officer and his or her deputy must have complimentary work experience; specifying the areas in which the State Resiliency Office Board shall be required to assist the State Resiliency Officer to fulfill the missions of that office, and specifying the areas where that body shall assist the State Resiliency Officer to devise plans and develop procedures; providing for certain exemptions from the Public Meetings Act and Freedom of Information Act for meetings of, and materials presented to, the board; delineating the authority of the State Resiliency Office and the State Resiliency Officer in carrying out their missions; providing the State Resiliency Officer shall report at least quarterly to the Joint Legislative Committee on Flooding; granting the State Resiliency Officer authority to hire employees for the office; providing that such employees are at-will, may participate in state insurance and other programs, and, if entrusted with state funds, shall execute surety bonds; providing that the State Resiliency Officer shall set employee salary rates; creating the state Office of the National Flood Insurance Program in the Office of the Insurance Commissioner; requiring a coordinator to administer such program; providing that state-owned property in any nonparticipating community shall be governed by appropriate rules promulgated by the Insurance Commissioner; requiring the coordinator and floodplain managers to develop a strategic plan to meet goals and objectives, which plan shall be reviewed by and must be approved by the State Resiliency Officer and State Resiliency Office Board; requiring the coordinator to establish and enforce flood plain management regulations in special hazard areas which are in conformity with federal laws and regulations; and providing the coordinator of the state Office of the National Flood Insurance Program shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 1. GENERAL PROVISIONS.

§5F-1-2. Executive departments created; offices of secretary created.

(a) There are created, within the executive branch of the state government, the following departments:

(1) Department of Administration;

(2) Department of Environmental Protection;

(3) Department of Health and Human Resources;

(4) Department of Homeland Security;

(5) Department of Revenue;

(6) Department of Transportation;

(7) Department of Commerce; and

(8) Department of Veterans' Assistance.

(b) Each department will be headed by a secretary appointed by the Governor with the advice and consent of the Senate. Each secretary serves at the will and pleasure of the Governor.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1. Transfer and incorporation of agencies and boards; funds.

(a) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Administration:

(1) Public Employees Insurance Agency provided in §5-16-1 *et seq.* of this code;

(2) Governor's Mansion Advisory Committee provided in §5A-5-1 *et seq.* of this code;

(3) Commission on Uniform State Laws provided in §29-1A-1 *et seq.* of this code;

(4) West Virginia Public Employees Grievance Board provided in §6C-3-1 *et seq.* of this code;

(5) Board of Risk and Insurance Management provided in §29-12-1 *et seq.* of this code;

(6) Boundary Commission provided in §29-23-1 *et seq.* of this code;

(7) Public Defender Services provided in §29-21-1 *et seq.* of this code;

(8) Division of Personnel provided in §29-6-1 *et seq.* of this code;

(9) The West Virginia Ethics Commission provided in §6B-2-1 *et seq.* of this code;

(10) Consolidated Public Retirement Board provided in §5-10D-1 *et seq.* of this code; and

(11) Real Estate Division provided in §5A-10-1 *et seq.* of this code.

(b) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes:

(A) Occupational Safety and Health Review Commission provided in §21-3A-1 *et seq.* of this code; and

(B) Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety, and Training provided in §22A-1-1 *et seq.* of this code. The following boards are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor:

(A) Board of Coal Mine Health and Safety and Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code;

(B) Board of Miner Training, Education, and Certification provided in §22A-7-1 *et seq.* of this code; and

(C) Mine Inspectors' Examining Board provided in §22A-9-1 *et seq.* of this code.

(3) The West Virginia Development Office provided in §5B-2-1 *et seq.* of this code;

(4) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(5) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(6) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code; and

(7) Workforce West Virginia provided in chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis.

(8) Office of Energy, within the Development Office, provided in §5B-2F-1 *et seq.* of this code;

(9) West Virginia Tourism Office and Tourism Commission provided in §5B-2I-1 *et seq.* of this code; and

(10) Division of Rehabilitation Services provided in §18-10A-1 *et seq.* of this code.

(c) The Economic Development Authority provided in §31-15-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(d) The Water Development Authority and the Water Development Authority Board provided in §22C-1-1 *et seq.* of this code is continued as an independent agency within the executive branch.

(e) The West Virginia Educational Broadcasting Authority provided in §10-5-1 *et seq.* of this code and the State Library Commission provided in §10-1-1 *et seq.* of this code are each continued as separate independent agencies within the Department of Arts, Culture, and History, which shall provide administrative support for both entities.

(f) The Division of Culture and History as established in §29-1-1 *et seq.* of this code is continued as a separate independent agency within the Executive Branch as the Department of Arts, Culture, and History. All references throughout this code to the "Division of Culture and History" means the "Department of Arts, Culture, and History".

(g) The following agencies and boards, including all of the allied, advisory, and affiliated entities, are transferred to the Department of Environmental Protection for purposes of

administrative support and liaison with the Office of the Governor:

(1) Air Quality Board provided in §22B-2-1 *et seq.* of this code;

(2) Solid Waste Management Board provided in §22C-3-1 *et seq.* of this code;

(3) Environmental Quality Board, or its successor board, provided in §22B-3-1 *et seq.* of this code;

(4) Surface Mine Board provided in §22B-4-1 *et seq.* of this code;

(5) Oil and Gas Inspectors' Examining Board provided in §22C-7-1 *et seq.* of this code;

(6) Shallow Gas Well Review Board provided in §22C-8-1 *et seq.* of this code; and

(7) Oil and Gas Conservation Commission provided in §22C-9-1 *et seq.* of this code.

(h) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Health and Human Resources:

(1) Human Rights Commission provided in §5-11-1 *et seq.* of this code;

(2) Bureau for Public Health provided in §16-1-1 *et seq.* of this code;

(3) Office of Emergency Medical Services and the Emergency Medical Service Advisory Council provided in §16-4C-1 *et seq.* of this code;

(4) Health Care Authority provided in §16-29B *et seq.* of this code;

(5) State Commission on Intellectual Disability provided in §29-15-1 *et seq.* of this code;

(6) Women's Commission provided in §29-20-1 *et seq.* of this code; and

(7) Bureau for Child Support Enforcement provided in chapter 48 of this code.

(i) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Homeland Security:

(1) West Virginia State Police;

(2) Division of Emergency Management provided in §15-5-1 *et seq.* of this code and Emergency Response Commission provided in §15-5A-1 *et seq.* of this code: *Provided*, That 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 Division of Homeland Security and Emergency Management, it shall be construed to mean the Division of Emergency Management;

(3) Division of Administrative Services;

(4) Division of Corrections and Rehabilitation;

(5) Fire Commission;

(6) The State Fire Marshal;

(7) Board of Probation and Parole;

(8) The West Virginia Fusion Center;

(9) The Division of Protective Services; and

(10) Any other agency or entity hereinafter established within the Department of Homeland Security by an act of the Legislature.

(j) The following agencies and boards, including all of the allied, advisory, affiliated or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Revenue:

(1) Tax Division provided in chapter 11 of this code;

(2) Racing Commission provided in §19-23-1 *et seq.* of this code;

(3) Lottery Commission and position of Lottery Director provided in §29-22-1 of this code;

(4) Insurance Commissioner provided in §33-2-1 *et seq.* of this code;

(5) West Virginia Alcohol Beverage Control Commissioner provided in §11-16-1 *et seq.* of this code and §60-2-1 *et seq.* of this code;

(6) Board of Banking and Financial Institutions provided in §31A-3-1 *et seq.* of this code;

(7) Lending and Credit Rate Board provided in chapter 47A of this code;

(8) Division of Financial Institutions provided in §31A-2-1 *et seq.* of this code;

(9) The State Budget Office provided in §11B-2-1 *et seq.* of this code;

(10) The Municipal Bond Commission provided in §13-3-1 *et seq.* of this code;

(11) The Office of Tax Appeals provided in §11-10A-1 of this code; and

(12) The State Athletic Commission provided in §29-5A-1 *et seq.* of this code.

(k) The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are incorporated in and administered as a part of the Department of Transportation:

(1) Division of Highways provided in §17-2A-1 *et seq.* of this code;

(2) Parkways Authority provided in §17-16A-1 *et seq.* of this code;

(3) Division of Motor Vehicles provided in §17A-2-1 *et seq.* of this code;

(4) Driver's Licensing Advisory Board provided in §17B-2-1 *et seq.* of this code;

(5) Aeronautics Commission provided in §29-2A-1 *et seq.* of this code;

(6) State Rail Authority provided in §29-18-1 *et seq.* of this code; and

(7) Public Port Authority provided in §17-16B-1 *et seq.* of this code.

(l) Effective July 1, 2011, the Veterans' Council provided in §9A-1-1 *et seq.* of this code, including all of the allied, advisory, affiliated, or related entities and funds associated with it, is incorporated in and administered as a part of the Department of Veterans' Assistance.

(m) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by the provisions of §5F-2-2 of this code, the position of administrator and the powers, authority, and duties of each administrator and agency are not affected by the enactment of this chapter.

(n) Except for powers, authority, and duties that have been delegated to the secretaries of the departments by the provisions of §5F-2-2 of this code, the existence, powers, authority, and duties of boards and the membership, terms and qualifications of members of the boards are not affected by the enactment of this chapter. All boards that are appellate bodies or are independent decision makers shall not have their appellate or independent decision-making status affected by the enactment of this chapter.

(o) Any department previously transferred to and incorporated in a department by prior enactment of this section means a division of the appropriate department. Wherever reference is made to any department transferred to and incorporated in a department created in §5F-1-2 of this code, the reference means a division of the appropriate department and any reference to a division of a department so transferred and incorporated means a section of the appropriate division of the department.

(p) When an agency, board, or commission is transferred under a bureau or agency other than a department headed by a secretary pursuant to this section, that transfer is solely for purposes of administrative support and liaison with the Office of the Governor, a department secretary or a bureau. Nothing in this section extends the powers of department secretaries under §5F-2-2 of this code to any person other than a department secretary and nothing limits or abridges the statutory powers and duties of statutory commissioners or officers pursuant to this code.

§5F-2-2. Power and authority of secretary of each department.

(a) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall have plenary power and authority within and for the department to:

(1) Employ and discharge within the office of the secretary employees as may be necessary to carry out the

functions of the secretary, which employees shall serve at the will and pleasure of the secretary;

(2) Cause the various agencies and boards to be operated effectively, efficiently, and economically and develop goals, objectives, policies, and plans that are necessary or desirable for the effective, efficient, and economical operation of the department;

(3) Eliminate or consolidate positions, other than positions of administrators or positions of board members and name a person to fill more than one position;

(4) Transfer permanent state employees between departments in accordance with the provisions of §5F-2-7 of this code;

(5) Delegate, assign, transfer, or combine responsibilities or duties to or among employees, other than administrators or board members;

(6) Reorganize internal functions or operations;

(7) Formulate comprehensive budgets for consideration by the Governor and transfer within the department funds appropriated to the various agencies of the department which are not expended due to cost savings resulting from the implementation of the provisions of this chapter: *Provided*, That no more than 25 percent of the funds appropriated to any one agency or board may be transferred to other agencies or boards within the department: *Provided, however*, That no funds may be transferred from a special revenue account, dedicated account, capital expenditure account, or any other account or funds specifically exempted by the Legislature from transfer, except that the use of appropriations from the State Road Fund transferred to the office of the Secretary of the Department of Transportation is not a use other than the purpose for which the funds were dedicated and is permitted: *Provided further*, That if the Legislature by subsequent enactment

consolidates agencies, boards, or functions, the appropriate secretary may transfer the funds formerly appropriated to the agency, board, or function in order to implement consolidation. The authority to transfer funds under this section shall expire on June 30, 2010;

(8) Enter into contracts or agreements requiring the expenditure of public funds and authorize the expenditure or obligation of public funds as authorized by law: *Provided*, That the powers granted to the secretary to enter into contracts or agreements and to make expenditures or obligations of public funds under this provision shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department under this chapter;

(9) Acquire by lease or purchase property of whatever kind or character and convey or dispose of any property of whatever kind or character as authorized by law: *Provided*, That the powers granted to the secretary to lease, purchase, convey, or dispose of such property shall be exercised in accordance with §5A-3-1 *et seq.*, §5A-10-1 *et seq.*, and §5A-3-11 *et seq.* of this code: *Provided, however*, That the powers granted to the secretary to lease, purchase, convey, or dispose of such property shall not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department under this chapter;

(10) Conduct internal audits;

(11) Supervise internal management;

(12) Promulgate rules, as defined in §29A-1-2 of this code, to implement and make effective the powers, authority, and duties granted and imposed by the provisions

of this chapter in accordance with the provisions of chapter 29A of this code;

(13) Grant or withhold written consent to the proposal of any rule, as defined in §29A-1-2 of this code, by any administrator, agency, or board within the department. Without written consent, no proposal for a rule shall have any force or effect;

(14) Delegate to administrators the duties of the secretary as the secretary may deem appropriate, from time to time, to facilitate execution of the powers, authority, and duties delegated to the secretary; and

(15) Take any other action involving or relating to internal management not otherwise prohibited by law.

(b) The secretaries of the departments hereby created shall engage in a comprehensive review of the practices, policies, and operations of the agencies and boards within their departments to determine the feasibility of cost reductions and increased efficiency which may be achieved therein, including, but not limited to, the following:

(1) The elimination, reduction, and restriction of the state's vehicle or other transportation fleet;

(2) The elimination, reduction, and restriction of state government publications, including annual reports, informational materials, and promotional materials;

(3) The termination or rectification of terms contained in lease agreements between the state and private sector for offices, equipment, and services;

(4) The adoption of appropriate systems for accounting, including consideration of an accrual basis financial accounting and reporting system;

(5) The adoption of revised procurement practices to facilitate cost-effective purchasing procedures, including

consideration of means by which domestic businesses may be assisted to compete for state government purchases; and

(6) The computerization of the functions of the state agencies and boards.

(c) Notwithstanding the provisions of subsections (a) and (b) of this section, none of the powers granted to the secretaries herein shall be exercised by the secretary if to do so would violate or be inconsistent with the provisions of any federal law or regulation, any federal-state program or federally delegated program or jeopardize the approval, existence or funding of any program.

(d) The layoff and recall rights of employees within the classified service of the state as provided in §29-6-10(5) and §29-6-10(6) of this code shall be limited to the organizational unit within the agency or board and within the occupational group established by the classification and compensation plan for the classified service of the agency or board in which the employee was employed prior to the agency or board's transfer or incorporation into the department: *Provided*, That the employee shall possess the qualifications established for the job class. The duration of recall rights provided in this subsection shall be limited to two years or the length of tenure, whichever is less. Except as provided in this subsection, nothing contained in this section shall be construed to abridge the rights of employees within the classified service of the state as provided in §29-6-10 and §29-6-10a of this code.

(e) Notwithstanding any other provision of this code to the contrary, the secretary of each department with authority over programs which have an impact on the delivery of health care services in the state or are payors for health care services or are payors for prescription drugs, including, but not limited to, the Public Employees Insurance Agency, the Department of Health and Human Resources, the Bureau of Senior Services, the Children's Health Insurance Program, the Health Care Authority, the Office of the Insurance

Commissioner, the Division of Corrections, the Division of Juvenile Services, the Regional Jail and Correctional Facility Authority, state colleges and universities, public hospitals, state or local institutions including nursing homes and veterans' homes, the Division of Rehabilitation Services, public health departments, the Bureau for Medical Services and other programs, which have an impact on the delivery of health care services or are payors for health care services or are payors for prescription drugs, in West Virginia shall cooperate with the Governor's Office of Health Enhancement and Lifestyle Planning established pursuant to §16-29H-1 *et seq.* of this code for the purpose of improving the health care delivery services in West Virginia for any program over which they have authority.

(f) Notwithstanding any other provision of this code to the contrary, the secretary of each department shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 1A. ADJUTANT GENERAL.

§15-1A-3. Duties.

(a) The Adjutant General shall be chief of staff to the Governor and commanding general of the organized militia. He or she shall direct the planning and employment of the military forces of the state in carrying out their state mission, establish unified command of state forces whenever jointly engaged, coordinate the military affairs with the civil defense of the state and organize and coordinate the activities of all civil agencies including local and state police in event of declaration of a limited emergency by the Governor pursuant to §15-1D-1 *et seq.* of this code. In time of emergency or disaster, the Adjutant General shall coordinate his or her activities with those of the Office of Emergency Services provided for by §15-5-1 *et seq.* of this code. He or she shall be custodian of all

15 military records of the state and shall keep the same indexed
16 and available for ready reference. He or she shall keep an
17 itemized account of all moneys received and dispensed from
18 all sources and shall make an annual report to the Governor
19 on the condition of the organized militia, receipts and
20 expenditures and such other matters relating to the military
21 forces of the state and the Adjutant General's department as
22 he or she shall deem expedient.

23 (b) The Adjutant General shall be responsible for the
24 organization, administration, training, and supply of the
25 organized militia and shall cause to be procured, prepared,
26 and issued to the organizations of the organized militia all
27 necessary books and blanks for reports, records, returns, and
28 general administration, and shall, at the expense of the state,
29 cause the military laws, military code and rules and
30 regulations in force to be printed, bound in proper form and
31 distributed, one copy to each commissioned officer, and one
32 each to all the circuit, intermediate and criminal court
33 judges, sheriffs and justices of the peace in the state
34 requiring them and shall procure and supply all necessary
35 textbooks of drill and instruction. He or she shall keep in his
36 or her office an accurate account of all state and United
37 States property issued to the state. He or she shall keep on
38 file in his or her office all official bonds required by this
39 chapter, the reports and returns of troops and military forces
40 of the state and all other writings and papers which are
41 required to be transmitted to and preserved at the general
42 headquarters of the organized militia.

43 (c) The Adjutant General shall keep records of all
44 service personnel from the State of West Virginia,
45 commissioned or enlisted, in any of the wars of the United
46 States and of individual claims of citizens of West Virginia
47 for service rendered in such wars. He or she shall assist all
48 persons residing in this state having claims against the
49 United States for pension, bounty, or back pay or such
50 claims as have arisen out of, or by reason of, service in any
51 of said wars. To this end he or she shall cooperate with the
52 agents or attorneys of such claimants, furnish to claimants

only all necessary certificates or certified abstracts from, or copies of, records or documents in his or her office and shall seek in all practicable ways to secure speedy and just action in all claims now pending or which may hereafter be filed: *Provided*, That any and all of the above services shall be rendered without charge to the claimant. He or she shall establish and maintain as a part of his or her office a bureau of records of the services of the West Virginia troops during such wars and shall keep arranged in proper and convenient form all records and papers pertaining thereto.

(d) Notwithstanding any other provision of this code to the contrary, the Adjutant General shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

ARTICLE 5. DIVISION OF EMERGENCY MANAGEMENT.

§15-5-3. Division of Emergency Management created.

(a) The Division of Homeland Security and Emergency Management is continued as the Division of Emergency Management, within the Department of Homeland Security. All of the allied, advisory, affiliated, or related entities, and funds associated with the Division of Homeland Security and Emergency Management and all its functions, personnel, and property are transferred to, incorporated in, and administered as a part of the Division of Emergency Management. Wherever the words "Office of Emergency Services" or "Division of Homeland Security and Emergency Management" appear in this code, they shall mean the Division of Emergency Management.

(b) A Director of the Division of Emergency Management shall be appointed by the Governor, by and with the advice and consent of the Senate. The Governor shall consider applicants for director who at a minimum: (1) Have at least five years managerial or strategic planning experience; (2) are knowledgeable in matters relating to public safety, homeland security, emergency management,

and emergency response; and (3) have, at a minimum, a federally issued secret level security clearance or have submitted to or will submit to a security clearance investigation for the purpose of obtaining, at a minimum, a federally issued secret level security clearance.

(c) The director may employ such technical, clerical, stenographic, and other personnel, fix their compensation and make expenditures within the appropriation to the division or from other funds made available for the purpose of providing homeland security and emergency management services to carry out the purpose of this article. Beginning on the effective date of this section, all employees of the Division of Emergency Management are exempt from the Civil Service System: *Provided*, That employees of the Division of Homeland Security and Emergency Management who are currently members of the classified service, having been transferred to the Division of Emergency Management, retain their classified service as long as they remain in their current classification. Thereafter, if the employee leaves his or her current classification and maintains employment in the Division of Emergency Management, that employee, at that time, becomes transferred to the classified-exempt service as that term is defined in §29A-6-2 of this code.

(d) The director and other personnel of the Division of Emergency Management shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for personnel of other state agencies.

(e) The director, subject to the direction and control of the Governor through the Secretary of the Department of Homeland Security, shall be the executive head of the Division of Emergency Management and shall be responsible to the Governor and the Secretary of the Department of Homeland Security for carrying out the program for emergency management in this state. The director, in consultation with the Secretary of the

Department of Homeland Security, shall coordinate the activities of all organizations for emergency management within the state and maintain liaison with and cooperate with homeland security, emergency management and other emergency service and civil defense agencies and organizations of other states and of the federal government, and shall have additional authority, duties, and responsibilities authorized by §15-5-1 *et seq.* of this code as may be prescribed by the Governor or the Secretary of the Department of Homeland Security.

(f) The director shall have the power to acquire in the name of the state by purchase, lease, or gift, real property and rights or easements necessary or convenient to construct thereon the necessary building or buildings for housing an emergency management control center.

(g) The director may, for the purposes of responding to a declared state of emergency or for the recovery from a declared state of emergency following the termination of the declaration, employ personnel or enter into contracts and subcontracts for goods or specialized technical services, subject to the following provisions:

(1) Employee positions shall be contingent on the receipt of the necessary federal and/or state funds.

(2) All employees employed pursuant to this subsection shall be exempt from both the classified services category and the classified exempt services category provided in §29-6-4 of this code.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Employees may participate in the PEIA, PERS, workers' compensation, unemployment compensation programs, or their equivalents.

(5) The director shall set appropriate salary rates for employees equivalent to a rate commensurate with industry standards.

(6) Contracts may be entered into pursuant to this subsection with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations and individuals for specialized technical services at a rate commensurate with industry standards as determined by the director to support specific activities related to the response to or the recovery from a declared state of emergency.

§15-5-4. West Virginia disaster recovery board created; organization of board; appointment of board members; term of office and expenses of board members; meetings.

[Repealed.]

§15-5-4b. West Virginia Disaster Recovery Trust Fund disbursement.

Upon the proclamation of the existence of a state of emergency or state of preparedness under the provisions of §15-5-6 of this code, The State Resiliency Officer, shall have the power to disburse funds from the disaster relief recovery trust fund created pursuant to §15-5-24 of this code to any person, political subdivision, or local organization for emergency services in such amounts and in such manner, and to take such other actions, as the State Resiliency Officer may determine is necessary or appropriate in order to provide assistance to any person, political subdivision, or local organization for emergency services responding to or recovering from the disaster, or otherwise involved in disaster recovery activities: *Provided*, That except as provided hereafter in this section, requisitions for payment shall not be made or authorized for payment by the Auditor without the express approval of the State Resiliency Officer,

17 except that the State Resiliency Officer's approval shall be
18 deemed to be made for the initial disbursement to cover the
19 first 30 days of disaster response, and: *Provided, however*,
20 That all subsequent disbursements arising out of the events
21 surrounding the state of emergency or preparedness giving
22 rise to the relevant disbursements shall require the express
23 approval of the State Resiliency Officer, which approval
24 shall not be unduly withheld or delayed.

§15-5-4c. Powers and duties related to the West Virginia Disaster Recovery Trust Fund.

1 The State Resiliency Officer is hereby granted, has and
2 may exercise all powers necessary or appropriate to carry
3 out and effectuate the purposes set forth in §15-5-4b of this
4 code. The State Resiliency Officer has the power:

5 (1) To accept appropriations, gifts, grants, bequests, and
6 devises from any source, public or private, for deposit into
7 the recovery fund, and to use or dispose of the same to
8 provide assistance to any person, political subdivision, or
9 local organization for emergency services responding to or
10 recovering from a disaster, or otherwise involved in disaster
11 recovery activities;

12 (2) To make and execute contracts, leases, releases, and
13 other instruments necessary or convenient for the exercise
14 of its power;

15 (3) To make, and from time to time, amend, and repeal
16 bylaws for the governance of its activities not inconsistent
17 with the provisions of this article;

18 (4) To sue and be sued;

19 (5) To acquire, hold, and dispose of real and personal
20 property;

21 (6) To enter into agreements or other transactions with
22 any federal or state agency, political subdivision, or person;

(7) To provide for the deposit of any funds or assets of the West Virginia disaster relief recovery trust fund with the state Board of Investments for investment;

(8) To procure insurance against any loss in connection with its property in such amounts, and from such insurers, as may be necessary or desirable;

(9) To use the recovery trust fund to pay the costs incurred by any state department or agency for the purpose of obtaining property appraisals and other certifications necessary to justify the involvement of the Federal Emergency Management Agency and to allow its determination of a presidentially declared disaster;

(10) To establish, or assist in the establishment of, temporary housing and residential housing by, with or for political subdivisions declared to be in a disaster area by the Federal Emergency Management Agency or other agency or instrumentality of the United States or by the Governor of this state;

(11) To enter into purchase, lease, or other arrangements with an agency of the United States or this state for temporary housing or residential housing units to be occupied by disaster victims and make such units available to any political subdivision or persons;

(12) To assist political subdivisions, local organizations for emergency services and nonprofit corporations in acquiring sites necessary for temporary housing or residential housing for disaster victims and in otherwise preparing the sites to receive and use temporary housing or residential housing units, including payment of transportation charges, by advancing or lending funds available to the Division of Emergency Management from the recovery fund;

(13) To make grants and provide technical services to assist in the purchase or other acquisition, planning,

processing, design, construction, or rehabilitation, improvement or operation of temporary housing or residential housing: *Provided*, That no such grant or other financial assistance shall be provided except upon a written finding by the State Resiliency Officer that such assistance and the manner in which it will be provided constitute a disaster recovery activity;

(14) To make or participate in the making of insured or uninsured construction and permanent loans or grants for temporary housing or residential housing, community facilities, and essential business activities: *Provided*, That no such loan or grant shall be made except upon a written finding by the State Resiliency Officer that the loan or grant and the manner in which it will be provided constitute a disaster recovery activity and that the loan or grant is not otherwise available, wholly or in part, from a private or public lender upon reasonably equivalent terms and conditions; and

(15) Do all acts necessary and proper to carry out the powers granted to the State Resiliency Office.

§15-5-13. Appropriations; acceptance of services, gifts, grants, and loans.

(a) Each political subdivision shall have the power to make appropriations in the manner provided by law for making appropriations for the ordinary expenses of such political subdivision for the payment of expenses of its local organization for emergency services or of its proportionate share of expenses of a regional organization for emergency services, or both.

(b) Whenever the federal government or any agency or officer thereof shall offer to any authority, corporation, partnership, or other entity, public or private or the state, or through the state to any political subdivision thereof, services, equipment, supplies, materials or funds by way of gift, grant or loan, for purposes relating to homeland

security or emergency services, the state, after consultation and in coordination with the State Resiliency Officer and acting through the Governor, or a political subdivision after consultation and in coordination with the State Resiliency Officer and acting with the consent of the Governor and through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials or funds on behalf of the state or the political subdivision and subject to the terms of the offer and the rules and regulations, if any, of the agency making the offer.

(c) Whenever any person, firm, or corporation shall offer to the state or to any political subdivision thereof, services, equipment, supplies, materials, or funds by way of gift, grant, or loan, for purposes relating to homeland security or emergency services, the state, after consultation and in coordination with the State Resiliency Officer and acting through the Governor, or the political subdivision after consultation and in coordination with the State Resiliency Officer and acting through its executive officer or governing body, may accept the offer. Upon acceptance, the Governor of the state or executive officer or governing body of the political subdivision may authorize any officer of the state or of the political subdivision, as the case may be, to receive services, equipment, supplies, materials, or funds on behalf of the state or the political subdivision and subject to the terms of the offer.

(d) The Governor may require any agency, authority, corporation, partnership, or other entity to furnish a report, in both written and electronic form, detailing the source and receipt of all services, equipment, supplies, materials, or funds for purposes relating to homeland security or emergency services as a condition of receiving these from the state. Within 10 days of the receipt of any reports

required under this subsection, the Governor shall furnish copies thereof to the Legislature.

§15-5-20a. Floodplain manager training.

(a) Community participation in the National Flood Insurance Program is important to manage and mitigate the special flood hazard areas in West Virginia. Therefore, all state, county, municipality and local floodplain managers should be adequately trained in floodplain management.

(b) Commencing July 1, 2012, each floodplain manager in the state is required to complete six hours of training in floodplain management annually to maintain good standing with the West Virginia Division of Emergency Management.

(c) A governmental unit that has a floodplain manager who fails to obtain the required training shall suspend the floodplain manager from his or her floodplain management responsibilities until the training requirement is met.

§15-5-24. Disaster Recovery Trust Fund; disbursement of funds.

(a) There is hereby created a special trust fund which shall be designated and known as the West Virginia Disaster Recovery Trust Fund to be administered by the State Resiliency Officer. The recovery fund shall consist of: (i) Any appropriations, grants, gifts, contributions, or revenues received by the recovery fund from any source, public or private; and (ii) all income earned on moneys, properties, and assets held in the recovery fund. When any funds are received by the State Resiliency Officer from any source, they shall be paid into the recovery fund, and shall be disbursed and otherwise managed in the manner set forth in this article. The recovery fund shall be treated by the Auditor and Treasurer as a special revenue fund and not as part of the general revenues of the state.

(b) All moneys, properties, and assets acquired by the State of West Virginia in the disaster recovery fund shall be held by it in trust for the purposes of carrying out its powers and duties and shall be used and reused in accordance with the purposes and provisions of this article. Such moneys, properties, and assets shall at no time be commingled with other public funds. Disbursements from the recovery fund shall be made only upon the written requisition of the Governor, the State Resiliency Officer, on behalf of and authorized by the Governor, or as set forth in §15-5-4b of this code. If no need exists for immediate use or disbursement, moneys, properties, and assets in the recovery fund shall be invested or reinvested by the State Resiliency Officer as provided in this article.

§15-5-26. Tax exemption.

The State Resiliency Officer shall not be required to pay any taxes and assessments to the state or any political subdivision of the state upon any of its moneys, properties, or assets or upon its obligations or other evidences of indebtedness pursuant to the provisions of this article, or upon any moneys, funds, revenues, or other income held or received into the West Virginia disaster recovery fund.

§15-5-27. Annual report.

[Repealed.]

§15-5-29. Cooperation with State Resiliency Office.

Notwithstanding any other provision of this code to the contrary, the Director of the Division of Emergency Management shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 1. DEFINITIONS.

§15A-1-2. Department.

"Department" means the Department of Homeland Security.

§15A-1-3. Secretary.

"Secretary" means the Secretary of the Department of Homeland Security.

§15A-1-9. Department of Homeland Security; Secretary of the Department of Homeland Security; powers and duties.

(a)(1) The Department of Homeland Security is established within the Executive Branch as a criminal justice agency. In addition to all other powers and duties set forth in this code, the department is designated as the principal state agency to coordinate the receipt, distribution, and monitoring of all funds available from any source for the purpose of equipping, training, research, and education in regard to homeland security related items, issues, or services. The department is authorized to coordinate and establish standards for all operations and activities of the state related to homeland security efforts and to establish protocols for coordinating and sharing information with state and federal law enforcement and intelligence agencies responsible for investigating and collecting information related to homeland security and national security threats.

(2) The department is designated as the state administrative agency responsible for homeland security and emergency management for the planning and development of state programs and grants which may be funded by federal, state, or other allocations in the areas of homeland security and emergency management, unless such administration has been specifically entrusted to another state agency by the Governor or the Legislature.

(3) 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 Department of

Military Affairs and Public Safety, it means the Department of Homeland Security.

(b) The secretary is the chief executive officer of the department. Subject to §5F-2-2 of this code, the secretary shall organize the department into such offices, sections, agencies, and other units of activity as may be found by the secretary to be desirable for the orderly, efficient and economical administration of the department and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers, and other officers, technical personnel, and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(c) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings, or other activities with such substitute having the same powers, duties, authority, and responsibility as the secretary. The secretary has the power to delegate, as he or she considers appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority and responsibility relating to such duties and functions set forth in this chapter or elsewhere in this code.

(d) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and complements the homeland security and public safety policies, programs and procedures of the federal government, other state governments, and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to homeland security and public safety issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over policies, programs, and procedures and concerning the impact of statutory law and rules upon the homeland security and public safety of this state.

(e) In addition to other powers, duties, and responsibilities granted and assigned to the secretary by this code, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Homeland Security any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships or individuals: *Provided*, That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter 5F of this code;

(2) Conduct research in improved homeland security and public safety methods and disseminate information to the citizens of this state;

(3) Require any persons contracting to install, establish, modify, operate, or close a correctional or other public safety facility to furnish the fingerprints of the person or persons; any officer, director, or manager of the contractor; any person owning a five percent or more interest, beneficial or otherwise, in the contractor's business; or any other person conducting or managing the affairs of the contractor, in whole or in part. These fingerprints may be

used to obtain and review any police record for the purposes that may be in the interest of homeland security or public safety, and to use the fingerprints furnished 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 the checks shall be provided to the secretary;

(4) Acquire for the state in the name of the Department of Homeland Security by purchase, lease, or agreement, or accept or reject for the state, in the name of the Department of Homeland Security, gifts, donations, contributions, bequests, or devises of money, security, or property, both real and personal, and any interest in property; and

(5) Provide for workshops, training programs, and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary.

(f) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate and serves at the will and pleasure of the Governor.

(g) The secretary shall serve as the Homeland Security Advisor (HSA) for West Virginia, and shall be responsible for coordinating, designing, and implementing West Virginia's program for homeland security. The secretary shall be the principal point of contact between the State of

West Virginia and the federal government with respect to homeland security issues. The HSA shall either possess at least a secret clearance through the federal government or be able to qualify for, and be in the process of obtaining, such clearance at the time of his or her appointment as HSA. The HSA shall keep the Governor advised of all homeland security matters and shall be the main point of contact for the Governor on these issues. The secretary, with permission of the Governor, may delegate all or a portion of the functions of the HSA to a designee who possesses at least a secret clearance.

(h) Notwithstanding any other provision of this code to the contrary, any records compiled by the department or any division, agency, office, or unit thereof, the disclosure of which could be used to create an endangerment to municipal, county, state, or national welfare and security, 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.

(i) The Department of Homeland Security shall cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

ARTICLE 9. OFFICE OF ADMINISTRATIVE HEARINGS.

§15A-9-1. Office created; appointment of Chief Hearing Examiner.

(a) The Office of Administrative Hearings is created as a separate operating agency within the department.

(b) The secretary shall appoint a director of the office who serves as the administrative head of the office and as Chief Hearing Examiner.

(c) Prior to appointment, the Chief Hearing Examiner shall be a citizen of the United States and a resident of this state who is admitted to the practice of law in this state.

(d) The salary of the Chief Hearing Examiner shall be set by the secretary of the department. (e) In addition to adherence to the code of conduct set forth in §6B-2-5a of this code, the Chief Hearing Examiner during his or her term shall:

(1) Devote his or her full time to the duties of the position;

(2) Not otherwise engage in the active practice of law or be associated with any group or entity which is itself engaged in the active practice of law. This subsection does not prohibit the Chief Hearing Examiner from being a member of a national, state, or local bar association or committee, or of any other similar group or organization, nor does it prohibit the Chief Hearing Examiner from engaging in the practice of law by representing himself, herself, or his or her immediate family in their personal affairs in matters not subject to this article;

(3) Not engage directly or indirectly in any activity, occupation, or business interfering or inconsistent with his or her duties as Chief Hearing Examiner;

(4) Not hold any other appointed public office or any elected public office or any other position of public trust; and

(5) Not be a candidate for any elected public office, or serve on or under any committee of, any political party.

(f) The Chief Hearing Examiner serves at the will and pleasure of the secretary.

§15A-9-2. Organization of office.

(a) The Chief Hearing Examiner is the chief administrator of the Office of Administrative Hearings and he or she may employ hearing examiners and other clerical personnel necessary for the proper administration of this article.

(1) The Chief Hearing Examiner may delegate administrative duties to other employees, but the Chief Hearing Examiner is responsible for all official delegated acts.

(2) All employees of the Office of Administrative Hearings are classified exempt.

(b) The Chief Hearing Examiner shall:

(1) Direct and supervise the work of the office staff;

(2) Hold hearings;

(3) Make hearing assignments;

(4) Maintain the records of the office;

(5) Review and approve decisions of hearing examiners as to legal accuracy, clarity, and other requirements; and

(6) Perform the other duties necessary and proper to carry out the purposes of this article.

(c) The administrative expenses of the office shall be included within the annual budget of the Division of Administrative Services.

§15A-9-3. Jurisdiction of Office of Administrative Hearings.

Notwithstanding any provision of this code to the contrary, the Office of Administrative Hearings has jurisdiction to hear and determine all:

(1) Level one grievance proceedings for all divisions of the department, except for the State Police.

(2) Appeals from decisions or orders of the State Fire Commission, except as otherwise provided in §15A-10-9(b) of this code;

(3) Other matters for which a hearing examiner is necessary within the department or any division of the department; and

(4) Other matters which may be conferred upon the office by statute or legislatively approved rules.

§15A-9-4. Hearing procedures.

(a) All level one grievance hearings before the office shall be heard in accordance with practices and procedures as set forth in §6C-2-1 *et seq.* of this code.

(b) All hearings on appeals before the office shall be heard de novo and conducted pursuant to the provisions of the contested case procedure set forth in §29A-5-1 *et seq.* of this code.

(1) Notwithstanding any provision of this code to the contrary, the division head, or the Fire Commission, may be represented at hearings conducted by the office and evidence submitted by the division head may be considered in such hearings with or without such representation.

(2) The West Virginia Rules of Evidence governing proceedings in the courts of this state shall be given like effect in hearings held before a hearing examiner. All testimony shall be given under oath.

(3) The hearing examiner may request proposed findings of fact and conclusions of law from the parties prior to the issuance by the office of the decision in the matter.

(c) Hearings and all records of hearings are exempt from the requirements of §29B-1-1 *et seq.* of this code, until the results of the hearing have been rendered: *Provided*, That once the decision is rendered, the records may be exempt from disclosure, pursuant to §29B-1-4 or other applicable section of this code.

§15A-9-5. Rule-making authority.

The Office of Administrative Hearings may propose legislative and procedural rules in accordance with the provisions of chapter 29A of this code in order to implement the provisions of this article and to carry out the duties prescribed therein.

§15A-9-6. Duty to provide notice of change of address.

Any person who has any pending contested matter before the Office of Administrative Hearings is required to provide notice of a change in address in writing at least 10 days prior to any scheduled hearing in which they are a party. If the person's final hearing is held prior to the person's change in address, then the person is required to provide the written notice prior to the issuance of the final order in their case. Written notice must be provided by certified mail, return receipt requested, facsimile, or by electronic mail, to the Office of Administrative Hearings.

§15A-9-7. Transition from divisions of the department to the Office of Administrative Hearings.

(a) In order to implement an orderly and efficient transition of the administrative hearing process from the many divisions of the department, the secretary may establish interim policies and procedures for the transfer of administrative hearings, appeals from decisions or orders of, as contemplated by this article, currently administered by the separate divisions and the Fire Commission, no later than October 1, 2020.

(b) On the effective date of this article, all equipment and records necessary to effectuate the purposes of this article shall be transferred from the many divisions of the department to the Office of Administrative Hearings: *Provided*, That in order to provide for a smooth transition, the secretary may establish interim policies and procedures, determine how the equipment and records are to be

transferred and provide that the transfers provided for in this subsection take effect no later than October 1, 2020.

ARTICLE 10. FIRE MARSHAL.

§15A-10-1. State Fire Marshal and Office of the State Fire Marshal transferred to Department of Homeland Security; appointment of State Fire Marshal; removal; salary; qualifications; responsibilities; employees; equipment.

(a) The State Fire Marshal and the Office of the State Fire Marshal, heretofore existing in this code, are hereby continued in all respects except that all powers and duties exercised by the State Fire Commission with respect to the State Fire Marshal and the Office of the State Fire Marshal are terminated and all such powers and duties are hereby transferred to and vested in the Department of Homeland Security except as provided otherwise in this article.

(b) When a vacancy occurs in the position of State Fire Marshal, the Fire Commission, at the request of the Governor, shall submit a list of not more than three names to the Governor from which the Governor shall make the appointment. The Governor shall appoint a State Fire Marshal, from a list of names submitted by the Fire Commission. The State Fire Marshal serves at the will and pleasure of the Governor and is exempt from coverage under the classified civil service system.

(c) The State Fire Marshal shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(d) The State Fire Marshal, shall have full responsibility for the enforcement of fire and life safety programs in this state designated to minimize fire hazards and disaster and loss of life and property from these causes. These

responsibilities include, but are not limited to, the establishment and enforcement of fire safety practices throughout the state, preventive inspection and correction activities, coordination of fire safety programs with volunteer and paid fire departments, and critical analysis and evaluation of West Virginia's fire loss statistics for determination of problems and solutions.

(e) The State Fire Marshal may employ such technical, clerical, stenographic, and other personnel and fix their compensation and may incur such expenses as may be necessary in the performance of the duties of his or her office within the appropriation therefor. Employees of the Fire Marshal's office shall be members of the state civil service system and all appointments of the office shall be a part of the classified service under the civil service system.

(f) The State Fire Marshal may employ a chief deputy fire marshal, who shall be classified exempt. The deputy shall have a baccalaureate degree from an accredited four-year college or university, or equivalent experience, and six years of full-time or part-time equivalent paid or volunteer experience in fire prevention or fire safety including two years in a supervisory capacity in fire prevention and fire safety.

(g) Any individual who is employed by the State Fire Marshal to conduct criminal investigations or who may become actively involved in matters of a criminal nature shall first be required to pass a civil service examination testing his or her competency and proficiency in the law of arrest, search and seizure, and other criminal procedures relating to the powers granted to the State Fire Marshal pursuant to the provisions of this article: *Provided*, That all new hires to sworn positions of Fire Marshal 1, 2, or 3 and deputy fire marshal, excluding the chief deputy as described in subdivision (f) of this section, shall comply with the law enforcement certification requirements set forth in §30-29-1 *et seq.*

(h) The State Fire Marshal and other personnel of the State Fire Marshal's Office shall be provided with appropriate office space, furniture, equipment, supplies, stationery, and printing in the same manner as provided for other state agencies.

§15A-10-2. Powers, duties, and authority of State Fire Marshal.

(a) The State Fire Marshal may employ personnel, fix their compensation and, within funds available to do so, incur expenses as necessary in the performance of the duties of his or her office.

(b) The State Fire Marshal is responsible for the enforcement of fire programs within this state, training, uniform standards and certification, finance, and planning, and fire prevention.

(c) The State Fire Marshal shall ensure that state and area training and education in fire service are operated throughout the state at a level consistent with needs identified by the State Fire Commission.

(d) The State Fire Marshal shall perform any such duties as necessary to assist the State Fire Commission in performing its duties and responsibilities as provided in §15A-11-1 *et seq.* of this code. This shall include, but not be limited to, performing inspections on fire departments, making recommendations on fire department boundary lines, making recommendations on applications for new fire departments, making recommendations on closures or suspensions of fire departments, and any other act or assistance to the State Fire Commission as may be necessary. The Fire Marshal may, in the case of imminent danger, issue immediate cease and desist orders on behalf of the State Fire Commission without their prior approval. In that case, the State Fire Commission shall act further upon said order at their next regular meeting.

(e) The State Fire Marshal may accept, on behalf of the Office of the State Fire Marshal, or on behalf of the State

Fire Commission, gifts, grants, court ordered civil forfeiture proceedings and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies and other organizations or institutions. Moneys from gifts, grants, civil forfeiture proceedings and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(f) Beginning July 1, 2020, applicants for certification or licensure in accordance with the education and training programs under the respective jurisdictions of State Fire Marshal shall be permitted to apply training hours earned via career technical education provided by West Virginia public schools or an apprenticeship program or employer-sponsored training program towards the requirements for certification and/or licensure by the State Fire Marshal as applicable. The State Fire Marshal shall, after consultation with the State Superintendent of Schools, propose rules for legislative approval, in accordance with the provisions of §29A-3-1 *et seq.* of this code, for the implementation and enforcement of these provisions. The rules shall provide at least the following:

(1) Standards and procedures for recognizing training hours acquired through career technical education provided by West Virginia public schools and applying those hours to requirements for testing and/or certification and/or licensure; and

(2) Standards and procedures for recognizing training hours acquired through apprenticeship programs and employer-sponsored training programs and applying those hours to requirements for testing and/or certification and/or licensure.

As used in this subsection:

(A) "Apprentice" means someone who is enrolled in an apprenticeship program.

(B) "Apprenticeship program" means a program offered by an employer to provide supervised on-the-job training to employees approved by the United States Department of Labor.

(C) "Employer sponsored training program" means a program approved in accordance with a rule promulgated by the State Fire Commission or the State Fire Marshal under their respective authorities established in this code.

(D) "License" means a valid and current certification or license issued by State Fire Commission or the State Fire Marshal for satisfactory completion of education and training programs under their respective jurisdictions.

(E) "Career technical education" means programs of study, clusters, and pathways approved by the West Virginia Board of Education pursuant to state board policy.

(g) Notwithstanding any other provisions of this code, beginning on July 1, 2020, the State Fire Commission has no enforcement authority for violations of the fire code, or the building code, all enforcement authority previously held by the Fire Commission regarding these two rules is hereby transferred and solely vests in the Office of the State Fire Marshal.

(h) Notwithstanding any provision of this code to the contrary, on July 1, 2020, all power and authority for the licensing or certifications programs of "home inspectors", and "municipal, county, and other public sector building code officials, building code inspectors, and plans examiners", are hereby transferred to the Office of the State Fire Marshal, and the State Fire Marshal shall have full authority over said programs, licenses, certifications, and all responsibilities thereof. Whenever in this code a reference is made to the State Fire Commission in relation to these

Licensing or Certification Programs, it shall be construed to mean the State Fire Marshal.

§15A-10-3. Additional powers, duties and authority of State Fire Marshal relating to law enforcement; statewide contracts; penalties; authority to carry firearms.

(a) *Enforcement of laws.* — The State Fire Marshal, and any of his or her assistant fire marshals or deputy fire marshals, are fully authorized to enforce the fire code, the building code, this article, §15A-11-1 *et seq.* of this code, and any laws over of the state having to do with:

(1) Prevention of fire;

(2) The storage, sale, and use of any explosive, combustible, or other dangerous article or articles in solid, flammable liquid, or gas form;

(3) The installation and maintenance of equipment of all sorts intended to extinguish, detect, and control fires;

(4) The means and adequacy of exit, in case of fire, from buildings and all other places in which persons work, live, or congregate, from time to time, for any purpose, except buildings used wholly as dwelling houses for no more than two families;

(5) The suppression of arson; and

(6) Any other thing necessary to carry into effect the provisions of this article and §15A-11-1 *et seq.* of this code 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 the provisions of this article and any person deputized pursuant to subsection (j) of this section may assist in the lawful execution of the requesting officer's official duties: *Provided*, That the State Fire Marshal, or other person authorized to act under this subsection, shall at all times work under the direct supervision of the requesting officer.

(c) *Enforcement of rules.* — The State Fire Marshal shall enforce the rules promulgated by the State Fire Commission as authorized by this article and §15A-11-1 *et seq.* of this code.

(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 any hour necessary, 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 §15A-10-7 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 this article is hereby authorized and empowered and any person deputized pursuant to this article 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 a 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 this article, 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 §15A-11-1 *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 the mandatory training as described in §15A-10-1 of this code, or 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 this article 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.

§15A-10-4. Enforcement standards.

(a) In the enforcement of the State Building Code and State Fire Code, the State Fire Marshal shall provide compliance alternatives for historic structures as provided for in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures, and shall coordinate with the Director of the Archives and History Division the application of the rules of that division.

(b) In interpretation and application, the State Fire Code shall be held to be the minimum requirements for the safeguarding of life and property from the hazards of fire and explosion: *Provided*, That the State Fire Marshal shall provide compliance alternatives for historic structures and sites as provided in §29-1-5 of this code, which compliance alternatives shall take into account the historic integrity of the historic structures and sites. Whenever any other state law, county or municipal ordinance, or regulation of any agency thereof, is more stringent or imposes a higher standard than is required by the State Fire Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs, if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices: *Provided, however*, That, on and after July 1, 2010, if a municipal or county fire ordinance or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Fire Code, it must be presented for review and approval and sanctioned for use by

the State Fire Commission. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof and determines compliance with state fire rules by officials of the state, counties, municipalities, and political subdivisions of the state.

§15A-10-5. General rule-making authority; appointment of advisory boards.

(a) The State Fire Marshal may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, establishing state standards and fee schedules for the licensing, registration, certification, regulation and continuing education of persons which will conduct inspections relating to the State Building Code, which include, but are not limited to, building code officials, inspectors, plans examiners, and home inspectors.

(b) The State Fire Marshal shall propose rules for legislative approval requiring applicants for home inspector licensing, registration, or certification to submit to a state and national criminal history record check as set forth in this section and may deny licensing, registration, or certification based upon the results of the criminal history record check.

(c) The State Fire Marshal may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the rules promulgated by the State Fire Marshal.

§15A-10-6. Responsibilities of insurance companies in fire loss investigation.

(a) The State Fire Marshal or any deputy or assistant fire marshals under the authority of the fire marshal may request any insurance company investigating a fire loss of real or personal property to release any information in its possession relative to that loss. The company shall release the information and cooperate with any official authorized

to request such information pursuant to this section. The information shall include, but not be limited to:

(1) Any policy in force;

(2) Any application for a policy;

(3) Premium payment records;

(4) History of previous claims; and

(5) Material relating to the investigation of the loss, including statements of any person, proof of loss, and any other relevant evidence.

(b) Any insurance company shall notify the State Fire Marshal if it has reason to believe, based on its investigation of a fire loss to real or personal property, that the fire was caused by other than accidental means. The company shall furnish the State Fire Marshal with pertinent information acquired during its investigation and cooperate with the courts and administrative agencies of the state, and any official mentioned, or referred to, in subsection (a) of this section.

(c) In the absence of fraud, no insurance company or person who furnishes information on its behalf, shall be liable for any oral or written statement or any other action necessary to supply information required pursuant to this section.

(d) Any information furnished pursuant to this section shall be held in confidence, and is exempt from the provisions of §29B-1-1 *et seq.* of this code, until such time as its release may be required pursuant to a criminal proceeding.

(e) Any official mentioned, or referred to, in subsection (a) of this section may be required to testify as to any information in his or her possession regarding the fire loss of real or personal property in any civil action in which any

39 person seeks recovery under a policy against an insurance
40 company for the fire loss.

§15A-10-7. Fees.

1 (a) The State Fire Marshal is authorized to propose rules
2 for legislative authorization pursuant to §29A-3-1 *et seq.* of
3 this code to establish fees in accordance with the following:

4 (1) For blasting;

5 (2) For inspections of schools or day-care facilities;

6 (3) For inspections of hospitals or nursing homes;

7 (4) For inspections of personal care homes or board and
8 care facilities;

9 (5) For inspections of residential occupancies;

10 (6) For inspections of mercantile occupancies;

11 (7) For business occupancies; and

12 (8) For inspections of assembly occupancies;

13 For purposes of this subdivision, an "assembly
14 occupancy" includes, but is not limited to, all buildings or
15 portions of buildings used for gathering together 50 or more
16 persons for such purposes as deliberation, worship,
17 entertainment, eating, drinking, amusement, or awaiting
18 transportation. For purposes of this section, a "Class C
19 assembly facility" is one that accommodates 50 to 300
20 persons, a "Class B facility" is one which accommodates
21 more than 300 persons but less than 1,000 persons, and a
22 "Class A facility" is one which accommodates more than
23 1,000 persons.

24 (b) The State Fire Marshal may collect fees for the fire
25 safety review of plans and specifications for new and
26 existing construction. Fees shall be paid by the party or
27 parties receiving the review.

(1) Structural barriers and fire safety plans review;

(2) Sprinkler system review;

(3) Fire alarm systems review;

(4) Range hood extinguishment system review;

(5) Carpet specifications;

(c) All fees authorized and collected pursuant to this article, §29-3B-1 *et seq.*, §29-3C-1 *et seq.*, and §29-3D-1 *et seq.* of this code shall be paid to the State Fire Marshal and thereafter deposited into the special account in the State Treasury known as the Fire Marshal Fees Fund. Expenditures from the fund shall be for the purposes set forth in this article and §29-3B-1 *et seq.*, §29-3C-1 *et seq.*, and §29-3D-1 *et seq.* of this code and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1 *et seq.* of this code and upon fulfillment of the provisions of §5A-2-1 *et seq.* of this code. Any balance remaining in the special account at the end of any fiscal year shall be reappropriated to the next fiscal year.

(d) If the owner or occupant of any occupancy arranges a time and place for an inspection with the State Fire Marshal and is not ready for the occupancy to be inspected at the appointed time and place, the owner or occupant thereof shall be charged the inspection fee provided in this section unless at least 48 hours prior to the scheduled inspection the owner or occupant requests the State Fire Marshal to reschedule the inspection. In the event a second inspection is required by the State Fire Marshal as a result of the owner or occupant failing to be ready for the inspection when the State Fire Marshal arrives, the State Fire Marshal shall charge the owner or occupant of the occupancy the inspection fees set forth above for each inspection trip required.

§15A-10-8. Annual reports.

The State Fire Marshal shall transmit annually to the Governor an annual report, pursuant to §5-1-20 of this code. Said annual report shall include the activities of the State Fire Commission which are reportable pursuant to §5-1-20 of this code.

§15A-10-9. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply; right to appeal.

(a) No person shall erect, construct, reconstruct, alter, maintain, or use any building, structure, or equipment, or use any land in such a way to endanger life or property from the hazards of fire or explosion, or in violation of any regulation, rule, or any provision or any change thereof promulgated by the State Fire Marshal or State Fire Commission.

(b) Whenever the State Fire Marshal determines that any building or structure has been constructed, altered, or repaired in a manner violating the State Building Code, or State Fire Code, prior to the commencement of such construction, alteration, or repairs; or whenever he or she may determine that any building or structure constitutes a fire hazard by reason of want of repair, age, or dilapidated or abandoned condition, or otherwise, and is so situated as to endanger other buildings and property; or whenever he or she may find in any building or upon any premises any combustible, flammable, or explosive substance or material, or other conditions dangerous to the safety of persons occupying the building or premises and adjacent premises or property, he or she may make reasonable orders in writing, directed to the owner of such building, structure, or premises, for the repair or demolition of such building or structure, or the removal of the combustible, flammable, or explosive substance or material, as the case may be, and the remedying of any conditions found to be in violation of a

regulation promulgated as aforesaid or to be dangerous to the safety of persons or property.

A true copy of every order of the State Fire Marshal as provided for in this section shall be filed in the county where the premises are totally or partially located, with the county clerk who shall index and record the order in the general lien book. Upon filing, the order constitutes notice of such proceedings to all persons or parties thereafter having dealings involving said property.

A statement of the expenses and administrative charges shall also be filed with the county clerk, recorded, and indexed in the general lien book and upon filing, shall become a lien against the property. Thereafter, a court supervised sale of the property to enforce the collection of the expenses and administrative charges may be prosecuted at the request of the State Fire Marshal, or the Attorney General.

Every order provided for in this section shall contain a notice that compliance therewith shall be required within a period of 30 days from the date of issuance thereof and also that any person desiring to contest the validity of any such order may enter an appeal from such order to the Office of Administrative Hearings established in §15-9-1 et. seq. of this code, and then to the circuit court in the county where the premises are totally or partially located as provided in this article.

§15A-10-10. Service of repair or demolition order.

The written order of the State Fire Marshal made pursuant to §15A-10-9 of this code shall be served by delivering a true copy thereof to such owner or, if the owner is absent from the state or his or her whereabouts be unknown to the State Fire Marshal, by mailing a true copy thereof by certified mail to the said owner's last known post-office address, or if no such address be known, then by certified mail to said owner in care of general delivery at the

post office serving the community in which said premises lie. Delivering or mailing such order shall be accomplished within five days of the date of issuance of such order. In the event it is necessary to mail a copy of such order as aforesaid, the officer mailing the same shall also, within five days of the date of issuance of such order, post a true copy thereof in a conspicuous place on the door or other prominent entrance to said premises.

§15A-10-11. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

In the event any owner of any building or premises served with a copy of an order as provided in §15A-10-9 and §15A-10-10 of this code shall fail substantially to comply with such order within 30 days from the date of issuance thereof, or within 30 days after any appeal from such order has been affirmed by the State Fire Marshal or by the court, the State Fire Marshal, or his or her designee, may enter into and upon the premises affected by such order and cause the building, structure, or premises to be repaired, torn down, materials removed, and all dangerous conditions to be remedied, as the case may be, at the expense of the owner and with any administrative charges as established by the State Fire Marshal also being borne by the owner, and if such person shall fail or neglect to repay the State Fire Marshal the expense and administrative charge thereby incurred by him or her within 30 days after written demand shall have been delivered or mailed to the said owner as provided in §15A-10-10 of this code, the State Fire Marshal is hereby authorized to bring an action in the name of the state to recover such expenses, with interest, and any administrative charge as established by the commission, in any court of competent jurisdiction.

Upon a determination by the State Fire Marshal that the provisions of §15A-10-9 and §15A-10-10 of this code have not been met, and that such property constitutes a hazard to health or public safety, in lieu of initiating an order as

therein provided, the State Fire Marshal may notify the county commission or the county health officer in order that they may perform their duties pursuant to section §7-1-3ff of this code. The State Fire Marshal may also, in lieu thereof, notify the municipality where the property is located so that the municipality may perform its duties pursuant to §8-12-14 of this code.

The State Fire Marshal may designate, pursuant to this section, a designee to accomplish the building, structure, or premises to be repaired, torn down, materials removed, and all dangerous conditions to be remedied, as the case may be. The designee may include an employee of the Fire Marshal, an agent of the Fire Marshal, a vendor, a Fire Department and its employees or agents, or a governmental entity and its employees or agents. Any contract entered into, pursuant to this section is exempt from the requirements of § 5A-3 - 1 *et seq.* of this code.

§15A-10-12. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

(a) An operational smoke detector shall be installed in the immediate vicinity of each sleeping area within all one- and two-family dwellings, including any "manufactured home" as that term is defined in §21-9-2(j) of this code. The smoke detector shall be capable of sensing visible or invisible particles of combustion and shall meet the specifications and be installed as provided in the current edition of the State Fire Code, and in the manufacturer's specifications. When activated, the smoke detector shall provide an alarm suitable to warn the occupants of the danger of fire.

(b) The owner of each dwelling described in subsection (a) of this section shall provide, install, and replace the operational smoke detectors required by this section. To assure that the smoke detector continues to be operational in each dwelling described in subsection (a) of this section

which is not occupied by the owner of the dwelling, the tenant in any dwelling shall perform routine maintenance on the smoke detectors within the dwelling.

(c) Where a dwelling is not occupied by the owner and is occupied by an individual who is deaf or hard of hearing, the owner shall, upon written request by or on behalf of the individual, provide and install a smoke detector with a light signal sufficient to warn the deaf or hard of hearing individual of the danger of fire.

(d) An automatic fire sprinkler system installed in accordance with the current edition of the State Fire Code and the State Building Code may be provided in lieu of smoke detectors.

(e) After investigating a fire in any dwelling described in subsection (a) of this section, the local investigating authority shall issue to the owner a smoke detector installation order in the absence of the required smoke detectors.

(f) An operational single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector, which shall be alternating current (AC) powered, either plugged directly in to an electrical outlet that is not controlled by a switch or hardwired into an alternating current (AC) electrical source, with battery backup, shall be installed, maintained, tested, repaired, or replaced, if necessary, in accordance with the manufacturer's direction:

(1) In any newly constructed residential unit which has a fuel-burning heating or cooking source including, but not limited to, an oil or gas furnace or stove;

(2) In any residential unit which is connected to a newly constructed building, including, but not limited to, a garage, storage shed, or barn, which has a fuel-burning heating or

cooking source, including, but not limited to, an oil or gas furnace or stove; and

(3) In either a common area where the general public has access or all rooms in which a person will be sleeping that are adjoining to and directly below and above all areas or rooms that contain permanently installed fuel-burning appliances and equipment that emit carbon monoxide as a byproduct of combustion located within all apartment buildings, boarding houses, dormitories, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels, and motels.

(g) All single station carbon monoxide detectors with a suitable alarm or a combination smoke detector and carbon monoxide detectors shall be hardwired into an alternating current (AC) electrical source, with battery backup, when installed in all newly constructed apartment buildings, boarding houses, dormitories, hospitals, long-term care facilities, adult or child care facilities, assisted living facilities, one- and two-family dwellings intended to be rented or leased, hotels, and motels.

(h) In any long-term care facility that is staffed on a 24-hour, seven day a week basis, the single station carbon monoxide detector with a suitable alarm or a combination smoke detector and carbon monoxide detector is only required to be installed in an area of the facility that permits the detector to be audible to the staff on duty.

(i) Carbon monoxide detectors shall be installed in every public or private school or daycare facility that uses a fuel-burning heating system or other fuel-burning device that produces combustion gases. A carbon monoxide detector shall be located in each area with a fuel-burning heating system or other fuel-burning device that produces combustion gases.

(j) Any person installing a carbon monoxide detector in a residential unit shall inform the owner, lessor, or the occupant or occupants of the residential unit of the dangers of carbon monoxide poisoning and instructions on the operation of the installed carbon monoxide detector.

(k) When repair or maintenance work is undertaken on a fuel-burning heating or cooking source or a venting system in an existing residential unit, the person making the repair or performing the maintenance shall inform the owner, lessor, or the occupant or occupants of the unit being served by the fuel-burning heating or cooking source or venting system of the dangers of carbon monoxide poisoning and recommend the installation of a carbon monoxide detector.

(l) Any person who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, for a first offense, shall be fined $250. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $750. For a third and subsequent offenses, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined $2000.

(m) A violation of this section may not be considered to constitute evidence of negligence or contributory negligence or comparative negligence in any civil action or proceeding for damages.

(n) A violation of this section may not constitute a defense in any civil action or proceeding involving any insurance policy.

(o) Nothing in this section shall be construed to limit the rights of any political subdivision in this state to enact laws imposing upon owners of any dwelling or other building described in subsection (a) or (f) of this section a greater duty with regard to the installation, repair, and replacement of the smoke detectors or carbon monoxide detectors than is required by this section.

§15A-10-13. Use of live trees in public buildings; exceptions.

Notwithstanding any other provision of law to the contrary, live trees may be displayed in public buildings if the trees are decorated with U/L approved miniature lights, or are not decorated with electrical lights. The provisions of this section do not apply to public buildings used for education, health care, nursing homes, or correctional facilities.

§15A-10-14. Safety standards for bed and breakfast establishments; findings.

(a) *Findings.* — Bed and breakfast establishments provide a unique and important contribution to the state, allowing visitors the opportunity to enjoy many of the aspects of our communities and state not available at hotels and motels, and often provide vacationers access to overnight accommodation in areas of this state that would not otherwise be available. These operations continue to grow in number and importance in our state's economy and must be promoted and encouraged by state and local government. Most of these facilities are older residences being converted to this use, and in many cases have architectural and historical significance; and, as with most small businesses, are begun with limited capital available for investment. Any fire safety code standards applicable to these facilities must be sensitive to this distinction and avoid placing a large financial burden on persons operating or planning to operate these facilities. Further, the personal safety of those who live in and visit these facilities is of paramount importance and requires that consideration be made to assure that adequate safety requirements are placed on these facilities to provide for the safety of visitors, residents, and, in an emergency, responding firefighters and rescue workers.

(b) *Definition.* — For the purposes of this section, the term "bed and breakfast establishment" means a building occupied as a one-family dwelling unit that provides

sleeping accommodations and breakfast to transient guests for a single fee and does not offer more than six guest rooms to no more than 12 guests.

(c) *Fire code standards.* — Notwithstanding any provision of this code to the contrary, every bed and breakfast establishment shall be exempt from provisions of fire safety code requirements which are contrary to the following standards:

(1) Each bed and breakfast shall have operational smoke alarms in all common areas, guest rooms, and hallways, and heat detectors as otherwise required by this code or rule of the Fire Commission. Battery-powered smoke alarms shall be permitted where the establishment has demonstrated that the testing, maintenance, and battery replacement procedures will ensure reliable power to the smoke alarms. Notwithstanding any provision of this code to the contrary, no smoking will be allowed inside a bed and breakfast establishment.

(2) Each bed and breakfast shall have operational hard-wired, battery-powered, or plug-in emergency lighting that indicates available means of egress. Battery-powered or plug-in emergency lighting devices shall be permitted where the establishment has demonstrated that the testing, maintenance, and battery replacement procedures will ensure reliable power to the emergency lighting devices.

(3) The State Fire Marshal shall permit bed and breakfast establishments that cannot readily comply with the requirements of a legislative rule, which may mandate the installation of a secondary means of escape or a sprinkler system, one year per floor of the establishment to comply with the requirements.

(4) All other provisions of the state fire safety code not inconsistent with this section and rules promulgated pursuant to subsection (d) of this section are applicable to bed and breakfast establishments.

(d) *Legislative rules.* — The State Fire Commission shall promulgate or amend an existing legislative rule, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to effectuate the provisions of this section. The rule shall include a mechanism for the Fire Marshal to grant individual variances to bed and breakfast establishments which cannot otherwise meet provisions of the state fire safety code due to the historic and architectural significance of the establishment, with due consideration of the economic limitations inherent in the operation of this type of small business.

(e) *Historic preservation review.* — The owner of a bed and breakfast may request the historical preservation section of the Division of Culture and History, pursuant to §15A-1-8 of this code, to consult with the owner and provide a recommendation to the Fire Marshal regarding the historic character of the structures used or proposed to be used as a bed and breakfast and any objections or concerns regarding any renovations or other changes required by the Fire Marshal. If an appeal regarding a decision made by the Fire Marshal is made as provided by §15A-10-18 of this code, the Fire Marshal shall consider the recommendation of the historical preservation section when making a determination regarding the variance as provided for in subsection (d) of this section.

§15A-10-15. Performance of installation of propane gas systems.

(a) Notwithstanding any statutory or regulatory provisions to the contrary, any person who installs, fuels, maintains, or services any fuel gas system to a one- or two-family dwelling shall comply with rules promulgated by the Fire Commission relating to fuel gas systems.

(b) This section does not apply to any person who performs this work on a single-family dwelling, owned or leased, and occupied by that person. The personal exemption provided in this subsection is the same as the

personal exemption provided in §29-3D-1, *et seq.* of this code.

§15A-10-16. Additional remedies to abate, etc., fire hazards.

In case any building, structure, or equipment is, or is proposed to be, erected, constructed, reconstructed, altered, maintained, or used, or any land is or is proposed to be used in such a way to endanger life or property from the hazards of fire or explosion or in violation of this article, §15A-11-1 *et seq.* of this code, the fire code or the building code, the State Fire Marshal, or the Attorney General may, in addition to other remedies provided by law, institute injunction, mandamus, abatement, or any other appropriate action or actions, proceedings to prevent, enjoin, abate, or remove such unlawful erection, construction, reconstruction, alteration, maintenance, or use.

§15A-10-17. License denial limitation, suspension, or revocation.

(a) The State Fire Marshal shall deny, limit, suspend, or revoke a license issued if the provisions of this article, or if the rules promulgated pursuant to this article or §15A-11-1 *et seq.* of this code are violated

(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 the license is denied, limited, suspended, or revoked, the license or certification holder shall cease and

desist practices of their profession as of the effective date of the denial, limitation, suspension, or revocation. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(e) A party aggrieved by a decision by the State Fire Marshal may appeal such final decision to the Office of Administrative Hearings, pursuant to §15A-9-1 *et seq.* of this code, or may choose independent informal dispute resolution as set forth in this article.

§15A-10-18. Independent informal dispute resolution.

(a) A license or certification holder adversely affected by an order or citation of a deficient practice issued pursuant to this article may request the independent informal dispute resolution process. A license or certificate holder may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The State Fire Marshal has the authority to establish conference panels composed of three persons of the licensed or certified skill to decide the outcome of the independent informal dispute resolution process. One member shall be selected by the State Fire Marshal, one member shall be selected by the licensee or certificate holder, and one member shall be selected by agreement of both. If a vacancy occurs on the panel, the replacement for that member shall be made by the original individual who had selected such member. The members of the panel shall serve without compensation. This panel shall hear the matter and render a decision. The licensee or certificate holder may not be accompanied by counsel during the independent informal dispute resolution conference.

(c) Upon appeal of a decision rendered by the State Fire Marshal, the panel shall hold an informal conference affirming, modifying, or vacating an order of the State Fire Marshal, or issuing an order in the name of the State Fire

Marshal. The panel shall forthwith notify the parties of its decision and as soon as practicable send written notices of its decision to the parties. The decision of the panel is final. The independent informal dispute resolution process is not a formal evidentiary proceeding.

(d) A party aggrieved by a decision of a panel may appeal pursuant to §29A-5-1 *et seq.* of this code.

(e) The State Fire Marshal shall promulgate a procedural rule to carry out the provisions of this section.

§15A-10-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

The State Fire Marshal is authorized to establish for educational purposes in public and private schools and state educational institutions, demonstration buildings and equipment for fire prevention and protection, and such expenditures therefor shall be made from the funds appropriated therefor to the office of the State Fire Marshal.

§15A-10-20. False alarm of fire; penalties.

No person shall make, report, or disclose, by any means of written or verbal communication, aid or abet in such, any alarm of fire which he or she knows to be false at the time of making or turning in the alarm.

§15A-10-21. Tax on insurance companies.

Every insurance company doing business in this state, except Farmers' Mutual Fire Insurance companies, shall pay to the State Insurance Commissioner annually on or before March 1, in addition to the taxes now required by law to be paid by the companies, one half of one percent of the taxable premiums of the companies on insurance against the hazard of fire and on that portion of all other taxable premiums reasonably applicable to insurance against the hazard of fire which are included in other coverages, and

received by it for insurance on property or risks in this state during the calendar year next preceding as shown by their annual statement under oath to the insurance department. The money so received by the State Insurance Commissioner is paid by him or her into the treasury and credited to the Special Revenue Fund created in §15A-10-7 of this code.

§15A-10-22. Penalties.

(a) Any person who violates any regulations promulgated by the State Fire Commission as provided in §15A-11-1 *et seq.* of this code, or by the State Fire Marshal as provided in this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in the county jail not more than 90 days, or both.

Each day during which any illegal erection, construction, reconstruction, alteration, maintenance or use continues after knowledge or official notice that it is illegal is a separate offense.

(b) Except as provided by the provisions of subsection (c) of this section, any person who violates the provisions of §15A-10-20 of this code shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined for a first offense not more than $100 or confined in jail for not more than 30 days, or both fined and confined; and for a second and each subsequent offense, fined not less than $100 nor more than $500, or confined in jail for not less than 90 days nor more than one year, or both.

(c) Any person who violates the provisions of §15A-10-20 of this code with the intent to cause injury to the person of another, to cause destruction of the property of another, or to divert the attention of law enforcement or fire personnel to help effectuate the commission of another crime shall be guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for

not less than one nor more than three years, or fined not more than $500, or both fined and confined.

(d) Any officer who knowingly and willfully fails to perform any duty required of him or her by this article or who violates any of its provisions is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $25 nor more than $50 for each failure or violation.

(e) Any person who violates any other provision of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $100 or confined in jail not more than 90 days, or both fined and confined.

§15A-10-23. Construction.

Being in the interest of public safety, the provisions of this article shall be liberally construed.

§15A-10-24. Severability.

If any section, subsection, subdivision, subparagraph, sentence, or clause of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining portions of this article and, to this end, the provisions of this article are hereby declared to be severable.

§15A-10-25. Awarding service weapon upon retirement of fire marshal or service weapon.

(a) Upon the retirement of a State Fire Marshal, any full-time deputy fire marshal or any full-time assistant fire marshal employed by the State Fire Marshal pursuant to this article shall award to the retiring member his or her service weapon, without charge, upon determining:

(1) That the retiring employee is retiring honorably with at least 20 years of service; or

(2) The retiring employee is retiring with less than 20 years of service based upon a determination that the

employee is totally physically disabled as a result of his or her service with the State Fire Marshal.

(b) Notwithstanding the provisions of subsection (a) of this section, the State Fire Marshal may not award a service weapon to any employee whom the State Fire Marshal knows is prohibited from possessing a firearm, finds to be mentally incapacitated, or who constitutes a danger to any person or the community.

(c) If a service weapon is taken out of service due to routine wear, the State Fire Marshal may offer the service weapon for sale to any active or retired State Fire Marshal, assistant state fire marshal, or deputy state fire marshal, at fair market value, with the proceeds from any sales used to offset the cost of new service weapons. The disposal of service weapons pursuant to this subsection does not fall within the jurisdiction of the Purchasing Division of the Department of Administration.

ARTICLE 11. FIRE COMMISSION.

§15A-11-1. State Fire Commission continued; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

(a) The Fire Commission is hereby continued, which shall consist of 13 voting members, with the State Fire Marshal sitting as an ex officio nonvoting member. The voting members shall be qualified by experience and training to deal with the matters which are the responsibilities of the commission. All current members of the commission are continued in their respective term. The officers of the West Virginia Fire Chief's Association, the West Virginia Firemen's Association, the West Virginia Professional Fire Fighters Association, the West Virginia Professional Fire Chiefs Association, the West Virginia Manufacturers Association, the Professional Independent Insurance Agents of West Virginia, and the West Virginia Society of Architects shall submit a list of names of persons

recommended by each of these associations to the Governor for consideration in appointing the State Fire Commission. The West Virginia Professional Fire Fighters Association and the West Virginia Professional Fire Chiefs Association shall recommend the names of two persons from full-time paid fire departments. The West Virginia Fire Chief's Association and the West Virginia Firemen's Association shall each recommend the names of three persons from volunteer fire departments. The West Virginia Manufacturers Association shall recommend the names of three persons to represent business and industry. The Professional Independent Insurance Agents of West Virginia shall recommend the names of two persons to represent the fire insurance industry. The West Virginia Society of Architects shall recommend the names of two persons to represent registered architects. Appointments to the commission shall be made by the Governor, by and with the advice and consent of the Senate, from the lists of qualified persons recommended by the organizations. Three members shall be appointed to represent full-time paid fire departments, one member shall be appointed to represent the full-time paid fire chiefs, three members shall be appointed to represent volunteer fire departments, and two members shall be appointed to represent the volunteer fire chiefs. Two members shall be appointed to represent business and industry and one member shall be appointed to represent the fire insurance industry. One member shall be appointed to represent registered architects. The term of office of the members shall be staggered five-year terms. Vacancies shall be filled in the same manner as the original appointment but only for the remainder of a term. All members serve at the will and pleasure of the Governor, and may be removed for any or no reason.

(b) The members of the State Fire Commission shall serve without compensation but shall be reimbursed for their reasonable and necessary expenses actually incurred in the performance of their duties.

(c) All costs incidental to the administration of the commission shall be paid from the special fund by the State Fire Marshal established in §15A-10-7 of this code.

§15A-11-2. Chairperson; vice chairperson; meetings; quorum.

(a) The State Fire Commission shall select a chairperson and vice chairperson from among its members and shall hold regular meetings at least once every two months and special meetings when called by its chairman. In the absence of the chairman, the vice chairman shall exercise the powers and duties of the chairman.

(b) No business shall be transacted by the State Fire Commission in the absence of a quorum which shall be seven members, one of whom must be the chairperson or vice chairperson.

§15A-11-3. Promulgation of rules and State Fire Code.

(a) Pursuant to the provisions of § 29A-3- 1 *et seq.* of this code, the State Fire Commission shall propose and promulgate comprehensive rules for the safeguarding of life and property from the hazards of fire and explosion to be known as the State Fire Code. Rules embodied in the State Fire Code shall be in accordance with standard safe practice as embodied in widely recognized standards of good practice for fire prevention and fire protection and have the force and effect of law in the several counties, municipalities, and political subdivisions of the state. The rule shall include, but not be limited to, standard safe practices for the design, construction, location, installation, maintenance, and operation of liquefied petroleum gas systems, and training standards and qualifications for persons who install or maintain liquefied petroleum gas systems.

(b) The State Fire Commission may establish work groups and seek input in the rulemaking process from

groups or individuals with an interest in any aspect of the fire code.

§15A-11-4. Hazardous substance emergency response training programs.

(a) The State Fire Commission shall promulgate rules pursuant to §29A-3-1 *et seq.* of this code establishing criteria for qualified training programs in hazardous substance emergency response activities and procedures for such qualified training programs to be certified by the State Fire Marshal.

(b) For the purposes of this section, "hazardous substance" means any hazardous substance as defined in chapter 88, Acts of the Legislature, regular session, 1985, any "chemical substances and materials" listed in the rules promulgated by the Commissioner of Labor pursuant to §21-3-8 of this code, and any "hazardous waste" as defined in §22-18-1 *et seq.* of this code.

§15A-11-5. Promulgation of rules and statewide building code.

(a) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to safeguard life and property and to ensure the quality of construction of all structures erected or renovated throughout this state through the adoption of a State Building Code. The rule may include provisions regarding building construction, renovation, and all other aspects as related to the construction and mechanical operations of a structure. The rule shall include building energy codes. The rules shall be in accordance with standard safe practices so embodied in widely recognized standards of good practice for building construction and all aspects related thereto and have force and effect in those counties and municipalities adopting the State Building Code: *Provided*, That each county or municipality may

adopt the code to the extent that it is only prospective and not retroactive in its application.

(b) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Building Code or related construction or renovation practices.

(c) For the purpose of this section, the term "building code" is intended to include all aspects of safe building construction and mechanical operations and all safety aspects related thereto. Whenever any other state law, county, or municipal ordinance, or regulation of any agency thereof is more stringent or imposes a higher standard than is required by the State Building Code, the provisions of the state law, county or municipal ordinance, or regulation of any agency thereof governs if they are not inconsistent with the laws of West Virginia and are not contrary to recognized standards and good engineering practices. In any question, the decision of the State Fire Commission determines the relative priority of any such state law, county or municipal ordinance, or regulation of any agency thereof, and determines compliance with State Building Code by officials of the state, counties, municipalities, and political subdivisions of the state.

(d) Enforcement of the provisions of the State Building Code is the responsibility of the respective local jurisdiction. Also, any county or municipality may enter into an agreement with any other county or municipality to provide inspection and enforcement services: *Provided*, That any county or municipality may adopt the State Building Code with or without adopting the BOCA National Property Maintenance Code.

(e) After the State Fire Commission has promulgated rules as provided in this section, each county or

municipality intending to adopt the State Building Code shall notify the State Fire Marshal of its adoption.

(f) The State Fire Commission may conduct public meetings in each county or municipality adopting the State Building Code to explain the provisions of the rules.

(g) The provisions of the State Building Code relating to the construction, repair, alteration, restoration, and movement of structures are not mandatory for existing buildings and structures identified and classified by the State Register of Historic Places under the provisions of §29-1-8 of this code or the National Register of Historic Places, pursuant to 16 U.S.C. §470a. Prior to renovations regarding the application of the State Building Code, in relation to historical preservation of structures identified as such, the authority having jurisdiction shall consult with the Division of Culture and History, State Historic Preservation Office. The final decision is vested in the State Fire Marshal. Additions constructed on a historic building are not excluded from complying with the State Building Code.

§15A-11-6. Public hearings and notice.

Prior to the promulgation of a State Fire Code, or any amendments thereto, as provided in this article, the State Fire Commission shall hold at least one public hearing on the proposed regulations contained therein, notice of which shall be the same as the notice for a hearing as provided in the Administrative Procedure Act, chapter 29A of this code.

§15A-11-7. Commission's powers in conduct of public hearing.

For the purposes of any public hearing under this article, the State Fire Commission is empowered and authorized to issue subpoenas and subpoenas duces tecum, to take testimony, and to administer oaths to any witness in any proceeding or examination instituted before it or conducted by it with reference to any matter within its jurisdiction. In all hearings or proceedings before the State Fire

Commission, the evidence of witnesses and the production of documentary evidence may be required at any designated place of hearing; and in case of disobedience to a subpoena or other process, the State Fire Commission or any party to the proceedings before the commission may invoke the aid of any circuit court in requiring the evidence and testimony of witnesses and the production of papers, books, and documents. Such court, in case of refusal to obey the subpoena issued to any person subject to the provisions of this chapter, shall issue an order requiring such person to appear before the State Fire Commission and produce all books and papers, if so ordered, and give evidence touching the matter in question.

§15A-11-8. Powers, duties, and authority of State Fire Commission.

(a) All state and area training and education in fire service shall be coordinated by the State Fire Commission. The State Fire Marshal shall ensure that these programs are operated throughout the state at a level consistent with needs identified by the commission.

(b) The State Fire Commission may make recommendations to the State Insurance Commissioner regarding town classifications for fire insurance rates.

(c) The formation of any new fire department, including volunteer fire departments, requires the concurrence of the State Fire Commission. The State Fire Commission shall develop a method of certification which can be applied to all fire departments and volunteer fire departments.

(d) The State Fire Commission shall develop a plan for fire prevention and control which shall include, but not be limited to, the following areas: manpower needs, location of training centers, location of fire prevention and control units, communications, fire-fighting facilities, water sources, vehicular needs, public education and information, public participation, standardization in recordkeeping,

evaluation of personnel, reporting of fire hazards, programs on mutual aid, location of public safety agencies, outline of fire prevention programs, and accessibility of fire prevention information.

(e) The State Fire Commission shall establish fire protection areas and at such times as funds are available shall establish field offices for inspection, planning, and certification.

(f) The State Fire Marshal may accept, on behalf of the State Fire Commission, gifts, grants, court-ordered civil forfeiture proceedings, and bequests of funds or property from individuals, foundations, corporations, the federal government, governmental agencies, and other organizations or institutions. The State Fire Marshal, acting on behalf of the State Fire Commission, may enter into, sign and execute any agreements, and do and perform any acts that may be necessary, useful, desirable, or convenient to effectuate the purposes of this article. Moneys from gifts, grants, civil forfeiture proceedings, and bequests received by the State Fire Marshal shall be deposited into the special account set forth in §15A-10-7 of this code, and the State Fire Marshal, with the approval of the State Fire Commission, has the authority to make expenditures of, or use of any tangible property, in order to effectuate the purposes of this article.

(g) The State Fire Commission shall establish standards and procedures for fire departments to implement the provisions of this section with regard to the following:

(1) Fire prevention and control;

(2) Uniform standards of performance, equipment, and training;

(3) Certification;

(4) Training and education in fire service, subject to the rule-making requirements set forth in section nine of this article; and

(5) The creation, operation, and responsibilities of fire departments throughout the state.

(h) The State Fire Commission may establish advisory boards as it considers appropriate to encourage representative participation in subsequent rulemaking from groups or individuals with an interest in any aspect of the State Fire or Building Code or related construction or renovation practices.

(i) The State Fire Commission may deny, suspend, or revoke certification of any fire department in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules, and regulations.

(j) Appeals from any final decision of the Fire Commission shall be heard by the Office of Administrative Hearings pursuant to this chapter, except as otherwise provided in §15A-10-9(b) of this code.

§15A-11-9. Volunteer firefighters' training and equipment.

(a) The State Fire Commission shall maintain oversight and authority over training, equipment requirements, and performance standards for volunteer fire departments and its members, establishing and maintaining said requirements pursuant to legislative rule, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to establish training requirements for firefighters which:

(1) Provide for:

(A) Minimum training levels for rescue and firefighting;

(B) Minimum levels of equipment needed to protect life and property within fire service areas;

(C) Minimum performance standards the departments must meet in response times, communications, levels of water flow, and pressure; and

(D) Other performance measures as considered necessary to meet the overall goals of improved fire prevention and control;

(2) Allow the training to be offered in segments, blocks, or modules: *Provided*, That no firefighter may engage in firefighting activities, except in response to wildland fires, until he or she has completed all firefighter one training: *Provided, however*, That support members may provide ancillary assistance to firefighters as defined by the rule;

(3) Provide for online training;

(4) Allow testing to be done in person or online; and

(5) Establish the testing requirements which include:

(A) If the individual is required to test in person, then the tests must be given regionally at various times throughout the year; or

(B) If the individual is authorized to test online, then the requirements for online testing must be established.

(b) Notwithstanding any provision of this code to the contrary, the State Fire Commission may establish or continue a pilot project program which implements changes to standards imposed on volunteer firefighting that address problems facing volunteer fire departments in the state, including issues related to training, recruitment, and retention.

(1) The State Fire Commission may limit the number of participating volunteer fire departments in the pilot project program.

(2) The State Fire Commission shall set the rules and conditions for participating volunteer fire departments by policies adopted and ratified by the commission.

(3) On July 1 of each year, the State Fire Commission shall annually provide a full summary report of the status of the program to the Joint Committee on Government and Finance.

§15A-11-10. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.

(a) It is the intention of the Legislature to permit individuals who have been certified as professional or volunteer firefighters in a state bordering West Virginia to serve as volunteer firefighters in West Virginia.

(b) Beginning July 1, 2020, the State Fire Commission shall establish a process by which a courtesy certification to serve as a volunteer firefighter in this state may be issued to any person who satisfies the following requirements:

(1) Is a certified professional or volunteer firefighter in good standing in a state bordering West Virginia;

(2) Complies with the application process and procedures established by the State Fire Commission; and

(3) Submits any required fee.

(c) Issuance of a courtesy certification shall not be withheld by the State Fire Commission based on an individual's failure to satisfy the training requirements for volunteer firefighters set forth in legislative rules promulgated pursuant to §15A-11-9 of this code.

(d) The State Fire Commission shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this section.

23 (e) Any courtesy certification issued pursuant to this
24 section may be revoked at any time if the individual's
25 certification in the bordering state is restricted, revoked, or
26 otherwise expires.

27 (f) Any courtesy certification issued pursuant to this
28 section must be renewed biennially.

29 (g) The State Fire Commission may deny, suspend, or
30 revoke a courtesy certification if the certificate holder is, or
31 has acted, not in compliance with all applicable laws, rules,
32 and regulations.

33 (h) Appeals from any final decision of the Fire
34 Commission shall be heard by the Office of Administrative
35 Hearings pursuant to this chapter.

§15A-11-11. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant; reports of ineligibility to State Fire Marshal.

1 (a) *Definitions.* — For the purposes of this section:

2 "Equipment and training grant" means a grant of money
3 to a volunteer fire company or a part-volunteer fire
4 department from the Fire Service Equipment and Training
5 Fund created in §15A-11-11 of this code;

6 "Formula distribution" means a distribution of money
7 to volunteer and part-volunteer fire companies or
8 departments made pursuant to §33-3-14d, §33-3-33, and
9 §33-12C-7 of this code; and

10 "State funds account" means a bank account established
11 by a volunteer or part-volunteer fire company or department
12 and maintained for the exclusive use and accounting of
13 money from formula distributions and equipment and
14 training grants.

15 (b) *Filing required documentation.* — Every volunteer
16 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 19. AGRICULTURE.

ARTICLE 1. DEPARTMENT OF AGRICULTURE.

§19-1-4. Duties of commissioner.

The Commissioner of Agriculture shall perform the following duties:

(a) Devise means of advancing the agricultural interests of the state and, in the performance of such duty, he or she

shall have authority to call upon any state department, or officer of the state or county, to cooperate in promoting the agricultural interests of the state. It shall be the duty of any such department, or officer, upon request of the commissioner to render the assistance desired;

(b) Promote and encourage the organization of such societies and associations as have for their object the improvement and development of the state's agricultural, horticultural and kindred interests, especially in production, processing for market, and distribution;

(c) Conduct cooperative work with the United States Department of Agriculture in inspecting and determining the grade and condition of farm produce at collecting centers, receiving centers, and shipping points;

(d) Induce the investment of capital in, and immigration into, this state by the dissemination of information relative to the soil, climate, health, natural resources, market opportunities, and advantages of the state;

(e) Investigate and report upon the kinds, conditions, and extent of the mineral products of the state and their value;

(f) Take charge of the museum of the Department of Agriculture, collect, preserve and exhibit therein specimens of agricultural, horticultural and kindred products, products of the forests, minerals, flora, and fauna of the state;

(g) Publish and distribute, from time to time, such reports and bulletins concerning agriculture, horticulture, and kindred subjects as may be of value to the farmers of the state and, as conditions may demand, publish a handbook giving the resources of the several counties of the state, the varieties of soil and products, both mineral and vegetable, and the adaptability of the different sections of the state to the different branches of agriculture, horticulture, and kindred interests;

(h) Submit a biennial report to the Governor and Legislature containing such information as to the operations of the department as may be helpful to the agricultural interests of the state, together with an itemized statement of all receipts and disbursements during the biennial period covered thereby and giving the name of every person employed during such period, the time employed, and the amount paid each employee;

(i) Perform such other duties and exercise such other powers as are provided in this chapter and by general law;

(j) Enter into an agreement with the Secretary of the Department of Veterans' Assistance to transfer without consideration all or part of the approximately 17 acres of Department of Agriculture property in Beckley, West Virginia, located adjacent to the Jackie Withrow Hospital which was formerly known as Pinecrest Hospital, for construction of a veterans skilled nursing facility;

(k) Propose rules, including regulatory standards, for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purpose of carrying out the requirements of this chapter; and

(l) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

ARTICLE 21A. CONSERVATION DISTRICTS.

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

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

(1) Four citizen members;

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

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

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

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

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

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

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

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

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

(e) The State Conservation Committee may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known

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

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

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

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

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

(4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

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

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

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

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

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

(5) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with, and cooperation in, programs of the United States government and any of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

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

(7) Disseminate information throughout the state concerning the activities and programs of the conservation

districts and encourage the formation of the districts in areas where their organization is desirable;

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

(9) Accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise from the United States or any of its agencies, from the State of West Virginia, or from other sources and use or expend the money, services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services, or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations;

(10) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate, and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration, or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article;

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

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

CHAPTER 20. NATURAL RESOURCES.

ARTICLE 1. ORGANIZATION AND ADMINISTRATION.

*§20-1-7. Additional powers, duties and services of director.

In addition to all other powers, duties, and responsibilities granted and assigned to the director in this chapter and elsewhere by law, the director may:

(1) With the advice of the commission, prepare and administer, through the various divisions created by this chapter, a long-range comprehensive program for the conservation of the natural resources of the state which best effectuates the purpose of this chapter and which makes adequate provisions for the natural resources laws of the state;

(2) Sign and execute in the name of the state by the Division of Natural Resources any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships, or individuals: *Provided*, That intergovernmental cooperative agreements and agreements with nongovernmental organizations in furtherance of providing a comprehensive program for the exploration, conservation, development, protection, enjoyment, and use of the natural resources of the state are exempt from the

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***NOTE:** This section was also amended by S. B. 487 (Chapter 229), which passed prior to this act.

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 24 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 re-advertise 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 10 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 rights-of-way 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 re-advertise 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 12 months;

(30) Establishing procedures and fee schedule for individuals applying for limited permit hunts;

(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;

(32) Exempt designated sections within the Division of Natural Resources from the requirement that all payments

must be deposited in a bank within 24 hours for amounts less than $500, notwithstanding any other provision of this code to the contrary: *Provided*, That such designated sections shall make a deposit in any amount no less than every seven working days; and

(33) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 1. DEPARTMENT OF ENVIRONMENTAL PROTECTION.

§22-1-6. Secretary of the Department of Environmental Protection.

(a) The secretary is the chief executive officer of the department. Subject to §22-1-7 of this code and other provisions of law, the secretary shall organize the department into such offices, sections, agencies, and other units of activity as may be found by the secretary to be desirable for the orderly, efficient, and economical administration of the department, and for the accomplishment of its objects and purposes. The secretary may appoint a deputy secretary, chief of staff, assistants, hearing officers, clerks, stenographers and other officers, technical personnel, and employees needed for the operation of the department and may prescribe their powers and duties and fix their compensation within amounts appropriated.

(b) The secretary has the power to and may designate supervisory officers or other officers or employees of the department to substitute for him or her on any board or commission established under this code or to sit in his or her place in any hearings, appeals, meetings, or other activities with such substitute having the same powers, duties, authority and responsibility as the secretary. The secretary has the power to delegate, as he or she considers

appropriate, to supervisory officers or other officers or employees of the department his or her powers, duties, authority, and responsibility relating to issuing permits, hiring and training inspectors, and other employees of the department, conducting hearings and appeals and such other duties and functions set forth in this chapter or elsewhere in this code.

(c) The secretary has responsibility for the conduct of the intergovernmental relations of the department, including assuring:

(1) That the department carries out its functions in a manner which supplements and complements the environmental policies, programs, and procedures of the federal government, other state governments and other instrumentalities of this state; and

(2) That appropriate officers and employees of the department consult with individuals responsible for making policy relating to environmental issues in the federal government, other state governments, and other instrumentalities of this state concerning differences over environmental policies, programs, and procedures and concerning the impact of statutory law and rules upon the environment of this state.

(d) In addition to other powers, duties, and responsibilities granted and assigned to the secretary by this chapter, the secretary is authorized and empowered to:

(1) Sign and execute in the name of the state by the Department of Environmental Protection any contract or agreement with the federal government or its departments or agencies, subdivisions of the state, corporations, associations, partnerships, or individuals: *Provided*, That the powers granted to the secretary to enter into agreements or contracts and to make expenditures and obligations of public funds under this subdivision may not exceed or be interpreted as authority to exceed the powers granted by the

Legislature to the various commissioners, directors, or board members of the various departments, agencies, or boards that comprise and are incorporated into each secretary's department pursuant to the provisions of chapter 5F of this code;

(2) Conduct research in improved environmental protection methods and disseminate information to the citizens of this state;

(3) Enter private lands to make surveys and inspections for environmental protection purposes; to investigate for violations of statutes or rules which the department is charged with enforcing; to serve and execute warrants and processes; to make arrests; issue orders, which for the purposes of this chapter include consent agreements; and to otherwise enforce the statutes or rules which the department is charged with enforcing;

(4) Require any applicant or holder of a permit to install, establish, modify, operate, or close a solid waste facility to furnish the fingerprints of the applicant or permittee; any officer, director, or manager of the applicant or permittee; any person owning a five percent or more interest, beneficial or otherwise, in the applicant's or permittee's business; or any other person conducting or managing the affairs of the applicant or permittee or of the proposed licensed premises, in whole or in part. These fingerprints may be used to obtain and review any police record for the purposes set may be relevant pursuant to §20-15-5 of this code, and to use the fingerprints furnished 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 the checks shall be provided to the secretary.

(5) Acquire for the state in the name of the Department of Environmental Protection by purchase, condemnation, lease, or agreement, or accept or reject for the state, in the

name of the Department of Environmental Protection, gifts, donations, contributions, bequests, or devises of money, security, or property, both real and personal, and any interest in property;

(6) Provide for workshops, training programs and other educational programs, apart from or in cooperation with other governmental agencies, necessary to ensure adequate standards of public service in the department. The secretary may provide for technical training and specialized instruction of any employee. Approved educational programs, training, and instruction time may be compensated for as a part of regular employment. The secretary is authorized to pay out of federal or state funds, or both, as such funds are available, fees and expenses incidental to the educational programs, training, and instruction. Eligibility for participation by employees shall be in accordance with guidelines established by the secretary;

(7) Issue certifications required under 33 U.S.C. §1341 of the federal Clean Water Act and enter into agreements in accordance with the provisions of §22-11-7a of this code. Prior to issuing any certification the secretary shall solicit from the Division of Natural Resources reports and comments concerning the possible certification. The Division of Natural Resources shall direct the reports and comments to the secretary for consideration;

(8) Notwithstanding any provisions of this code to the contrary, employ in-house counsel to perform all legal services for the secretary and the department, including, but not limited to, representing the secretary, any chief, the department or any office thereof in any administrative proceeding or in any proceeding in any state or federal court. Additionally, the secretary may call upon the Attorney General for legal assistance and representation as provided by law; and

(9) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(e) The secretary shall be appointed by the Governor, by and with the advice and consent of the Senate, and serves at the will and pleasure of the Governor.

(f) At the time of his or her initial appointment, the secretary must be at least 30 years old and shall be selected with special reference and consideration given to his or her administrative experience and ability, to his or her demonstrated interest in the effective and responsible regulation of the energy industry and the conservation and wise use of natural resources. The secretary must have at least a bachelor's degree in a related field and at least three years of experience in a position of responsible charge in at least one discipline relating to the duties and responsibilities for which the secretary will be responsible upon assumption of the office. The secretary may not be a candidate for or hold any other public office, may not be a member of any political party committee and shall immediately forfeit and vacate his or her office as secretary in the event he or she becomes a candidate for or accepts appointment to any other public office or political party committee.

(g) The secretary shall receive an annual salary as provided in §6-7-2a of this code and is allowed and shall be paid necessary expenses incident to the performance of his or her official duties. Prior to the assumption of the duties of his or her office, the secretary shall take and subscribe to the oath required of public officers prescribed by section five, article IV of the Constitution of West Virginia and shall execute a bond, with surety approved by the Governor, in the penal sum of $10,000, which executed oath and bond will be filed in the Office of the Secretary of State. Premiums on the bond shall be paid from the department funds.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 3. FIRE PREVENTION AND CONTROL ACT.

§29-3-1. Short title.

1 [Repealed]

§29-3-2. Legislative findings and declaration of policy.

1 [Repealed]

§29-3-3. State Fire Commission created; composition; qualifications; appointment; terms of office; removal; vacancies; compensation and expenses.

1 [Repealed]

§29-3-4. Chairman; vice chairman; meetings; quorum.

1 [Repealed]

§29-3-5. Promulgation of rules and State Fire Code.

1 [Repealed]

§29-3-5a. Hazardous substance emergency response training programs.

1 [Repealed]

§29-3-5b. Promulgation of rules and statewide building code.

1 [Repealed]

§29-3-5c. Liquified petroleum gas systems.

1 [Repealed]

§29-3-5d. Volunteer firefighters' training.

1 [Repealed]

§29-3-5e. Courtesy certification of firefighters in surrounding states to serve as volunteer firefighter.

1 [Repealed]

§29-3-5f. Fire Service Equipment and Training Fund; creation of fire service equipment and training grant.

1 [Repealed]

§29-3-6. Public hearings and notice.

1 [Repealed]

§29-3-7. Commission's powers in conduct of public hearing.

1 [Repealed]

§29-3-8. Comprehensive report by State Fire Marshal.

1 [Repealed]

§29-3-9. Powers, duties and authority of State Fire Commission and State Fire Marshal.

1 [Repealed]

§29-3-10. State fire marshal's office transferred to state Fire Commission; powers and duties of state Insurance Commissioner with respect to fire marshal terminated; operation of commission prior to adoption of code.

1 [Repealed]

§29-3-11. Appointment of State Fire Marshal; term of office; removal; salary; qualifications; responsibilities; employees; equipment.

1 [Repealed]

§29-3-12. Powers and duties of State Fire Marshal.

1 [Repealed]

§29-3-12a. Responsibilities of insurance companies in fire loss investigation.

1 [Repealed]

§29-3-12b. Fees.

1 [Repealed]

§29-3-13. Annual reports.

1 [Repealed]

§29-3-14. Maintenance of fire hazard; order for repair or demolition; order to contain notice to comply and right to appeal.

1 [Repealed]

§29-3-15. Service of repair or demolition order.

1 [Repealed]

§29-3-16. Work to be done at expense of owner or occupant upon failure to comply with repair or demolition order; action to recover.

1 [Repealed]

§29-3-16a. Smoke detectors in one- and two-family dwellings; carbon monoxide detectors in residential units, schools, and daycare facilities; penalty.

1 [Repealed]

§29-3-16b. Use of live trees in public buildings; exceptions.

1 [Repealed]

§29-3-16c. Safety standards for bed and breakfast establishments; findings.

1 [Repealed]

§29-3-16d. Performance of installation of propane gas systems.

1 [Repealed]

§29-3-17. Additional remedies to abate, etc., fire hazards.

1 [Repealed]

§29-3-18. Appellate procedure generally.

1 [Repealed]

§29-3-19. Establishment of demonstration buildings and equipment for educational instruction in fire prevention and protection; payment therefor.

1 [Repealed]

§29-3-21. False alarm of fire; penalties.

1 [Repealed]

§29-3-22. Tax on insurance companies.

1 [Repealed]

§29-3-27. Penalties.

1 [Repealed]

§29-3-28. Transfer of certain state employees; perpetuation of rules, regulations and orders.

1 [Repealed]

§29-3-29. Construction.

1 [Repealed]

§29-3-30. Severability.

1 [Repealed]

§29-3-32. Awarding service weapon upon retirement of fire marshal or service weapon.

[Repealed]

ARTICLE 31. STATE RESILIENCY AND FLOOD PROTECTION PLAN ACT.

§29-31-2. State Resiliency Office

(a) It is determined that a state authority is required to provide a coordinated effort for emergency and disaster planning, response, recovery, and resiliency between government agencies, first responders, and all other entities to reduce the loss of life and property, lessen the impact of future disasters, respond quickly to save lives, protect property and the environment, meet basic human needs, and provide economic growth and resilience in the aftermath of an incident. Therefore, the State Resiliency Office is hereby created. The office shall be organized within the Office of the Governor. The office will serve as the recipient of disaster recovery and resiliency funds, excluding federal Stafford Act funds, and the coordinating agency of recovery and resiliency efforts, including matching funds for other disaster recovery programs, excluding those funds and efforts under the direct control of the State Resiliency Officer pursuant to §15-5-4b and §15-5-24 of this code for a particular event.

(b)(1) The State Resiliency Office Board is also established and shall consist of the following members: the Secretary of the Department of Commerce or his or her designee; the Director of the Division of Natural Resources or his or her designee; the Secretary of the Department of Environmental Protection or his or her designee; the Executive Director of the State Conservation Agency or his or her designee; the President of the West Virginia Emergency Management Council or his or her designee; the Secretary of the Department of Homeland Security or his or her designee; the Secretary of Transportation or his or her

designee; the Adjutant General of the West Virginia National Guard or his or her designee; the Director of the Division of Emergency Management within the Department of Homeland Security or his or her designee; two nonvoting members of the West Virginia Senate, to be appointed by the President of the Senate; and two nonvoting members of the West Virginia House of Delegates, to be appointed by the Speaker of the House of Delegates.

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

(3) The board shall:

(A) Provide for the keeping of a full and accurate record of all proceedings and of all resolutions, rules, and orders issued or adopted and of its other official actions;

(B) Shall adopt a seal, which shall be judicially noticed;

(C) Provide for an annual audit of the accounts of receipts and disbursements of the State Resiliency Office; and

(D) Perform those acts necessary for the execution of its functions under this article.

(c)(1) The State Resiliency Officer shall be the chair of the State Resiliency Office Board, and shall be appointed by the Governor with the advice and consent of the Senate. In the absence of the chair, any member designated by the members present may act as chair.

(2) The State Resiliency Officer shall be vested with the authority and duties prescribed to the office within this article.

(3) The State Resiliency Officer shall be a person who has:

(A) At least five years' managerial or strategic planning experience in matters relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency management, or emergency response;

(B) At least a level IS-800 NIMS certification: *Provided*, That if the State Resiliency Officer does not have a level IS-800 NIMS certification when appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation, or alternatively, in matters relating to disaster recovery, emergency management, and emergency response.

(4) The State Resiliency Officer shall employ a deputy who shall assist the State Resiliency Officer in carrying out the duties of the office. The State Resiliency Office Board shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy in this deputy position. This deputy shall be appointed by the Governor with the advice and consent of the Senate. Applicants for the deputy position shall at a minimum:

(A) Have at least three years' managerial or strategic planning experience in matters relating to flood control and hazard mitigation or, alternatively, in disaster recovery, emergency management, or emergency response;

(B) Have at least a level E/L 950 NIMS certification: *Provided*, That if the deputy State Resiliency Officer does not have a level E/L 950 NIMS certification when

appointed, he or she shall become so certified within one year following appointment; and

(C) Be thoroughly knowledgeable in matters relating to flood control and hazard mitigation, or alternatively, in matters relating to disaster recovery, emergency management, and emergency response; and

(D) If the State Resiliency Officer has his or her primary experience in flood control and hazard mitigation then his or her deputy must have experience in disaster recovery, emergency management, or emergency response; alternatively, if the State Resiliency Officer has his or her primary experience in disaster recovery, emergency management, or emergency response then his or her deputy must have experience in flood control and hazard mitigation.

(d) The board shall meet no less than once each calendar quarter at the time and place designated by the chair and the board shall work together with the State Resiliency Officer to fulfill the mission given to the State Resiliency Office to coordinate efforts for emergency and disaster planning, response, recovery, and resiliency between government agencies, first responders and others.

The board will assist and advise the State Resiliency Officer in developing policies to accomplish, at a minimum, the following specific tasks in order to achieve these goals, and will assist the State Resiliency Officer in devising plans and developing procedures which will ensure that agencies and political subdivisions of the state carry out these following specific tasks:

(1) Establish mechanisms to coordinate resiliency-related programs and activities among state agencies and to encourage intergovernmental as well as cross-sector coordination and collaboration;

(2) Evaluate the state's role in construction permitting process and identify opportunities to expedite the permitting process post-disaster and for selected types of mitigation and adaptation actions;

(3) Conduct a review of laws and regulations to identify those that create or add to risk, or interfere with the ability to reduce risk or to improve resiliency;

(4) Conduct an inventory of relevant critical planned activity by state agencies to determine their proposed impact upon resiliency;

(5) Make recommendations regarding practical steps that can be taken to improve efficiencies, and to pool and leverage resources to improve resiliency;

(6) Identify, prioritize, and evaluate issues affecting implementation of mitigation and adaptation actions, including, but not limited to, the effect of loss of land in context of zoning and other land use regulations, possible conflicts between public hazard mitigation/adaptation planning and private property interests (e.g. buy-out programs, projects to increase flood storage), develop guidance for cities and towns, real estate professionals, property owners under existing law and regulations; and develop proposals for changes in laws, policies, and regulations, as needed;

(7) Ensure all counties and municipalities have up to date Hazard Mitigation Plans and Local Comprehensive Disaster Plans that are consistent with and coordinated to the state's Hazard Mitigation Plans and Comprehensive Disaster Plans; including, but not limited to, assisting them in developing planning guidance for cities and towns to complete and/or update Hazard Mitigation Plans; providing technical assistance to help counties and municipalities meet these standards; and provide notice to counites and municipalities of funding opportunities to implement projects outlined in their Hazard Mitigation Plans;

(8) Conduct risk assessments, including, but not limited to, examining state highway corridors and associated drainage systems for stormwater inundation, impacts of downed trees, effects on utilities, etc.; assessment of known stormwater impacts between state highways and municipal drainage systems, options to eliminate or mitigate such impact; a housing vulnerability assessment for structures in riparian zones; and a vulnerability assessment of the state's historic and cultural resources;

(9) Establish working groups that will conduct assessments for varied sectors of the economy, such as small business, ports and river traffic, agriculture, manufacturing, and tourism; these assessments should address vulnerabilities and economic impacts, options to mitigate impacts, options to improve preparedness, response and recovery, and economic opportunities associated with design, engineering, technological and other skills and capabilities that can improve resilience;

(10) Establish emergency permitting procedures to expedite issuance of state permits following disasters, and develop guidance (model procedures) for political subdivisions to follow; and

(11) Establish a model long-term recovery plan that would be activated after catastrophic events.

All decisions of the board shall be decided by a majority vote of the members.

(e) The State Resiliency Office shall provide adequate staff from that office to ensure the meetings of the board are properly noticed, meetings of the board are facilitated, board meeting minutes are taken, records and correspondence kept and that reports of the board are produced in a timely manner.

(f) Notwithstanding any other provisions of this code:

(1) The meetings of the board are not subject to the provisions of §6-9A-1 *et seq.* of this code.

(2) The following are exempt from public disclosure under the provisions of chapter 29B of this code:

(A) All deliberations of the board;

(B) The materials, in any medium, including hard copy and electronic, placed in the custody of the board as a result of any of its duties; and

(C) All records of the board, in the possession of the board, and generated by the board, due to their falling under several exceptions to public disclosure including, but not limited to, that for security or disaster recovery plans and risk assessments.

§29-31-3. Authority of State Resiliency Office and State Resiliency Officer.

The State Resiliency Office will coordinate the state's disaster response mission and the State Resiliency Officer serve as the primary representative of the Governor. The State Resiliency Officer shall, upon the order and direction of the Governor, act on behalf of the Governor in the event of the proclamation of the existence of a state of emergency or state of preparedness under the provisions of §15-5-6 of this code. The State Resiliency Officer will assist and advise the Governor on all disaster response issues and serve as a liaison between the Governor's office, and all other parties, whether state, federal, public, or private to further the purposes of this article. The State Resiliency Officer will:

(1) Serve as coordinator of all economic and community resiliency planning and implementation efforts, including, but not limited to, flood protection programs and activities in the state;

(2) Coordinate an annual review of the state flood protection plan and update the plan no less than biannually;

(3) Recommend legislation to reduce or mitigate flood damage;

(4) Report to the Joint Legislative Committee on Flooding at least quarterly;

(5) Catalog, maintain, and monitor a listing of current and proposed capital expenditures to reduce or mitigate flood damage and other hazards, and other useful and desirable resiliency efforts;

(6) Coordinate planning of flood projects with federal agencies;

(7) Improve professional management of flood plains;

(8) Provide education and outreach on flooding issues to the citizens of this state;

(9) Establish a single website integrating all agency flood information;

(10) Monitor federal funds and initiatives that become available for disaster recovery and economic and community resiliency or other flood or hazard mitigation and to direct expenditure on behalf of the Governor;

(11) Pursue additional funds and resources to assist not only with long-term recovery efforts but also long-term community and statewide resiliency efforts;

(12) Coordinate, integrate, and expand planning efforts in the state for hazard mitigation, long-term disaster recovery, and economic diversification;

(13) Coordinate long-term disaster recovery efforts in response to disasters as they occur;

(14) Establish and facilitate regular communication between federal, state, local, and private sector agencies and organizations to further economic and disaster resilience;

(15) Receive resources, monetary or otherwise, from any other governmental entity and disburse those resources to effectuate the purposes of this article;

(16) Execute cooperative agreements, where appropriate, between the State Resiliency Office and the federal and/or state governments;

(17) Contract, where appropriate, on behalf of the State Resiliency Office, with the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals;

(18) Use funds administered by the State Resiliency Office for the maintenance, construction, or reconstruction of capital repair and replacement items as necessary to effectuate the purposes of this article;

(19) Accept and use funds from the federal government, its instrumentalities and agencies, any state, territory or the District of Columbia, and its agencies and instrumentalities, municipalities, foreign governments, public bodies, private corporations, partnerships, associations, and individuals for the purposes of disaster recovery, hazard mitigation, flood mitigation, flood prevention, and disaster response programs;

(20) Hire necessary employees at an appropriate salary equivalent to a competitive wage rate;

(21) Enroll appropriate employees in PERS, PEIA, and workers' compensation and unemployment programs, or their equivalents: *Provided*, That the State Resiliency Office, through the receipt of federal and/or state funds, pays the required employer contributions;

(22) Develop a human resources division that will administer and manage its employees and receive state

matching funds as necessary to ensure maximum federal funds are secured;

(23) Have the ability to secure all other bonding, insurance or other liability protections necessary for its employees to fulfill their duties and responsibilities;

(24) Have the ability to draw upon other departments, divisions, agencies, and all other subdivisions of the state for research and input in fulfilling the requirements of this article, and its requests are to have priority over other such requests;

(25) Participate in the interdepartmental transfer of permanent state employees, as if he were a department secretary, under the provisions of §5F-2-7 *et seq.* of this code.

(26) Notwithstanding any other provision of this code to the contrary, acquire legal services that are necessary, including representation of the board, its employees and officers before any court or administrative body from the office of the Attorney General, who shall provide such legal assistance and representation, and

(27) Take all other actions necessary and proper to effectuate the purposes of this article.

The office shall have any other additional authority, duties, and responsibilities as prescribed by the Governor to effectuate the purposes of this article. Due to the at-will employment relationship with the office, its employees may not avail themselves of the state grievance procedure as set forth in §6C-2-1 *et seq.* of this code.

§29-31-4. Reporting to the Joint Legislative Committee on Flooding.

The State Resiliency Officer shall report, at a minimum of quarterly, to the Joint Legislative Committee on Flooding, created pursuant to §4-15-1 *et seq.* of this code,

in sufficient detail for the committee to be aware of the activities of the office to assure progress toward reducing and mitigating flood damage within this state while respecting and complying with the Takings Clause of the United States Constitution, the West Virginia Constitution, and related precedential court opinions, and to develop legislative recommendations and shall submit an annual report to the committee by December 31 of each year, along with any recommended legislation, budget requests and a summary of the activities of the office for the previous year.

§29-31-5. Employees.

(a) The State Resiliency Officer shall have the power to hire, administer, and manage employees necessary to fulfill its responsibilities.

(1) All employees will be exempt from both the classified services category and the classified-exempt services category as set forth in §29-6-4 of this code.

(2) Employee positions are contingent upon the receipt of the necessary federal and/or state funds.

(3) Each employee hired shall be deemed an at-will employee who may be discharged or released from his or her respective position without cause or reason.

(4) Employees may participate in the PEIA, PERS, and workers' compensation and unemployment compensation programs, or their equivalents. Public safety-related positions will continue to require dual status membership as outlined in §15-1B-26 of this code.

(5) All employees and officers of the State Resiliency Office who are entrusted with funds or property shall execute surety bonds.

(b) The State Resiliency Officer will set appropriate salary rates for employees equivalent to a competitive wage rate necessary to support a specific mission.

CHAPTER 33. INSURANCE.

ARTICLE 2. INSURANCE COMMISSIONER.

§33-2-23. Creation of the State Office of the National Flood Insurance Program; responsibilities.

(a) The Legislature, finding that the National Flood Insurance Program is a voluntary federal program under which federal flood insurance is made available to participating communities is of vital importance to the citizens of West Virginia, does hereby create the State Office of the National Flood Insurance Program, to be housed in the office of the Insurance Commissioner of West Virginia, and which office shall administer this program.

(b) The State Office of the National Flood Insurance Program shall have a coordinator who shall issue such regulations, guidance, and instructions as necessary to effectively administer the program. The coordinator shall conduct trainings and will adopt and enforce adequate land use and development criteria that are consistent with the minimum standards established by the National Flood Insurance Program and shall report to the Insurance Commissioner.

(c) Any state-owned property that is located in a nonparticipating local community will be governed by the rules promulgated by the Insurance Commissioner and filed in the Code of State Rules.

(d) The coordinator, in consultation with the Insurance Commissioner, and with the assistance of floodplain managers around the state, shall develop and publish a strategic plan to establish shared goals, define a path to meet those goals, and shall invite other governmental units to adopt these goals and objectives. The strategic plan shall be initially presented by the Coordinator to the State Resiliency Officer and to the State Resiliency Office Board who shall review and approve the strategic plan, and that plan shall be so presented and approved no less than biannually

32 thereafter. The strategic plan shall be made available to the
33 public.

34 (e) The coordinator shall establish and enforce flood
35 plain management regulations for any state property in
36 special hazard areas which, at a minimum, satisfy the
37 criteria set forth in 44 CFR §§ 60.3, 60.4, and 60.5 (2019).

38 (f) Notwithstanding any other provision of this code to
39 the contrary, the coordinator shall cooperate with the State
40 Resiliency Office to the fullest extent practicable to assist
41 that office in fulfilling its duties.

CHAPTER 159

(S. B. 610 - By Senators Weld, Palumbo, Trump and Woelfel)

[Passed March 6, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §29-22B-327 of the Code of West Virginia, 1931, as amended; to amend and reenact §11-16-3 and §11-16-8 of said code; to amend and reenact §16A-6-3 of said code; to amend and reenact §29-22B-503, §29-22B-504, and §29-22B-512 of said code; to amend and reenact §60-1-5 of said code; to amend and reenact §60-3A-8 of said code; to amend and reenact §60-7-4 and §60-7-5 of said code; and to amend and reenact §60-8-16 and §60-8-17 of said code, all relating to removing resident manager requirements; adding a manager requirement for West Virginia Alcohol Beverage Control Administration applicants and licensees; removing residency requirements for granting permits under the Medical Cannabis Act; and removing residency and United States citizenship requirements for the West Virginia Lottery.

Be it enacted by the Legislature of West Virginia:

CHAPTER 11. TAXATION.

ARTICLE 16. NONINTOXICATING BEER.

§11-16-3. Definitions.

For the purpose of this article, except where the context clearly requires differently:

(1) "Brand" means a nonintoxicating beer product manufactured, brewed, mixed, concocted, blended, bottled, or otherwise produced, imported, or transshipped by a brewer or manufacturer, the labels of which have been registered and approved by the commissioner, that is being offered for sale or sold in West Virginia by a distributor who has been appointed in a valid franchise agreement or a valid amendment thereto.

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

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

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

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

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

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

(8) "Franchise agreement" means the written agreement between a brewer and a distributor that is identical as to terms and conditions between the brewer and all its distributors, which agreement has been approved by the commissioner. The franchise agreement binds the parties so that a distributor, appointed by a brewer, may distribute all of the brewer's nonintoxicating beer products, brands, or family of brands imported and offered for sale in West Virginia, including, but not limited to, existing brands, line extensions, and new brands all in the brewer's assigned territory for the distributor. All brands and line extensions being imported or offered for sale in West Virginia must be listed by the brewer in the franchise agreement or a written amendment to the franchise agreement. A franchise agreement may be amended by mutual written agreement of the parties as approved by the commissioner with identical terms and conditions for a brewer and all of its distributors. Any approved amendment to the franchise agreement becomes a part of the franchise agreement. A brewer and a distributor may mutually agree in writing to cancel a

franchise agreement. A distributor terminated by a brewer as provided in this article and the promulgated rules no longer has a valid franchise agreement. If a brewer has reached an agreement to cancel a distributor or has terminated a distributor, then a brewer may appoint a successor distributor who accedes to all the rights of the cancelled or terminated distributor.

(9) "Franchise distributor network" means the distributors who have entered into a binding written franchise agreement, identical as to terms and conditions, to distribute nonintoxicating beer products, brands, and line extensions in an assigned territory for a brewer. A brewer may only have one franchise distributor network: *Provided*, That a brewer that has acquired the manufacturing, bottling, or other production rights for the sale of nonintoxicating beer at wholesale from a selling brewer as specified in §11-16-21(a)(2) of this code shall continue to maintain and be bound by the selling brewer's separate franchise distributor's network for any of its existing brands, line extensions, and new brands.

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

(11) "Growler" means a container or jug that is made of glass, ceramic, metal, or other material approved by the commissioner, that may be no larger than 128 fluid ounces in size and must be capable of being securely sealed. The growler is utilized by an authorized licensee for purposes of off-premise sales only of nonintoxicating beer or nonintoxicating craft beer for personal consumption not on a licensed premise and not for resale. Notwithstanding any other provision of this code to the contrary, a securely sealed growler is not an open container under federal, state, and local law. A growler with a broken seal is an open container under federal, state, and local law unless it is located in an area of the motor vehicle physically separated from the

passenger compartment. The secure sealing of a growler requires the use of a tamper-resistant seal, security tape, or other material, as approved by the commissioner, placed on or over the growler's opening, which seal, security tape or other material is clearly marked with the date of the secure sealing by the authorized licensee who is selling the growler.

(12) "Line extension" means any nonintoxicating beer product that is an extension of brand or family of brands that is labeled, branded, advertised, marketed, promoted, or offered for sale with the intent or purpose of being manufactured, imported, associated, contracted, affiliated, or otherwise related to a brewer's existing brand through the use of a brewer, its subsidiaries, parent entities, contracted entities, affiliated entities, or other related entities. In determining whether a nonintoxicating beer product is a line extension, the commissioner may consider, but is not limited to, the following factors: Name or partial name; trade name or partial trade name; logos; copyrights; trademarks or trade design; product codes; advertising promotion; or pricing.

(13) "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: Coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

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

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

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

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

(18) "Nonintoxicating craft beer" means any beverage obtained by the natural fermentation of barley, malt, hops, or any other similar product or substitute and containing not

less than one half of one percent by volume and not more than 15 percent alcohol by volume or 11.9 percent alcohol by weight with no caffeine infusion or any additives masking or altering the alcohol effect.

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

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

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

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

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

(24) "Tax Commissioner" means the Tax Commissioner of the State of West Virginia or the commissioner's designee.

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

(a) A license may be issued by the commissioner to any person who submits an application, accompanied by a

license fee and, where required, a bond, and states under oath:

(1) The name and residence of the applicant, the duration of such residency, and that the applicant is 21 years of age. If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall include the residence of the members or officers. If a person, firm, partnership, limited partnership, limited liability company, association, corporation, or trust applies for a license as a distributor, the person, or in the case of a firm, partnership, limited partnership, limited liability company, association or trust, the members, officers, trustees or other persons in active control of the activities of the limited liability company, association or trust relating to the license, shall include the residency for these persons on the application. All applicants and licensees must include a manager on the applicant's license application, or a licensee's renewal application who must meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, and other requirements, all as set forth in this article and the rules, promulgated thereunder, all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain licensure, a licensee shall notify the commissioner immediately of a change in managers. If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e), of this code and shall further state, under oath, the names, addresses, Social Security numbers and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the

certification of trust must state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date;

(2) The place of birth of applicant, that he or she is a citizen of the United States and of good moral character and, if a naturalized citizen, when and where naturalized. If the applicant is a corporation organized or authorized to do business under the laws of the state, the application must state when and where incorporated, the name and address of each officer, and that each officer is a citizen of the United States and a person of good moral character. If the applicant is a firm, association, limited liability company, partnership, limited partnership, trust, or has a trust as an owner, the application shall provide the place of birth of each member of the firm, association, limited liability company, partnership or limited partnership and of the trustees, beneficiaries, or other persons in active control of the activities of the trust relating to the license and that each member or trustee, beneficiary or other persons in active control of the activities of the trust relating to the license is a citizen of the United States, and if a naturalized citizen, when and where naturalized, each of whom must qualify and sign the application;

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

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

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

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

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

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

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

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

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

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

(2) That the place to be occupied by the applicant is not a suitable place or is within 300 feet of any school or church measured from front door to front door along the street or streets. This requirement does not apply to a Class B licensee or to a place now occupied by a beer licensee so long as it is continuously so occupied. The prohibition against locating any such place within 300 feet of a school

does not apply to a college or university that has notified the commissioner, in writing, that it has no objection to the location of any such place within 300 feet;

(3) That the manager, owner, employee, or person is in a contractual relationship to provide goods or services to the applicant is an active employee of the commissioner; or

(4) That the license should not be issued for reason of conduct declared to be unlawful by this article.

CHAPTER 16A. MEDICAL CANNABIS ACT.

ARTICLE 6. MEDICAL CANNABIS ORGANIZATIONS.

§16A-6-3. Granting of permit.

(a) The bureau may grant or deny a permit to a grower, processor, or dispensary. In making a decision under this subsection, the bureau shall determine that:

(1) The applicant will maintain effective control of and prevent diversion of medical cannabis.

(2) The applicant will comply with all applicable laws of this state.

(3) The applicant is ready, willing, and able to properly carry on the activity for which a permit is sought.

(4) The applicant possesses the ability to obtain in an expeditious manner sufficient land, buildings, and equipment to properly grow, process, or dispense medical cannabis.

(5) It is in the public interest to grant the permit.

(6) The applicant, including the financial backer or principal, is of good moral character and has the financial fitness necessary to operate.

18 (7) The applicant is able to implement and maintain
19 security, tracking, recordkeeping, and surveillance systems
20 relating to the acquisition, possession, growth, manufacture,
21 sale, delivery, transportation, distribution, or the dispensing
22 of medical cannabis as required by the bureau.

23 (8) The applicant satisfies any other conditions as
24 determined by the bureau.

25 (b) Nontransferability. — A permit issued under this
26 chapter shall be nontransferable.

27 (c) Privilege. — The issuance or renewal of a permit
28 shall be a revocable privilege.

29 (d) Dispensary location. — The bureau shall consider
30 the following when issuing a dispensary permit:

31 (1) Geographic location;

32 (2) Regional population;

33 (3) The number of patients suffering from serious
34 medical conditions;

35 (4) The types of serious medical conditions;

36 (5) Access to public transportation;

37 (6) Approval by local health departments;

38 (7) Whether the county has disallowed the location of a
39 grower, processor, or dispensary; and

40 (8) Any other factor the bureau deems relevant.

41 (e) Application procedure. — The bureau shall establish
42 a procedure for the fair and objective evaluation of all
43 applications for all medical cannabis organization permits.
44 The evaluations shall score each applicant numerically
45 according to standards set forth in this chapter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22B. LIMITED VIDEO LOTTERY.

§29-22B-327. Resident of this state defined.

[Repealed.]

§29-22B-503. Additional qualifications for an applicant for an operator's license.

(a) No operator's license or license renewal may be granted unless the Lottery Commission has determined that, in addition to the general requirements set forth in §29-22B-502 of this code, the applicant satisfies all of the following qualifications:

(1) The applicant has demonstrated the training, education, business ability, and experience necessary to establish, operate, and maintain the business for which the license application is made;

(2) The applicant has secured any necessary financing for the business for which the license application is made, and the financing: (A) Is from a source that meets the qualifications of this section; and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee. A licensee shall request commission approval of any change in financing or leasing arrangements at least 30 days before the effective date of the change;

(3) The applicant has disclosed all financing or refinancing arrangements for the purchase, lease, or other acquisition of video lottery terminals and associated equipment in the degree of detail requested by the Lottery Commission;

(4) The applicant has filed with the Lottery Commission a copy of any current or proposed agreement between the applicant and any manufacturer for the sale, lease, or other assignment to the operator of video lottery terminals, the

electronic computer components of the terminals, the random number generators of the terminals, or the cabinets in which they are housed; and

(5) The applicant does not hold any other license under this article, §19-23-1 *et seq.* of this code, §29-22-1 *et seq.* of this code, §29-22A-1 *et seq.* of this code, or §29-25-1 *et seq.* of this code, except that an applicant may also be licensed as a service technician. In addition, an applicant may also be licensed as a limited video lottery retailer: *Provided,* That a licensed operator that also is a licensed retailer may operate limited video lottery terminals as a limited video lottery retailer at no more than 10 locations: *Provided, however,* That the director may authorize the operator to operate limited video lottery terminals as a limited video lottery retailer at more than 10 locations if the applicant provides sufficient justification that such approval is necessary to sustain state revenues without a detrimental impact on public interest, further shows that a qualified retailer is unavailable and a good faith effort to identify a qualified retailer was made prior to the request, and an explanation of other relevant information supporting the request.

(b)(1) A person or a member of his or her immediate family who has an ownership interest in a business entity that submits an application for an operator's license may not: (A) Submit an application for another operator's license as an individual; (B) serve as an officer, director, member, or partner of a business entity that submits an application for another operator's license; or (C) have an ownership interest in any other business entity that submits an application for an operator's license.

(2) Business entities that have common owners or common officers, directors, members, or partners may not hold more than one operator's license.

§29-22B-504. Additional qualifications for an applicant for a limited video lottery retailer's license.

No limited video lottery retailer's license or license renewal may be granted unless the Lottery Commission has determined that, in addition to the general requirements set forth in §29-22B-502 of this code, the applicant satisfies all of the following qualifications:

(1) The applicant has disclosed to the Lottery Commission the identity of each person who has control of the applicant, as control is described in §29-22B-507 of this code;

(2) The applicant holds either: (A) A valid license issued under §60-7-1 *et seq.* of this code to operate a private club; (B) a valid Class A license issued under §11-16-1 *et seq.* of this code to operate a business where nonintoxicating beer is sold for consumption on the premises; or (C) both licenses;

(3) The applicant has demonstrated the training, education, business ability, and experience necessary to establish, operate and maintain the business for which the license application is made;

(4) The applicant has secured any necessary financing for the business for which the license application is made and the financing: (A) Is from a source that meets the qualifications of this section; and (B) is adequate to support the successful performance of the duties and responsibilities of the licensee;

(5) The applicant has disclosed all financing or refinancing arrangements for placement on the applicant's premises of video lottery terminals and associated equipment in the degree of detail requested by the Lottery Commission;

(6) The applicant has filed with the Lottery Commission a copy of any current or proposed agreement between the applicant and a licensed operator for the placement on the applicant's premises of video lottery terminals;

(7) The applicant has filed with the Lottery Commission a copy of any current or proposed agreement between the applicant and a licensed operator or other person for the servicing and maintenance of video lottery terminals by licensed service technicians; and

(8) The applicant does not hold any other license under this article, §19-23-1 *et seq.* of this code, or §29-22A-1 *et seq.* of this code, or §29-25-1 *et seq.* of this code except that an applicant may also be licensed as a service technician. In addition, an applicant may also be licensed as an operator, subject to the provisions of §29-22B-503(a)(6) of this code.

§29-22B-512. Review of continuing eligibility for license.

The Lottery Commission shall determine on a continuing basis the eligibility of licensees to hold a license.

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS.

ARTICLE 1. GENERAL PROVISIONS.

§60-1-5. Definitions.

For the purposes of this chapter:

(1) "Alcohol" means ethyl alcohol whatever its origin and shall include synthetic ethyl alcohol but not denatured alcohol.

(2) "Alcoholic liquor" includes alcohol, beer, wine, and spirits, and any liquid or solid capable of being used as a beverage, but shall not include nonintoxicating beer.

(3) "An agency" means a drugstore, grocery store, or general store designated by the commission as a retail distributor of alcoholic liquor for the West Virginia Alcohol Beverage Control Commission.

(4) "Beer" means any beverage obtained by the fermentation of barley, malt, hops, or any other similar

product or substitute, and containing more alcohol than that of nonintoxicating beer.

(5) "Brewery" means an establishment where beer is manufactured or in any way prepared.

(6) "Commissioner" or "commission" means the West Virginia Alcohol Beverage Control Commissioner.

(7) "Department" means the organization through which the commission exercises powers imposed upon it by this chapter.

(8) "Distillery" means an establishment where alcoholic liquor other than wine or beer is manufactured or in any way prepared.

(9) "Intoxicated" means a person's faculties are impaired by alcohol or other substance to the point where physical or mental control or both are markedly diminished.

(10) "Manager" means an individual who is the applicant's or licensee's on-premises employee, member, partner, shareholder, director, or officer who meets the licensure requirements of §11-16-1 *et seq.* of this code and rules promulgated thereunder who actively manages, conducts, and carries on the day-to-day operations of the applicant or licensee with full and apparent authority or actual authority to act on behalf of the applicant or licensee. Such duties include but are not limited to: coordinating staffing; reviewing and approving payroll; ordering and paying for inventory, such as nonintoxicating beer, wine, and liquor, as applicable; and managing security staff, security systems, video and other security equipment; and any further acts or actions involved in managing the affairs of the business, on behalf of owners, partners, members, shareholders, officers, or directors.

(11) "Manufacture" means to distill, rectify, ferment, brew, make, mix, concoct, process, blend, bottle, or fill an original package with any alcoholic liquor.

(12) "Manufacturer" means any person engaged in the manufacture of any alcoholic liquor, and among others includes a distiller, a rectifier, a wine maker, and a brewer.

(13) "Nonintoxicating beer" means any beverage obtained by the fermentation of barley, malt, hops, or similar products or substitute, and containing not more alcohol than that specified by §11-16-2 of this code.

(14) "Original package" means any closed or sealed container or receptacle used for holding alcoholic liquor.

(15) "Person" means an individual, firm, partnership, limited partnership, corporation, or voluntary association.

(16) "Powdered alcohol" means an alcohol manufactured in a powder or crystalline form for either direct use or reconstitution as an alcoholic liquor or food. For purposes of this chapter, powdered alcohol excludes any material intended for industrial purposes.

(17) "Public place" means any place, building, or conveyance to which the public has, or is permitted to have access, including restaurants, soda fountains, hotel dining rooms, lobbies, and corridors of hotels and any highway, street, lane, park, or place of public resort or amusement: *Provided*, That the term "public place" shall not mean or include any of the above-named places or any portion or portions thereof which qualify and are licensed under the provisions of this chapter to sell alcoholic liquors for consumption on the premises: *Provided, however*, That the term "public place" shall not mean or include any legally demarcated area designated solely for the consumption of beverages and freshly prepared food that directly connects and adjoins any portion or portions of a premise that qualifies and is licensed under the provisions of this chapter to sell alcoholic liquors for consumption thereupon: *Provided further*, That the term "public place" shall not include a facility constructed primarily for the use of a Division I, II, or III college or university that is a member

of the National Collegiate Athletic Association, or its successor, and used as a football, basketball, baseball, soccer, or other Division I, II, or III sports stadium which holds a special license to sell wine pursuant to the provisions of §60-8-3 of this code, in the designated areas of sale and consumption of wine and other restrictions established by that section and the terms of the special license issued thereunder.

(18) "Sale" means any transfer, exchange, or barter in any manner or by any means, for a consideration, and shall include all sales made by a principal, proprietor, agent, or employee.

(19) "Selling" includes solicitation or receipt of orders; possession for sale; and possession with intent to sell.

(20) "Spirits" means any alcoholic beverage obtained by distillation and mixed with potable water and other substances in solution and includes brandy, rum, whiskey, cordials, and gin.

(21) "State liquor store" means a store established and operated by the commission under this chapter for the sale of alcoholic liquor in the original package for consumption off the premises.

(22) "Wine" means any alcoholic beverage obtained by the fermentation of the natural content of fruits, or other agricultural products, containing sugar.

(23) "Winery" means an establishment where wine is manufactured or in any way prepared.

ARTICLE 3A. SALES BY RETAIL LIQUOR LICENSEES.

§60-3A-8. Retail license application requirements; retail licensee qualifications.

(a) Prior to or simultaneously with the submission of a bid for a retail license or the payment of a purchase option

for a Class A retail license, each applicant shall file an application with the commissioner, stating under oath, the following:

(1) If the applicant is an individual, his or her name and residence address;

(2) If the applicant is other than an individual, the name and business address of the applicant; the state of its incorporation or organization; the names and residence addresses of each executive officer and other principal officer, partner, or member of the entity; a copy of the entity's charter or other agreement under which the entity operates; the names and residence addresses of any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant; and all applicants and licensees must list a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to, licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(3) That the applicant and manager have never been convicted in this state or any other state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law, and if the applicant is other than an individual, that none of its

executive officers, other principal officers, partners, or members, or any person owning, directly or indirectly, at least 20 percent of the outstanding stock, partnership, or other interests in the applicant, has been convicted; and

(4) That the applicant and the manager, each is a United States citizen of good moral character and, if a naturalized citizen, when and where naturalized; and, if a corporation organized and authorized to do business under the laws of this state, when and where incorporated, with the name and address of each officer; that each officer is a citizen of the United States and a person of good moral character; and if a firm, association, partnership, or limited partnership, that each member is a citizen of the United States and, if a naturalized citizen, when and where naturalized, each of whom must sign the application.

(b) An applicant and manager shall provide the commissioner any additional information requested by the commissioner including, but not limited to, authorization to conduct a criminal background and credit records check.

(c) Whenever a change occurs in any information provided to the commissioner, the change shall immediately be reported to the commissioner in the same manner as originally provided.

(d) The commissioner shall disqualify each bid submitted by an applicant under §60-3A-10 of this code and no applicant shall be issued or eligible to hold a retail license under this article, if:

(1) The applicant has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law; or

(2) Any executive officer or other principal officer, partner, or member of the applicant, or any person owning, directly or indirectly, at least twenty percent of the

outstanding stock, partnership, or other interests in the applicant, has been convicted in this state of any felony or other crime involving moral turpitude or convicted of any felony in this or any other state court or any federal court for a violation of any state or federal liquor law.

(e) The commissioner shall not issue a retail license to an applicant which does not hold a license issued pursuant to federal law to sell liquor at wholesale.

ARTICLE 7. LICENSES TO PRIVATE CLUBS.

§60-7-4. Application for license; information required; verification; application to be accompanied by fees; bond; college fraternities and sororities ineligible for license; racial discrimination by applicants prohibited.

(a) Application for a license to operate a private club shall be made on such form as may be prescribed by the commissioner and shall include:

(1) The name and residence of the applicant and list the same for its manager;

(2) If the applicant is an unincorporated association, the names and residence addresses of the members of its governing board;

(3) If the applicant is a corporation, the names and residence addresses of its officers and directors;

(4) The place at which the applicant will conduct its operations and whether the same is owned or leased by the applicant;

(5) The number of members of the applicant;

(6) A listed manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other requirements of licensure, including, but not limited to, United States citizenship or naturalization, passing a background

investigation, being at least 21 years of age, being a suitable person, being of good morals and character, being capable of operating a bona fide private club of good reputation in the community, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to: Licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application shall be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(7) The name or names of any national organizations with which the applicant is affiliated and the nature of the affiliation;

(8) The size and nature of the dining and kitchen facilities operated by applicant;

(9) Accurate and complete ownership information;

(10) An attestation that the information in the application is true and accurate; and

(11) Such other information as the commissioner may reasonably require of the applicant and manager which shall include, but not be limited to, the criminal records, if any, of each member of the applicant's governing board or its officers and directors who have been convicted of a felony or a crime involving moral turpitude.

(b) The application shall be verified by the manager, each member of the governing board of the applicant if an unincorporated association, or, if the applicant is a corporation, by each of its officers and all members of its board of directors. The application shall be accompanied by the license fee hereinafter prescribed and by a bond of the

applicant in the penal sum of $5,000 with a corporate surety authorized to transact business in the state of West Virginia, payable to the State of West Virginia, which bond shall be conditioned on the payment of all fees herein prescribed and on the faithful performance of and compliance with the provisions of this article.

(c) Under no circumstance may any college fraternity or sorority be issued a license to operate a private club.

(d) No license to operate a private club may be issued to applicants who discriminate against any person or group of persons because of race or color of the person or group of persons.

§60-7-5. Investigation by commissioner; issuance or refusal of license; special requirements for clubs at parks and airports; form of license; license valid at one location only; expiration and renewal; transferability.

(a) Upon receipt of a completed application referred to in §60-7-4 of this code, together with the accompanying fee and bond, the commissioner shall conduct an investigation to determine the accuracy of the matters contained in such completed application and whether applicant is a bona fide private club of good reputation in the community in which it shall operate. For the purpose of conducting such investigation, the commissioner may withhold the granting or refusal to grant the license for a period not to exceed 30 days or until the applicant has completed the conditions set forth in this article and in §60-7-4(a) of this code, all as determined by the commissioner. If it appears that the applicant is a bona fide private club of good reputation in the community in which it shall operate and that the applicant and the manager in the application or a licensee and manager in the renewal application, subject to investigation set forth in §60-7-4 of this code, have made no false statement, no material misrepresentations, no hidden ownership, or persons with an undisclosed pecuniary interest, and no omissions or failures to disclose in the

application, as determined by the commissioner shall issue a license authorizing the applicant to sell alcoholic liquors as provided in §60-7-3 of this code, and otherwise shall refuse to issue the license, except that in the case of an application by a corporation or association to operate a private club in connection with:

(1) A state park, the Director of the Department of Natural Resources shall grant his or her approval before the license can be issued; or

(2) A county or municipal park, or an airport, the authority governing the park or airport shall grant its approval before the license can be issued.

A license may not be issued for a private club in any state park unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public. A license may not be issued for a private club in any county or municipal park, or an airport, unless a dining facility comparable to the dining facility for the proposed private club will be available to serve meals to the general public.

(b) Upon refusal to issue such license the commissioner shall make and enter an order denying the application, which denial and refusal shall be final unless a hearing is requested in accordance with the provisions of §60-7-13 of this code. When the refusal or denial becomes final the commissioner shall forthwith refund to the applicant his or her fees and bond accompanying the application.

(c) The license shall be of such form and design as the commissioner may prescribe by reasonable rule or regulation and shall authorize the licensee to sell alcoholic liquors at only one location.

(d) The license shall expire on June 30 next following the date of issue and may be renewed upon the same showing as required for the issuance of the initial license,

together with the payment of fees and filing of the bond as required by this article.

(e) A license issued under the provisions of this article may not be transferable.

ARTICLE 8. SALE OF WINES.

§60-8-16. Application for license.

(a) Any person desiring a license under this article shall file a written application for a license with the commissioner and in the application shall state under oath:

(1) The name of the applicant, including his or her trade name if any, his or her residence address and the length of his or her residence;

(2) The address of the place of business for which the license is desired, or other description that definitely locates it; and that the place of business conforms to all health and fire laws and regulations applicable thereto;

(3) The name of the owner of the premises upon which the business is to be conducted and, if the owner is not the applicant, that the applicant is the bona fide lessee of the business;

(4) If the application is for a retailer's license, that the applicant is the proprietor or owner of a bona fide grocery store, private wine bed and breakfast, private wine restaurant, private wine spa, or wine specialty shop;

(5) That the applicant intends to carry on the business authorized by the license for himself or herself or under his or her immediate supervision or direction;

(6) That the applicant is a citizen of the United States;

(7) That the applicant shall include a manager on the applicant's license application, or a licensee's renewal application, and further that the manager shall meet all other

requirements of an applicant for licensure set forth in this section, including, but not limited to, United States citizenship or naturalization, passing a background investigation, being at least 21 years of age, being a suitable person, being of good morals and character, and other requirements, all as set forth in the code and the legislative rules, in order for the manager to be able to meet and conduct any regulatory matters, including, but not limited to: Licensure or enforcement matters related to the applicant or licensee all in the interest of protecting public health and safety and being a suitable applicant or licensee. In order to maintain active licensure, any change by a licensee in any manager listed on an application must be made immediately to the commissioner, in order to verify that the new manager meets licensure requirements;

(8) That the applicant is not less than 21 years of age;

(9) That the applicant has not been convicted of a felony or other crime involving moral turpitude within the three years next preceding the filing of the application; and that he or she has not, within the two years next preceding the filing of the application, been convicted of violating the liquor laws of any state or of the United States;

(10) That the applicant has not during the five years next preceding the date of said application had any license revoked under this chapter or under the liquor laws of any other state;

(11) If the applicant is a firm, association, partnership, limited partnership, limited liability company, or corporation, the application shall state the matters required in subdivisions (6), (8), (9), and (10) of this subsection, with respect to each of the members and the manager thereof, and each of said members and the manager must meet all the requirements in said subdivisions;

(12) If the applicant is a corporation, organized or authorized to do business in this state, the application shall

state the matters required in subdivisions (6), (8), (9), and (10) of this subsection, with respect to the manager and each of the officers and directors thereof, and any stockholder owning 20 percent or more of the stock of the corporation and any other persons who conduct and manage the licensed premises for the corporation. Each of said individuals must meet all the requirements provided in those subdivisions except that the requirements as to citizenship may not apply to the officers, directors, and stockholders of a corporation applying for a retailer's license; and

(13) If the applicant is a trust or has a trust as an owner, the trustees or other persons in active control of the activities of the trust relating to the license shall provide a certification of trust as described in §44D-10-1013 of this code. This certification of trust shall include the excerpts described in §44D-10-1013(e) of this code and shall further state, under oath, the names, addresses, Social Security numbers, and birth dates of the beneficiaries of the trust and certify that the trustee and beneficiaries are 21 years of age or older. If a beneficiary is not 21 years of age, the certification of trust must state that the beneficiary's interest in the trust is represented by a trustee, parent, or legal guardian who is 21 years of age and who will direct all actions on behalf of the beneficiary related to the trust with respect to the distributor until the beneficiary is 21 years of age. Any beneficiary who is not 21 years of age or older shall have his or her trustee, parent, or legal guardian include in the certification of trust and state under oath his or her name, address, Social Security number, and birth date.

(14) Any other information that the commissioner may reasonably require of the applicant, or licensee, or the applicant or licensee's manager.

The foregoing statements required in an application are mandatory prerequisites for the issuance of a license.

The application must be verified by the owner, manager, or in the case of a firm, partnership, limited partnership,

limited liability company, association, or trust, the members, officers, trustees, or other persons in active control of the activities of the limited liability company, association, or trust relating to the license. The application of a corporation applying for a retailer's license need be verified only by its president or vice president.

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

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

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

the license. Otherwise the commissioner shall refuse to issue the license.

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

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

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

(e) The license may not be transferred to another person, but the location of the premises to which the license relates may be changed with the written consent of the commissioner, if the new location satisfies the requirements of this article upon an initial application and payment of a new application fee.

CHAPTER 160

(Com. Sub. for S. B. 657 - By Senators Rucker, Blair, Smith, Trump, Cline, Sypolt and Roberts)

[Passed February 25, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5B-1-9, relating to authorizing the Department of Commerce to assist qualifying tourism development projects and tourism development expansion projects in the creation of tourism development districts by approved companies; prohibiting certain municipalities from restricting tourism development projects and tourism development expansion projects in a tourism development district and from imposing or enforcing ordinances concerning such districts and tourism development projects and tourism development expansion projects therein; limiting certain rights of a municipality's home rule powers; establishing requirements of application for and designation of tourism development districts; providing that decision of development office regarding establishment of tourist development district is final; restricting number of such districts; providing for termination of tourism development districts; exempting districts and projects within them from certain municipal regulation and requirements; establishing that projects within tourism development districts are required to pay various taxes and fees and comply with certain state laws, State Building Code, and inspection standards of development office; allowing Department of Transportation to participate in tourism development projects; providing that failure to continue the Tourism Development Act does not affect the provisions of this section and created tourism development districts;

requiring rulemaking and promulgation of emergency rules; and providing severability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF COMMERCE.

§5B-1-9. Authority to assist qualifying tourism development projects and tourism development expansion projects; legislative findings.

(a) The Department of Commerce may assist qualifying tourism development projects and tourism development expansion projects by approved companies pursuant to §5B-2E-1 *et seq.* of this code which are located in, or partially in, municipalities with a population of 2,000 or less, effective as of the effective date of the most recent census, as specified in §8-1-4 of this code relating to the creation of tourism development districts.

(b) The Legislature finds and declares that the general welfare and material well-being of the citizens of the state depend, in large measure, upon the development and expansion of tourism in the state, and that, beyond the creation and expansion of tourism development projects and tourism development expansion projects, it is in the best interest of the state to induce and assist in tourism development in small municipalities through the creation of tourism development districts, in order to advance the public purposes of relieving unemployment by preserving and creating jobs, and preserving and creating new and greater sources of revenues for the support of public services provided by the state and local government; and that tourism development districts are of paramount importance to the state and its economy and for the state's contribution to the national economy.

It is the intent of the Legislature to occupy the whole field of the creation and regulation of tourism development districts. The stated purpose of this section is to promote

uniform and consistent application of the act within the state.

(c) This section prohibits:

(1) Certain municipalities, whether by ordinance, resolution, administrative act, or otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules which limit, in any way, the creation of, and acquisition, construction, equipping, development, expansion, and operation of any tourism development project or tourism development expansion project in a tourism development district; and

(2) Certain municipalities from imposing or enforcing local laws and ordinances concerning the creation or regulation of any tourism development district and any tourism development project or tourism development expansion project therein.

(d) Any developer or owner of a tourism development project or tourism development expansion project which has been determined by the West Virginia Development Office, pursuant to §5B-2E-1 *et seq.* of this code, to be an approved company and which has entered into an agreement with the development office pursuant to §5B-2E-6 of this code to provide the approved company with a credit against the West Virginia consumers sales and service tax imposed by §11-15-1 *et seq.* of this code may apply to the development office for designation of a tourism development district encompassing the area where the tourism development project or the tourism development expansion project is to be acquired, constructed, equipped, developed, expanded, and operated: *Provided*, That notwithstanding any provision of §5B-2E-5(c)(2) of this code to the contrary, only tourism development projects and tourism development expansion projects with aggregate projected costs of construction, reconstruction, restoration, rehabilitation, or upgrading of not less than $25 million shall be eligible for designation as a tourism development district.

(e) Applicants for the creation of a tourism development district shall demonstrate that the district, when designated, will create significant economic development activity:

(1) Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created, and the viability of the proposed tourism development district; and

(2) The applicant shall own, control, or have the right of use to, all real property within the proposed tourism development district and shall provide evidence of such ownership, control, or right of use in the application to the development office.

(f) The proposed district shall be entirely or partially within the corporate limits of a municipality which has a population of 2,000 or less as of the effective date of the most recent census, as specified in §8-1-4 of this code.

(g) All costs for the application shall be borne by the applicant.

(h) The application submitted by the applicant to the development office pursuant to §5B-2E-1 *et seq.* of this code may be considered by the development office to be sufficient to meet some of the requirements of this section.

(i) The decision of the development office to designate a tourism development district shall be final.

(j) The total number of approved tourism development districts may not exceed five. When the total number of designated tourism development districts equals five, no further designations may be approved by the development office.

(k) Each tourism development district shall terminate by operation of law 99 years from the date approved by the development office, unless a shorter time period for termination is agreed to by the applicant and the

development office. The development office may terminate a tourism development district if the development office determines that the tourism development project or tourism development expansion project has been abandoned or ceased operations for five consecutive years.

(l) In accordance with subsections (b) and (c) of this section, and notwithstanding any provision of this code to the contrary, or any municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to the Municipal Home Rule Program under §8-1-5a of this code, designated tourism development districts, and the tourism development projects or tourism development expansion projects therein, may not be subject to the following:

(1) Municipal zoning, historic preservation, horticultural, noise, viewshed, lighting, development, or land use ordinances, restrictions, limitations, or approvals;

(2) Municipal regulation of the sale of alcoholic liquor, nonintoxicating beer, or wine for consumption within the tourism development district;

(3) Municipal building permitting, inspection, or code enforcement;

(4) Municipal license requirements;

(5) The legal jurisdiction of the municipality in which the tourism development district is entirely or partially located, except as specifically provided in this article;

(6) The implementation of any tax, fee, or charge by the municipality, except as specifically provided in this section; or

(7) Any requirement under state law for the consent or approval of the municipality in which the tourism development district is entirely or partially located of any state or county action pursuant to this code, specifically

including, but not limited to, §7-11B-1 *et seq.* of this code, for formal consent of the governing body of a municipality for county or state action regarding the establishment of tax increment financing development or redevelopment districts or the approval of tax increment financing development or redevelopment plans.

(m) Notwithstanding the creation of the tourism development district, the owner, operator, or manager, as applicable, and all concessions and licensees thereof, of the tourism development project or tourism development expansion project located therein shall:

(1) Pay business and occupation tax, if applicable, pursuant to §8-13-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(2) Collect and remit municipal sales and service tax and municipal use tax, if applicable, pursuant to §8-1-5a, §8-13C-4, and §8-13C-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(3) Pay ad valorem real and personal property tax pursuant to the same millage rates as any other business or commercial venture located within the municipality;

(4) Collect and remit hotel occupancy tax, if applicable, to the municipality or county in accordance with §7-18-1 of this code;

(5) Pay all municipal service fees enacted pursuant to §8-13-13 of this code, including, but not limited to, fire, police, sanitation, or city service fees;

(6) Pay all municipal utility rates, fees, and charges for utilities used or consumed during construction and operation of premises within the tourism development district, including, but not limited to, water, sewer, stormwater, and garbage and recycling collection:

Provided, That (i) The rates, fees, and charges for such services shall be based on the cost of providing such service and the municipality shall enter into a contract for each such service with the developer and any contracts for water service or sewer service with the municipality shall be subject to review and approval by the Public Service Commission of West Virginia; and (ii) the developer shall only be required to pay any capacity improvement fee or impact fee to the extent that capital additions, betterments, and improvements must be designed, acquired, constructed, and equipped by the municipality to provide such service to the project and any such capacity improvement fee or impact fee for water or sewer service shall be subject to review and approval by the Public Service Commission of West Virginia;

(7) Comply with state laws, regulations, and licensure requirements concerning state control of alcoholic liquors pursuant to chapter 60 of this code and control of nonintoxicating beer pursuant to §11-16-1 *et seq.* of this code;

(8) Be entitled to municipal police protection and municipal fire protection, if available, in the same manner as any other business or commercial venture located within the municipality;

(9) Design, acquire, construct, and equip the tourism development project or the tourism development expansion project pursuant to the State Building Code in accordance with §8-12-13 of this code and corresponding State Rule 87 CSR 4; and

(10) Provide for inspection of the design, acquisition, construction, and equipping, and any subsequent expansion of the tourism development project or the tourism development expansion project pursuant to standards approved by the West Virginia Development Office.

(n) The West Virginia Department of Transportation may take actions necessary in support of the development of any tourism development project or tourism development expansion project in a tourism development district specifically, including, but not limited to, the development or improvement of such highways, roads, thoroughfares, and sidewalks within the municipality in which the tourism development district is partially or entirely located.

(o) Failure of the Legislature to renew the Tourism Development Act, §5B-2E-1 *et seq.* of this code, may not, in any way, modify or alter the designation and vested rights of any tourism development district created prior to the failure of the Legislature to renew the Tourism Development Act and any such tourism development district shall continue to exist beyond the termination of the Tourism Development Act.

(p) The development office shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this section, and the rules shall include, but not be limited to:

(1) The application and timeline process;

(2) A nonbinding review of the existing planning and zoning ordinances of any municipality in which the tourism development district is located;

(3) Notice provisions;

(4) The method and timeline for receiving statements of support or opposition from any municipality within or partially within the tourism development district;

(5) Additional application consideration criteria; and

(6) Application fees sufficient to cover the costs of consideration of an application.

229 (q) The development office shall promulgate emergency
230 rules pursuant to §29A-3-15 of this code by July 1, 2020, to
231 facilitate the implementation of this section.

232 (r) Pursuant to §2-2-10 of this code, if any provision of
233 this section or the application thereof to any person or
234 circumstance is held unconstitutional or invalid, the
235 unconstitutionality or invalidity shall not affect other
236 provisions or applications of this section, and to this end the
237 provisions of this section are declared to be severable.

CHAPTER 161

(Com. Sub. for S. B. 738 - By Senators Maynard and Plymale)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-9-1, relating to creating the Flatwater Trail Commission; describing role, function, and duties of the commission; establishing criteria qualifications for the appointment of members; specifying duties; declaring the responsibilities of the Department of Commerce regarding the commission; providing for reimbursement of the expenses for members; and defining a quorum to conduct business.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. FLATWATER TRAIL COMMISSION.

§5B-9-1. Flatwater Trail Commission; members, appointment, and expenses.

(a) The Flatwater Trail Commission is hereby created as an independent body corporate. It shall be a commission advisory to the secretary and to the Department of Commerce.

(b) The Flatwater Trail Commission shall consist of five members, who shall be residents and citizens of the state. The commission members shall be appointed by the Governor, by and with the advice and consent of the Senate. Throughout the operation of the commission, at least two of the members shall have knowledge of and experience with nonmotorized watercraft recreation, and at least two members shall have knowledge of and experience with motorized watercraft recreation. Each member shall serve a term of five years. Of the members first appointed, two shall be appointed for a term ending December 31, 2021, and one each for terms ending one, two, and three years thereafter. Commission members may be reappointed to additional terms.

(c) The chair of the Flatwater Trail Commission shall be appointed by the Governor from members then serving on the commission and serves at the will and pleasure of the Governor.

(d) It is the duty of the commission:

(1) To unify and coordinate efforts to develop and establish successful flatwater trails in this state;

(2) To standardize procedures, programs, research, and support for the development and establishment of flatwater trails;

(3) To disseminate information for the purpose of educating the public as to the existence and functions of the commission and as to the availability of state, federal, and nongovernmental resources and support for the development and establishment of flatwater trails; and

(4) To advise, consult, and cooperate with other offices of the Department of Commerce and other agencies of state government, and to receive assistance therefrom in the development of activities and programs of beneficial interest to water recreation and flatwater trails.

(e) The Department of Commerce shall assist the commission in its functions and operations, including, but not limited to, providing administrative, clerical, and technical support, publishing materials developed by the commission, and preparation of proposed legislation to further the purposes of the commission.

(f) Members of the Flatwater Trail Commission are not entitled to compensation for services performed as members. Each member is entitled to reimbursement for reasonable expenses incurred in the discharge of their official duties. All expenses incurred by members shall be paid in a manner consistent with guidelines of the Travel Management Office of the Department of Administration and are payable solely from the funds of the Department of Commerce or from funds appropriated for that purpose by the Legislature. Liability or obligation is not incurred by the commission beyond the extent to which moneys are available from funds of the authority or from the appropriations.

(g) Members shall meet at least quarterly as designated and scheduled by the chair. The presence of three members, in person or by real-time electronic communication, constitutes a quorum to conduct business at a meeting.

CHAPTER 162

(Com. Sub. for H. B. 2696 - By Delegates Howell, Bibby, Phillips, Sypolt, Cadle, Azinger, D. Jeffries and Hott)

[Passed January 29, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 7, 2020.]

AN ACT to amend and reenact §14-1-20 and §14-1-21 of the Code of West Virginia, 1931, as amended, all relating to creating an additional index system for state-owned lands; providing that the county courts submit a list of lands the state obtained to the Auditor; providing that the Auditor create an index system; providing that the Auditor create a standard naming system; and providing for rule-making authority relating to the index system.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. CLAIMS DUE THE STATE.

§14-1-20. Lands of state — List by clerk.

The clerks of the county courts shall transmit to the Auditor a list of all lands in their respective counties obtained by the state, under the provisions of §14-1-16 of this code, and set forth in such list all the information which they can obtain in relation to the lands mentioned therein. For each tract of land or lot so mentioned by any clerk of the county court, he or she shall receive $1 from the Treasury.

§14-1-21. Lands of state — Registration by Auditor.

(a) The Auditor shall, in a book kept for the purpose, register all lands in the lists described in §14-1-20 of this

code, describing when, how, and of whom, they were obtained, their situation, quantity and the title thereto, together with the price paid therefor by the state.

(b) The Auditor shall create an index system to reference lands purchased by the state, similar to those created and maintained by the counties of this state. The Auditor shall create a standard naming system to easily cross reference lands purchased by the state in the county indexes. The naming system, at a minimum, must include:

(1) The state agency purchasing the lands; and

(2) The county or counties where the land is located.

(c) The Auditor shall have rule-making authority relating to this index system under §29A-3-1 *et seq.* of this code. Any deed for state lands purchased after December 31, 2020, shall be recorded pursuant to the provisions of this section.

CHAPTER 163

(Com. Sub. for H. B. 2924 - By Delegates Howell, Pack, C. Martin and Hamrick)

[Passed February 12, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §5B-2I-4 of the Code of West Virginia, 1931, as amended, relating to permitting the West Virginia Tourism Office to contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and to raise capital for technological improvements to the website; permitting 50 percent of the funds from such sale to be deposited into the Tourism

Promotion Fund; and permitting 50 percent of the fund from such sale be remitted to the Division of Highways pursuant to the contract.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2I. WEST VIRGINIA TOURISM OFFICE.

§5B-2I-4. Powers and duties of the West Virginia Tourism Office.

(a) The West Virginia Tourism Office, under the direction and charge of the Executive Director of the West Virginia Tourism Office, shall develop and implement a comprehensive tourism advertising, promotion and development strategy for West Virginia. "Comprehensive tourism advertising, promotion and development strategy" means a plan that outlines strategies and activities designed to continue, diversify and expand the tourism base of the state as a whole; create tourism jobs; develop a highly skilled tourism workforce; facilitate business access to capital for tourism; advertise and market the resources offered by the state with respect to tourism advertising, promotion and development; facilitate cooperation among local, regional and private tourism enterprises; improve infrastructure on a state, regional and community level in order to facilitate tourism development; improve the tourism business climate generally; and leverage funding from sources other than the state, including local, federal and private sources. In addition to all other power and duties of the West Virginia Tourism Office by other provisions of this code, the West Virginia Tourism Office shall:

(1) Coordinate media events to promote a positive image of West Virginia and new investment in the tourist industry;

(2) Provide comprehensive strategic planning services to existing tourism enterprises;

(3) Promote attractions of West Virginia in other states;

(4) Provide advertising, marketing and communications goods and services, including, without limitation, a cooperative advertising program to facilitate and allow participation in the West Virginia Tourism Office's advertising and marketing campaigns and activities, to state agencies, departments, units of state or local government, private tourism enterprises and other persons, entities or private enterprises, including, without limitation, convention and visitors' bureaus; and

(5) Distribute West Virginia informational publications and manage the West Virginia Welcome Centers.

(b) In developing its strategies, plans and campaigns, the West Virginia Tourism Office shall consider the following:

(1) Improvement and expansion of existing tourism marketing and promotion activities;

(2) Promotion of cooperation among municipalities, counties and the West Virginia Infrastructure and Jobs Development Council in funding physical infrastructure to enhance the potential for tourism development.

(c) The West Virginia Tourism Office shall have the power and duty:

(1) To acquire for the state in the name of the West Virginia Tourism Office by purchase, lease or agreement, or accept or reject for the state, in the name of the West Virginia Tourism Office, gifts, donations, contributions, bequests or devises of money, security or property, both real and personal, and any interest in such property, to effectuate or support the purposes of this article;

(2) To make recommendations to the Governor and the Legislature of any legislation deemed necessary to facilitate the carrying out of any of the foregoing powers and duties and to exercise any other power that may be necessary or proper for the orderly conduct of the business of the West

Virginia Tourism Office and the effective discharge of the duties of the West Virginia Tourism Office;

(3) To cooperate and assist in the production of motion pictures and television and other communications;

(4) To purchase advertising time or space in or upon any medium generally engaged or employed for said purpose to advertise and market the resources of the state or to inform the public at large or any specifically targeted group or industry about the benefits of living in, investing in, producing in, buying from, contracting with, or in any other way related to, the State of West Virginia or any business, industry, agency, institution or other entity therein;

(5) To promote and disseminate information related to the attractions of the state through the operation of the state's telemarketing initiative, which telemarketing initiative shall include a centralized reservation and information system for state parks and recreational facilities;

(6) To take such additional factors as may be necessary to carry out the duties and programs described in this article; and

(7) To provide assistance to and assist with retention and expansion of existing tourism-related enterprises in the state and to recruit or assist in the recruitment of new tourism-related enterprises to the state.

(d) The West Virginia Tourism Office may contract with the Division of Highways to sell advertising space on the WV511 website to promote in-state tourism and raise capital for technological improvements to the website: *Provided*, That 50 percent of the money collected for sale of advertising space is deposited into the Tourism Promotion Fund and the other 50 percent of the money collected from the sale of advertising space is remitted to the Division of Highways pursuant to the contract.

(e) The West Virginia Tourism Office may charge and collect reasonable fees for goods and services it provides to state agencies, departments, units of state or local government or other person, entity or enterprise. All moneys collected by the West Virginia Tourism Office shall be deposited in the Tourism Promotion Fund and used in accordance with the provisions of this article.

(f) The West Virginia Tourism Office may engage and retain one or more advertising and marketing agencies, consultants, enterprises, firms or persons, as deemed by the Executive Director of the West Virginia Tourism Office, in his or her sole discretion, necessary or advisable to assist the West Virginia Tourism Office in carrying out its powers and duties as set forth in this article. In the procurement of advertising agencies, consultants, enterprises or persons, from time to time, estimated to cost $250,000 or more, the Executive Director of the West Virginia Tourism Office shall encourage such advertising and marketing agencies, consultants, enterprises, firms or persons to submit an expression of interest, which shall include a statement of qualifications, including anticipated concepts and proposed advertising, marketing and advertising campaigns. All potential contracts shall be announced by public notice published as a Class II legal advertisement in compliance with the provisions of §59-3-3 of this code. A committee of three to five representatives of the West Virginia Tourism Office or the Tourism Commission, as selected by the chair of the Tourism Commission, shall evaluate the statements of qualifications and other materials submitted by interested firms and select three firms which, in their opinion, are best qualified to perform the desired service. The committee shall then rank, in order of preference, the three firms selected and shall commence scope of service and price negotiations with the first ranked firm. If the West Virginia Tourism Office is unable to negotiate a satisfactory contract with the first ranked firm, at a fee determined to be fair and reasonable, price negotiations with the firm of second choice shall commence. Failing accord with the second

ranked firm, the committee shall undertake price negotiations with the third ranked firm. If the West Virginia Tourism Office is unable to negotiate a satisfactory contract with any of the selected firms, the office shall select additional firms in order of their competence and qualifications and it shall continue negotiations in accordance with this section until an agreement is reached.

If the procurement of the services is estimated by the executive director to cost less than $250,000, the West Virginia Tourism Office shall conduct discussions with three or more firms solicited on the basis of known or submitted qualifications for the assignment prior to the awarding of any contract: *Provided*, That if a judgment is made that special circumstances exist and that seeking competition is not practical, the West Virginia Tourism Office may, with the prior written approval of the Secretary of Commerce, select a firm on the basis of previous satisfactory performance and knowledge of the West Virginia Tourism Office's needs. After selection, the West Virginia Tourism Office and selected firm shall develop the scope of desired services and negotiate a contract.

(g) The Executive Director of the West Virginia Tourism Office may, in order to carry out the powers and duties of the West Virginia Tourism Office described in this article, employ necessary personnel, contract with professional or technical experts or consultants and purchase or contract for the necessary equipment or supplies.

(h) The Executive Director of the West Virginia Tourism Office may designate, in writing, with the written consent of the Secretary of Commerce, a list of positions within the West Virginia Tourism Office that shall be exempt from coverage under the state's classified service.

(i) The West Virginia Tourism Office shall submit a report annually to the Governor, Secretary of Commerce and the Legislature about the development of the tourism

industry in the state and the necessary funding required by the state to continue the development of the tourism industry.

(j) The West Virginia Tourism Office and the Executive Director of the West Virginia Tourism Office shall engage, collaborate, assist and cooperate with the West Virginia Development Office, when and as appropriate, to facilitate retention, expansion, recruitment and location of existing and new tourism-related enterprises.

CHAPTER 164

(Com. Sub. for H. B. 4004 - By Delegates D. Kelly, Waxman, Hanna, Mandt, Robinson, Miller and Canestraro)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §15-9-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §15-9C-1, §15-9C-2, §15-9C-3, §15-9C-4, §15-9C-5, and §15-9C-6, all relating to creating the West Virginia Sentencing Commission as a subcommittee of the Governor's Committee on Crime, Delinquency and Correction; authorizing the commission to seek and use funding and grants; setting forth legislative findings; setting forth the purpose of the commission; establishing composition and membership of commission; setting forth the powers and duties of the commission; setting forth objectives for the commission; directing commission provide assessment and recommendations to the Legislature; authorizing the commission to make additional recommendations to the Legislature; and establishing an internal effective date and termination date for the subcommittee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9. GOVERNOR'S COMMITTEE ON CRIME, DELINQUENCY, AND CORRECTION.

§15-9-4. Sentencing Commission Subcommittee.

Effective July 1, 2020, the Governor's Committee on Crime, Delinquency, and Correction shall establish a subcommittee to be known as the West Virginia Sentencing Commission. To the extent requested or necessary, the commission shall be staffed and supported by the Division of Administrative Services of the Department of Military Affairs and Public Safety. The commission, by and through the division, may seek and use funding and grants in furtherance of the purposes and mission of the commission.

ARTICLE 9C. WEST VIRGINIA SENTENCING COMMISSION.

§15-9C-1. Legislative findings.

The Legislature finds and declares that there is:

(1) A need for fair and uniform sentencing;

(2) A need for research on issues regarding sentencing in order to promote a fuller understanding of the efficient, just, and fair operation of this state's criminal justice system;

(3) A need for establishing priorities with regard to the severity of the criminal offenses; and

(4) A need to use the limited correctional resources in the state in a manner best able to fulfill the goals of criminal punishment, rehabilitation, and protection of the public while preventing disparate treatment of offenders based on racial, ethnic, cultural, economic, or other factors related to the social status of the offender.

§15-9C-2. Creation of Sentencing Commission; purpose; composition.

(a) The West Virginia Sentencing Commission is hereby created as a subcommittee of the Governor's Committee on Crime, Delinquency, and Correction.

(b) The purpose of the commission is to promote a fuller understanding of this state's criminal justice sentencing system, and shall include the review and research of issues of sentence length imposed, actual sentence length served, parole eligibility, parole revocation, determinate or indeterminate sentences, availability of alternatives to incarceration for certain offenses, and the respective roles that each of these and other criminal sanction issues may play in the increased demand for prison bed space.

(c) The commission consists of the following members, who serve without compensation:

(1) The Secretary of the Department of Military Affairs and Public Safety, or his or her designee;

(2) Two prosecuting attorneys, or assistant prosecuting attorneys, from two different counties chosen by the President of the West Virginia Prosecuting Attorneys Association;

(3) Two public defenders, or assistant public defenders, or panel attorneys who primarily do court-appointed criminal representation, from two different judicial circuits chosen by the Director of the Public Defender Services;

(4) One representative from the West Virginia Chief of Police Association who shall be chosen by the executive director of that organization;

(5) One representative from the West Virginia Sheriff's Association who shall be chosen by the executive director of that organization;

(6) Two representatives from the West Virginia Judicial Association who are current or senior status circuit court judges and chosen by the executive committee of that organization, who shall serve as ex officio members;

(7) One member of the West Virginia Association on Alcoholism and Drug Abuse Counselors who shall be chosen by the president of the organization;

(8) Two members of the West Virginia Legislature, one chosen by the Speaker of the House and one chosen by the President of the Senate, who shall serve as ex officio members of the commission; and

(9) One professor of law with experience in the practice and teaching of criminal law appointed by the Dean of the West Virginia University College of Law.

(d) Each member serves a two-year term, except for the ex officio members who serve as long as they hold their respective offices.

(e) The chairperson of this commission shall be elected by the other members of the commission. The first meeting shall be chaired by the Director of the Division of Administrative Services of the Department of Military Affairs and Public Safety.

(f) Six members of the commission shall constitute a quorum.

(g) The Director of the Division of Administrative Services serves as executive director of the commission and the division shall provide administrative services to the commission.

§15-9C-3. Powers and duties of the commission.

(a) The Sentencing Commission established pursuant to this article:

(1) May request information, data, and reports from any officer or agency of the state government, as required by the commission and as may be produced consistent with other laws;

(2) Issue invitations requesting the attendance and testimony of witnesses and the production of any evidence that relates directly to a matter with respect to which the commission or any member of the commission is empowered to make a determination under this article;

(3) Shall establish a research and development program within the commission for the purpose of:

(A) Serving as a clearinghouse and information center for the collection, preparation, and dissemination of information on sentencing practices; and

(B) Assisting and serving in a consulting capacity to state courts, departments, and agencies in the development, maintenance, and coordination of sound sentencing practices;

(4) Shall collect data obtained from studies, research, and the empirical experience of public and private agencies concerning the sentencing processes;

(5) Shall publish data concerning the sentencing process;

(6) Shall collect and disseminate information concerning sentences actually imposed;

(7) Shall collect and disseminate information regarding effectiveness of sentences imposed;

(8) Shall make recommendations to the Legislature concerning modification or enactment of sentencing and correctional statutes which the commission finds to be necessary and advisable to carry out an effective, humane, and rational sentencing policy;

(9) Shall establish a plan and timetable to collect and disseminate information relating to incapacitation, recidivism, deterrence, and overall effectiveness of sentences imposed;

(10) Shall provide recommendations to the Legislature for the creation of programs and establishment of facilities in the state that provide how the state can best shift its expenditures in a revenue-neutral fashion away from incarceration to treatment programs, facilities, and related services;

(11) Shall conduct a comprehensive review and study of national and local trends and programs that have proven successful in addressing and overcoming addiction and identifying the nature of the causes of addiction and criminal behavior related to drug addiction; and

§15-9C-4. Objectives of the commission.

In performing its powers and duties, the commission shall pursue the following objectives:

(1) Promoting sentencing that more accurately reflects the time that an offender will actually be incarcerated;

(2) Reducing unwarranted disparity in sentences for offenders who have committed similar offenses and have similar criminal histories;

(3) Preserving meaningful judicial discretion in the imposition of sentences and sufficient flexibility to permit individualized sentences;

(4) Ensuring that sentencing judges in every jurisdiction in the state are able to impose the most appropriate criminal penalties, including correctional options programs for appropriate nonviolent offenders; and

(5) Determining whether the state needs to set out all criminal offenses in terms of priority and in order of severity and harm to society, and to provide alternatives to incarceration for certain offenses.

§15-9C-5. Recommendations to Legislature.

(a) In addition to the dissemination of information set forth in §15-9C-3 of this code, the commission shall provide, on or before January 1, 2022, an assessment and report to the Legislature as its findings, analysis, and recommendations, if any, as to the state's sentencing and correctional laws and policies.

(b) As part of the report set forth in subsection (a) of this section, the commission may, or at the request of the President of the Senate and the Speaker of the House of Delegates, shall make recommendations regarding the following issues:

(1) Whether the state should adopt discretionary sentencing guidelines and, if so, what type of discretionary sentencing guidelines should be adopted;

(2) Whether the state should alter the manner in which an inmate obtains credit for good time;

(3) Whether the state needs to take action to ensure that there is a coordinated system of alternatives to incarceration at the state and county levels and, if so, what action should be taken;

(4) Whether the state should establish additional guidelines and procedures to examine or reexamine the reduction of long-term sentences of individuals who are not a danger to public safety; and

(5) Any other matters relating to state and local laws and policies governing sentencing, parole, mandatory supervision, and correctional alternative programs.

§15-9C-6. Sunset.

The Sentencing Commission Subcommittee established in this article terminates on June 30, 2023, unless continued by the Legislature.

CHAPTER 165

(Com. Sub. for H. B. 4042 - By Delegates Howell, Bibby, J. Jeffries, Waxman, J. Kelly and Cadle)

[Passed February 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 17, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-1-12, relating to requiring agencies exempt from some or all of state purchasing requirements to adopt procedural rules establishing their purchasing procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. DEPARTMENT OF ADMINISTRATION.

§5A-1-12. Procedural rules required for exempt agencies.

(a) An agency that has been exempted from some or all of the requirements of this chapter, by either a provision of this chapter or in another provision of this code, shall adopt procedural rules, under §29A-3-1 *et seq.* or §29A-3A-1 *et seq.* of this code, establishing its purchasing procedures.

(b) For agencies that have been exempted prior to the effective date of this section, the written procedures shall be filed no later than September 1, 2020. After September 1, 2020, any agency which has not filed its procedural rule as required by this section shall follow the procurement requirements established by the Purchasing Division.

(c) For agencies that are exempted after the effective date of this section, the written procedures shall be filed before the exemption may take effect.

CHAPTER 166

(H. B. 4130 - By Delegates D. Jeffries and Hanna)

[Passed January 30, 2020; in effect from passage.]
[Approved by the Governor on February 5, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §5-22-1a, relating to competitive bidding for government construction contracts arising out of declared states of emergency; allowing contracts for construction projects to be procured through competitive bidding on an open-ended basis as to quantity or by unit pricing on estimated quantities; allowing the establishment of multiple award construction contracts; eliminating need for emergency construction contract to specify the exact location of construction involved in the solicitation for bids; making the requirement that the entity to whom the contract is awarded furnish payment or performance bonds discretionary for residential projects; requiring contractor to provide release of claims before final payment is released if bonds are not required; and making the award of such contracts subject to other competitive bidding requirements of said code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. GOVERNMENT CONSTRUCTION CONTRACTS.

§5-22-1a. Permitting government construction contracts arising out of declared states of emergency on open-ended quantity or unit price basis; types of contracts allowed for construction projects; specific location of construction project not required in solicitation; certain bonds discretionary; other bidding requirements applicable.

(a) The state, not including its subdivisions, may solicit competitive bids for construction projects arising out of a state of emergency declared pursuant to §15-5-6 of this code, in a manner that is open-ended as to quantity only, or for unit prices on estimated quantities, and may also award contracts to multiple qualified responsible bidders, thereby creating a pool of qualified responsible bidders, so long as the nature of the contract is fully disclosed in the solicitation in a way that allows for fair and competitive bidding. The state reserves the right to reject a bid that it deems to be nonresponsive, a bid from a bidder that is not qualified responsible, as defined in the first section of this article, or a bid that is higher than the state is willing to pay.

(b) If the state creates a pool of qualified responsible bidders, it must first offer work available to the multiple contract holders to the contract holder identified as the lowest qualified responsible bidder, and if that vendor is unable or unwilling to perform, then the same work must be extended to the contract holder identified as the second lowest qualified responsible bidder, and so on, until the work is either accepted or there are no remaining qualified responsible bidders holding a contract that are willing to perform the work. If no vendors accept the work, the state may revise the work and reoffer it to the lowest qualified responsible bidder, then the second lowest qualified responsible bidder, and so on.

(c) Solicitations or contracts under this section are not required to specify the exact addresses or identify the locations of the construction project, so long as the solicitation and resulting contract clearly articulate the mechanism by which the exact address or location will be identified prior to work being performed.

(d) For projects limited to the construction or replacement of one or more residential dwellings or appurtenances, the state agency responsible for overseeing the work may, in its discretion, choose not to require an entity to whom the contract is awarded to furnish payment

or performance bonds, but only if it clearly indicates in the solicitation for bids that payment or performance bonds will not be required: *Provided*, That in the event a payment or performance bond is not required, the entity responsible for the contract shall provide to the state agency responsible for overseeing the work a document certifying that all of the claims of subcontractors, laborers, materialmen, and all persons furnishing material have been paid, satisfied, and discharged before final payment is released.

(e) A vendor or contractor that has been debarred pursuant to §5A-3-33f of this code may not bid on or be awarded a contract under this section.

(f) Except where other provisions of this article conflict with the provisions of this section, the other provisions of this article remain in effect.

CHAPTER 167

(H. B. 4141 - By Delegates Butler, Fast, Kessinger, D. Jeffries, Bibby, Pack, McGeehan, P. Martin, J. Jeffries, Graves and Bates)

[Passed February 13, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §5A-2-33 of the Code of West Virginia,1931, as amended, relating to requiring the Department of Administration to publish its comprehensive annual financial report by the end of December of the calendar year in which the fiscal year reported upon ended.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. FINANCE DIVISION.

§5A-2-33. Financial accounting and reporting section; comptroller; powers and responsibilities.

(a) The financial accounting and reporting section created under section one of this article shall be under the control and supervision of a comptroller. The provisions of this section shall apply to all component units of state government, as defined by generally accepted accounting principles.

(b) The comptroller, under the direction and supervision of the director of the Finance Division, has the power and responsibility to:

(1) Maintain financial records supporting the Comprehensive Annual Financial Report required under subdivision (8) of this subsection, in accordance with generally accepted accounting principles;

(2) Maintain the official chart of accounts of the state;

(3) Maintain the centralized accounting system;

(4) Maintain the statewide accounting policies and procedures;

(5) Direct the establishment and maintenance of an adequate internal control structure by the various component units of state government;

(6) Verify the periodic reconciliation of assets as reported by the board of Investments and budgetary fund balances as reported by the State Auditor;

(7) Issue management financial reports by component unit and department, as well as consolidated management financial reports, as follows:

(A) Monthly budgetary basis reports by revenue and expense, budget compared to actual, and encumbrances; and

(B) Financial position reports, including, but not limited to, cash, investments, indebtedness, obligations and accounts payable.

(8) Issue a comprehensive annual financial report.

(A) When all state agencies meet the financial reporting deadlines set by the financial accounting and reporting section, the report shall be issued on or before December 31 of the calendar year in which the reporting period ends.

(B) When any agency fails to meet the reporting deadline, the report shall be issued within 60 days of receiving the last agency report.

(C) The financial report will be prepared in accordance with generally accepted accounting principles;

(9) Have the general purpose financial statements of the state audited annually by independent certified public accountants;

(10) Require the state pension systems, workers' compensation commission, Public Employees Insurance Agency, Board of Risk and Insurance Management and the various other component units of the state to prepare financial statements audited by independent certified public accountants and submit the audited financial statements to the financial accounting and reporting section in the form and within the time frames established by the financial accounting and reporting section;

(11) Maintain controls over access to the centralized accounting system and the required modifications, as well as edits, controls and tables;

(12) Promulgate legislative rules in accordance with §29A-3-1 *et seq.* of this code to effectuate the intent and purpose of this section: *Provided*, That such rules may initially be implemented by emergency rule; and

(13) Do all things necessary and convenient to maintain the centralized accounting system, to issue financial reports of the state and to carry out its powers and responsibilities.

CHAPTER 168

(Com. Sub. for H. B. 4461 – By Delegate Hanshaw (Mr. Speaker) [By Request]

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §6-7-2a of the Code of West Virginia, 1931, as amended, relating to requiring the Governor to fix the annual salaries of certain state appointed officers after the office is vacated or after July 1, 2020, whichever occurs first; requiring that the salary be within the current budget allocation; requiring the amount of the annual salary for appointed state officer be set forth in a line-item in the budget bill; limiting payment of salary to amount approved in budget bill; allowing lower salaries; and requiring that the salary of each such appointed state officer be listed in the appointment letter for the position.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. COMPENSATION AND ALLOWANCES.

§6-7-2a. Terms of certain appointive state officers; appointment; qualifications; powers and salaries of officers.

(a) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the

appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer is as follows:

Commissioner, Division of Highways, $92,500; Commissioner, Division of Corrections and Rehabilitation, $90,000; Director, Division of Natural Resources, $75,000; Superintendent, State Police, $85,000; Commissioner, Division of Financial Institutions, $75,000; Commissioner, Division of Culture and History, $65,000; Commissioner, Alcohol Beverage Control Commission, $75,000; Commissioner, Division of Motor Vehicles, $75,000; Director, Human Rights Commission, $55,000; Commissioner, Division of Labor, $70,000; Chairperson, Board of Parole, $55,000; members, Board of Parole, $50,000; members, Employment Security Review Board, $17,000; and Commissioner, Workforce West Virginia, $75,000. Secretaries of the departments shall be paid an annual salary as follows: Health and Human Resources, $95,000: *Provided*, That effective July 1, 2013, the Secretary of the Department of Health and Human Resources shall be paid an annual salary not to exceed $175,000; Transportation, $95,000: *Provided, however*, That if the same person is serving as both the Secretary of Transportation and the Commissioner of Highways, he or she shall be paid $120,000; Revenue, $95,000; Military Affairs and Public Safety, $95,000; Administration, $95,000; Education and the Arts, $95,000; Commerce, $95,000; Veterans' Assistance, $95,000; and Environmental Protection, $95,000: *Provided further*, That any officer specified in this subsection whose salary is increased by more than $5,000 as a result of the amendment and reenactment of this section during the 2011 regular session of the Legislature shall be paid the salary increase

in increments of $5,000 per fiscal year beginning July 1, 2011, up to the maximum salary provided in this subsection.

(b) Each of the state officers named in this subsection shall continue to be appointed in the manner prescribed in this code and shall be paid an annual salary as follows:

Director, Board of Risk and Insurance Management, $80,000; Director, Division of Rehabilitation Services, $70,000; Director, Division of Personnel, $70,000; Executive Director, Educational Broadcasting Authority, $75,000; Secretary, Library Commission, $72,000; Director, Geological and Economic Survey, $75,000; Executive Director, Prosecuting Attorneys Institute, $80,000; Executive Director, Public Defender Services, $70,000; Commissioner, Bureau of Senior Services, $75,000; Executive Director, Women's Commission, $45,000; Director, Hospital Finance Authority, $35,000; member, Racing Commission, $12,000; Chairman, Public Service Commission, $85,000; members, Public Service Commission, $85,000; Director, Division of Forestry, $75,000; and Executive Director of the Health Care Authority, $80,000.

(c) Each of the following appointive state officers named in this subsection shall be appointed by the Governor, by and with the advice and consent of the Senate. Each of the appointive state officers serves at the will and pleasure of the Governor for the term for which the Governor was elected and until the respective state officers' successors have been appointed and qualified. Each of the appointive state officers are subject to the existing qualifications for holding each respective office and each has and is hereby granted all of the powers and authority and shall perform all of the functions and services heretofore vested in and performed by virtue of existing law respecting each office.

The annual salary of each named appointive state officer shall be as follows:

Commissioner, State Tax Division, $92,500; Insurance Commissioner, $92,500; Director, Lottery Commission, $92,500; Director, Division of Homeland Security and Emergency Management, $65,000; and Adjutant General, $125,000.

(d) No increase in the salary of any appointive state officer pursuant to this section may be paid until and unless the appointive state officer has first filed with the State Auditor and the Legislative Auditor a sworn statement, on a form to be prescribed by the Attorney General, certifying that his or her spending unit is in compliance with any general law providing for a salary increase for his or her employees. The Attorney General shall prepare and distribute the form to the affected spending units.

(e) The annual salary of each appointive state officer named in this section shall continue in the amount as set forth in this section from the effective date of the amendments to this section enacted in 2020, whichever occurs first. After the vacancy or after July 1, 2020, whichever occurs first, unless otherwise prohibited by law, the annual salary of each appointed state officer named in this section shall be fixed by the Governor within the current budget allocation. In the event the annual salary fixed by the Governor for an appointed state officer named in this section exceeds the amount set forth in this section for the appointed state officer, the amount of the annual salary for the appointed state officer shall be set forth in a line-item in the budget bill, and payment of an annual salary to the appointed state officer may not exceed that amount but may be lower than the salary approved in the budget bill or established in this section. The salary of a newly appointed state officer named in this section shall be included in the appointment letter for the position.

CHAPTER 169

(Com. Sub. for H. B. 4509 - By Delegates Shott, Steele, N. Brown and Maynard)
[By Request of the Department of Military Affairs and Public Safety]

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §62-12-12 of the Code of West Virginia, 1931, as amended, relating to transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support; removing the residency requirements pertaining to counties; continuing terms of current members; specifying the powers and duties of the chairperson; setting forth the process for selecting a vice chairperson; specifying the powers and duties of the vice chairperson; clarifying how a vacancy occurs on the board; creating the position of substitute board member; creating a substitute board member list; establishing qualifications, powers and duties of substitute board members; and clarifying how moneys for the board should be appropriated.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. PROBATION AND PAROLE.

§62-12-12. Parole Board generally.

(a) The West Virginia Parole Board is continued as part of the Division of Corrections and Rehabilitation. The board shall consist of nine members, each of whom shall have been a resident of this state for at least five consecutive years prior to his or her appointment. No more than five of the board members may at any one time belong to the same political party, except as provided in subsection (b) of this section. The board shall be appointed by the Governor, by

and with the advice and consent of the Senate and shall serve at the will and pleasure of the Governor.

Appointments shall be made in such a manner that each congressional district is represented and so that no more than four and no less than two members of the board reside in any one congressional district.

(b) The Governor shall appoint one of the nine members to serve as chairperson at the Governor's will and pleasure. In addition to all other powers, duties, and responsibilities granted and assigned to the chairperson by law and rule, the chairperson has the following powers and duties:

(1) To provide for the management of facilities and personnel of the board;

(2) To supervise the administration and operation of the board;

(3) To delegate the powers and duties of his or her office to the vice chairperson or other members of the board, who shall act under the direction of the chairperson and for whose acts he or she is responsible: *Provided*, That if the position of chairperson becomes vacant by death, resignation, or otherwise, the vice chairperson shall assume all the powers and duties of the chairperson until such time as a new chairperson is appointed pursuant to the provisions of this subsection;

(4) To employ one full-time administrative employee, who shall be a classified exempt employee; and

(5) To exercise all other powers and perform all other duties necessary and proper in carrying out his or her responsibilities as chairperson.

(c) The board, from its membership, shall elect a vice chairperson, at least once every year, to serve as chair in the absence of a chairperson. In the absence of or at the direction of the chairperson, the vice chairperson may

exercise the powers and duties of the chairperson. The vice chairperson shall, while performing the duties and responsibilities of the chairperson, have all of the statutorily authorized power and duties of the chairperson.

(d) Any person initially appointed to the board on or after July 1, 2012, shall have a degree from an accredited college or university or at least five years of actual experience in the fields of corrections, law enforcement, sociology, law, education, psychology, social work, or medicine, or a combination thereof, and shall be otherwise competent to perform the duties of his or her office. All members currently serving on the board shall continue the terms they are currently serving, unless otherwise removed. The members shall be appointed for overlapping terms of six years. Members are eligible for reappointment. The members of the board shall devote their full time and attention to their board duties.

(e) The Governor may, if he or she is informed that a vacancy is imminent, appoint a member to fill the imminent vacancy prior to it becoming vacant: *Provided*, That the new member may be appointed no more than 30 days prior to the vacancy occurring and only for purposes of training. He or she may not assume the powers and duties of the position until the vacancy has actually occurred.

(f) The Governor may appoint no more than five persons to a list of substitute board members. Substitute board members shall meet the qualifications set forth in subsection (d) of this section. The persons on the list shall be used in a rotating fashion. If a full-time board member is unable to serve, a substitute board member may serve in his or her place. These substitute board members shall have the same powers and duties of the fulltime board members while acting as a substitute. These members shall be reimbursed for expenses and paid a per diem rate set by the secretary.

(g) The Division of Corrections and Rehabilitation shall provide administrative and other services to the board as the

78 board requires. Expenses of the board shall be included
79 within the annual budget of the Division of Corrections and
80 Rehabilitation: *Provided*, That the salaries of the members
81 appointed pursuant to subsection (b) of this section are to be
82 included in a separate budget for the Parole Board.

CHAPTER 170

(Com. Sub. for H. B. 4581 - By Delegates Pack and Hill)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, and §16-49-8 of the Code of West Virginia, 1931, as amended; all relating to employment screening; including the screening of West Virginia Department of Health and Human Resources employees in the background check process; and streamlining the variance procedures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.

§16-49-1. Definitions.

1 As used in this article:

2 "Applicant" means an individual who is being
3 considered for employment or engagement with the
4 department, a covered provider or covered contractor.

5 "Background check" means a prescreening of registries
6 specified by the secretary by rule and a fingerprint-based
7 search of state and federal criminal history record
8 information.

9 "Bureau" means a division within the Department of
10 Health and Human Resources.

11 "Covered contractor" means an individual or entity,
12 including their employees and subcontractors, that contracts
13 with a covered provider to perform services that include any
14 direct access services.

15 "Covered provider" means the following facilities or
16 providers:

17 (i) A skilled nursing facility;

18 (ii) A nursing facility;

19 (iii) A home health agency;

20 (iv) A provider of hospice care;

21 (v) A long-term care hospital;

22 (vi) A provider of personal care services;

23 (vii) A provider of adult day care;

24 (viii) A residential care provider that arranges for, or
25 directly provides, long-term care services, including an
26 assisted living facility;

27 (ix) An intermediate care facility for individuals with
28 intellectual disabilities; and

29 (x) Any other facility or provider required to participate
30 in the West Virginia Clearance for Access: Registry and
31 Employment Screening program as determined by the
32 secretary by legislative rule.

"Department" means the Department of Health and Human Resources.

"Department employee" means any prospective or current part-time employee, full-time employee, temporary employee, independent contractor, or volunteer of the department.

"Direct access" means physical contact with a resident, member, beneficiary or client, or access to their property, personally identifiable information, protected health information or financial information.

"Direct access personnel" means an individual who has direct access by virtue of ownership, employment, engagement or agreement with the department, a covered provider, or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions or contractors performing repairs, deliveries, installations or similar services for the covered provider. The secretary shall determine by legislative rule whether the position in question involves direct access.

"Disqualifying offense" means:

(A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

(B) A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses and financial crimes.

"Negative finding" means a finding in the prescreening that excludes an applicant from direct access personnel positions.

"Notice of ineligibility" means a notice pursuant to §16-49-3 of this code that the secretary's review of the applicant's criminal history record information reveals a disqualifying offense.

"Prescreening" means a mandatory search of databases and registries specified by the secretary in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

"Rap back" means the notification to the department when an individual who has undergone a fingerprint-based, state or federal criminal history record information check has a subsequent state or federal criminal history event.

"Secretary" means the Secretary of the West Virginia Department of Health and Human Resources, or his or her designee.

"State Police" means the West Virginia State Police Criminal Identification Bureau.

§16-49-2. Background check program for the department, covered providers, and covered contractors.

(a) The secretary shall create and implement a background check program to facilitate the processing and analysis of the criminal history and background of applicants to the department, covered providers, and covered contractors with direct access. This program shall be called the West Virginia Clearance for Access: Registry and Employment Screening.

(b) The purpose of the program is to protect West Virginia's vulnerable populations by requiring registry and criminal background checks for all direct access personnel of the department, covered providers, and covered contractors.

(c) The program shall include:

(1) A centralized Internet-based system of registries to allow the department, covered providers, and covered contractors to perform a mandatory prescreening of applicants;

(2) Fingerprint-based state and federal criminal background checks on all direct access personnel; and

(3) An integrated Rap Back Program with the State Police to allow retention of fingerprints and updates of state and federal criminal information on all direct access personnel until such time as the individual is no longer employed or engaged by the department, the covered provider, or covered contractor.

(d) The department shall notify applicants subject to a criminal history record check that their fingerprints shall be retained by the State Police Criminal Identification Bureau and the Federal Bureau of Investigation.

§16-49-3. Prescreening and criminal background checks.

(a) Except as otherwise permitted in this article, the department, covered provider, or covered contractor may not employ or engage an applicant prior to completing the background check process.

(b) If the applicant has a negative finding on any required prescreening registry or database, the employer shall notify the individual of such finding.

(c) If the applicant has a negative finding on any required prescreening registry or database, that individual may not immediately be engaged by the department, covered provider, or covered contractor.

(d) If the applicant does not have a negative finding in the prescreening process, the applicant shall submit to fingerprinting for a state and federal criminal history record information check.

(e) The State Police shall notify the secretary of the results of the criminal history record information check.

(f) If the secretary's review of the criminal history record information reveals that the applicant does not have

a disqualifying offense, the secretary shall provide written notice to the bureau, covered provider, or covered contractor that the individual may be engaged.

§16-49-4. Notice of ineligibility; prohibited participation as direct access personnel or department employee.

(a) If the secretary's review of the applicant's criminal history record information reveals a disqualifying offense, the secretary shall provide written notice to the bureau, covered provider, or covered contractor advising that the applicant is ineligible for work. The secretary may not disseminate the criminal history record information.

(b) The department, covered provider, or covered contractor may not engage an applicant with a disqualifying offense as direct access personnel. If the applicant has been provisionally employed pursuant to §16-49-6 of this code, the employer shall terminate the provisional employment upon receipt of the notice.

§16-49-5. Variance; appeals.

(a) If the secretary issues a notice of ineligibility, the applicant, or the employer on the applicant's behalf, may file a written request for a variance with the secretary not later than 30 days after the date of the notice required by §16-49-3 or §16-49-4 of this code.

(b) The secretary may grant a variance if:

(1) Mitigating circumstances surrounding the negative finding or disqualifying offense is provided; and

(2) The secretary finds that the individual will not pose a danger or threat to residents, members and their property.

(c) The secretary shall establish in legislative rule factors that qualify as mitigating circumstances.

(d) The secretary shall mail to the applicant and the bureau, covered provider, or covered contractor a written

decision within 60 days of receipt of the request indicating whether a variance has been granted or denied.

(e) If an applicant believes that their criminal history record information within this state is incorrect or incomplete, they may challenge the accuracy of such information by writing to the State Police for a personal review. However, if the discrepancies are at the charge or final disposition level, the applicant must address this with the court or arresting agency that submitted the record to the State Police.

(f) If an applicant believes that their criminal history record information outside this state is incorrect or incomplete, they may appeal the accuracy of such information by contacting the Federal Bureau of Investigation for instructions.

(g) If any changes, corrections, or updates are made in the criminal history record information, the State Police shall notify the secretary that the applicant has appealed the accuracy of the criminal history records and provide the secretary with the updated results of the criminal history record information check, which the secretary shall review de novo in accordance with the provisions of this article.

§16-49-6. Provisional employment pending completion of background check.

(a) The department, covered provider, or covered contractor may permit an applicant to work on a provisional basis for not more than 60 days pending notification from the secretary regarding the results of the criminal background check if:

(1) The applicant is subject to direct on-site supervision, as specified in rule by the secretary, during the course of the provisional period; and

(2) In a signed statement the applicant:

(A) Affirms that he or she has not committed a disqualifying offense;

(B) Acknowledges that a disqualifying offense reported in the required criminal history record information check shall constitute good cause for termination; and

(C) Acknowledges that the department, covered provider, or covered contractor may terminate the individual if a disqualifying offense is reported in the background check.

(b) Provisional employees who have requested a variance shall not be required to sign such a statement. The department, covered provider, or covered contractor may continue to employ an applicant if an applicant applies for a variance of his or her fitness determination until the variance is resolved.

§16-49-7. Clearance for subsequent employment.

(a) An applicant is not required to submit to fingerprinting and a criminal background check if:

(1) The individual previously submitted to fingerprinting and a full criminal background check as required by this article;

(2) The prior criminal background check confirmed that the individual did not have a disqualifying offense or the individual received prior approval from the secretary to work for or with the same type of covered provider or covered contractor; and

(3) The Rap Back Program has not identified any criminal activity that constitutes a disqualifying offense.

(b) The secretary shall provide notice of prior clearance for direct access status upon request by a subsequent bureau, covered provider, or covered contractor inquiries.

§16-49-8. Fees.

In order to enforce the requirements and intent of this article, the following fees may be charged:

(1) The State Police may assess a fee to the department, applicants, covered providers, or covered contractors for conducting the criminal background check and for collecting and retaining fingerprints for Rap Back as authorized under this article.

(2) The secretary may assess a fee to applicants, covered providers, or covered contractors for the maintenance of the Internet-based system required by this article. The assessment shall be deposited into a special revenue account within the State Treasurer's office to be known as the DHHR Criminal Background Administration Account. Expenditures from the account shall be made by the secretary for purposes set forth in this article and are authorized from collections. The account shall be administered by the secretary and may not be deemed a part of the general revenue of the state.

CHAPTER 171

(Com. Sub. for H. B. 4747 - By Delegates Howell and C. Martin)
[By Request of the Secretary of State]

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §29-19-2, §29-19-5, §29-19-6, and §29-19-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §39-4A-2 of said code; and to amend and reenact §47-2-1 and §47-2-3, all relating generally to extending current laws allowing electronic submission of

applications and forms to the Secretary of State's Office relating to licensure or regulation of charities, nonprofit organizations, out-of-state commissioners, and trademarks; providing new definitions for the term "sign" and "signature" relating to applications or forms in the foregoing regulated industries; providing for more efficient application processes in the foregoing regulated industries; and technical typographical changes to distinguish the Secretary of State from an entity's secretary or administrative assistant.

Be it enacted by the Legislature of West Virginia:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 19. SOLICITATION OF CHARITABLE FUNDS ACT.

§29-19-2. Definitions.

As used in this article:

(1) "Audit" means the systematic examination of records and documents and the securing of other evidence by confirmation, physical inspection, or otherwise, that includes a written assurance that financial statements and reports are fairly presented in conformity with generally accepted accounting principles issued by the American Institute of Certified Public Accountants.

(2) "Charitable organization" means a person who is or holds itself out to be a benevolent, educational, philanthropic, humane, patriotic, religious or eleemosynary organization, or any person who solicits or obtains contributions solicited from the public for charitable purposes, or any person who in any manner employs any appeal for contributions which may be reasonably interpreted to suggest that any part of those contributions will be used for charitable purposes. A chapter, branch, area, office or similar affiliate or any person soliciting contributions within the state for a charitable organization

which has its principal place of business outside the state is a charitable organization for the purposes of this article.

(3) "Contribution" means the promise or grant of any money or property of any kind or value.

(4) "Financial review" means an examination of financial statements in accordance with generally accepted accounting principles issued by the American Institute of Certified Public Accountants, in which a certified public accountant has a reasonable basis for expressing limited assurance that the reviewed statements are free of material misstatements or false or missing information and are found to be accurate, complete and fairly presented to meet the requirements of the generally accepted accounting principles.

(5) "Solicit" and "solicitation" means the request or appeal, directly or indirectly, for any contribution on the plea or representation that the contribution will be used for a charitable purpose, including, without limitation, the following methods of requesting a contribution:

(A) Any oral or written request;

(B) Any announcement to the press, over the radio or television, or by telephone, electronic mail or messaging, electronic bulletin board, or Internet technology, concerning an appeal or campaign to which the public is requested to make a contribution for any charitable purpose connected therewith;

(C) The distribution, circulation, posting or publishing of any handbill, written advertisement or other publication which directly or by implication seeks to obtain public support; or

(D) The sale of, offer or attempt to sell, any advertisement, advertising space, subscription, ticket or any service or tangible item in connection with which any appeal is made for any charitable purpose or where the name

of any charitable or civic organization is used or referred to in an appeal as an inducement or reason for making the sale, or when or where in connection with the sale, any statement is made that the whole, or any part of, the proceeds from the sale will be donated to any charitable purpose.

"Solicitation", as defined herein, occurs when the request is made, at the place the request is received, whether or not the person making the request actually receives any contribution.

(6) "Federated fund-raising organization" means a federation of independent charitable organizations which have voluntarily joined together, including, but not limited to, a united fund or community chest, for purposes of raising and distributing money for and among themselves and where membership does not confer operating authority and control of the individual agencies upon the federated group organization.

(7) "Parent organization" is that part of a charitable organization which coordinates, supervises or exercises control over policy, fund raising and expenditures, or assists, receives funds from or advises one or more chapters, branches or affiliates in the state.

(8) "Person" means any individual, organization, trust, foundation, group, association, partnership, corporation, society or any combination of them.

(9) "Professional fund-raising counsel" means any person who for a flat fixed fee under a written agreement plans, conducts, manages, carries on, advises or acts as a consultant, whether directly or indirectly, in connection with soliciting contributions for, or on behalf of any charitable organization but who actually solicits no contributions as a part of the services. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional fund-raising counsel.

(10) "Professional solicitor" means any person who, for a financial or other consideration, solicits contributions for, or on behalf of a charitable organization, whether the solicitation is performed personally or through that person's agents, servants or employees specially employed by, or for a charitable organization, who are engaged in the solicitation of contributions under the direction of that person, or a person who plans, conducts, manages, carries on, advises or acts as a consultant to a charitable organization in connection with the solicitation of contributions but does not qualify as "professional fund-raising counsel" within the meaning of this article. A bona fide salaried officer or employee of a charitable organization maintaining a permanent establishment within the state is not a professional solicitor.

No attorney, investment counselor or banker, who advises any person to make a contribution to a charitable organization, is considered, as the result of the advice, a professional fund-raising counsel or a professional solicitor.

(11) "Sign" means the action of affixing a person's signature to any document or record, whether by manual, written, or approved electronic means.

(12) "Signature" means any mark, symbol, facsimile, or electronic mark or symbol, that depicts a person's name on any document or record, affixed to the document or record by the person with the intent to authenticate, assert, certify, or agree to the matters, validity, information, or attestation set forth in the document or record.

§29-19-5. Registration of charitable organizations; fee.

(a) Every charitable organization, except as provided in section six of this article, which intends to solicit contributions, donations or grants within this state or to have funds solicited or received on its behalf shall, prior to any solicitation, register with the Secretary of State, in a manner or method authorized and upon forms prescribed by him or

her which shall be good for one full year and which shall be refiled in the next and each following year in which the charitable organization is engaged in solicitation activities. If an organization discontinues solicitation at any time after its last registration filing, then it shall file a registration statement reflecting its activities during its last fiscal year in which solicitation in West Virginia took place. The president, chairman, or principal officer of the charitable organization signed by an authorized agent of the charitable organization shall file the statements required under this article. The statements shall be sworn to and shall contain the following information:

(1) The name of the organization and the purpose for which it was organized;

(2) The principal address of the organization and the address of any offices in this state. If the organization does not maintain an office, the name and address of the person having custody of its financial records;

(3) The names and addresses of any chapters, branches or affiliates in this state;

(4) The place where and the date when the organization was legally established and the form of its organization;

(5) The names and addresses of the officers, directors, trustees and the principal salaried executive staff officer;

(6) A copy of a balance sheet and a statement or report of income and expenses for the organization's immediately preceding fiscal year or a financial statement reporting information showing the kind and amount of funds raised during the preceding fiscal year, the costs and expenses incidental to the fundraising and showing how the funds were disbursed or allocated for the same fiscal year: *Provided*, That in addition to the financial documents required by this subdivision:

(A) Charitable organizations raising more than $500,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a report of an audit by an independent certified public accountant; and

(B) Charitable organizations raising more than $200,000 per year, but less than $500,000 per year in contributions, excluding grants from governmental agencies or private foundations, shall submit a statement of financial review by an independent certified public accountant;

(7) A copy of any determination of the organization's tax-exempt status under the provisions of 26 U.S.C. §501(c)(3) and a copy of the last filed Internal Revenue Service Form 990 and Schedule A for every charitable organization and any parent organization;

(8) Whether the organization intends to solicit contributions, donations or grants from the public directly or have other solicitation done on its behalf by others;

(9) Whether the organization is authorized by any other governmental authority to solicit contributions, donations or grants and whether it is or has ever been enjoined by any court from soliciting contributions;

(10) The general purpose or purposes for which the contributions to be solicited shall be used;

(11) The name or names under which it intends to solicit contributions;

(12) The names of the individuals or officers of the organization who will have final responsibility for the custody of the contributions;

(13) The names of the individuals or officers of the organization responsible for the final distribution of the contributions;

(14) Copies of all contract documentation from professional fund-raising counsels and professional solicitors as provided in subsection (d), section seven of this article; and

(15) The amount of money received in the state and the amount spent in the state for charitable purposes.

(b) Each chapter, branch or affiliate, except an independent member agency of a federated fundraising organization, may separately report the information required by this section or report the information to its parent organization which shall then furnish the information regarding its West Virginia affiliates, chapters and branches in a consolidated form to the Secretary of State. An independent member agency of a federated fundraising organization, as defined in section two of this article, shall comply with the provisions of this article independently. Each organization shall file a separate registration form for each name under which funds will be solicited.

(c) The registration forms and any other documents prescribed by the Secretary of State shall be signed by an authorized agent, officer or by an independent public accountant and by the chief fiscal officer of the charitable organization.

(d) Every charitable organization receiving less than $1 million during any year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $15; every charitable organization collecting more than $1 million during one year which submits an independent registration to the Secretary of State shall pay an annual registration fee of $50; and a parent organization filing on behalf of one or more chapters, branches or affiliates or a single organization filing under different names shall pay a single annual registration fee of $50 for itself and the chapters, branches or affiliates included in the registration statement. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as

follows: One-half shall be deposited in the State General Revenue Fund and one-half shall be deposited in the services fees and collections account established by §59-1-2 of this code for the operation of the office of the Secretary of State. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(e) For good cause shown, the Secretary of State may extend the due date for the annual filing of a registration statement or report by a charitable organization or a professional fundraiser for a period not to exceed 90 days. During that period, the previously filed registration statement or report of the charitable organization which has been granted the extension remains in effect.

(f) In addition to the registration fee required by this section, a charitable organization or professional fundraiser, or both, which fails to file a registration statement or report by the original or extended due date for filing as required by this section shall, for each month or part of the month thereafter in which the registration statement or report is not filed, pay an additional fee of $25: *Provided*, That the total amount of the additional fees for a registration statement or report required to be filed in any one year may not exceed $500. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the State General Revenue Fund and 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. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

***§29-19-6. Certain persons and organizations exempt from registration.**

The following charitable organizations are not required to file an annual registration statement with the Secretary of State:

***NOTE:** This section was also amended by H. B. 4714 (Chapter 340), which passed prior to this act.

(1) Educational institutions, the curriculums of which, in whole or in part, are registered or approved by the State Board of Education, either directly or by acceptance of accreditation by an accrediting body recognized by the State Board of Education; and any auxiliary associations, foundations and support groups which are directly responsible to the educational institutions;

(2) Persons requesting contributions for the relief of any individual specified by name at the time of the solicitation when all of the contributions collected without any deductions whatsoever are turned over to the named beneficiary for his or her use;

(3) Hospitals and licensed nursing homes which are nonprofit and charitable;

(4) Organizations which solicit only within the membership of the organization by the members thereof: *Provided*, That the term "membership" does not include those persons who are granted a membership upon making a contribution as the result of solicitation. For the purpose of this section, "member" means a person having membership in a nonprofit corporation, or other organization, in accordance with the provisions of its articles of incorporation, bylaws or other instruments creating its form and organization; and having bona fide rights and privileges in the organization, including the right to vote, to elect officers, directors and issues, to hold office or otherwise as ordinarily conferred on members of the organizations;

(5) Churches, synagogues, associations or conventions of churches, religious orders or religious organizations that are an integral part of a church which qualifies as tax exempt under the provisions of 26 U.S.C. §501(c)(3) and which qualifies as being exempt from filing an annual return under the provisions of 26 U.S.C. §6033;

(6) Any person, firm, corporation or organization that sponsors a single fundraising event for the benefit of a named charitable organization where all or part of the funds collected are donated to the named charitable organization: *Provided*, That the named charitable organization receiving the funds is registered pursuant to this article, reports each of these donations individually and certifies that no funds were withheld by the organization that solicited the funds;

(7) Any charitable organization that does not employ a professional solicitor or fundraiser and does not intend to solicit and receive and does not actually raise or receive contributions, donations or grants from the public in excess of $50,000 during a calendar year.

Charitable organizations which do not intend to solicit and receive contributions, donations or grants in excess of $50,000, but do receive in excess of that amount from the public, shall file the annual registration statement within 30 days after contributions are in excess of $50,000.

§29-19-9. Registration of professional fundraising counsel and professional solicitor; bonds; records; books.

(a) No person may act as a professional fundraising counsel or professional solicitor for a charitable organization subject to the provisions of this article unless he or she has first registered with the Secretary of State. The registration application shall be submitted in a manner or method authorized by the Secretary of State and contain the information he or she requires. The registration application by professional fundraising counsel or professional solicitor shall be accompanied by an annual fee in the sum of $100. A partnership or corporation, which is a professional fundraising counsel or professional solicitor, may register for and pay a single fee on behalf of all its members, officers, agents and employees. However, the names and addresses of all officers, agents and employees of professional fundraising counsel and all professional solicitors, their officers, agents, servants or employees

employed to work under the direction of a professional solicitor shall be listed in the application. All fees and moneys collected by the Secretary of State pursuant to the provisions of this article shall be deposited by the Secretary of State as follows: One-half shall be deposited in the state General Revenue Fund and 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. The Secretary of State shall dedicate sufficient resources from that fund or other funds to provide the services required in this article.

(b) The applicant shall, at the time of the making of an application, file with and have approved by the Secretary of State a bond in which the applicant shall be the principal obligor in the sum of $10,000 and which shall have one or more sureties satisfactory to the Secretary of State whose liability in the aggregate as such sureties will at least equal the said sum and maintain the bond in effect so long as a registration is in effect. The bond shall run to the state for the use of the Secretary of State and any person who may have a cause of action against the obligor of the bonds for any losses resulting from malfeasance, nonfeasance or misfeasance in the conduct of solicitation activities. A partnership or corporation which is a professional fundraising counsel or professional solicitor may file a consolidated bond on behalf of all its members, officers and employees.

(c) Each registration is valid throughout the state for a period of one year and may be renewed for additional one-year periods upon application submitted to the Secretary of State in a manner or method authorized and in the form prescribed by the Secretary of State and the payment of the fee prescribed in this section.

(d) The Secretary of State or his or her designee shall examine each application and if he or she finds it to be in conformity with the requirements of this article and all relevant rules and the registrant has complied with the

requirements of this article and all relevant rules, he or she shall approve the registration.

CHAPTER 39. RECORDS AND PAPERS.

ARTICLE 4A. OUT-OF-STATE COMMISSIONERS.

§39-4A-2. Powers of commissioners; official seals.

(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) 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.

(e) Every certificate of the commissioner shall be authenticated by his or her signature and official seal.

CHAPTER 47. REGULATION OF TRADE.

ARTICLE 2. TRADEMARKS IN GENERAL.

§47-2-1. Definitions.

As used in this article:

(1) The term "trademark" means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the goods of such person, including a unique product, from those manufactured and sold by others, and to indicate the source of the goods, even if that source is unknown.

(2) The term "service mark" means any word, name, symbol or device or any combination thereof used by a person to identify and distinguish the services of one person, including a unique service, from the services of others, and to indicate the source of the services, even if that source is unknown. Titles, character names used by a person, and other distinctive features of radio or television programs may be registered as service marks notwithstanding that they, or the programs, may advertise the goods of the sponsor.

(3) The term "mark" includes any trademark or service mark, entitled to registration under this article whether registered or not.

(4) The term "trade name" means any name used by a person to identify a business or vocation of such person.

(5) The term "person" and any other word or term used to designate the applicant or other party entitled to a benefit or privilege or rendered liable under the provisions of this article includes a juristic person as well as a natural person. The term "juristic person" includes a firm, partnership,

corporation, union, association or other organization capable of suing and being sued in a court of law.

(6) The term "applicant" embraces the person filing an application for registration of a mark under this article, and the legal representatives, successors or assigns of that person.

(7) The term "registrant" as used herein embraces the person to whom the registration of a mark under this article is issued, and the legal representatives, successors or assigns of that person.

(8) The term "use" means the bona fide use of a mark in the ordinary course of trade, and not made merely to reserve a right in a mark. For the purposes of this article, a mark is considered to be in use: (A) On goods when it is placed in any manner on the goods or other containers or the displays associated therewith or on the tags or labels affixed thereto, or if the nature of the goods makes such placement impracticable, then on documents associated with the goods or their sale, and the goods are sold or transported in commerce in this state; and (B) on services when it is used or displayed in the sale or advertising of services and the services are rendered in this state.

(9) A mark is considered to be "abandoned" when either of the following occurs:

(A) When its use has been discontinued with intent not to resume that use. Intent not to resume may be inferred from circumstances. Nonuse for two consecutive years shall constitute prima facie evidence of abandonment.

(B) When any course of conduct of the owner, including acts of omission as well as commission, causes the mark to lose its significance as a mark.

(10) The term "secretary" means the Secretary of State or the designee of the secretary charged with the administration of this article.

(11) The term "dilution" means the lessening of the capacity of registrant's mark to identify and distinguish goods or services, regardless of the presence or absence of: (A) Competition between the parties; or (B) likelihood of confusion, mistake or deception.

(12) "Retail value" means:

(A) For items that bear a counterfeit mark and are components of a finished product, the regular selling price of the finished product in which the component would be utilized.

(B) For items that bear a counterfeit mark other than items described in paragraph (A) of this subdivision and for services that are identified by a counterfeit mark, the regular selling price of the item or service.

(13) "Sign" means the action of affixing a person's signature to any document or record, whether by manual, written or approved electronic means.

(14) "Signature" means any mark, symbol, facsimile or electronic mark or symbol, that depicts a person's name on any document or record, affixed to the document or record by the person with the intent to authenticate, assert, certify or agree to the matters, validity, information or attestation set forth in the document or record.

§47-2-3. Application for registration.

(a) Subject to the limitations set forth in this article, any person who uses a mark may file in the office of the secretary, in a manner complying with the requirements of the secretary, an application for registration of that mark setting forth, but not limited to, the following information:

(1) The name and business address of the person applying for such registration; and, if a corporation, the state of incorporation, or if a partnership, the state in which the partnership is organized and the names of the general partners, as specified by the secretary;

(2) The goods or services on or in connection with which the mark is used and the mode or manner in which the mark is used on or in connection with such goods or services and the class in which such goods or services fall;

(3) The date when the mark was first used anywhere and the date when it was first used in this state by the applicant or a predecessor in interest; and

(4) A statement that the applicant is the owner of the mark, that the mark is in use, and that, to the knowledge of the person verifying the application, no other person has registered, either federally or in this state, or has the right to use such mark either in the identical form thereof or in such near resemblance thereto as to be likely, when applied to the goods or services of such other person, to cause confusion, or to cause mistake, or to deceive.

(b) The secretary may also require a statement as to whether an application to register the mark, or portions or a composite thereof, has been filed by the applicant or a predecessor in interest in the United States Patent and Trademark Office; and, if so, the applicant shall provide full particulars with respect thereto including the filing date and serial number of each application, the status thereof and, if any application was finally refused registration or has otherwise not resulted in a registration, the reasons therefor.

(c) The secretary may also require that a drawing of the mark, complying with such requirements as the secretary may specify, accompany the application.

(d) The application shall be signed manually in writing or electronically by the applicant or by a member of the firm or an officer of the corporation or association applying.

(e) The application shall be accompanied by three specimens showing the mark as actually used.

(f) The application shall be accompanied by the application fee payable to the Secretary of State.

CHAPTER 172

(S. B. 703 - By Senators Prezioso, Azinger, Beach, Clements, Hamilton, Plymale, Rucker, Weld, Cline, Hardesty, Jeffries, Romano and Roberts)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-1-1d of the Code of West Virginia, 1931, as amended, relating to an increase in the earning limit for employees who accept a separation incentive under this article and subsequently return to employment; and amending or removing obsolete, duplicative, or unnecessary language from state code.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1d. Retirement and separation incentives.

(a) Notwithstanding any other provisions of this code to the contrary, each state institution of higher education may develop plans that offer various incentives for voluntary, early, or phased retirement of employees or voluntary separation from employment when necessary to implement programmatic changes effectively pursuant to the findings, directives, goals, and objectives of this article: *Provided*, That such incentives for voluntary, early, or phased retirement of employees or voluntary separation from employment must be approved by the institution's governing board and presented to the legislative Joint Committee on Pensions and Retirement and approved before such plans are implemented by the institution.

(b) The plans may include the following provisions:

(1) Payment of a lump sum to an employee to resign or retire;

(2) Continuation of full salary to an employee for a predetermined period of time prior to the employee's resignation or retirement and a reduction in the employee's hours of employment during the predetermined period of time;

(3) Continuation of insurance coverage pursuant to the provisions of §5-16-1 *et seq.* of this code for a predetermined period;

(4) Continuation of full employer contributions to an employee's retirement plan during a phased retirement period; and

(5) That an employee retiring pursuant to an early or phased retirement plan may begin collecting an annuity from the employee's retirement plan prior to the statutorily designated retirement date without terminating his or her service with the institution.

(c) No incentive provided for in this section shall be granted except in furtherance of programmatic changes undertaken pursuant to the findings, directives, goals, and objectives set forth in this article.

(d) No plan proposed by an institution pursuant to this section shall be implemented without approval of the legislative joint committee on pensions and retirement.

Any costs associated with any incentive adopted or implemented in accordance with this section shall be borne entirely by the institutions and no incentive shall be granted that imposes costs on the retirement systems of the state or the Public Employees Insurance Agency unless those costs are paid entirely by the institutions.

(e) The Legislature further finds and declares that there is a compelling state interest in restricting the availability and application of these incentives to individual employees determined by the institutions to be in furtherance of the aims of this section and nothing herein shall be interpreted as granting a right or entitlement of any such incentive to any individual or group of individuals. Any employee granted incentives shall be ineligible for reemployment by the institutions during or after the negotiated period of his or her incentive concludes, including contract employment in excess of $25,000 per fiscal year.

(f) The West Virginia network for educational telecomputing may utilize the incentives contained in any plan approved by the legislative Joint Committee on Pensions and Retirement pursuant to this section.

CHAPTER 173

(Com. Sub. for S. B. 760 - By Senator Rucker)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1-1f; to amend and reenact §18B-1-2 of said code; to amend and reenact §18B-1B-4 and §18B-1B-6 of said code; to amend and reenact §18B-1D-7 of said code; and to amend and reenact §18B-19-4 of said code, all relating to higher education; providing findings; defining terms; allowing any state college and university to apply to the Higher Education Policy Commission for designation as an administratively exempted school; requiring Higher Education Policy Commission to propose rules for legislative approval that address loss of an administratively exempted designation; setting forth specific

exemptions for a college and university designated as an administratively exempted school; requiring Higher Education Policy Commission report to the Legislative Oversight Commission on Education Accountability certain information pertaining to the administratively exempted schools eligibility criteria; updating institution names; referring to exempted schools as statutorily exempted schools; removing obsolete language; updating code to reflect removal of statewide master plan and compact requirements by prior legislation; removing requirement for Higher Education Policy Commission to advise and confirm in the appointment of presidents of the institutions of higher education under its jurisdiction; amending the powers and duties of the Higher Education Policy Commission, consistent with the specific exemptions provided for administratively exempted schools; clarifying that Higher Education Policy Commission can use certain appropriated incentive funds to influence behavior of statutorily and administratively exempted schools; amending requirements pertaining to the required report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability that includes a recommendation for the allocation of general revenue to be appropriated to the institutions; removing requirement for Higher Education Policy Commission to confirm appointment of institutional presidents; requiring classified employees, if any are employed by the institution, be used when doing evaluations of institutional presidents; updating language to be consistent with replacing institutional and statewide report cards with a data reporting system in prior legislation; removing unnecessary language; declaring that the geographic areas of responsibility for the West Virginia School of Osteopathic Medicine, Marshall University, and West Virginia University are statewide; and removing requirement for Higher Education Policy Commission confirmation of campus development plans.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GOVERNANCE.

§18B-1-1f. State college and university exemption status.

(a) The Legislature finds that:

(1) Efficiencies, entrepreneurialism, and the effectiveness of governing boards in fulfilling certain goals can be incentivized through the accountability and autonomy associated with exemption status for state colleges and universities based on meeting certain criteria; and

(2) Leading higher education authorities in the nation identify common, key performance indicators as an important measure of institutional effectiveness, including, but not limited to, enrollment benchmarks, fiscal benchmarks, and student success benchmarks.

(b) The following definitions apply to terms used in this section:

(1) "Administratively exempted schools" means state colleges and universities:

(A) That achieve and maintain three out of five of the following:

(i) Graduation rates: A three-year average graduation rate of not less than 45 percent;

(ii) Retention rates: A three-year average retention rate of not less than 60 percent; and

(iii) Credit head count enrollment: A three-year credit head count enrollment increase, or a decrease of not more than five percent over the same period;

(iv) Days of cash reserved: A three-year average of not less than 50 days cash reserved; and

(v) Composite Financial Index: A Composite Financial Index of not less than one as reported in the college and university's audited financial statements; or

(B) Whose governing board requests a review by the chancellor of any special circumstances and the commission grants administratively exempted status based on those special circumstances as verified by the chancellor after his or her review.

(2) "Composite Financial Index" means the benchmarking tool used by the Higher Learning Commission as a financial indicator and developed specifically for the higher education industry and is a combination of several different ratios, each of which is comprised of data that, when analyzed further, can provide insight into an institution's financial health and inform decision-making processes;

(3) "Credit headcount enrollment" means the total number of unique students, but not counting dual-enrolled high school students, who enrolled in credit-bearing classes during the fall, spring, and summer terms in a given academic year at a specific institution;

(4) "Days of cash reserved" means the audited end of fiscal year cash balance, multiplied by 365, and then divided by the audited total expenses less depreciation, and less other post employment benefit and pension liability expenses;

(5) "Graduation rates" means the proportion of first time in college students who obtain a bachelor's degree within six years, as further defined by and reported to the commission;

(6) "Retention rates" means the proportion of first-time, fall term, full-time freshmen students who are in continuing enrollment in the fall term of the next succeeding year; and

(7) "State college and university" shall have the same meaning as provided in §18B-1-2 of this code.

(c) Any state college and university may apply to the commission for designation as an administratively

exempted school. The commission shall make its determination as to whether to grant or deny exemption designation based on the definition of administratively exempted school. The commission shall propose rules for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement the provisions of this section and that addresses loss of an administratively exempted designation. The rule shall at least include the following:

(1) After the first year an administratively exempted school fails to meet three of the five criteria under the definition of administratively exempted schools, the commission may advise the institution on strategies that may be implemented in order to meet three of the five criteria before the following year;

(2) An institution may not lose its designation as an administratively exempted school until it has failed to meet three of the five criteria under the definition of administratively exempted schools for two consecutive years;

(3) If an institution is administratively exempt based on special circumstances, the commission may revoke the administratively exempted status of a state college and university if it determines that the special circumstance that the state college and university's administratively exempted status is based on no longer exists; and

(4) The commission shall provide notice to the institution at least 30 days before revoking the institution's administratively exempted status.

(d) Notwithstanding any other provision of this code to the contrary:

(1) West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine,

which are statutorily exempted schools under §18B-1-2 of this code, are institutions of unique characteristics and their continuing inclusion as a statutorily exempted school is confirmed; and

(2) No other state institution of higher education maintains exempted school status pursuant to any other provision of this code except any exempted school status designated by the commission pursuant to this section.

(e) Notwithstanding any other provision of this code to the contrary, any state college and university that applies and is designated by the commission as an administratively exempted school is exempt from the following:

(1) The required approval of capital projects to ensure that capital projects and facility needs are managed effectively pursuant to §18B-1B-4(a)(10) of this code;

(2) The development and approval of institutional mission definitions pursuant to §18B-1B-4(a)(34) of this code;

(3) The program approval required pursuant to §18B-1B-4(a)(35) of this code;

(4) The rules providing guidance to the governing boards in filling vacancies in the office of the president pursuant to §18B-1B-6(d) of this code;

(5) The commission's rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, upon adoption by the board of governors of said school of its own rule governing and controlling acquisitions and purchases pursuant to §18B-5-4 of this code, following the procedures for adoption of rules provided for in this code;

(6) The required approval of capital improvement projects exceeding $3 million pursuant to §18B-19-6 of this code;

(7) The required approval of lease-purchase agreements for capital improvements and equipment of $1.5 million or greater pursuant to §18B-19-11 of this code; and

(8) The required approval of real estate transactions, lease purchase, and new building construction exceeding $1 million pursuant to §18B-19-13 of this code.

(f) Not later than the January interims of each year, the commission shall submit a report to the Legislative Oversight Commission on Education Accountability relating to the administratively exempted schools eligibility criteria established by this section, providing the data for each of the three preceding years, as available, and the three-year average thereof, for each of the state institutions of higher education under its jurisdiction. The commission shall share the report with the institutions.

§18B-1-2. Definitions.

The following words when used in this chapter and chapter 18C of this code have the meanings ascribed to them unless the context clearly indicates a different meaning:

"Administratively linked community and technical college" means a state institution of higher education delivering community and technical college education and programs which has maintained a contractual agreement to receive essential services from another accredited state institution of higher education prior to July 1, 2008;

"Advanced technology center" means a facility established under the direction of an independent community and technical college or the council for the purpose of implementing and delivering education and training programs for high-skill, high-performance 21st century workplaces;

"Approve" or "approval", when used in reference to action by the commission or the council, means action in which the governance rationale of a governing board under

its jurisdiction is given due consideration, and the action of the commission is to additionally establish whether the proposed institutional action is consistent with law and established policy and is an appropriate advancement of the public interest;

"Board of visitors" means the advisory board previously appointed for the West Virginia Graduate College and the advisory board previously appointed for West Virginia University Institute of Technology, which provide guidance to the Marshall University Graduate College and West Virginia University Institute of Technology, respectively;

"Broker" or "brokering" means serving as an agent on behalf of students, employers, communities, or responsibility areas to obtain education services not offered at that institution. These services include courses, degree programs, or other services contracted through an agreement with a provider of education services either in-state or out of state;

"Chancellor" means the Chancellor for Higher Education where the context refers to a function of the Higher Education Policy Commission. "Chancellor" means the Chancellor for Community and Technical College Education where the context refers to a function of the West Virginia Council for Community and Technical College Education;

"Chancellor for Community and Technical College Education" means the chief executive officer of the West Virginia Council for Community and Technical College Education employed pursuant to §18B-2B-3 of this code;

"Chancellor for Higher Education" means the chief executive officer of the Higher Education Policy Commission employed pursuant to §18B-1B-5 of this code;

"Collaboration" means entering into an agreement with one or more providers of education services in order to

enhance the scope, quality, or efficiency of education services;

"Community and technical college", in the singular or plural, means the free-standing community and technical colleges and other state institutions of higher education which deliver community and technical college education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

"Community and technical college education" means the programs, faculty, administration, and funding associated with the delivery of community and technical college education programs;

"Community and technical college education program" means any college-level course or program beyond the high school level provided through a public institution of higher education resulting in or which may result in a two-year associate degree award including an associate of arts, an associate of science, and an associate of applied science; certificate programs and skill sets; developmental education; continuing education; collegiate credit and noncredit workforce development programs; and transfer and baccalaureate parallel programs. All programs are under the jurisdiction of the council. Any reference to "post-secondary vocational education programs" means community and technical college education programs as defined in this subdivision;

"Confirm" or "confirmation", when used in reference to action by the commission, means action in which substantial deference is allocated to the governing authority of a

governing board under its jurisdiction and the action of the commission is to review whether the proposed institutional action is consistent with law and established policy;

"Council" means the West Virginia Council for Community and Technical College Education created by §18B-2B-1 *et seq.* of this code;

"Dual credit course" or "dual enrollment course" means a credit-bearing college-level course offered in a high school by a state institution of higher education for high school students in which the students are concurrently enrolled and receiving credit at the secondary level;

"Essential conditions" means those conditions which shall be met by community and technical colleges as provided in §18B-3C-3 of this code;

"Exempted schools" or "statutorily exempted schools" means West Virginia University, including West Virginia University Potomac State College and West Virginia University Institute of Technology; Marshall University; and the West Virginia School of Osteopathic Medicine;

"Governing boards" or "boards" means the institutional boards of governors created by §18B-2A-1 of this code;

"Higher Education Policy Commission", "policy commission" or "commission" means the commission created by §18B-1B-1 of this code;

"Independent community and technical college" means a state institution of higher education under the jurisdiction of the council, which is independently accredited, is governed by its own independent governing board, and may not be operated as a branch or off-campus location of any other state institution of higher education. This definition includes Blue Ridge Community and Technical College, BridgeValley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River

Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg;

"Institutional operating budget" or "operating budget" means for any fiscal year an institution's total unrestricted education and general funding from all sources, including, but not limited to, tuition and fees and legislative appropriation, and any adjustments to that funding as approved by the commission or council based on comparisons with peer institutions or to reflect consistent components of peer operating budgets;

"Rule" or "rules" means a regulation, standard, policy, or interpretation of general application and future effect;

"Sponsoring institution" means a state institution of higher education that maintained an administrative link to a community and technical college providing essential services prior to July 1, 2008. This definition includes institutions whose governing boards had under their jurisdiction a community and technical college, regional campus, or a division delivering community and technical college education and programs;

"State college and university" means Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University, or West Virginia State University;

"State institution of higher education" means any university, college, or community and technical college under the jurisdiction of a governing board as that term is defined in this section;

"Statewide network of independently accredited community and technical colleges" or "community and technical college network" means the state institutions of

higher education under the jurisdiction of the West Virginia Council for Community and Technical College Education which are independently accredited, each governed by its own independent governing board, and each having a core mission of providing affordable access to and delivering high quality community and technical education in every region of the state; and

"Vice chancellor for administration" means the person employed in accordance with §18B-4-2 of this code. Any reference in this chapter or chapter 18C of this code to "senior administrator" means vice chancellor for administration.

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-4. Powers and duties of Higher Education Policy Commission.

(a) The primary responsibility of the commission is to provide shared services in a cost-effective manner upon request to the state colleges and universities, the council, and the community and technical colleges; undertake certain statewide and regional initiatives as specifically designated in this chapter, including those related to the administration of grants and scholarships and including those in conjunction with the council; to review, confirm, or approve certain actions undertaken by governing boards, as delineated in this chapter; and assist in the development of policy that will achieve the goals, objectives and priorities found in §18B-1-1a and §18B-1D-1 of this code. The commission shall exercise its authority and carry out its responsibilities in a manner that is consistent and not in conflict with the powers and duties assigned by law to the West Virginia Council for Community and Technical College Education and the powers and duties assigned to the governing boards. To that end, the commission has the following powers and duties relating to the governing boards under its jurisdiction:

(1) Develop and advance the public policy agenda pursuant to §18B-1D-1 *et seq.* of this code to address major challenges facing the state, including, but not limited to, the goals, objectives, and priorities established in this chapter; and

(2) Develop, oversee, and advance the promulgation and implementation of a financing rule for state institutions of higher education under its jurisdiction except the statutorily exempted schools. The rule shall meet the following criteria:

(A) Provide for an adequate level of educational and general funding for institutions pursuant to §18B-1A-5 of this code;

(B) Serve to maintain institutional assets, including, but not limited to, human and physical resources and eliminating deferred maintenance; and

(C) Invest and provide incentives for achieving the priority goals in the public policy agenda, including, but not limited to, those found in §18B-1-1a and §18B-1D-1 *et seq.* of this code;

(3) In collaboration with the council and the governing boards:

(A) Building public consensus around and sustaining attention to a long-range public policy agenda. In developing the agenda, the commission and council shall seek input from the Legislature, the Governor, the governing boards, and specifically from the State Board of Education and local school districts in order to create the necessary linkages to assure smooth, effective and seamless movement of students through the public education and post-secondary education systems and to ensure that the needs of public school courses and programs can be fulfilled by the graduates produced and the programs offered;

(B) Assisting governing boards to carry out their duty effectively to govern the individual institutions of higher education;

(4) Serve as a point of contact to state policymakers:

(A) The Governor for the public policy agenda; and

(B) The Legislature by maintaining a close working relationship with the legislative leadership and the Legislative Oversight Commission on Education Accountability;

(5) Upon request, provide shared services to a state institution of higher education;

(6) Administer scholarship and grant programs as provided for in this code;

(7) Establish and implement the benchmarks and performance indicators for state colleges and universities necessary to measure institutional progress in achieving state policy priorities and institutional missions pursuant to §18B-1D-7 of this code;

(8) Establish a formal process for recommending capital investment needs and for determining priorities for state colleges and universities for these investments for consideration by the Governor and the Legislature as part of the appropriation request process pursuant to §18B-19-1 *et seq.* of this code;

(9) Except the statutorily exempted schools and the administratively exempted schools, develop standards and evaluate governing board requests for capital project financing in accordance with §18B-19-1 *et seq.* of this code;

(10) Except the statutorily exempted schools and administratively exempted schools, ensure that governing boards manage capital projects and facilities needs

effectively, including review and approval of capital projects, in accordance with §18B-19-1 *et seq.* of this code;

(11) Acquire legal services as considered necessary, including representation of the commission, the governing boards, employees, and officers before any court or administrative body, notwithstanding any other provision of this code to the contrary. The counsel may be employed either on a salaried basis or on a reasonable fee basis. In addition, the commission may, but is not required to, call upon the Attorney General for legal assistance and representation as provided by law;

(12) Employ a Chancellor for Higher Education pursuant to §18B-1B-5 of this code;

(13) Employ other staff as necessary and appropriate to carry out the duties and responsibilities of the commission and the council, in accordance with §18B-4-1 *et seq.* of this code;

(14) Provide suitable offices in Kanawha County for the chancellor, vice chancellors, and other staff;

(15) Approve the total compensation package from all sources for presidents of institutions under its jurisdiction, except the statutorily exempted schools, as proposed by the governing boards. The governing boards, except the governing boards of the statutorily exempted schools, must obtain approval from the commission of the total compensation package both when institutional presidents are employed initially and afterward when any change is made in the amount of the total compensation package: *Provided*, That the commission will receive notice, but need not approve or confirm, an increase in the compensation of an institutional president that is exactly in the ratio of compensation increases allocated to all institutional employees and approved by the governing board to expressly include the president;

(16) Assist and facilitate the work of the institutions to implement the policy of the state to assure that parents and students have sufficient information at the earliest possible age on which to base academic decisions about what is required for students to be successful in college, other post-secondary education and careers related, as far as possible, to results from current assessment tools in use in West Virginia;

(17) Approve and implement a uniform standard jointly with the council to determine which students shall be placed in remedial or developmental courses. The standard shall be aligned with college admission tests and assessment tools used in West Virginia and shall be applied uniformly by the governing boards. The chancellors shall develop a clear, concise explanation of the standard which they shall communicate to the State Board of Education and the state superintendent of schools;

(18) Jointly with the council, develop and implement an oversight plan to manage systemwide technology except for the statutorily exempted schools, including, but not limited to, the following:

(A) Expanding distance learning and technology networks to enhance teaching and learning, promote access to quality educational offerings with minimum duplication of effort; and

(B) Increasing the delivery of instruction to nontraditional students, to provide services to business and industry and increase the management capabilities of the higher education system.

(C) Notwithstanding any other provision of law or this code to the contrary, the council, commission, and governing boards are not subject to the jurisdiction of the Chief Technology Officer for any purpose;

(19) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a bachelor's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state community and technical college with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(20) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for any degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(21) Establish and implement policies and procedures to ensure that a student may transfer and apply toward the requirements for a master's degree the maximum number of credits earned at any regionally accredited in-state or out-of-state higher education institution with as few requirements to repeat courses or to incur additional costs as are consistent with sound academic policy;

(22) Establish and implement policies and programs, in cooperation with the council and the governing boards, through which a student who has gained knowledge and skills through employment, participation in education, and training at vocational schools or other education institutions, or Internet-based education programs, may demonstrate by competency-based assessment that he or she has the necessary knowledge and skills to be granted academic credit or advanced placement standing toward the requirements of an associate's degree or a bachelor's degree at a state institution of higher education;

(23) Seek out and attend regional, national, and international meetings and forums on education and workforce development-related topics as, in the commission's discretion, are critical for the performance of

their duties as members, for the purpose of keeping abreast of education trends and policies to aid it in developing the policies for this state to meet the established education goals, objectives, and priorities pursuant to §18B-1-1a and §18B-1D-1 *et seq.* of this code;

(24) Promulgate and implement a rule for higher education governing boards and institutions, except for the statutorily exempted schools and administratively exempted schools, to follow when considering capital projects pursuant to §18B-19-1 *et seq.* of this code, which rule shall provide for appropriate deference to the value judgments of governing boards under the jurisdiction of the commission;

(25) Submit to the appropriate agencies of the executive and legislative branches of state government an appropriation request that reflects recommended appropriations for the commission and the governing boards under its jurisdiction. The commission shall submit as part of its appropriation request the separate recommended appropriation request it received from the council, both for the council and for the governing boards under the council's jurisdiction. The commission annually shall submit the proposed allocations based on subsection (d) of this section;

(26) Promulgate rules allocating reimbursement of appropriations, if made available by the Legislature, to governing boards for qualifying noncapital expenditures incurred in providing services to students with physical, learning, or severe sensory disabilities;

(27) Pursuant to §29A-3A-1 *et seq.* and §18B-1-6 of this code, promulgate rules necessary or expedient to fulfill the purposes of this chapter;

(28) Determine when a joint rule among the governing boards under its jurisdiction is necessary or required by law and, in those instances, in consultation with the governing boards under its jurisdiction, promulgate the joint rule;

(29) Promulgate and implement a rule jointly with the council whereby course credit earned at a community and technical college transfers for program credit at any other state institution of higher education and is not limited to fulfilling a general education requirement;

(30) Promulgate a rule pursuant to §18B-10-1 of this code establishing tuition and fee policy for all governing boards under the jurisdiction of the commission, except the exempted schools. The rule shall include, but is not limited to, the following:

(A) Differences among institutional missions;

(B) Strategies for promoting student access;

(C) Consideration of charges to out-of-state students; and

(D) Such other policies as the commission and council consider appropriate;

(31) Assist governing boards in actions to implement general disease awareness initiatives to educate parents and students, particularly dormitory residents, about meningococcal meningitis; the potentially life-threatening dangers of contracting the infection; behaviors and activities that can increase risks; measures that can be taken to prevent contact or infection; and potential benefits of vaccination. The commission shall encourage governing boards that provide medical care to students to provide access to the vaccine for those who wish to receive it;

(32) Notwithstanding any other provision of this code to the contrary sell, lease, convey, or otherwise dispose of all or part of any real property that it owns, in accordance with §18B-19-1 *et seq.* of this code;

(33) Policy analysis and research focused on issues affecting institutions of higher education generally or a geographical region thereof;

(34) Development and approval of institutional mission definitions except the statutorily exempted schools and administratively exempted schools: *Provided*, That the commission may use funds appropriated by the Legislature for incentive funds to influence institutional behavior in ways that are consistent with public priorities, including the statutorily exempted schools and administratively exempted schools;

(35) Academic program review and approval for governing boards under its jurisdiction. The review and approval includes use of institutional missions as a template to judge the appropriateness of both new and existing programs and the authority to implement needed changes.

(A) The commission's authority to review and approve academic programs for the statutorily exempted and administratively exempted schools is limited to programs that are proposed to be offered at a new location not presently served by that institution: *Provided*, That West Virginia University and the West Virginia University Institute of Technology are subject to the commission's authority as provided in §18B-1C-2 of this code.

(B) In reviewing and approving academic programs, the commission shall focus on the following policy concerns:

(i) New programs should not be implemented which change the institutional mission, unless the institution also receives approval for expanding the institutional mission;

(ii) New programs which will require significant additional expense investments for implementation should not be implemented unless the institution demonstrates that:

(I) The expenses will be addressed by effective reallocations of existing institutional resources; or

(II) The expenses can be legitimately spread out over future years and will be covered by reasonably anticipated additional net revenues from new enrollments;

(iii) A new undergraduate program which is significantly similar to an existing program already in the geographic service area should not be implemented unless the institution requesting the new program demonstrates a compelling need in the service area that is not being met by the existing program: *Provided*, That the academic programs of the statutorily exempted and administratively exempted schools are not to be taken into consideration except as it relates to academic programs offered at West Virginia University in Beckley and West Virginia University Institute of Technology in Beckley.

(C) The commission shall approve or disapprove proposed academic degree programs in those instances where approval is required as soon as practicable. The commission shall maintain by rule a format model by which a new program approval shall be requested by an institution. When a request for approval of a new program is submitted to the commission, the chancellor shall provide notice within two weeks as to whether the submission meets the required format, and if it does not the chancellor shall identify each specific deficiency and return the request to the institution. The institution may refile the request for approval with the commission to address any identified deficiencies. Within 30 days after the chancellor's confirmation that the request meets the required format, the commission shall either approve or disapprove the request for the new program. The commission may not withhold approval unreasonably.

(36) Distribution of funds appropriated to the commission, including incentive and performance-based funds;

(37) Administration of state and federal student aid programs under the supervision of the vice chancellor for administration, including promulgation of rules necessary to administer those programs;

(38) Serving as the agent to receive and disburse public funds when a governmental entity requires designation of a statewide higher education agency for this purpose;

(39) Developing and distributing information, assessment, accountability and personnel systems for state colleges and universities, including maintaining statewide data systems that facilitate long-term planning and accurate measurement of strategic outcomes and performance indicators;

(40) Jointly with the council, promulgating and implementing rules for licensing and oversight for both public and private degree-granting and nondegree-granting institutions that provide post-secondary education courses or programs in the state. The council has authority and responsibility for approval of all post-secondary courses or programs providing community and technical college education as defined in §18B-1-2 of this code;

(41) Developing, facilitating, and overseeing statewide and regional projects and initiatives related to providing post-secondary education at the baccalaureate level and above such as those using funds from federal categorical programs or those using incentive and performance-based funds from any source;

(42) (A) For all governing boards under its jurisdiction, except for the statutorily exempted schools, the commission shall review institutional operating budgets, review, and approve capital budgets, and distribute incentive and performance-based funds.

(B) For the governing boards of the statutorily exempted schools, the commission shall distribute incentive and performance-based funds and may review and comment upon the institutional operating budgets and capital budgets. The commission's comments, if any, shall be made part of the governing board's minute record and shall be filed with

the Legislative Oversight Commission on Education Accountability;

(43) May provide information, research, and recommendations to state colleges and universities relating to programs and vocations with employment rates greater than 90 percent within six months post-graduation; and

(44) May provide information, research, and recommendations to state colleges and universities on coordinating with the West Virginia State Board of Education about complimentary programs.

(b) In addition to the powers and duties provided in subsections (a) and (c) of this section and any other powers and duties assigned to it by law, the commission has other powers and duties necessary or expedient to accomplish the purposes of this article: *Provided*, That the provisions of this subsection shall not be construed to shift management authority from the governing boards to the commission.

(c) The commission may withdraw specific powers of a governing board under its jurisdiction for a period not to exceed two years, if the commission determines that any of the following conditions exist:

(1) The commission has received information, substantiated by independent audit, of significant mismanagement or failure to carry out the powers and duties of the governing board according to state law; or

(2) Other circumstances which, in the view of the commission, severely limit the capacity of the governing board to exercise its powers or carry out its duties and responsibilities.

The commission may not withdraw specific powers for a period exceeding two years. During the withdrawal period, the commission shall take all steps necessary to reestablish sound, stable and responsible institutional governance.

(d) The Higher Education Policy Commission shall examine the question of general revenue appropriations to individual higher education institutions per student, and per credit hour, and by other relevant measures at state institutions of higher education under its jurisdiction and the council shall undertake the same analysis for the community and technical colleges, and on or before October 1 of each year the commission and council shall each deliver a report to the Joint Committee on Government and Finance and the Legislative Oversight Commission on Education Accountability. These reports shall include a recommendation to the Legislature on a formula or methodology for the allocation of general revenue to be appropriated to such institutions that provides for ratable funding across all four-year institutions and community and technical colleges on a ratable basis, by enrolled student, by credit hour or by other relevant measures. The commission and council shall take into consideration the needs of each institution relating to a base level of appropriation support and mission differentiation. On such basis, the commission and council shall each make a recommendation to the Legislature as to the amounts that each such institution should have appropriated to it in the general revenue budget for the next fiscal year, based upon the total general revenue appropriations that such institutions receive in aggregate in the enacted budget for the current fiscal year. The commission and council shall engage with the four-year institutions and community and technical colleges, as appropriate, to seek to develop a consensus on the formulas and methodologies underlying any recommendations required by this subsection. The commission and council shall provide the four-year institutions and community and technical colleges with at least 30 days written notice to comment on any recommendations before any report contemplated by this subsection is provided to the Legislature.

§18B-1B-6. Appointment of institutional presidents; evaluation.

(a) *Appointment of institutional presidents.* — Appointment of presidents of the state institutions of higher

education, except the statutorily exempted schools, shall be made as follows:

(1) The initial contract term for a president may not exceed two years. At the end of the initial contract period, and subject to the provisions of subsection (c) of this section, the governing board may offer the president a contract of longer duration, but not to exceed five years.

(2) The president of a state institution of higher education serves at the will and pleasure of the appointing governing board.

(3) The governing boards of the following institutions, appoint a president: Bluefield State College, Concord University, Fairmont State University, Glenville State College, Shepherd University, West Liberty University and West Virginia State University, West Virginia University, Marshall University, and the West Virginia School of Osteopathic Medicine.

(4) Subject to the approval of the council, the governing board of the community and technical college appoints a president for Blue Ridge Community and Technical College, Bridge Valley Community and Technical College, Eastern West Virginia Community and Technical College, Mountwest Community and Technical College, New River Community and Technical College, Pierpont Community and Technical College, Southern West Virginia Community and Technical College, West Virginia Northern Community and Technical College, and West Virginia University at Parkersburg.

(b) *Other appointments.* — The President of West Virginia University appoints a campus president to be the administrative head of Potomac State College of West Virginia University and a campus president to be the administrative head of West Virginia University Institute of Technology.

(c) *Evaluation of presidents.* —

(1) The appointing governing board shall conduct written performance evaluations of the institution's president. Evaluations shall be done at the end of the initial contract period and in every third year of employment as president thereafter, recognizing unique characteristics of the institution and using institutional personnel including classified employees if any are employed by the institution, boards of advisors as appropriate, staff of the appropriate governing board, and persons knowledgeable in higher education matters who are not otherwise employed by a governing board. A part of the evaluation shall be a determination of the success of the institution in meeting the requirements of its institutional compact and in achieving the goals, objectives, and priorities established in §18B-1-1 *et seq.* and §18B-1D-1 *et seq.* of this code.

(2) After reviewing the evaluations, the governing board shall decide by majority vote of its members on continuing employment and the compensation level for the president in accordance with subsection (a) of this section.

(d) The legislative rules of the commission and council promulgated in accordance with §18B-1-6 and §29A-3A-1 *et seq.* of this code which are in effect on January 1, 2014, continue in effect unless amended or repealed. The rules provide guidance for the governing boards, but are not applicable to the statutorily exempted or the administratively exempted schools, in filling vacancies in the office of president in accordance with this chapter and shall include, but are not limited to, clarifying the powers, duties and roles of the governing boards, commission, council, and chancellors in the presidential appointment process.

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-7. Findings; establishment of institutional compacts; compact elements; submission date; review and approval process; rule required.

(a) The Legislature finds that West Virginia long has recognized the value of education and, on a per capita income basis, ranks very high among the states in its investment to support public education. The Legislature further finds that a combination of state and national demographic and economic factors as well as significant changes in methods of course and program delivery compel both the state and public higher education to create a process that will strengthen institutional capacity to provide the services so valued by the citizens of the state and so essential to promoting economic vitality.

(b) The commission and council each shall organize the statements of legislative goals and objectives contained in this article and §18B-1-1a of this code in a manner that facilitates the purposes therein.

(c) *Assignment of geographic areas of responsibility.* —

(1) The commission shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction, except for the statutorily exempted schools. For institutions other than the statutorily exempted schools, the geographic areas of responsibility shall be assigned in such a way as to ensure that all areas of the state are provided necessary programs and services to achieve state goals and objectives. The commission and the council each shall develop data-based measures to determine the extent to which institutions, with the exception of the statutorily exempted schools, under their respective jurisdictions are providing higher education services aligned with state goals and objectives and institutional missions within their geographic areas of responsibility. This information shall be reported in the statewide data reporting system established pursuant to §18B-1D-8 of this code.

(2) The council shall assign geographic areas of responsibility to the state institutions of higher education under its jurisdiction.

(3) The geographic areas of responsibility for the state institutions of higher education known as West Virginia School of Osteopathic Medicine, Marshall University, and West Virginia University are statewide.

(4) Each state institution of higher education shall establish benchmarks in collaboration with the commission or council, as applicable, which include measures of programs and services by geographic area throughout the assigned geographic area of responsibility.

(d) The benchmarks shall be used to determine progress toward meeting the state's higher education objectives. The benchmarks shall meet the following criteria:

(1) They shall be objective;

(2) They shall be directly linked to the established objectives;

(3) They shall be measured by the indicators described in subsection (e) of this section; and

(4) Where applicable, they shall be used to measure progress in geographic areas of responsibility.

(e) The rules required by §18B-1D-1(c) of this code shall include indicators which measure the degree to which the goals and objectives set forth in this article and §18B-1-1a of this code are being met by the institutions under the jurisdiction of the commission and the council, respectively.

(1) The rules pertaining to benchmarks and indicators in effect for the commission and the council on the effective date of this section remain in effect for the institutions under their respective jurisdictions until amended, modified, repealed, or replaced by the commission or the council, respectively, pursuant to the provisions of this article, §18B-1-6 of this code, and §29A-3A-1 *et seq.* of this code.

(2) The rules shall set forth at least the following as pertains to all state institutions of higher education, except the statutorily exempted schools:

(A) The indicators used to measure the degree to which the goals and objectives are being met;

(B) Uniform definitions for the various data elements to be used in establishing the indicators;

(C) Guidelines for the collection and reporting of data; and

(D) Sufficient detail within the benchmarks and indicators to provide the following information:

(i) Measurable evidence that the pursuits of the institution are focused on the education needs of the citizens of the state and are aligned with the objectives required pursuant to this section;

(ii) Delineation of the objectives and benchmarks for an institution so that the commission or council can precisely measure the degree to which progress is being made toward achieving the goals and objectives provided in this article and §18B-1-1a of this code: *Provided*, That the commission has no authority regarding the objectives and benchmarks for statutorily exempted schools; and

(iii) Identification of specific objectives that are not being met or toward which sufficient progress is not being made.

(3) In addition to any other requirement, the rule established by the council shall set forth at least the following as pertains to community and technical college education:

(A) Benchmarks and indicators which are targeted to identify the following:

(i) The degree to which progress is being made by institutions toward meeting state goals and objectives and the essential conditions for community and technical college education pursuant to §18B-3C-3 of this code;

(ii) Information and data necessary to be considered by the council in making the determination required by §18B-2C-3 of this code; and

(B) Sufficient detail within the benchmarks and indicators to provide clear evidence to support an objective determination by the council that an institution's progress toward achieving state goals and objectives and the essential conditions for community and technical college education is so deficient that implementation of the provisions of §18B-2C-4 of this code is warranted and necessary.

ARTICLE 19. CAPITAL PROJECTS AND FACILITIES NEEDS.

§18B-19-4. Campus development plans.

(a) Each governing board shall update its current campus development plan and submit the updated plan to the commission or council, as appropriate. The submission of a plan or updated plan to the council is for approval. A campus development plan shall be adopted by each governing board for a 10-year period and shall align with criteria specified in the following sources:

(1) The system capital development oversight policy;

(2) The institution's approved master plan; and

(3) The current campus development plan objectives.

(b) Campus development plans are intended to be aspirational; however, an institution's plan shall be appropriate to its size, mission, and enrollment and to the fiscal constraints within which the institution operates. At a

minimum the campus development plan shall include the following:

(1) The governing board's development strategy;

(2) An assessment of the general condition and suitability of buildings and facilities, including deferred maintenance, life-safety and building code issues, ADA requirements, and energy efficiency;

(3) An assessment of the impact of projected enrollment and demographic changes on building and facility needs;

(4) A comprehensive list of major deferred maintenance projects, individually exceeding $75,000 in cost, that need to be addressed for each campus by building or facility including an estimated cost for each;

(5) An analysis as to all buildings and facilities as to the need for renovations, additions, demolition, or any combination thereof;

(6) A list of major site improvements that are needed, including vehicular and pedestrian circulation, parking, and landscaping;

(7) An analysis of telecommunications, utilities, and other infrastructure improvements that are needed;

(8) A delineation of clear property acquisition boundaries that are reasonably appropriate for campus expansion;

(9) A list of proposed new facilities and building sites;

(10) A list of capital projects in priority order;

(11) Estimates of the timing, phasing, and projected costs associated with individual projects;

(12) If an institution has multiple campuses in close proximity, a delineation of how the campuses should

interact and support each other to minimize duplication of facilities, improve efficiency and be aesthetically compatible;

(13) A statement of the impact of the plan upon the local community and the input afforded local and regional government entities and the public with respect to its implementation; and

(14) Any other requirement established by the commission and council in the rules required by §18B-19-17 of this code.

(c) Campus development plans shall incorporate all current and proposed facilities, including educational and general and auxiliary facilities.

(d) Not later than the next regularly scheduled meeting of the commission or council, as applicable, following the fifth anniversary date after the commission receives or council approves, as appropriate, the development plan of a governing board the governing board shall report on the progress made in the first five years to implement the campus development plan for each campus under its jurisdiction. In addition, the governing board shall report on its plans to implement the remaining five-year period of its campus development plan.

(e) Each governing board shall update its campus development plan at least once during each 10-year period and any update shall be submitted to the commission or council, as appropriate and those submitted to the council are subject to the approval of the council.

(f) A governing board may not implement a campus development plan or plan update that has not been submitted to the commission or submitted to and approved by the council, as appropriate.

CHAPTER 174

(S. B. 781 - By Senators Rucker, Plymale, Stollings and Cline)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-3C-16 of the Code of West Virginia, 1931, as amended, relating to modifying information required to be included in report to the Legislature and the Governor regarding the collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3C. COMMUNITY AND TECHNICAL COLLEGE SYSTEM.

§18B-3C-16. Encouragement of collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

(a) The Legislature finds that apprenticeship programs provide a valuable educational opportunity that can be enhanced by community and technical colleges that offer associate degrees. Accordingly, the Legislature hereby encourages, but is not requiring, community and technical colleges that offer associate degrees to enter into collaborative agreements with federally registered apprenticeship programs that are registered with the United States Department of Labor.

(b) On or before January 1 of each year, the council shall provide to the Legislature and the Governor a report regarding the collaborative agreements between community

and technical colleges and federally registered apprenticeships programs. The report should identify those community and technical colleges that have entered into a collaborative agreement with federally registered apprenticeship programs, the number of students participating in such apprenticeship programs, and* the number of community and technical colleges credits earned by students in such apprenticeship programs, and, if available, information on the number of students employed, and the average hours they worked in a relevant field, during such apprenticeship programs.

CHAPTER 175

(S. B. 839 - By Senators Roberts, Weld, Baldwin, Boley, Jeffries, Rucker, Smith, Stollings and Tarr)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-1D-11, relating to creating the State Advisory Council on Postsecondary Attainment Goals; designating members of the council; providing for the powers and duties of the council; requiring certain state agencies to cooperate with the council; and establishing a sunset date for the council.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1D. HIGHER EDUCATION ACCOUNTABILITY.

§18B-1D-11. State Advisory Council on Postsecondary Attainment Goals.

(a) There is hereby created the State Advisory Council on Postsecondary Attainment Goals. The council's purpose

*NOTE: This word (and) was contained in the enrolled bill.

is to ensure that students are provided opportunities to learn and earn the most relevant industry-demanded knowledge, skills, and credentials to prepare students for the challenges of college, careers, and life, while helping the state and its employers attain economic growth through collaboration with K-12 education leaders, employers and industry leaders, state agency leaders, the Higher Education Policy Commission, and the Council for Community and Technical College Education to identify high-value and in-demand postsecondary credentials, and to develop a plan to assist the state in achieving its postsecondary attainment goal of having 60 percent of West Virginians between the ages of 25 and 64 hold a degree, certificate, or other postsecondary workforce credential of value in the workplace by 2030.

(b) The State Advisory Council on Postsecondary Attainment Goals shall consist of the following members:

(1) The Chancellor of the Higher Education Policy Commission, or his or her designee;

(2) The State Superintendent of Schools, or his or her designee;

(3) The Secretary of the Department of Commerce, or his or her designee;

(4) The Director of WorkForce West Virginia, or his or her designee;

(5) Two presidents representing the state's four-year institutions of higher education, at least one of which shall be the president of a regional institution, appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(6) Two presidents representing the state's community and technical colleges appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(7) Representatives from at least two employers, industry associations, or chambers of commerce, appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(8) Representatives from at least two regional economic development and workforce investment boards, appointed jointly by the President of the Senate and the Speaker of the House of Delegates;

(9) The chair of the Senate Committee on Education as an ex officio nonvoting member;

(10) The chair of the House Committee on Education as an ex officio nonvoting member; and

(11) Any other individuals deemed appropriate and appointed jointly by the President of the Senate and the Speaker of the House of Delegates.

(c) The council shall be chaired by the Chancellor of the Higher Education Policy Commission. The council shall meet at least quarterly and at the call of the chair. Quorum shall be a simple majority of the council. The administrative functions of the council are the responsibility of the joint staff of the Higher Education Policy Commission and the Council for Community and Technical Education.

(d) The council shall consult with and advise the Legislature on matters related to the progress toward achieving the state's postsecondary attainment goal as established in subsection (a) of this section, including identifying high-value and in-demand postsecondary credentials. The council may:

(1) Make recommendations to the Legislature as required by this section;

(2) Provide guidance to the Legislature on potential statutory solutions relative to achievement of the state's postsecondary attainment goal;

(3) Establish workgroups or subcommittees as the council considers necessary to address pertinent issues related to achievement of the state's postsecondary attainment goal, and to provide consistency in the development of further regulation, if further regulation is determined to be necessary by the council;

(4) Consult with entities and persons with expertise in the areas being studied by the council as the council considers necessary in the fulfillment of its duties, including public and private sector partnerships; and

(5) Provide a forum for a full and fair discussion of issues relating to achievement of the state's postsecondary attainment goal.

(e) The council shall provide leadership, strategic direction, and evaluation of the state's investments in, and progress toward, implementing high-quality career and technical education programs that are accessible to all students and improves the career readiness of the state's workforce by conducting an annual review of career and technical education offerings in K-12 and the state's community college and technical education system to determine the alignment of existing offerings with employer demand, postsecondary degree or certificate programs, and professional industry certifications. The review shall identify career and technical education offerings that are linked to occupations that are in high-demand by employers, require high-level skills, and provide middle- and high-level wages. The review shall include analyses of:

(1) Participating students and their outcomes, including the following:

(A) Academic achievement;

(B) Attainment of industry certifications;

(C) Program completion;

(D) Applied learning experiences;

(E) College credit attainment through the career and technical education program, including dual enrollment or articulation;

(F) Postsecondary enrollment and credential attainment, including enrollment in four-year degree programs for state college system students; and

(G) Employment outcomes, including wages;

(2) Demographics of participating students by pathway and credential attainment;

(3) Educational settings of the courses;

(4) Alignment with high-growth, high-demand, and high-wage employment opportunities;

(5) Current and projected economic, labor, and wage data on the needs of the state, regional, and global economy and workforce;

(6) Alignment with certificate or degree programs offered at the postsecondary level or professional industry certifications;

(7) Employment outcomes, including wages, by career and technical education program offerings;

(8) Apprenticeship and pre-apprenticeship offerings;

(9) Qualifications and specialized knowledge and expertise of instructors and the opportunities for these educators to upskill in the latest in-demand skills of employers; and

(10) Extent to which federal, state, and local funding is used to foster career and technical education program success and program efficiency.

(f) The council shall report its findings to the Legislative Oversight Commission on Education Accountability and the Joint Committee on Government and Finance by December 31, 2020, and annually thereafter until the council terminates, pursuant to the provisions of this section. The report shall include, at a minimum, the following:

(1) Conclusions and recommendations about the means to achieve the state's postsecondary attainment goal;

(2) Recommendations for statutory and regulatory modifications, if the council determines that such modifications are necessary;

(3) Identification of any action that the Legislature may take to better foster awareness of the actions being taken to achieve the state's postsecondary attainment goal; and

(4) Any other ancillary issues relative to achievement of the state's postsecondary attainment goal.

(g) The State Board of Education, the Superintendent of Schools, the Department of Commerce, WorkForce West Virginia, the presidents of the state's public institutions of higher education, and all other entities of state government shall cooperate with the council in the exchange of data, information, and expertise, if so requested by the council, including, but not limited to:

(1) Providing the entity's plans to assist in achievement of the state's postsecondary attainment goal;

(2) Identifying equity gaps among certain high-risk populations, including, but not limited to, returning adults, academically underprepared students, the economically disadvantaged, and underrepresented racial or ethnic minorities;

(3) Sharing information on the economic impact of achievement of the state's postsecondary goal on the State of West Virginia;

(4) Providing an assessment of the benefits of implemented programs and activities aimed at achieving the state's postsecondary attainment goal;

(5) Assisting in the development or revision of detailed action plans to achieve the state's postsecondary attainment goal; and

(6) Providing resources required to implement the plan to achieve the state's postsecondary attainment goal.

(h) The council and all provisions of this section shall terminate and no longer be in effect on December 31, 2023.

CHAPTER 176

(H. B. 4022 - By Delegates Ellington, Hanna, Hamrick, Higginbotham and Espinosa)

[Passed March 5, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-1B-5 of the Code of West Virginia, 1931, as amended, clarifying the qualifications of the Chancellor of the Higher Education Policy Commission; modifying provisions pertaining to salary of Chancellor of the Higher Education Policy Commission; retitling the Vice Chancellor for Health Sciences; and abolishing the statutory position of Vice Chancellor for State Colleges.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. HIGHER EDUCATION POLICY COMMISSION.

§18B-1B-5. Employment of Chancellor for Higher Education; office; powers and duties generally; employment of Vice Chancellors and other staff.

(a) The commission, created by §18B-1B-1 of this code, shall employ a Chancellor for Higher Education who is the Chief Executive Officer of the Commission and who serves at its will and pleasure.

(b) The commission shall set the qualifications for the position of chancellor and, when a vacancy occurs, shall conduct a thorough nationwide search for qualified candidates. A qualified candidate is one who meets at least the following criteria:

(1) Possesses an excellent academic and administrative background;

(2) Demonstrates strong communication skills;

(3) Has significant experience and an established national reputation as a professional in the field of higher education;

(4) Is free of institutional or regional biases; and

(5) Holds or retains no other administrative position within a system of higher education while employed as chancellor: *Provided,* That nothing contained in this subsection may preclude the Chancellor of the commission from also serving as the Chancellor Of The Council for Community and Technical College Education, as provided in §18B-2B-3 of this code.

(c) The commission shall conduct written performance evaluations of the chancellor annually and may offer the chancellor a contract not to exceed three years. At the end of each contract period, the commission shall review the

evaluations and make a determination by vote of its members on continuing employment and compensation level.

(d) When filling a vacancy in the position of chancellor, the commission shall enter into an initial employment contract for one year with the candidate selected. At the end of the initial contract period, and each contract period thereafter, the commission shall review the evaluations and make a determination by vote of its members on continuing employment and compensation level for the chancellor.

(e) The commission sets the chancellor's salary. The salary may not exceed by more than 20 percent the average annual salary of the chief executive officers of state systems of higher education in the states that comprise the membership of the Southern Regional Education Board. Pursuant to §6B-2-5(l) of this code, the chancellor may receive only one form of salary if such person serves as the chancellor for both the higher education policy commission and the council for community and technical colleges.

(f) The commission may employ a Senior Director for Health Sciences who serves at the will and pleasure of the commission. The Senior Director for Health Sciences shall coordinate the West Virginia University School of Medicine, the Marshall University School of Medicine and the West Virginia School of Osteopathic Medicine and also shall provide assistance to the governing boards on matters related to medical education and health sciences. The Senior Director for Health Sciences shall perform all duties assigned by the chancellor, the commission and state law. If there is a vacancy in the office of Senior Director of Health Sciences, the duties assigned to this office by law are the responsibility of the chancellor or a designee.

(g) The commission shall employ a Vice Chancellor for Administration pursuant to §18B-4-2 of this code.

(h) On behalf of the commission, the chancellor may enter into agreements with any state agency or political subdivision of the state, any state institution of higher education or any other person or entity to enlist staff assistance to implement the powers and duties assigned by the commission or by state law.

(i) The chancellor is responsible for the daily operations of the commission and has the following responsibilities relating to the commission and the governing boards under its jurisdiction:

(1) To carry out policy and program directives of the commission;

(2) To develop and submit annual reports on the implementation plan to achieve the goals and objectives set forth in §18B-1-1a and §18B-1-1d of this code, and in the compacts;

(3) To prepare and submit to the commission for its approval the proposed budget of the commission including the offices of the chancellor and the vice chancellors;

(4) To assist the governing boards in developing rules, subject to §18B-1-6 of this code. Nothing in this chapter requires the rules of the governing boards to be filed pursuant to the rule-making procedures provided in §29A-3A-1 *et seq.* of this code. The commission and the council, either separately or jointly as appropriate, are responsible for ensuring that any policy which is required to be uniform across the institutions is applied in a uniform manner;

(5) To consult with institutions on human relations policies and rules;

(6) To perform all other duties and responsibilities assigned by the commission or by state law.

(j) The chancellor shall be reimbursed for all actual and necessary expenses incurred in the performance of all assigned duties and responsibilities.

(k) The chancellor, with the commission, advises the Legislature on matters of higher education in West Virginia. The Chancellor shall work closely with the Legislative Oversight Commission on Education Accountability and with the elected leadership of the state to ensure that they are fully informed about higher education issues and that the commission fully understands the goals, objectives and priorities for higher education that the Legislature has established by law.

(l) The chancellor may design and develop for consideration by the commission new statewide or region-wide initiatives in accordance with the goals set forth in §18B-1-1a and §18B-1D-1 *et seq.* of this code, and the public policy agenda articulated by the commission. In those instances where the initiatives to be proposed have a direct and specific impact or connection to community and technical college education as well as to baccalaureate and graduate education, the Chancellor for Higher Education and the Chancellor for Community and Technical College Education shall design and develop the initiatives jointly for consideration by the commission and the council.

(m) To further the goals of cooperation and coordination between the commission and the State Board of Education, the chancellor serves as an ex officio, nonvoting member of the state board. The chancellor shall work closely with members of the State Board of Education and with the State Superintendent of Schools to assure that the following goals are met:

(1) Development and implementation of a seamless kindergarten-through-college system of education; and

(2) Appropriate coordination of missions and programs.

CHAPTER 177

(Com. Sub. for H. B. 4077 - By Delegates Higginbotham and Ellington) [By Request of the Higher Education Policy Commission]

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-2B-9 of the Code of West Virginia, 1931, as amended, relating to increasing the amount of the bond required to be posted by proprietary schools; establishing methods of bonding; and requiring suspension of a proprietary school's permit if there is not required bond coverage.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2B. WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION.

§18B-2B-9. Permits required for correspondence, business, occupational and trade schools; surety bonds amount and method of bonding; fees; issuance, renewal and revocation of permit; reports; rules; penalty and enforcement.

(a) The following words when used in this section have the meaning hereinafter ascribed to them unless the context clearly indicates a different meaning:

(1) "Proprietary schools that award specialized associate degrees" means institutions of higher education; and

(2) "Specialized associate degrees" means degrees awarded by such institutions pursuant to a program of not fewer than two academic years.

(b) Nothing in this section qualifies proprietary schools for additional state moneys not otherwise qualified under other provisions of this code.

(c) It is unlawful for any person representing a correspondence, business, occupational or trade school inside or outside this state, as these are defined by the council by rule promulgated in accordance with §29A-3A-1 *et seq.* of this code, to solicit, sell or offer to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, from the council in the manner and on the terms herein prescribed, except this section does not apply to private organizations which offer only tax return preparation courses. The rule previously promulgated by the state College System Board of Directors and transferred to the council by §18B-2B-6 of this code remains in effect until rescinded or amended by the council.

(1) All private training or educational institutions, schools or academies or other organizations shall apply for a permit from the council on forms provided by the council.

(2) Each initial application shall be accompanied by a nonrefundable fee of $2,000. The council also may assess an additional fee based on any additional expense required to evaluate the application.

(3) The council shall make a determination on the initial permit application within 90 days after receipt of the application and fee.

(4) An applicant for an initial permit shall show proof at the time of filing an application that adequate facilities are available and ready for occupancy and that all instructional equipment, books and supplies and personnel are in place and ready for operation. A representative of the council shall make an on-site visit to the facilities of all new applicants to confirm their readiness for operation prior to

issuance of the initial permit if the facilities are located in West Virginia.

(5) A school is considered to be established under the provisions of this article on the date it first begins to operate lawfully. An established school is not required to reapply for a permit as a result of changes in governance; administration; ownership; or form of operation.

(6) After the first permit year, an annual fee of $500 is imposed on each school for each campus it operates in this state.

(d) Each application for a proprietary school that has its physical facilities in this state shall be accompanied by a penal bond, on a form to be prescribed and furnished by the council, payable to the State of West Virginia and conditioned upon the school faithfully performing all of the requirements of this section, the rules promulgated hereunder, and the permit. The penal amount of the bond, as determined by the council, may not be less than $50,000 nor more than $100,000.

(1) If the school has changed ownership within the last 10 years by transfer of ownership control to a person who is a spouse, parent, sibling, child or grandchild of the previous owner, the surety bond shall continue in the penal sum as determined by the council. The period of liability for bond coverage begins with the issuance of the permit and continues for the full term of the permit, plus any renewals thereof. The council shall release the bond upon satisfaction that the conditions thereof have been fully performed. Upon release of the bond, any cash or collateral securities deposited by the school shall be returned to the school that deposited the same.

(2) Any school which has operated in West Virginia for fewer than 10 years, excluding those schools which have changed ownership within the last 10 years as provided in subdivision (1) of this section, and any school located in

another state which applies for a permit hereunder, shall provide a surety bond as determined by the council. The form of the bond shall be approved by the Chancellor and may include, at the option of the school, surety bonding, collateral bonding (including cash and securities), establishment of an escrow account, submission of a letter of credit or a combination of these methods. If collateral bonding is used, the school may elect to deposit cash or collateral securities or certificates as follows: bonds of the United States or its possessions; full faith and credit general obligations bonds of the State of West Virginia or other states and of any county, district or municipality of the State of West Virginia or other states; or certificates of deposit in a bank in this state, which certificates shall be in favor of the council. The cash deposit or market value of the securities or certificates shall be equal to or greater than the penal sum of the bond. The Chancellor shall, upon receipt of any deposit of cash, securities or certificates, promptly place the same with the Treasurer of the State of West Virginia, whose duty it is to receive and hold the deposit in the name of the state in trust for the purpose for which the deposit is made when the permit is issued. The school making the deposit is entitled, from time to time, to receive from the State Treasurer, upon the written approval of the Chancellor, the whole or any portion of any cash, securities or certificates so deposited, upon depositing with him or her in lieu thereof cash or other securities or certificates of the classes specified in this subsection having value equal to or greater than the sum of the bond.

(3) Any school may be required to increase its bond to $150,000 if either of the following conditions apply:

(A) The school's accreditation is terminated for cause; or

(B) The school's institutional eligibility under the Higher Education Act of 1965, as amended, has been terminated for cause. Expiration, nonrenewal or voluntary relinquishment of accreditation or institutional eligibility

under the Higher Education Act, or failure to meet the requirements of one or more programs under the Act, are not considered to be a termination for cause.

(4) Any school may be required to increase its bond to an amount not to exceed $400,000 if, in accordance with the standards of the American Institute of Certified Public Accountants, the school's audited financial statements are qualified because the school's continued financial viability as an ongoing concern is in doubt and the council determines an increased bond is reasonably necessary to protect the financial obligations legally due the students then enrolled at the institution.

(A) A school may be required to maintain the increased bonding requirements described above until all students attending classes at the date of termination either graduate or withdraw.

(B) The bond may be continuous and shall be conditioned to provide indemnification to any student suffering loss as a result of any fraud or misrepresentation used in procuring the student's enrollment, failure of the school to meet contractual obligations, or failure of the school to meet the requirements of this section.

(C) The bond shall be given by the school itself as a blanket bond covering all of its representatives.

(5) The surety on a bond or other collateral may be released upon giving 30 days' notice in writing to the principal on the bond and to the council and thereafter shall be relieved of liability for any breach of condition occurring after the effective date of the release. Upon 10 days' written notice, the council shall suspend the permit when the proprietary school is no longer covered by a surety bond or other collateral as required by this section, and the suspension shall remain in effect until the school obtains another bond or establishes other collateral and posts it in

the same manner and like amount as required for the initial bond.

(e) A permit is valid for one year corresponding to the effective date of the bond and may be renewed upon application, accompanied by the required fee and the surety bond as herein required. All fees collected for the issuance or renewal of a permit shall be deposited in the State Treasury to the credit of the council.

(f) The council may refuse a permit to any school if the council finds that the school engages in practices which are inconsistent with this section or with rules issued pursuant thereto.

(g) A permit issued hereunder may be suspended or revoked by the council for fraud or misrepresentation in soliciting or enrolling students, for failure of the school to fulfill its contract with one or more students who are residents of West Virginia or for violation of or failure to comply with any provision of this section or with any regulation of the council pertinent thereto.

(1) Before taking any action to suspend or revoke a school's permit, the council shall give the school 15 days' notice and convene a hearing, if a hearing is requested by the school.

(2) Prior to the council taking any adverse action, including refusal, suspension or revocation of a permit, the council shall give the school reasonable opportunity to take corrective measures.

(3) Any refusal, suspension or revocation of a permit, or any other adverse action against a school, shall comply with all constitutional provisions, including due process, relating to the protection of property rights.

(h) All correspondence, business, occupational or trade schools which have been issued a permit shall make annual reports to the council on forms furnished by the council and

shall provide such appropriate information as the council reasonably may require. All correspondence, business, occupational or trade schools which have been issued a permit shall furnish to the council a list of its official representatives. Each school shall be issued a certificate of identification by the council for each of its official representatives.

(i) The issuance of a permit pursuant to this section does not constitute approval or accreditation of any course or school. No school, nor any representative of a school, may make any representation stating, asserting or implying that a permit issued pursuant to this section constitutes approval or accreditation by the State of West Virginia, council or any other department or agency of the state.

(j) The council may adopt rules and conduct on-site reviews to evaluate academic standards maintained by schools for the awarding of certificates, diplomas, associate degrees and specialized associate degrees.

(1) These standards may include curriculum, personnel, facilities, materials and equipment.

(2) For accredited correspondence, business, occupational and trade schools under permit on July 1, 1979, which have their physical facilities located in this state and which are accredited by the appropriate nationally recognized accrediting agency or association approved by the United States Department of Education, the accrediting agency's standards, procedures and criteria are accepted as meeting applicable laws, standards and rules of the council.

(3) Institutions which are institutionally accredited by accrediting agencies recognized by the United States Department of Education to establish academic standards for post-secondary education may offer post-secondary educational programs leading to certificates, diplomas and associate degrees and may award certificates, diplomas and associate degrees to graduates who successfully complete

required programs in accordance with the academic standards required by such accrediting agency.

(4) If a review undertaken by the council indicates there may be deficiencies in the academic standards the institution maintains in its educational programs and if such deficiencies are of such a material nature that they jeopardize continued accreditation, the council shall notify the institution. If the council and the institution are unable to agree on the deficiencies or the steps necessary to correct the deficiencies, the council shall consult with the institution's accrediting agency regarding an academically appropriate resolution which may include a joint on-site review by the council and the accrediting agency.

(5) The council also may review the academic standards of unaccredited institutions and may require such institutions to maintain recognized academic standards that are reasonably appropriate to the nature of the institution and the training offered.

(k) The council may authorize an investigation of written student complaints alleging a violation of this section, council rules or accreditation standards and may take appropriate action based on the findings of such an investigation.

(l) All evaluations or investigations of correspondence, business, occupational and trade schools and actions resulting from such evaluations or investigations shall be made in accordance with rules promulgated by the council pursuant to §29A-3A-1 *et seq.* of this code.

(m) In regard to private, proprietary educational institutions operating under this section of the code, accredited by a national or regional accrediting agency or association recognized by the United States Department of Education and which provide training at a campus located in this state:

(1) Any rule or standard which is authorized by this or any section of the code or other law and which is now in effect or promulgated hereafter by the council (or other agency with jurisdiction) shall be clearly, specifically and expressly authorized by narrowly construed enabling law and shall be unenforceable and without legal effect unless authorized by an Act of the Legislature under the provisions of §29A-3A- 1 *et seq.* of this code.

(2) Notwithstanding any other provision of this section or other law to the contrary, the institution's accrediting agency standards, procedures and criteria shall be accepted as the standards and rules of the council (or other agency with jurisdiction) and as meeting other law or legal requirements relating to the operation of proprietary institutions which such council or other agency has the legal authority to enforce under any section of the code or other law. Nothing in this section denies students the use of remedies that would otherwise be available under state or federal consumer laws or federal law relating to federal college financial assistance programs.

(3) Accredited institutions operating hereunder are hereby recognized as postsecondary. Academic progress is measured and reported in credit hours and all reports/documents are filed on a credit-hour basis unless the institution notifies the council that it utilizes clock hours as its unit of measurement.

(n) A representative of any school who solicits, sells or offers to sell courses of instruction to any resident of this state for consideration or remuneration unless the school first applies for a permit, or obtains a permit, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $200 per day per violation, or confined in jail not more than 60 days, or both fined and confined. No correspondence, business, occupational or trade school may maintain an action in any court of this state to recover for services rendered pursuant to a contract solicited by the school if the school did not hold a valid permit at the time

the contract was signed by any of the parties thereto. The Attorney General or any county prosecuting attorney, at the request of the council or upon his or her own motion, may bring any appropriate action or proceeding in any court of competent jurisdiction for the enforcement of the provisions of this section relating to permits, bonds and sureties.

(o) In regard to institutions operating under this section, all substantive standards and procedural requirements established by the council (or the West Virginia state program review entity or other agency with jurisdiction over institutions operating hereunder) shall meet all substantive and procedural standards of due process relating to the protection of an individual citizen's property rights as provided under the United States Constitution and shall follow the substantive standards and procedural requirements established by or under authority of this section.

CHAPTER 178

(H. B. 4365 - By Delegates Higginbotham, Ellington, Jennings, Hanna, R. Thompson, Hamrick, Barnhart and Porterfield)

[Passed March 2, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-14-3, relating to authorizing granting of college credit hours for learning English as a second language; authorizing state higher education institutions to grant college credit hours for English learned as a second language and to accept English learned as a foreign language to satisfy college foreign

language requirement; requiring jointly proposed rules to set and identify required test scores.

Be it enacted by the Legislature of West Virginia:

ARTICLE 14. MISCELLANEOUS.

§18B-14-3. College credit authorized for learning English as second language.

State Institutions of higher education are authorized to offer college credit hours for English learned as a second language and may accept English learned as a second language to satisfy an institution's foreign language requirement. To obtain college credit the student must be enrolled in the institution granting credit and be certified as having reached a satisfactory score on the test of English as a foreign language.

The Higher Education Policy Commission and the Council for Community and Technical College Education shall jointly propose rules to set and identify scores required on the test of English as a foreign language for course credit being offered.

CHAPTER 179

(H. B. 4412 - By Delegates Fleischauer, Bibby, Jennings, Walker, Hansen, Cooper, Rowan, Butler, Pethtel, Longstreth and Angelucci)

[Passed March 2, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §15-1B-21 of the Code of West Virginia, 1931, as amended, relating to providing education

benefits to members of the West Virginia Army National Guard and West Virginia Air National Guard.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-21. Tuition and fees for guard members at institutions of higher education.

(a) Any member of the Army National Guard or Air National Guard who is enrolled in an educational program which leads to a certificate, undergraduate degree, master's degree, doctor of medicine, or doctor of osteopathic medicine, and is attending any accredited community and technical college, college, university, or business, career-technical, vocational, trade, or aviation school, located in West Virginia, may be entitled to payment of tuition and fees for that program during the period of his or her service in the National Guard.

(1) The Adjutant General may prescribe criteria of eligibility for payment of tuition and fees. The payment is contingent upon appropriations being made by the Legislature for the express purpose of this section.

(2) A member may receive payment for only one certificate, undergraduate degree, and master's degree pursuant to this section.

(3) Not more than two members a year may be selected by the Adjutant General to receive payment for either a doctor of medicine or doctor of osteopathic medicine degree program. Any candidate selected for this program must remain a member of the Army National Guard or the Air National Guard and practice medicine in the state of West Virginia for a minimum of 10 years after receiving a doctor of medicine or doctor of osteopathic medicine degree, or be subject to recoupment for all moneys paid pursuant to this subdivision.

(b) The amount of the payment for a member attending a state-supported school is determined by the Adjutant General and may not exceed the actual cost of tuition and fees at the school. The amount of the payment for a member attending a private school is determined by the Adjutant General and may not exceed the highest amount payable at any state-supported school.

(c) Any member of the Army National Guard or Air National Guard who is receiving payments under a federally funded continuing education system and is eligible to receive tuition and fee payments pursuant to this section may be entitled to payment of tuition and fees under this section. The sum of payments received under this section and a federally funded continuing education system may not exceed the actual amount of tuition and fees at the school and in any event may not exceed the highest amount payable at any state-supported school. If a member of the Army National Guard or Air National Guard uses education benefits that are administered by the U.S. Department of Veterans Affairs, such as the Post 9/11 GI Bill or any other program that pays tuition or fees directly to the institutions of higher education, the institution of higher education shall first assess the U.S. Department of Veterans Affairs for payment of tuition and fees payable by those programs, with the remaining tuition and fees, if any, then being payable in accordance with this section.

(d) For any member of the West Virginia Army National Guard or West Virginia Air National Guard who is participating in the PROMISE Scholarship program provided in §18C-7-1 *et seq.* of this code, the Adjutant General may pay directly to the member an amount equal to the amount of tuition and fees which otherwise would have been paid to the school.

(e) A member of the West Virginia Army National Guard or West Virginia Air National Guard who is receiving payments for tuition and fees under this section and is discharged from the military service due to wounds

or injuries received in the line of duty may continue to receive payments for tuition and fees under this section as if he or she were still a member.

(f) The Adjutant General shall administer the tuition and fee payments authorized under this section and shall establish policies to implement the provisions of this section.

CHAPTER 180

(Com. Sub. for H. B. 4729 - By Delegates Linville, Ellington, Summers, Higginbotham, Barnhart, Maynard, Graves, Foster, McGeehan, Hanna and Pack)

[Passed March 3, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18B-10-14 of the Code of West Virginia, 1931, as amended, relating to the purchase of educational materials at institutions of higher education; establishing or continuing an educational materials affordability committee; requiring that the educational materials affordability committee make certain recommendations to the institutional governing boards; and defining the term "educational materials".

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. FEES AND OTHER MONEY COLLECTED AT STATE INSTITUTIONS OF HIGHER EDUCATION.

§18B-10-14. Bookstores.

(a) Each governing board may establish and operate a bookstore at the institutions under its jurisdiction to sell

educational materials, books, stationery, and other school and office supplies generally carried in college bookstores.

(b) The prices to be charged may not be less than the prices fixed by any fair trade agreements and shall, in all cases, include in addition to the purchase price paid by the bookstore, a sufficient handling charge to cover all expenses incurred for personal and other services, supplies and equipment, storage, and other operating expenses.

(c) Each governing board shall establish, or if already established, continue, an educational materials affordability committee consisting of faculty, students, administrators and bookstore representatives and the committee shall make recommendations to the governing board to:

(1) Ensure that bookstores operated at institutions under its jurisdiction minimize the costs to students of purchasing educational materials;

(2) Ensure appropriate, high quality course educational materials are selected by course instructors;

(3) Encourage and incentivize the use of previous or older versions of basic educational materials to the extent those older versions are available and less costly to students and remain relevant, high quality educational materials with up-to-date information and content;

(4) Require the repurchase and resale of educational materials on an institutional basis;

(5) Provide for the use of certain basic educational materials for a reasonable number of years;

(6) Encourage and incentivize the use of emerging technologies, such as electronic textbooks, online textbooks, print-on-demand services, and other open resource materials; and

(7) Prohibit employees from profiteering by requiring the purchase of one-time use materials (such as worksheets) or receiving payment or other consideration as an inducement to require students to purchase particular textbooks.

(d) The Legislature recognizes that in 2004, the Congress of the United States commissioned the United States Government Accountability Office to study the high prices of college textbooks. Upon completion of the study, the Legislative Oversight Commission on Education Accountability shall obtain the results and any related reports produced by the office.

(e) An employee of a governing board:

(1) May not:

(A) Receive a payment, loan, subscription, advance, deposit of money, service, benefit or thing of value, present or promised, as an inducement for requiring students to purchase a specific textbook for coursework or instruction; or

(B) Require for any course a textbook that includes his or her own writing or work if the textbook incorporates either detachable worksheets or workbook-style pages intended to be written on or removed from the textbook. This provision does not prohibit an employee from requiring as a supplement to a textbook any workbook or similar material which is published independently from the textbook; and

(2) May receive:

(A) Sample copies, instructor's copies and instructional material which are not to be sold; and

(B) Royalties or other compensation from sales of textbooks that include the employee's own writing or work.

(f) A governing board shall provide to students a listing of textbooks required or assigned for any course offered at the institution.

(1) The listing shall be prominently posted:

(A) In a central location at the institution;

(B) In any campus bookstore; and

(C) On the institution's website.

(2) The list shall include for each textbook the International Standard Book Number (ISBN), the edition number and any other relevant information.

(3) An institution shall post a book to the listing when the adoption process is complete and the textbook is designated for order by the bookstore.

(g) All moneys derived from the operation of the bookstore shall be paid into a special revenue fund as provided in §12-2-2 of this code. Subject to the approval of the Governor, each governing board periodically shall change the amount of the revolving fund necessary for the proper and efficient operation of each bookstore.

(h) Moneys derived from the operation of the bookstore shall be used first to replenish the stock of goods and to pay the costs of operating and maintaining the bookstore. Notwithstanding any other provision of this section, any institution that has contracted with a private entity for bookstore operation shall deposit into an appropriate account all revenue generated by the operation and enuring to the benefit of the institution. The institution shall use the funds for nonathletic scholarships.

(i) Each governing board shall promulgate a rule in accordance with the provisions of section six, article one of this chapter to implement the provisions of this section.

(j) This section applies to textbook sales and bookstores supported by an institution's auxiliary services and those operated by a private contractor.

(k) "Educational Materials" means textbooks and other supplementary course materials that come at a cost to the student, regardless of format.

CHAPTER 181

(H. B. 4737 - By Delegates Rowan, Toney, Sypolt, Linville, Graves, Zukoff, Bartlett, Pethtel, Maynard, Queen and Williams)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §18C-1-1 of the Code of West Virginia, 1931, as amended, relating to the qualifications for state financial aid.

Be it enacted by the Legislature of West Virginia:

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 code to the contrary, the qualifications for state financial aid are separate and apart from the requirements for federal financial aid, and the inability of a student to complete the Free Application for Federal Student Aid (FAFSA) because of extenuating family circumstances, as determined by the vice chancellor for administration in consultation with the student's high school, shall not affect the student's eligibility for state financial aid. This provision in no way determines the student's compliance with federal rules or eligibility relating to federal student financial aid programs.

70 (f) The vice chancellor for administration shall publish
71 comprehensive data to the official websites of the commission
72 and council regarding the implementation of the financial aid
73 programs identified in subsection (d) of this section which are
74 administered under his or her supervision, including data
75 regarding how many students had to avail themselves of the
76 provisions of subsection (e) above. A concise summary report
77 shall be provided to the commission and the council and shall
78 be presented to the Legislative Oversight Commission on
79 Education Accountability no later than January 1 annually.
80 The report shall address all financial aid issues for which
81 reports are required in this code, as well as any findings and
82 recommendations.

CHAPTER 182

(Com. Sub. for S. B. 648 - By Senators Takubo, Mann, Maroney, Prezioso, Stollings, Weld, Baldwin, Cline, Hardesty, Lindsay, Palumbo, Plymale, Unger, Roberts and Rucker)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-12a, relating to providing dental coverage for adult Medicaid recipients; providing limitations; defining terms; designating the Department of Health and Human Resources as the responsible department to implement these provisions; providing for the Department of Health and Human Resources to seek authority from the Centers for Medicare and Medicaid Services to implement the program; and making the provisions on the section effective only upon the approval by the Centers for Medicare and Medicaid Services for specified provider taxes.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12a. Medicaid program; dental care.

(a) The following terms are defined:

(1) "Cosmetic services" means dental work that improves the appearance of the teeth, gums, or bite, including, but not limited to, inlays or onlays, composite bonding, dental veneers, teeth whitening, or braces.

(2) "Diagnostic and preventative services" means dental work that maintains good oral health and includes oral evaluations, routine cleanings, x-rays, fluoride treatment, fillings, and extractions.

(3) "Restorative services" means dental work that involves tooth replacement, including, but not limited to, dentures, dental implants, bridges, crowns, or corrective procedures such as root canals.

(b) The Department of Health and Human Resources shall extend Medicaid coverage to adults age 21 and over covered by the Medicaid program for diagnostic and preventative dental services and restorative dental services, excluding cosmetic services. This coverage is limited to $1,000 each budget year. Recipients must pay for services over the $1,000 yearly limit. No provision in this section shall restrict the department in exercising new options provided by, or to be in compliance with, new federal legislation that further expands eligibility for dental care for adult recipients.

(c) The Department of Health and Human Resources is responsible for the implementation of, and program design for, a dental care system to reduce the continuing harm and continuing impact on the health care system in West Virginia. The dental health system design shall include oversight, quality assurance measures, case management,

31 and patient outreach activities. The Department of Health
32 and Human Resources shall assume responsibility for
33 claims processing in accordance with established fee
34 schedules and financial aspects of the program necessary to
35 receive available federal dollars and to meet federal rules
36 and regulations. The Department of Health and Human
37 Resources shall seek authority from the Centers for
38 Medicare and Medicaid Services to implement the
39 provisions of this section.

40 (d) The provisions of this section enacted during the
41 2020 regular legislative session shall only become effective
42 upon approval from the federal Centers for Medicare and
43 Medicaid Services of the provider tax as set forth in §11-27-
44 10a of this code.

CHAPTER 183

(Com. Sub. for S. B. 716 - By Senators Takubo and Stollings)

[Passed March 7, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §9-5-12 of the Code of West Virginia, 1931, as amended, relating to requiring Department of Health and Human Resources to make payment for tubal ligation without requiring at least 30 days between the date of informed consent and date of the tubal ligation procedure; and removing obsolete language.

Be it enacted by the Legislature of West Virginia:

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 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 is 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) The department shall make payment for tubal ligation without requiring at least 30 days between the date of informed consent and the date of the tubal ligation procedure.

CHAPTER 184

(Com. Sub. for S. B. 717 - By Senators Maroney, Cline, Hamilton, Prezioso, Rucker, Swope, Sypolt, Takubo, Trump, Weld, Stollings and Smith)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §9-6-1, §9-6-2, §9-6-3, §9-6-4, §9-6-5, §9-6-6, §9-6-7, §9-6-8, §9-6-9, §9-6-10, §9-6-11, §9-6-13, and §9-6-16 of the Code of West Virginia, 1931, as amended, all relating to adult protective services, abuse, neglect, and vulnerable adults; defining terms; replacing old terms and adding new terms; and providing for the release of investigative summaries of substantiated and unsubstantiated reports of abuse, neglect, or financial exploitation to certain individuals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. SOCIAL SERVICES FOR ADULTS.

§9-6-1. Definitions.

As used in this article:

(1) "Adult protective services agency" means any public or nonprofit private agency, corporation, board, or organization furnishing protective services to adults;

(2) "Adult protective services" means services provided to vulnerable adults as the secretary may specify and may include, but are not limited to, services such as:

(A) Receiving reports of adult abuse, neglect, or exploitation;

(B) Investigating the reports of abuse, neglect, or exploitation;

(C) Case planning, monitoring, evaluation, and other case work and services; and

(D) Providing, arranging for, or facilitating the provision of medical, social service, economic, legal, housing, law enforcement, or other protective, emergency, or support services;

(3) "Abuse" means the infliction or threat of physical or psychological harm, including the use of undue influence or the imprisonment of any vulnerable adult or facility resident;

(4) "Neglect" means the unreasonable failure by a caregiver to provide the care necessary to maintain the safety or health of a vulnerable adult or self-neglect by a vulnerable adult, including the use of undue influence by a caregiver to cause self-neglect;

(5) "Vulnerable adult" means any person over the age of 18, or an emancipated minor, who by reason of physical or mental condition is unable to independently carry on the daily activities of life necessary to sustaining life and reasonable health and protection;

(6) "Emergency" or "emergency situation" means a situation or set of circumstances which presents a substantial and immediate risk of death or serious injury to a vulnerable adult;

(7) "Financial exploitation" means the intentional misappropriation, misuse, or use of undue influence to cause the misuse of funds or assets of a vulnerable adult or facility resident, but does not apply to a transaction or disposition of funds or assets where a person made a good-faith effort to assist the vulnerable adult or facility resident with the management of his or her money or other things of value;

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

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

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

(11) "Facility resident" means an individual living in a nursing home or other facility, as that term is defined in subdivision (9) of this section;

(12) "State long-term care ombudsman" means an individual who meets the qualifications of §16-5L-5 of this code and who is employed by the State Bureau of Senior Services to implement the State Long-term Care Ombudsman Program;

(13) "Secretary" means the Secretary of the Department of Health and Human Resources;

(14) "Caregiver" means an individual who is responsible for the care of a vulnerable adult or a facility resident, either voluntarily, by contract, by receipt of payment for care, or as a result of the operation of law, and means a family member or other individual who provides (on behalf of such individual or of a public or private agency, organization, or institution) compensated or uncompensated care to an adult with disabilities or a facility resident who needs supportive services in any setting; and

(15) "Fiduciary" means a person or entity with the legal responsibility to make decisions on behalf of and for the benefit of another person; to act in good faith and with fairness; and includes a trustee, a guardian, a conservator, an executor or an agent under a financial power of attorney.

§9-6-2. Adult protective services; immunity from civil liability; rules; organization and duties.

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

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

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

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

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

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

(4) Referring and admitting abused, neglected, or financially exploited vulnerable adults to institutional care only where other available services are inappropriate;

(5) Providing services and monitoring to adults in institutions designed to assist adults in returning to community settings;

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

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

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

(d) An adult protective services caseworker may not be held personally liable for any professional decision or action arrived at in the performance of his or her official duties as set forth in this section or agency rules promulgated: *Provided*, That nothing in this subsection protects any adult protective services worker from any liability arising from the operation of a motor vehicle or for any loss caused by willful and wanton misconduct or intentional misconduct.

(e) The rules proposed by the secretary shall provide for the means by which the department shall cooperate with federal, state, and other agencies to fulfill the objectives of the system of adult protective services.

§9-6-3. Cooperation among agencies; termination and reduction of assistance by commissioner.

The secretary shall direct the coordination of the investigation of complaints of abuse, neglect, or financial exploitation made pursuant to this article, and the various agencies of the department, the adult protective services system, the state and regional long-term care ombudsmen, administrators of nursing homes or other residential facilities, county prosecutors, and any other applicable state or federal agency shall cooperate among each other for the purposes of observing, reporting, investigating, and acting upon complaints of abuse, neglect, or financial exploitation of any vulnerable adult or facility resident in this state.

§9-6-4. Action to abate abuse, neglect, emergency, or financial exploitation.

The department or any reputable person may bring and maintain an action against any person having actual care, custody, or control of a vulnerable adult, for injunctive relief, including a preliminary injunction, to restrain and abate any abuse, neglect, or financial exploitation of a vulnerable adult or to abate an emergency situation. In any such proceeding the court shall appoint a guardian ad litem, to protect the interests of the vulnerable adult, who shall not be an employee of the state, nor be a party to the proceeding, nor be selected by, or in the employ of, any party to the proceeding: *Provided*, That the court may by order terminate assistance granted or paid to any person found to have abused, neglected, or financially exploited a vulnerable adult and order any such assistance to be paid to another person solely for the use and benefit of such abused, neglected, or financially exploited person, and grant such other equitable relief as may be appropriate in the circumstances to restrain and abate such abuse or neglect: *Provided, however*, That in the case of an action to abate an emergency situation, the court may grant the relief authorized in §9-6-5 of this code.

§9-6-5. Emergency immediate remedial treatment; procedure.

Whenever a circuit court shall find in an action to abate an emergency situation that there is probable cause to believe that a vulnerable adult is in an emergency situation and that the person or persons having the immediate care, custody, and control of such vulnerable adult refuses to take necessary steps to alleviate such emergency, or that such vulnerable adult is without the actual care, custody, and control of any persons, it may issue an order of attachment for such vulnerable adult and direct that the peace officer executing the same deliver such vulnerable adult in his custody to a hospital or other safe place except a jail, for immediate remedial treatment to reduce or avoid the risk of

death or serious injury. In the event that an order of attachment is issued pursuant to this section, any peace officer executing the order, and such employees of the department the peace officer directs to accompany him, may enter into the place of abode to remove such vulnerable person, notwithstanding the residence therein of other persons.

If any employee or officer of the department shall by direct observation of a vulnerable adult not in the immediate care, custody, or control of another, have reasonable cause to believe that such vulnerable person is then and there in an emergency situation, then such officer or employee may offer transportation to a hospital or other safe place, other than a jail, to such vulnerable adult for immediate remedial treatment to reduce or avoid the risk of death or serious injury.

Immediately upon delivery of any vulnerable person to such hospital or other safe place, such officer or employee shall apply to the circuit court for and the court shall appoint, and in the case of an attachment the court shall contemporaneously with its issuance appoint, a guardian ad litem who shall not be an employee of the state, nor be an interested party, nor be selected by, nor in the employ of, any interested party, to represent the interests of such vulnerable adult, and the court shall fix a time, not later than one judicial day later, to determine if such remedial treatment shall continue or such vulnerable adult should be released. A copy of that attachment and notice of such hearing shall be served on any person in whose actual care, custody, and control such vulnerable adult is found. If further remedial treatment is required, application shall be promptly made to the county commission or such other proper tribunal for appropriate relief: *Provided*, That the commitment for further remedial treatment may be continued until proceedings for such appropriate relief be concluded: *Provided, however*, That application for release from such remedial treatment may be made and granted at any time that the emergency ceases.

§9-6-6. Payment and termination of payment for services to a vulnerable adult.

If any vulnerable adult requires and is granted remedial treatment for an emergency, or the department determines that a vulnerable adult is abused, neglected, or financially exploited, the department may pay any assistance granted for the use and benefit of such vulnerable adult to the person actually providing care for such adult, and terminate payments to any person alleged or shown to have abused, neglected, or financially exploited such vulnerable adult, or to whom such payments were made prior to such remedial treatment, for so long as such remedial treatment continues, or until such abuse, neglect, or financial exploitation is abated, and such vulnerable adult continues to be in the immediate care, custody, and control of such person.

§9-6-7. Comprehensive system of adult protective services; compulsory assistance prohibited.

The department shall develop a plan for a comprehensive system of adult protective services, including social casework, medical and psychiatric services, home care, day care, counseling, research, and others to achieve the goals of this article.

It shall offer such services as are available and appropriate in the circumstances to persons who, other than for compensation, have or intend to have the actual, physical custody and control of a vulnerable adult and to such vulnerable adults or to adults who may request and be entitled to such protective services: *Provided*, That except as expressly provided in this article, the department may not directly or indirectly compel the acceptance of such services by any person or discriminate against a person who refuses such services.

§9-6-8. Confidentiality of records.

(a) Except as otherwise provided in this section, all records of the department, state and regional long-term care

ombudsmen, nursing home or facility administrators, the Office of Health Facility Licensure and Certification, and all protective services agencies concerning an adult or facility resident under this article are confidential and may not be released, except in accordance with the provisions of §9-6-11 of this code.

(b) Unless the vulnerable adult concerned is receiving adult protective services, or unless there are pending proceedings regarding the vulnerable adult, the records maintained by the adult protective services agency shall be destroyed 30 years following their preparation.

(c) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, records concerning reports of abuse, neglect, or financial exploitation of a vulnerable adult, including all records generated as a result of such reports, may be made available to:

(1) Employees or agents of the department who need access to the records for official business;

(2) Any law-enforcement agency investigating a report of known or suspected abuse, neglect, or financial exploitation of a vulnerable adult;

(3) The prosecuting attorney of the judicial circuit in which the vulnerable adult resides or in which the alleged abuse, neglect, or financial exploitation occurred;

(4) A circuit court or the Supreme Court of Appeals subpoenaing the records. The court shall, before permitting use of the records in connection with any court proceeding, review the records for relevancy and materiality to the issues in the proceeding. The court may issue an order to limit the examination and use of the records or any part of the record;

(5) A grand jury, by subpoena, upon its determination that access to the records is necessary in the conduct of its official business;

(6) The recognized protection and advocacy agency for the disabled of the State of West Virginia;

(7) The victim; and

(8) The victim's legal representative, unless he or she is the subject of an investigation under this article.

(d) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made available to:

Any person who the department has determined to have abused, neglected, or financially exploited the victim.

(e) Notwithstanding the provisions of subsection (a) of this section or any other provision of this code to the contrary, summaries concerning substantiated and unsubstantiated investigative reports of abuse, neglect, or financial exploitation of vulnerable adults may be made available to:

(1) Any appropriate official of the state or regional long-term care ombudsman investigating a report of known or suspected abuse, neglect or financial exploitation of a vulnerable adult;

(2) Any person engaged in bona fide research or auditing, as defined by the department. However, information identifying the subjects of the report may not be made available to the researcher;

(3) Employees or agents of an agency of another state that has jurisdiction to investigate known or suspected abuse, neglect, or exploitation of vulnerable adults;

(4) A professional person when the information is necessary for the diagnosis and treatment of, and service delivery to, a vulnerable adult; and

(5) A department administrative hearing officer when the hearing officer determines the information is necessary for the determination of an issue before the officer.

(f) The identity of any person reporting abuse, neglect, or financial exploitation of a vulnerable adult may not be released without that person's written consent to any person other than employees of the department responsible for protective services or the appropriate prosecuting attorney or law-enforcement agency. This subsection grants protection only for the person who reported the abuse, neglect, or financial exploitation and protects only the fact that the person is the reporter. This subsection does not prohibit the subpoena of a person reporting the abuse, neglect, or financial exploitation when deemed necessary by the prosecuting attorney or the department to protect a vulnerable adult who is the subject of a report, if the fact that the person made the report is not disclosed.

§9-6-9. Mandatory reporting of incidences of abuse, neglect, financial exploitation, or emergency situation.

(a) If any medical, dental, or mental health professional, Christian Science practitioner, religious healer, social service worker, law-enforcement officer, humane officer, or any employee of any nursing home or other residential facility, has reasonable cause to believe that a vulnerable adult or facility resident is or has been neglected, abused, financially exploited or placed in an emergency situation, or if such person observes a vulnerable adult or facility resident being subjected to conditions that are likely to result in abuse, neglect, financial exploitation, or an emergency situation, the person shall immediately report the circumstances pursuant to the provisions of §9-6-11 of this code: *Provided*, That nothing in this article is intended to prevent individuals from reporting on their own behalf.

(b) In addition to those persons and officials specifically required to report situations involving suspected abuse, neglect, or financial exploitation of a vulnerable adult or facility resident, or the existence of an emergency situation, any other person may make such a report.

(c) The Department of Health and Human Resources shall develop and implement a procedure to notify any person mandated to report suspected abuse and neglect of a vulnerable adult or facility resident of whether an investigation into the reported suspected abuse, neglect, or financial exploitation has been initiated and when the investigation is completed.

(d) Financial institutions and their employees, as defined by §31A-2A-1 of this code and as permitted by §31A-2A-4(13) of this code, others engaged in financially related activities, as defined by §31A-8C-1 of this code, caregivers, relatives, and other concerned persons are permitted to report suspected cases of financial exploitation to state or federal law-enforcement authorities, the county prosecuting attorney, and to the Department of Health and Human Resources, Adult Protective Services Division, or Medicaid Fraud Division, as appropriate. Public officers and employees are required to report suspected cases of financial exploitation to the appropriate entities as stated above. The requisite agencies shall investigate or cause the investigation of the allegations.

§9-6-10. Mandatory reporting to medical examiner or coroner; postmortem investigation.

(a) Any person or official who is required under §9-6-9 of this code to report cases of suspected abuse, neglect, or financial exploitation, and who has probable cause to believe that a vulnerable adult or facility resident has died as a result of abuse or neglect, shall report that fact to the appropriate medical examiner or coroner.

(b) Upon the receipt of such a report, the medical examiner or coroner shall cause an investigation to be made and shall report the findings to the local law-enforcement agency, the local prosecuting attorney, the department's local adult protective services agency, and, if the institution making a report is a hospital, nursing home, or other residential facility, to the administrator of the facility, the state and regional long-term care ombudsman, and the Office of Health Facility Licensure and Certification.

§9-6-11. Reporting procedures.

(a) A report of neglect, abuse, or financial exploitation of a vulnerable adult or facility resident, or of an emergency situation involving such an adult, shall be made immediately, and not more than 48 hours after suspecting abuse, neglect or financial exploitation, to the department's adult protective services agency by a method established by the department. 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 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, financial exploitation, 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, neglected, or financially exploited 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 long-term care ombudsman and the administrator of the nursing home or facility.

(d) Reports of known or suspected institutional abuse, neglect, or financial exploitation of a vulnerable 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.

§9-6-13. Abrogation of privileged communications.

The privileged status of communications between husband and wife, and with any person required to make reports under §9-6-9 or §9-6-10 of this code, except communications between an attorney and his or her client, is hereby abrogated in circumstances involving suspected or known abuse, neglect, or financial exploitation of a vulnerable adult, or where the vulnerable adult is in a known or suspected emergency situation.

§9-6-16. Compelling production of information.

(a)(1) In order to obtain information regarding the location of an adult who is the subject of an allegation of abuse, neglect, or financial exploitation, the Secretary of the Department of Health and Human Resources may serve, by certified mail, personal service, or facsimile, an administrative subpoena on any corporation, partnership, business, or organization for production of information leading to determining the location of the adult. In case of disobedience to the subpoena, the Division of Adult Protective Services may petition any circuit court to require the production of information.

(2) In case of disobedience to the subpoena, in compelling the production of information, the secretary may invoke the aid of: (A) The circuit court with jurisdiction

over the served party, if the entity served is located in this state; or (B) the circuit court of the county in which the local protective services office conducting the investigation is located, if the entity served is a nonresident.

(3) A circuit court shall not enforce an administrative subpoena unless it finds that: (A) The investigation is one the Division of Adult Protective Services is authorized to make and is being conducted pursuant to a legitimate purpose; (B) the inquiry is relevant to that purpose; (C) the inquiry is not too broad or indefinite; (D) the information sought is not already in the possession of the Division of Adult Protective Services; and (E) any administrative steps required by law have been followed.

(4) If circumstances arise where the secretary, or his or her designee, determines it necessary to compel an individual to provide information regarding the location of an adult who is the subject of an allegation of abuse, neglect, or financial exploitation, the secretary, or his or her designee, may seek a subpoena from the circuit court with jurisdiction over the individual from whom the information is sought.

CHAPTER 185

(S. B. 740 - By Senator Blair)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §18-10L-5 of the Code of West Virginia, 1931, as amended, relating to clarifying authorized uses of the Ron Yost Personal Assistance Services Fund.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10L. RON YOST PERSONAL ASSISTANCE SERVICES ACT.

§18-10L-5. Funding.

(a) There is hereby created in the State Treasury a special fund designated the Ron Yost Personal Assistance Services Fund. The fund shall be an appropriated account within the Division of Rehabilitation Services and the moneys shall be expended exclusively for the purposes of this article.

(b) Funds made available under this article may be used only for the Ron Yost Personal Assistance Program, including planning; designing; delivering; and administering services, functional assessment evaluations, and training. The Division of Rehabilitation Services may use not more than seven percent of the total allocation for administrative costs.

(c) The Division of Rehabilitation Services or the contracted program administrator may apply for and use all other funding sources to carry out this program, including state, federal, and other grants and donations.

(d) Funds shall be disbursed in a manner that ensures maximum consumer control of the services provided under the program.

(e) Personal assistance services shall be available only to the extent funding is available through annual appropriations of state, federal, and other allotted funds.

(f) Funds or services provided to eligible individuals by the personal assistance services program under this article is not income to those individuals for any purpose under this code or under the rules of any agency of state government.

CHAPTER 186

(Com. Sub. for S. B. 291 - By Senators Weld and Woelfel)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §33-15-4a of the Code of West Virginia, 1931, as amended; to repeal §33-16-3a of said code; to amend and reenact §5-16-7 of said code; to amend said code by adding thereto a new section, designated §33-15-4u; to amend said code by adding thereto a new section, designated §33-16-3ff; to amend and reenact §33-24-4 of said code; to amend said code by adding thereto a new section, designated §33-24-7u; to amend and reenact §33-25-6 of said code; to amend said code by adding thereto a new section, designated §33-25-8r; and to amend said code by adding thereto a new section, designated §33-25A-8u, all relating to requiring the Public Employees Insurance Agency and other health insurance providers to provide mental health parity between behavioral health, mental health, substance use disorders, and medical and surgical procedures; providing definitions; providing for mandatory reporting; providing for rulemaking; and setting forth 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 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

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

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

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

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

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

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

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

48 (6) Coverage for treatment of serious mental illness:

49 (A) The coverage does not include custodial care,
50 residential care, or schooling. For purposes of this section,
51 "serious mental illness" means an illness included in the
52 American Psychiatric Association's diagnostic and
53 statistical manual of mental disorders, as periodically
54 revised, under the diagnostic categories or
55 subclassifications of: (i) Schizophrenia and other psychotic
56 disorders; (ii) bipolar disorders; (iii) depressive disorders;
57 (iv) substance-related disorders with the exception of
58 caffeine-related disorders and nicotine-related disorders; (v)
59 anxiety disorders; and (vi) anorexia and bulimia. With
60 regard to a covered individual who has not yet attained the
61 age of 19 years, "serious mental illness" also includes
62 attention deficit hyperactivity disorder, separation anxiety
63 disorder, and conduct disorder.

64 (B)The agency shall not discriminate between medical-
65 surgical benefits and mental health benefits in the

administration of its plan. With regard to both medical-surgical and mental health benefits, it may make determinations of medical necessity and appropriateness and it may use recognized health care quality and cost management tools including, but not limited to, limitations on inpatient and outpatient benefits, utilization review, implementation of cost-containment measures, preauthorization for certain treatments, setting coverage levels, setting maximum number of visits within certain time periods, using capitated benefit arrangements, using fee-for-service arrangements, using third-party administrators, using provider networks, and using patient cost sharing in the form of copayments, deductibles, and coinsurance. Additionally, the agency shall comply with the financial requirements and quantitative treatment limitations specified in 45 CFR 146.136(c)(2) and (c)(3), or any successor regulation. The agency may not apply any nonquantitative treatment limitations to benefits for behavioral health, mental health, and substance use disorders that are not applied to medical and surgical benefits within the same classification of benefits: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable;

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

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

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

113 (8) (A) Any plan issued or renewed on or after January
114 1, 2012, shall include coverage for diagnosis, evaluation,
115 and treatment of autism spectrum disorder in individuals
116 ages 18 months to 18 years. To be eligible for coverage and
117 benefits under this subdivision, the individual must be
118 diagnosed with autism spectrum disorder at age eight or
119 younger. Such plan shall provide coverage for treatments
120 that are medically necessary and ordered or prescribed by a
121 licensed physician or licensed psychologist and in
122 accordance with a treatment plan developed from a
123 comprehensive evaluation by a certified behavior analyst
124 for an individual diagnosed with autism spectrum disorder.

125 (B) The coverage shall include, but not be limited to,
126 applied behavior analysis which shall be provided or
127 supervised by a certified behavior analyst. The annual
128 maximum benefit for applied behavior analysis required by
129 this subdivision shall be in an amount not to exceed $30,000
130 per individual for three consecutive years from the date
131 treatment commences. At the conclusion of the third year,
132 coverage for applied behavior analysis required by this
133 subdivision shall be in an amount not to exceed $2,000 per
134 month, until the individual reaches 18 years of age, as long
135 as the treatment is medically necessary and in accordance
136 with a treatment plan developed by a certified behavior
137 analyst pursuant to a comprehensive evaluation or
138 reevaluation of the individual. This subdivision does not
139 limit, replace, or affect any obligation to provide services to

an individual under the Individuals with Disabilities Education Act, 20 U. S. C. §1400 *et seq.*, as amended from time to time, or other publicly funded programs. Nothing in this subdivision requires reimbursement for services provided by public school personnel.

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

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

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

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

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

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

(i) "Applied behavior analysis" means the design, implementation, and evaluation of environmental modifications using behavioral stimuli and consequences in order to produce socially significant improvement in human behavior and includes the use of direct observation,

173 measurement, and functional analysis of the relationship
174 between environment and behavior.

175 (ii) "Autism spectrum disorder" means any pervasive
176 developmental disorder including autistic disorder,
177 Asperger's syndrome, Rett syndrome, childhood
178 disintegrative disorder, or Pervasive Development Disorder
179 as defined in the most recent edition of the Diagnostic and
180 Statistical Manual of Mental Disorders of the American
181 Psychiatric Association.

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

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

193 (F)To the extent that the provisions of this subdivision
194 require benefits that exceed the essential health benefits
195 specified under section 1302(b) of the Patient Protection
196 and Affordable Care Act, Pub. L. No. 111-148, as amended,
197 the specific benefits that exceed the specified essential
198 health benefits shall not be required of insurance plans
199 offered by the Public Employees Insurance Agency.

200 (9) For plans that include maternity benefits, coverage
201 for the same maternity benefits for all individuals
202 participating in or receiving coverage under plans that are
203 issued or renewed on or after January 1, 2014: *Provided*,
204 That to the extent that the provisions of this subdivision
205 require benefits that exceed the essential health benefits
206 specified under section 1302(b) of the Patient Protection
207 and Affordable Care Act, Pub. L. No. 111-148, as amended,

the specific benefits that exceed the specified essential health benefits shall not be required of a health benefit plan when the plan is offered in this state.

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

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

(ii) Severe food protein-induced enterocolitis syndrome;

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

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

(B) The coverage required by paragraph (A) of this subdivision shall include medical foods for home use for which a physician has issued a prescription and has declared them to be medically necessary, regardless of methodology of delivery.

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

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

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

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

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

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

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

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

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

(e) The agency shall establish procedures to authorize treatment with a nonparticipating provider if a covered

service is not available within established time and distance standards and within a reasonable period after service is requested, and with the same coinsurance, deductible, or copayment requirements as would apply if the service were provided at a participating provider, and at no greater cost to the covered person than if the services were obtained at or from a participating provider.

(f) If the Public Employees Insurance Agency offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in paragraph (A), subdivision (6), subsection (a) of this section if the services are rendered by a provider who is designated by and affiliated with the Public Employees Insurance Agency, and only if the same requirements apply for services for a physical illness.

(g) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the Public Employees Insurance Agency notifies the covered person of the determination of the claim.

(h) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the Public Employees Insurance Agency shall include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the internal appeals process if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the Public Employees Insurance Agency, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(i) On or after June 1, 2021, and annually thereafter, the Public Employees Insurance Agency shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits; and

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative

344 treatment limitation to benefits for behavioral health, mental
345 health, and substance use disorders within each
346 classification of benefits are comparable to, and are applied
347 no more stringently than, the processes, strategies,
348 evidentiary standards, or other factors used in applying the
349 medical necessity criteria and each nonquantitative
350 treatment limitation to medical and surgical benefits within
351 the corresponding classification of benefits.

352 (5) The Public Employees Insurance Agency's report of
353 the analyses regarding nonquantitative treatment limitations
354 shall include at a minimum:

355 (A) Identify factors used to determine whether a
356 nonquantitative treatment limitation will apply to a benefit,
357 including factors that were considered but rejected;

358 (B) Identify and define the specific evidentiary
359 standards used to define the factors and any other evidence
360 relied on in designing each nonquantitative treatment
361 limitation;

362 (C) Provide the comparative analyses, including the
363 results of the analyses, performed to determine that the
364 processes and strategies used to design each nonquantitative
365 treatment limitation, as written, and the written processes
366 and strategies used to apply each nonquantitative treatment
367 limitation for benefits for behavioral health, mental health,
368 and substance use disorders are comparable to, and are
369 applied no more stringently than, the processes and
370 strategies used to design and apply each nonquantitative
371 treatment limitation, as written, and the written processes
372 and strategies used to apply each nonquantitative treatment
373 limitation for medical and surgical benefits;

374 (D) Provide the comparative analysis, including the
375 results of the analyses, performed to determine that the
376 processes and strategies used to apply each nonquantitative
377 treatment limitation, in operation, for benefits for behavioral
378 health, mental health, and substance use disorders are

comparable to, and are applied no more stringently than, the processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and

(E) Disclose the specific findings and conclusions reached by the Public Employees Insurance Agency that the results of the analyses indicate that each health benefit plan offered by the Public Employees Insurance Agency complies with paragraph (B), subdivision (6), subsection (a) of this section.

(6) After the initial report required by this subsection, annual reports are only required for any year thereafter during which the Public Employees Insurance Agency makes significant changes to how it designs and applies medical management protocols.

(j) The Public Employees Insurance Agency shall update its annual plan document to reflect its comprehensive parity compliance. An annual report shall also be filed with the Joint Committee on Government and Finance and the Public Employees Insurance Agency Finance Board.

(k) This section is effective for policies, contracts, plans or agreements, beginning on or after January 1, 2021. 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 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4a. Required policy provisions-mental illness.

[Repealed.]

§33-15-4u. Mental health parity.

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

To the extent that coverage is provided "behavioral health, mental health, and substance use disorder" means a condition or disorder, regardless of etiology, that may be the result of a combination of genetic and environmental factors and that falls under any of the diagnostic categories listed in the mental disorders section of the most recent version of:

(A) The International Statistical Classification of Diseases and Related Health Problems;

(B) The Diagnostic and Statistical Manual of Mental Disorders; or

(C) The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood; and

Includes autism spectrum disorder: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use disorder diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable.

(b) The carrier is required to provide coverage for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders that is no less extensive than the coverage provided for any physical illness and that complies with the requirements of this section. This screening shall include, but is not limited to, unhealthy alcohol use for adults, substance use for adults and adolescents, and depression screening for adolescents and adults.

(c) The carrier shall:

32 (1) Include coverage and reimbursement for behavioral
33 health screenings using a validated screening tool for
34 behavioral health, which coverage and reimbursement is no
35 less extensive than the coverage and reimbursement for the
36 annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider; and

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,

reimburse treatment or services for behavioral health, mental health, or substance use disorders required to be covered pursuant to this subsection that are provided by a nonparticipating provider using the same methodology that the carrier uses to reimburse covered medical services provided by nonparticipating providers and, upon request, provide evidence of the methodology to the person or provider.

(d) If the carrier offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in subsection (c) of this section if the services are rendered by a provider who is designated by and affiliated with the carrier only if the same requirements apply for services for a physical illness.

(e) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the carrier notifies the covered person of the determination of the claim.

(f) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the carrier must include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the Consumer Services Division of the West Virginia Office of the Insurance Commissioner if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the carrier, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(g) On or after June 1, 2021, and annually thereafter, the Insurance Commissioner shall submit a written report to the Joint Committee on Government and Finance that contains the following information on plans which fall under this section regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits; and

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental

135 health, and substance use disorders within each
136 classification of benefits are comparable to, and are applied
137 no more stringently than, the processes, strategies,
138 evidentiary standards, or other factors used in applying the
139 medical necessity criteria and each nonquantitative
140 treatment limitation to medical and surgical benefits within
141 the corresponding classification of benefits.

142 (5) The Insurance Commissioner's report of the
143 analyses regarding nonquantitative treatment limitations
144 shall include at a minimum:

145 (A) Identifying factors used to determine whether a
146 nonquantitative treatment limitation will apply to a benefit,
147 including factors that were considered but rejected;

148 (B) Identify and define the specific evidentiary
149 standards used to define the factors and any other evidence
150 relied on in designing each nonquantitative treatment
151 limitation;

152 (C) Provide the comparative analyses, including the
153 results of the analyses, performed to determine that the
154 processes and strategies used to design each nonquantitative
155 treatment limitation, as written, and the written processes
156 and strategies used to apply each nonquantitative treatment
157 limitation for benefits for behavioral health, mental health,
158 and substance use disorders are comparable to, and are
159 applied no more stringently than, the processes and
160 strategies used to design and apply each nonquantitative
161 treatment limitation, as written, and the written processes
162 and strategies used to apply each nonquantitative treatment
163 limitation for medical and surgical benefits;

164 (D) Provide the comparative analyses, including the
165 results of the analyses, performed to determine that the
166 processes and strategies used to apply each nonquantitative
167 treatment limitation, in operation, for benefits for behavioral
168 health, mental health, and substance use disorders are
169 comparable to, and are applied no more stringently than, the

processes and strategies used to apply each nonquantitative treatment limitation, in operation, for medical and surgical benefits; and

(E) Disclose the specific findings and conclusions reached by the Insurance Commissioner that the results of the analyses indicate that each health benefit plan offered under the provisions of this section complies with subsection (c) of this section.

(h) The Insurance Commissioner shall adopt legislative rules to comply with the provisions of this section. These rules shall specify the information and analyses that carriers shall provide to the Insurance Commissioner necessary for the Insurance Commissioner to complete the report described in subsection (g) of this section and shall delineate the format in which the carriers shall submit such information and analyses. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2021. The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.

(i) This section is effective for policies, contracts, plans, or agreements, beginning on or after January 1, 2021. 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.

(j) The Insurance Commissioner shall enforce this section and may conduct a financial examination of the carrier to determine if it is in compliance with this section, including, but not limited to, a review of policies and procedures and a sample of mental health claims to

determine these claims are treated in parity with medical and surgical benefits. The results of this examination shall be reported to the Legislature. If the Insurance Commissioner determines that the carrier is not in compliance with this section, the Insurance Commissioner may fine the carrier in conformity with the fines established in the legislative rule.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3a. Same-mental health.

[Repealed.]

§33-16-3ff. Mental health parity.

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

To the extent that coverage is provided "behavioral, mental health, and substance use disorder" means a condition or disorder, regardless of etiology, that may be the result of a combination of genetic and environmental factors and that falls under any of the diagnostic categories listed in the mental disorders section of the most recent version of:

(1) The International Statistical Classification of Diseases and Related Health Problems;

(2) The Diagnostic and Statistical Manual of Mental Disorders; or

(3) The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood; and

Includes autism spectrum disorder: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use disorder diagnosis if medical in

nature, shall be reviewed as a medical claim and undergo all utilization review as applicable.

(b) The carrier is required to provide coverage for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders that is no less extensive than the coverage provided for any physical illness and that complies with the requirements of this section. This screening shall include but is not limited to unhealthy alcohol use for adults, substance use for adults and adolescents, and depression screening for adolescents and adults.

(c) The carrier shall:

(1) Include coverage and reimbursement for behavioral health screenings using a validated screening tool for behavioral health, which coverage and reimbursement is no less extensive than the coverage and reimbursement for the annual physical examination;

(2) Comply with the nonquantitative treatment limitation requirements specified in 45 CFR §146.136(c)(4), or any successor regulation, regarding any limitations that are not expressed numerically but otherwise limit the scope or duration of benefits for treatment, which in addition to the limitations and examples listed in 45 CFR §146.136(c)(4)(ii) and (c)(4)(iii), or any successor regulation and 78 FR 68246, include the methods by which the carrier establishes and maintains its provider network and responds to deficiencies in the ability of its networks to provide timely access to care;

(3) Comply with the financial requirements and quantitative treatment limitations specified in 45 CFR §146.136(c)(2) and (c)(3), or any successor regulation;

(4) Not apply any nonquantitative treatment limitations to benefits for behavioral health, mental health, and

53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider; and

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,
67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,
73 provide evidence of the methodology to the person or
74 provider.

75 (d) If the carrier offers a plan that does not cover
76 services provided by an out-of-network provider, it may
77 provide the benefits required in subsection (c) of this section
78 if the services are rendered by a provider who is designated
79 by and affiliated with the carrier only if the same
80 requirements apply for services for a physical illness.

81 (e) In the event of a concurrent review for a claim for
82 coverage of services for the prevention of, screening for,
83 and treatment of behavioral health, mental health, and
84 substance use disorders, the service continues to be a
85 covered service until the carrier notifies the covered person
86 of the determination of the claim.

(f) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the carrier must include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the Consumer Services Division of the Office of the West Virginia Insurance Commissioner if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the carrier, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(g) On or after June 1, 2021, and annually thereafter, the Insurance Commissioner shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

121 (B) The medical necessity criteria used in determining
122 medical and surgical benefits;

123 (3) Identification of all nonquantitative treatment
124 limitations that are applied to benefits for behavioral health,
125 mental health, and substance use disorders and to medical
126 and surgical benefits within each classification of benefits;
127 and

128 (4) The results of analyses demonstrating that, for
129 medical necessity criteria described in subdivision (2) of
130 this subsection and for each nonquantitative treatment
131 limitation identified in subdivision (3) of this subsection, as
132 written and in operation, the processes, strategies,
133 evidentiary standards, or other factors used in applying the
134 medical necessity criteria and each nonquantitative
135 treatment limitation to benefits for behavioral health, mental
136 health, and substance use disorders within each
137 classification of benefits are comparable to, and are applied
138 no more stringently than, the processes, strategies,
139 evidentiary standards, or other factors used in applying the
140 medical necessity criteria and each nonquantitative
141 treatment limitation to medical and surgical benefits within
142 the corresponding classification of benefits.

143 (5) The Insurance Commissioner's report of the
144 analyses regarding nonquantitative treatment limitations
145 shall include at a minimum:

146 (A) Identifying factors used to determine whether a
147 nonquantitative treatment limitation will apply to a benefit,
148 including factors that were considered but rejected;

149 (B) Identify and define the specific evidentiary
150 standards used to define the factors and any other evidence
151 relied on in designing each nonquantitative treatment
152 limitation;

153 (C) Provide the comparative analyses, including the
154 results of the analyses, performed to determine that the

155 processes and strategies used to design each nonquantitative
156 treatment limitation, as written, and the written processes
157 and strategies used to apply each nonquantitative treatment
158 limitation for benefits for behavioral health, mental health,
159 and substance use disorders are comparable to, and are
160 applied no more stringently than, the processes and
161 strategies used to design and apply each nonquantitative
162 treatment limitation, as written, and the written processes
163 and strategies used to apply each nonquantitative treatment
164 limitation for medical and surgical benefits;

165 (D) Provide the comparative analyses, including the
166 results of the analyses, performed to determine that the
167 processes and strategies used to apply each nonquantitative
168 treatment limitation, in operation, for benefits for behavioral
169 health, mental health, and substance use disorders are
170 comparable to, and are applied no more stringently than, the
171 processes and strategies used to apply each nonquantitative
172 treatment limitation, in operation, for medical and surgical
173 benefits; and

174 (E) Disclose the specific findings and conclusions
175 reached by the Insurance Commissioner that the results of
176 the analyses indicate that each health benefit plan which
177 falls under the provisions of this section complies with
178 subsection (c) of this section.

179 (h) The Insurance Commissioner shall adopt legislative
180 rules to comply with the provisions of this section. These
181 rules shall specify the information and analyses that carriers
182 shall provide to the Insurance Commissioner necessary for
183 the commissioner to complete the report described in
184 subsection (g) of this section and shall delineate the format
185 in which carriers shall submit such information and
186 analyses. These rules or amendments to rules shall be
187 proposed pursuant to the provisions of §29A-3-1 *et seq.* of
188 this code within the applicable time limit to be considered
189 by the Legislature during its regular session in the year
190 2021. The rules shall require that each carrier first submit
191 the report to the Insurance Commissioner no earlier than one

year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.

(i) This section is effective for policies, contracts, plans or agreements, beginning on or after January 1, 2021. 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.

(j) The Insurance Commissioner shall enforce this section and may conduct a financial examination of the carrier to determine if it is in compliance with this section, including, but not limited to, a review of policies and procedures and a sample of mental health claims to determine these claims are treated in parity with medical and surgical benefits. The results of this examination shall be reported to the Legislature. If the Insurance Commissioner determines that the carrier is not in compliance with this section, the Insurance Commissioner may fine the carrier in conformity with the fines established in the legislative rule.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-4. Exemptions; applicability of insurance laws.

(a) Every corporation defined in §33-24-2 of this code is hereby declared to be a scientific, nonprofit institution and exempt from the payment of all property and other taxes. Every corporation, to the same extent the provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated, of the following articles of this chapter: §33-2-1 *et seq.* of this code (Insurance

Commissioner); §33-4-1 *et seq.* of this code (general provisions), except that §33-4-16 of this code may not be applicable thereto; §33-5-20 of this code (borrowing by insurers); §33-6-34 of this code (fee for form, rate and rule filing); §33-6C-1 *et seq.* of this code (guaranteed loss ratios as applied to individual sickness and accident insurance policies); §33-7-1 *et seq.* of this code (assets and liabilities); §33-8A-1 *et seq.* of this code (use of clearing corporations and Federal Reserve book-entry system); §33-11-1 *et seq.* of this code (unfair trade practices); §33-12-1 *et seq.* of this code (insurance producers and solicitors), except that the agent's license fee shall be $25; §33-15-2a of this code (definitions); §33-15-2b of this code (guaranteed issue; limitation of coverage; election; denial of coverage; network plans); §33-15-2d of this code (exceptions to guaranteed renewability); §33-15-2e of this code (discontinuation of particular type of coverage; uniform termination of all coverage; uniform modification of coverage); §33-15-2f of this code (certification of creditable coverage); §33-15-2g (applicability); §33-15-4e of this code (benefits for mothers and newborns); §33-15-14 of this code (policies discriminating among health care providers); §33-15-16 of this code (policies not to exclude insured's children from coverage; required services; coordination with other insurance); §33-15-18 of this code (equal treatment of state agency); §33-15-19 of this code (coordination of benefits with Medicaid); §33-15A-1 *et seq.* of this code (West Virginia Long-Term Care Insurance Act); §33-15C-1 *et seq.* of this code (diabetes insurance); §33-16-3 of this code (required policy provisions); §33-16-3a of this code (same - mental health); §33-16-3d of this code (Medicare supplement insurance); §33-16-3f of this code (required policy provisions - treatment of temporomandibular joint disorder and craniomandibular disorder); §33-16-3j of this code (hospital benefits for mothers and newborns); §33-16-3k of this code (limitations on preexisting condition exclusions for health benefit plans); §33-16-3l of this code (renewability and modification of health benefit plans); §33-16-3m of this code (creditable coverage); §33-16-3n of this code (eligibility for

enrollment); §33-16-11 of this code (group policies not to exclude insured's children from coverage; required services; coordination with other insurance); §33-16-13 of this code (equal treatment of state agency); §33-16-14 of this code (coordination of benefits with Medicaid); §33-16-16 of this code (insurance for diabetics); §33-16A-1 *et seq.* of this code (group health insurance conversion); §33-16C-1 *et seq.* of this code (employer group accident and sickness insurance policies); §33-16D-1 *et seq.* of this code (marketing and rate practices for small employer accident and sickness insurance policies); §33-26A-1 *et seq.* of this code (West Virginia Life and Health Insurance Guaranty Association Act), after October 1, 1991, §33-27-1 *et seq.* of this code (insurance holding company systems); §33-28-1 *et seq.* of this code (individual accident and sickness insurance minimum standards); §33-33-1 *et seq.* of this code (annual audited financial report); §33-34-1 *et seq.* of this code (administrative supervision); §33-34A-1 *et seq.* of this code (standards and commissioner's authority for companies considered to be in hazardous financial condition); §33-35-1 *et seq.* of this code (criminal sanctions for failure to report impairment); §33-37-1 *et seq.* of this code (managing general agents); §33-40A-1 *et seq.* of this code (risk-based capital for health organizations); and §33-41-1 *et seq.* of this code (Insurance Fraud Prevention Act) and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article. If, however, the corporation is converted into a corporation organized for a pecuniary profit or if it transacts business without having obtained a license as required by §33-24-5 of this code, it shall thereupon forfeit its right to these exemptions.

(b) Every corporation subject to this article shall comply with mental health parity requirements in this chapter.

§33-24-7u. Mental health parity.

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

To the extent that coverage is provided "behavioral health, mental health, and substance use disorder" means a condition or disorder, regardless of etiology, that may be the result of a combination of genetic and environmental factors and that falls under any of the diagnostic categories listed in the mental disorders section of the most recent version of:

(1) The International Statistical Classification of Diseases and Related Health Problems;

(2) The Diagnostic and Statistical Manual of Mental Disorders; or

(3) The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood; and

Includes autism spectrum disorder: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use disorder diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable.

(b) The carrier is required to provide coverage for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders that is no less extensive than the coverage provided for any physical illness and that complies with the requirements of this section. This screening shall include, but is not limited to, unhealthy alcohol use for adults, substance use for adults and adolescents, and depression screening for adolescents and adults.

(c) The carrier shall:

(1) Include coverage and reimbursement for behavioral health screenings using a validated screening tool for behavioral health, which coverage and reimbursement is no less extensive than the coverage and reimbursement for the annual physical examination;

(2) Comply with the nonquantitative treatment limitation requirements specified in 45 CFR §146.136(c)(4), or any successor regulation, regarding any limitations that are not expressed numerically but otherwise limit the scope or duration of benefits for treatment, which in addition to the limitations and examples listed in 45 CFR §146.136(c)(4)(ii) and (c)(4)(iii), or any successor regulation and 78 FR 68246, include the methods by which the carrier establishes and maintains its provider network and responds to deficiencies in the ability of its networks to provide timely access to care;

(3) Comply with the financial requirements and quantitative treatment limitations specified in 45 CFR §146.136(c)(2) and (c)(3), or any successor regulation;

(4) Not apply any nonquantitative treatment limitations to benefits for behavioral health, mental health, and substance use disorders that are not applied to medical and surgical benefits within the same classification of benefits;

(5) Establish procedures to authorize treatment with a nonparticipating provider if a covered service is not available within established time and distance standards and within a reasonable period after service is requested, and with the same coinsurance, deductible, or copayment requirements as would apply if the service were provided at, a participating provider;

(6) If a covered person obtains a covered service from a nonparticipating provider because the covered service is not available within the established time and distance standards, reimburse treatment or services for behavioral health, mental health, or substance use disorders required to be covered pursuant to this subsection that are provided by a nonparticipating provider using the same methodology that the carrier uses to reimburse covered medical services provided by nonparticipating providers and, upon request, provide evidence of the methodology to the person or provider.

(d) If the carrier offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in subsection (c) of this section if the services are rendered by a provider who is designated by and affiliated with the carrier only if the same requirements apply for services for a physical illness.

(e) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the carrier notifies the covered person of the determination of the claim.

(f) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the carrier must include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the Consumer Services Division of the Office of the West Virginia Insurance Commissioner if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the carrier, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(g) On or after June 1, 2021, and annually thereafter, the Insurance Commissioner shall submit a written report to the Joint Committee on Government and Finance that contains

the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits; and

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits.

141 (5) The Insurance Commissioner's report of the
142 analyses regarding nonquantitative treatment limitations
143 shall include at a minimum:

144 (A) Identifying factors used to determine whether a
145 nonquantitative treatment limitation will apply to a benefit,
146 including factors that were considered but rejected;

147 (B) Identify and define the specific evidentiary
148 standards used to define the factors and any other evidence
149 relied on in designing each nonquantitative treatment
150 limitation;

151 (C) Provide the comparative analyses, including the
152 results of the analyses, performed to determine that the
153 processes and strategies used to design each nonquantitative
154 treatment limitation, as written, and the written processes
155 and strategies used to apply each nonquantitative treatment
156 limitation for benefits for behavioral health, mental health,
157 and substance use disorders are comparable to, and are
158 applied no more stringently than, the processes and
159 strategies used to design and apply each nonquantitative
160 treatment limitation, as written, and the written processes
161 and strategies used to apply each nonquantitative treatment
162 limitation for medical and surgical benefits;

163 (D) Provide the comparative analyses, including the
164 results of the analyses, performed to determine that the
165 processes and strategies used to apply each nonquantitative
166 treatment limitation, in operation, for benefits for behavioral
167 health, mental health, and substance use disorders are
168 comparable to, and are applied no more stringently than, the
169 processes and strategies used to apply each nonquantitative
170 treatment limitation, in operation, for medical and surgical
171 benefits; and

172 (E) Disclose the specific findings and conclusions
173 reached by the Insurance Commissioner that the results of
174 the analyses indicate that each health benefit plan offered

pursuant to this section complies with subsection (c) of this section.

(h) The Insurance Commissioner shall adopt legislative rules to comply with the provisions of this section. These rules shall specify the information and analyses that carriers shall provide to the Insurance Commissioner necessary for the commissioner to complete the report described in subsection (g) of this section and shall delineate the format in which carriers shall submit such information and analyses. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2021. The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.

(i) This section is effective for policies, contracts, plans or agreements, beginning on or after January 1, 2021. 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.

(j) The Insurance Commissioner shall enforce this section and may conduct a financial examination of the carrier to determine if it is in compliance with this section, including, but not limited to, a review of policies and procedures and a sample of mental health claims to determine these claims are treated in parity with medical and surgical benefits. The results of this examination shall be reported to the Legislature. If the Insurance Commissioner determines that the carrier is not in compliance with this section, the Insurance Commissioner may fine the carrier in conformity with the fines established in the legislative rule.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-6. Supervision and regulation by Insurance Commissioner; exemption from insurance laws.

(a) Corporations organized under this article are subject to supervision and regulation of the Insurance Commissioner. The corporations organized under this article, to the same extent these provisions are applicable to insurers transacting similar kinds of insurance and not inconsistent with the provisions of this article, shall be governed by and be subject to the provisions as herein below indicated of the following articles of this chapter: §33-4-1 *et seq.* of this code (general provisions), except that §33-4-16 of this code shall not be applicable thereto; §33-6C-1 *et seq.* of this code (guaranteed loss ratio); §33-7-1 *et seq.* of this code (assets and liabilities); §33-8-1 *et seq.* of this code (investments); §33-10-1 *et seq.* of this code (rehabilitation and liquidation); §33-15-2a of this code (definitions); §33-15-2b of this code (guaranteed issue); §33-15-2d of this code (exception to guaranteed renewability); §33-15-2e of this code (discontinuation of coverage); §33-15-2f of this code (certification of creditable coverage); §33-15-2g of this code (applicability); §33-15-4e of this code (benefits for mothers and newborns); §33-15-14 of this code (individual accident and sickness insurance); §33-15-16 of this code (coverage of children); §33-15-18 of this code (equal treatment of state agency); §33-15-19 of this code (coordination of benefits with Medicaid); §33-15C-1 of this code (diabetes insurance); §33-16-3 of this code (required policy provisions); §33-16-3a of this code (mental health); §33-16-3j of this code (benefits for mothers and newborns); §33-16-3k of this code (preexisting condition exclusions); §33-16-3l of this code (guaranteed renewability); §33-16-3m of this code (creditable coverage); §33-16-3n of this code (eligibility for enrollment); §33-16-11 of this code (coverage of children); §33-16-13 of this code (equal treatment of state agency); §33-16-14 of this code (coordination of benefits with Medicaid); §33-16-16 of this code (diabetes insurance); §33-16A-1 *et seq.* of this code

(group health insurance conversion); §33-16C-1 *et seq.* of this code (small employer group policies); §33-16D-1 *et seq.* of this code (marketing and rate practices for small employers); §33-25F-1 *et seq.* of this code (coverage for patient cost of clinical trials); §33-26A-1 *et seq.* of this code (West Virginia Life and Health Insurance Guaranty Association Act); §33-27-1 *et seq.* of this code (insurance holding company systems); §33-33-1 *et seq.* of this code (annual audited financial report); §33-34A-1 *et seq.* of this code (standards and commissioner's authority for companies considered to be in hazardous financial condition); §33-35-1 *et seq.* of this code (criminal sanctions for failure to report impairment); §33-37-1 *et seq.* of this code (managing general agents); §33-40A-1 *et seq.* of this code (risk-based capital for health organizations); and §33-41-1 *et seq.* of this code (privileges and immunity); and no other provision of this chapter may apply to these corporations unless specifically made applicable by the provisions of this article.

(b) Every corporation subject to this article shall comply with mental health parity requirements in this chapter.

§33-25-8r. Mental health parity.

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

To the extent that coverage is provided "behavioral health, mental health, and substance use disorder" means a condition or disorder, regardless of etiology, that may be the result of a combination of genetic and environmental factors and that falls under any of the diagnostic categories listed in the mental disorders section of the most recent version of:

(1) The International Statistical Classification of Diseases and Related Health Problems;

(2) The Diagnostic and Statistical Manual of Mental Disorders; or

(3) The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood; and

Includes autism spectrum disorder: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use disorder diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable.

(b) The carrier is required to provide coverage for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders that is no less extensive than the coverage provided for any physical illness and that complies with the requirements of this section. This screening shall include, but is not limited to, unhealthy alcohol use for adults, substance use for adults and adolescents, and depression screening for adolescents and adults.

(c) The carrier shall:

(1) Include coverage and reimbursement for behavioral health screenings using a validated screening tool for behavioral health, which coverage and reimbursement is no less extensive than the coverage and reimbursement for the annual physical examination;

(2) Comply with the nonquantitative treatment limitation requirements specified in 45 CFR §146.136(c)(4), or any successor regulation, regarding any limitations that are not expressed numerically but otherwise limit the scope or duration of benefits for treatment, which in addition to the limitations and examples listed in 45 CFR §146.136(c)(4)(ii) and (c)(4)(iii), or any successor regulation and 78 FR 68246, include the methods by which the carrier establishes and maintains its provider network and responds to deficiencies in the ability of its networks to provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider; and

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,
67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,
73 provide evidence of the methodology to the person or
74 provider.

75 (d) If the carrier offers a plan that does not cover
76 services provided by an out-of-network provider, it may
77 provide the benefits required in subsection (c) of this section
78 if the services are rendered by a provider who is designated
79 by and affiliated with the carrier only if the same
80 requirements apply for services for a physical illness.

81 (e) In the event of a concurrent review for a claim for
82 coverage of services for the prevention of, screening for,

and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the carrier notifies the covered person of the determination of the claim.

(f) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the carrier must include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the Consumer Services Division of the Office of the West Virginia Insurance Commissioner if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the carrier, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(g) On or after June 1, 2021, and annually thereafter, the Insurance Commissioner shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits; and

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to medical and surgical benefits within the corresponding classification of benefits.

(5) The Insurance Commissioner's report of the analyses regarding nonquantitative treatment limitations shall include at a minimum:

(A) Identifying factors used to determine whether a nonquantitative treatment limitation will apply to a benefit, including factors that were considered but rejected;

149 (B) Identify and define the specific evidentiary
150 standards used to define the factors and any other evidence
151 relied on in designing each nonquantitative treatment
152 limitation;

153 (C) Provide the comparative analyses, including the
154 results of the analyses, performed to determine that the
155 processes and strategies used to design each nonquantitative
156 treatment limitation, as written, and the written processes
157 and strategies used to apply each nonquantitative treatment
158 limitation for benefits for behavioral health, mental health,
159 and substance use disorders are comparable to, and are
160 applied no more stringently than, the processes and
161 strategies used to design and apply each nonquantitative
162 treatment limitation, as written, and the written processes
163 and strategies used to apply each nonquantitative treatment
164 limitation for medical and surgical benefits;

165 (D) Provide the comparative analyses, including the
166 results of the analyses, performed to determine that the
167 processes and strategies used to apply each nonquantitative
168 treatment limitation, in operation, for benefits for behavioral
169 health, mental health, and substance use disorders are
170 comparable to, and are applied no more stringently than, the
171 processes and strategies used to apply each nonquantitative
172 treatment limitation, in operation, for medical and surgical
173 benefits; and

174 (E) Disclose the specific findings and conclusions
175 reached by the Insurance Commissioner that the results of
176 the analyses indicate that each health benefit plan offered
177 pursuant to this section complies with subsection (c) of this
178 section.

179 (h) The Insurance Commissioner shall adopt legislative
180 rules to comply with the provisions of this section. These
181 rules shall specify the information and analyses that carriers
182 shall provide to the Insurance Commissioner necessary for
183 the commissioner to complete the report described in
184 subsection (g) of this section and shall delineate the format

in which carriers shall submit such information and analyses. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2021. The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.

(i) This section is effective for policies, contracts, plans or agreements, beginning on or after January 1, 2021. 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.

(j) The Insurance Commissioner shall enforce this section and may conduct a financial examination of the carrier to determine if it is in compliance with this section, including, but not limited to, a review of policies and procedures and a sample of mental health claims to determine these claims are treated in parity with medical and surgical benefits. The results of this examination shall be reported to the Legislature. If the Insurance Commissioner determines that the carrier is not in compliance with this section, the Insurance Commissioner may fine the carrier in conformity with the fines established in the legislative rule.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8u. Mental health parity.

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

To the extent that coverage is provided "behavioral health, mental health, and substance use disorder" means a condition or disorder, regardless of etiology, that may be the result of a combination of genetic and environmental factors and that falls under any of the diagnostic categories listed in the mental disorders section of the most recent version of:

(1) The International Statistical Classification of Diseases and Related Health Problems;

(2) The Diagnostic and Statistical Manual of Mental Disorders; or

(3) The Diagnostic Classification of Mental Health and Developmental Disorders of Infancy and Early Childhood; and

Includes autism spectrum disorder: *Provided*, That any service, even if it is related to the behavioral health, mental health, or substance use disorder diagnosis if medical in nature, shall be reviewed as a medical claim and undergo all utilization review as applicable.

(b) The carrier is required to provide coverage for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders that is no less extensive than the coverage provided for any physical illness and that complies with the requirements of this section. This screening shall include, but is not limited to, unhealthy alcohol use for adults, substance use for adults and adolescents, and depression screening for adolescents and adults.

(c) The carrier shall:

(1) Include coverage and reimbursement for behavioral health screenings using a validated screening tool for behavioral health, which coverage and reimbursement is no less extensive than the coverage and reimbursement for the annual physical examination;

37 (2) Comply with the nonquantitative treatment
38 limitation requirements specified in 45 CFR
39 §146.136(c)(4), or any successor regulation, regarding any
40 limitations that are not expressed numerically but otherwise
41 limit the scope or duration of benefits for treatment, which
42 in addition to the limitations and examples listed in 45 CFR
43 §146.136(c)(4)(ii) and (c)(4)(iii), or any successor
44 regulation and 78 FR 68246, include the methods by which
45 the carrier establishes and maintains its provider network
46 and responds to deficiencies in the ability of its networks to
47 provide timely access to care;

48 (3) Comply with the financial requirements and
49 quantitative treatment limitations specified in 45 CFR
50 §146.136(c)(2) and (c)(3), or any successor regulation;

51 (4) Not apply any nonquantitative treatment limitations
52 to benefits for behavioral health, mental health, and
53 substance use disorders that are not applied to medical and
54 surgical benefits within the same classification of benefits;

55 (5) Establish procedures to authorize treatment with a
56 nonparticipating provider if a covered service is not
57 available within established time and distance standards and
58 within a reasonable period after service is requested, and
59 with the same coinsurance, deductible, or copayment
60 requirements as would apply if the service were provided at
61 a participating provider, and at no greater cost to the covered
62 person than if the services were obtained at, or from a
63 participating provider;

64 (6) If a covered person obtains a covered service from a
65 nonparticipating provider because the covered service is not
66 available within the established time and distance standards,
67 reimburse treatment or services for behavioral health,
68 mental health, or substance use disorders required to be
69 covered pursuant to this subsection that are provided by a
70 nonparticipating provider using the same methodology that
71 the carrier uses to reimburse covered medical services
72 provided by nonparticipating providers and, upon request,

provide evidence of the methodology to the person or provider.

(d) If the carrier offers a plan that does not cover services provided by an out-of-network provider, it may provide the benefits required in subsection (c) of this section if the services are rendered by a provider who is designated by and affiliated with the carrier only if the same requirements apply for services for a physical illness.

(e) In the event of a concurrent review for a claim for coverage of services for the prevention of, screening for, and treatment of behavioral health, mental health, and substance use disorders, the service continues to be a covered service until the carrier notifies the covered person of the determination of the claim.

(f) Unless denied for nonpayment of premium, a denial of reimbursement for services for the prevention of, screening for, or treatment of behavioral health, mental health, and substance use disorders by the carrier must include the following language:

(1) A statement explaining that covered persons are protected under this section, which provides that limitations placed on the access to mental health and substance use disorder benefits may be no greater than any limitations placed on access to medical and surgical benefits;

(2) A statement providing information about the Division of Consumer Services of the Office of the West Virginia Insurance Commissioner if the covered person believes his or her rights under this section have been violated; and

(3) A statement specifying that covered persons are entitled, upon request to the carrier, to a copy of the medical necessity criteria for any behavioral health, mental health, and substance use disorder benefit.

(g) On or after June 1, 2021, and annually thereafter, the Insurance Commissioner shall submit a written report to the Joint Committee on Government and Finance that contains the following information regarding plans offered pursuant to this section:

(1) Data that demonstrates parity compliance for adverse determination regarding claims for behavioral health, mental health, or substance use disorder services and includes the total number of adverse determinations for such claims;

(2) A description of the process used to develop and select:

(A) The medical necessity criteria used in determining benefits for behavioral health, mental health, and substance use disorders; and

(B) The medical necessity criteria used in determining medical and surgical benefits;

(3) Identification of all nonquantitative treatment limitations that are applied to benefits for behavioral health, mental health, and substance use disorders and to medical and surgical benefits within each classification of benefits; and

(4) The results of analyses demonstrating that, for medical necessity criteria described in subdivision (2) of this subsection and for each nonquantitative treatment limitation identified in subdivision (3) of this subsection, as written and in operation, the processes, strategies, evidentiary standards, or other factors used in applying the medical necessity criteria and each nonquantitative treatment limitation to benefits for behavioral health, mental health, and substance use disorders within each classification of benefits are comparable to, and are applied no more stringently than, the processes, strategies, evidentiary standards, or other factors used in applying the

140 medical necessity criteria and each nonquantitative
141 treatment limitation to medical and surgical benefits within
142 the corresponding classification of benefits.

143 (5) The Insurance Commissioner's report of the
144 analyses regarding nonquantitative treatment limitations
145 shall include at a minimum:

146 (A) Identifying factors used to determine whether a
147 nonquantitative treatment limitation will apply to a benefit,
148 including factors that were considered but rejected;

149 (B) Identifying and define the specific evidentiary
150 standards used to define the factors and any other evidence
151 relied on in designing each nonquantitative treatment
152 limitation;

153 (C) Provide the comparative analyses, including the
154 results of the analyses, performed to determine that the
155 processes and strategies used to design each nonquantitative
156 treatment limitation, as written, and the written processes
157 and strategies used to apply each nonquantitative treatment
158 limitation for benefits for behavioral health, mental health,
159 and substance use disorders are comparable to, and are
160 applied no more stringently than, the processes and
161 strategies used to design and apply each nonquantitative
162 treatment limitation, as written, and the written processes
163 and strategies used to apply each nonquantitative treatment
164 limitation for medical and surgical benefits;

165 (D) Provide the comparative analyses, including the
166 results of the analyses, performed to determine that the
167 processes and strategies used to apply each nonquantitative
168 treatment limitation, in operation, for benefits for behavioral
169 health, mental health, and substance use disorders are
170 comparable to, and are applied no more stringently than, the
171 processes and strategies used to apply each nonquantitative
172 treatment limitation, in operation, for medical and surgical
173 benefits; and

(E) Disclose the specific findings and conclusions reached by the Insurance Commissioner that the results of the analyses indicate that each health benefit plan offered pursuant to this section complies with subsection (c) of this section.

(h) The Insurance Commissioner shall adopt legislative rules to comply with the provisions of this section. These rules shall specify the information and analyses that carriers shall provide to the Insurance Commissioner necessary for the commissioner to complete the report described in subsection (g) of this section and shall delineate the format in which carriers shall submit such information and analyses. These rules or amendments to rules shall be proposed pursuant to the provisions of §29A-3-1 *et seq.* of this code within the applicable time limit to be considered by the Legislature during its regular session in the year 2021. The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.

(i) This section is effective for policies, contracts, plans or agreements, beginning on or after January 1, 2021. 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.

(j) The Insurance Commissioner shall enforce this section and may conduct a financial examination of the carrier to determine if it is in compliance with this section, including, but not limited to, a review of policies and procedures and a sample of mental health claims to determine these claims are treated in parity with medical and surgical benefits. The results of this examination shall be reported to the Legislature. If the Insurance Commissioner determines that the carrier is not in compliance with this section, the Insurance Commissioner may fine the carrier in conformity with the fines established in the legislative rule.

CHAPTER 187

(S. B. 641 - By Senator Maroney)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended, relating to the Children's Health Insurance Program; removing how reimbursements rates are calculated; and making other technical changes.

Be it enacted by the Legislature of West Virginia:

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 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.

All provisions of §5-16B-1 *et seq.* of this code are applicable to this expansion unless expressly addressed in §5-16B-6d of this code.

(d) Nothing in §5-16B-6d of this code 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.

CHAPTER 188

(Com. Sub. for S. B. 787 - By Senators Tarr, Hardesty, Maroney, Stollings and Plymale)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated †§33-56-1, relating to providing benefits to pharmacists for pharmacist care rendered within the pharmacist's scope of practice if benefits would be provided for such services performed by other health care providers; providing for reimbursement pursuant to negotiations; excepting certain health plans,

† Redesignated

policies, contracts, or agreements from requirements; and providing for effective date.

Be it enacted by the Legislature of West Virginia:

†ARTICLE 56. HEALTH CARE SERVICES PROVIDED BY PHARMACISTS.

†§33-56-1. Services provided by pharmacists.

(a) For health plans, policies, contracts, or agreements issued, amended, adjusted, or renewed on or after January 1, 2021:

(1) Benefits may not be denied for any health care service performed by a pharmacist licensed under §30-5-1 *et seq.* of this code if:

(A) The service performed was within the lawful scope of the pharmacist's license;

(B) The plan would have provided benefits if the service had been performed by another health care provider; and

(C) The pharmacist is included in the plan's network of participating providers.

(2) The health plan shall include an adequate number of pharmacists in its network of participating health care providers.

(b) The participation of pharmacies in the plan network's drug benefit does not satisfy the requirement that plans include pharmacists in their network of participating health care providers.

(c) Health benefit plans, policies, contracts, or agreements issued, amended, adjusted, or renewed on or after January 1, 2020, but before January 1, 2021, that delegate credentialing agreements to contracted health care facilities shall accept credentialing for pharmacists employed or contracted by those facilities. Health plans

† Redesignated

shall reimburse facilities for covered services provided by network pharmacists within the pharmacists' scope of practice per negotiations with the facility.

(d) For purposes of this section, health plans, policies, contracts, or agreements do not include Medicaid or Children's Health Insurance Program health plans, policies, contracts, or agreements that are approved by the Department of Health and Human Resources Bureau of Medical Services.

CHAPTER 189

(S. B. 849 - By Senators Azinger, Baldwin, Beach, Clements, Cline, Hardesty, Jeffries, Lindsay, Maynard, Pitsenbarger, Romano, Rucker, Smith, Weld and Trump)

[Passed March 5, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-40, relating to military service as a factor in certain insurance coverage rates generally; prohibiting an insurance company from increasing premiums when reinstating an insurance contract or writing a new policy that was previously cancelled or suspended due to active duty military service of the insured; defining terms; and creating presumption of continuous coverage when lapse occurs while insured is on active duty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-40. Military service as factor in insurance rates.

With respect to any fire, marine, or casualty insurance contract, no person may deny, refuse to renew, cancel coverage, or charge increased premiums for applicants or insureds solely as a result of a uniformed service member's performance of active military duty in the United States armed forces or as a member of a reserve component of the United States armed forces, to include the National Guard of a state or territory, because the uniformed service member fails to meet underwriting standards that require continuous coverage unless the failure to maintain continuous coverage existed prior to the applicant's or insured's entry into active duty status and was not related in any way to the applicant's or insured's military service. For the purposes of this section, service in the National Guard includes any full-time active duty for training in the National Guard, active duty operational support, active duty special work, state active duty as a member of a National Guard unit, or any other periods of service pursuant to Title 32 of the United States Code or active service of the state or territory. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage.

CHAPTER 190

(Com. Sub. for H. B. 4003 - By Delegates Maynard, Toney, Linville, Porterfield, Householder, Sypolt, Westfall and Bates)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-7b; to amend said code by adding thereto a new section, designated

†§30-1-26; and to amend said code by adding thereto a new section, designated †§33-57-1*, all relating to telehealth requirements; providing rulemaking authority; requiring boards to regulate telehealth practice; defining terms; requiring insurance coverage of certain telehealth services; providing an effective date; and providing limitation of applicability.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7b. Coverage for telehealth services.

1 (a) The following terms are defined:

2 (1) "Distant site" means the telehealth site where the
3 health care practitioner is seeing the patient at a distance or
4 consulting with a patient's health care practitioner.

5 (2) "Health care practitioner" means a person licensed
6 under §30-1-1 *et seq.* of this code who provides health care
7 services.

8 (3) "Originating site" means the location where the
9 patient is located, whether or not accompanied by a health
10 care practitioner, at the time services are provided by a
11 health care practitioner through telehealth, including, but
12 not limited to, a health care practitioner's office, hospital,
13 critical access hospital, rural health clinic, federally
14 qualified health center, a patient's home, and other
15 nonmedical environments such as school-based health
16 centers, university-based health centers, or the work
17 location of a patient.

18 (4) "Remote patient monitoring services" means the
19 delivery of home health services using telecommunications
20 technology to enhance the delivery of home health care,
21 including monitoring of clinical patient data such as weight,
22 blood pressure, pulse, pulse oximetry, blood glucose, and
23 other condition-specific data; medication adherence

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† Redesignated
***NOTE:** Section number corrected.

monitoring; and interactive video conferencing with or without digital image upload.

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) After July 1, 2020, the plan shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) After July 1, 2020, the plan may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) The plan shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company.

(e) The plan may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge the plan a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

†§30-1-26. Telehealth practice.

(a) For the purposes of this section:

"Health care practitioner" means a person licensed under §30-1-1 *et seq.* who provides health care services.

"Telehealth services" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) Unless already provided for by statute or legislative rule, a health care board, referred to in this chapter, shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* to regulate telehealth practice by a telehealth practitioner. The proposed rule shall consist of the following:

(1) The practice of the health care service occurs where the patient is located at the time the telehealth technologies are used;

(2) The health care practitioner who practices telehealth must be licensed as provided in this chapter;

† Redesignated

(3) When the health care practitioner patient relationship is established;

(4) The standard of care;

(5) A prohibition of prescribing schedule II drugs, unless authorized by another section; and

(6) Implement the provisions of this section while ensuring competency, protecting the citizens of this state from harm, and addressing issues specific to each profession.

CHAPTER 33. INSURANCE.

†ARTICLE 57. REQUIRED COVERAGE FOR HEALTH INSURANCE.

†§33-57-1. Coverage of telehealth services.

(a) The following terms are defined:

(1) "Distant site" means the telehealth site where the health care practitioner is seeing the patient at a distance or consulting with a patient's health care practitioner.

(2) "Health care practitioner" means a person licensed under §30-1-1 *et seq.* of this code who provides health care services.

(3) "Originating site" means the location where the patient is located, whether or not accompanied by a health care practitioner, at the time services are provided by a health care practitioner through telehealth, including, but not limited to, a health care practitioner's office, hospital, critical access hospital, rural health clinic, federally qualified health center, a patient's home, and other nonmedical environments such as school-based health centers, university-based health centers, or the work location of a patient.

† Redesignated

(4) "Remote patient monitoring services" means the delivery of home health services using telecommunications technology to enhance the delivery of home health care, including monitoring of clinical patient data such as weight, blood pressure, pulse, pulse oximetry, blood glucose, and other condition-specific data; medication adherence monitoring; and interactive video conferencing with or without digital image upload.

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology by a health care practitioner to provide health care services, including, but not limited to, assessment, diagnosis, consultation, treatment, and monitoring of a patient; transfer of medical data; patient and professional health-related education; public health services; and health administration. The term does not include audio-only telephone calls, e-mail messages, or facsimile transmissions.

(b) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §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 which issues or renews a health insurance policy on or after July 1, 2020, shall provide coverage of health care services provided through telehealth services if those same services are covered through face-to-face consultation by the policy.

(c) An insurer subject to §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 which issues or renews a health insurance policy on or after July 1, 2020, may not exclude a service for coverage solely because the service is provided through telehealth services.

(d) An insurer subject to §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 shall provide reimbursement for a telehealth service at a rate negotiated between the provider and the insurance company.

(e) An insurer subject to §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 may not impose any annual or lifetime dollar maximum on coverage for telehealth services other than an annual or lifetime dollar maximum that applies in the aggregate to all items and services covered under the policy, or impose upon any person receiving benefits pursuant to this section any copayment, coinsurance, or deductible amounts, or any policy year, calendar year, lifetime, or other durational benefit limitation or maximum for benefits or services, that is not equally imposed upon all terms and services covered under the policy, contract, or plan.

(f) An originating site may charge an insurer subject to §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 a site fee.

(g) The coverage required by this section shall include the use of telehealth technologies as it pertains to medically necessary remote patient monitoring services to the full extent that those services are available.

CHAPTER 191

(Com. Sub. for H. B. 4058 - By Delegates Hill, Pack and Fleischauer)

[Passed February 18, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 28, 2020.]

AN ACT to amend and reenact §33-51-8 and §33-51-10 of the Code of West Virginia, 1931, as amended, all relating to pharmacy benefit managers; civil penalties; rules required.

Be it enacted by the Legislature of West Virginia:

ARTICLE 51. PHARMACY AUDIT INTEGRITY ACT.

§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 §33-51-7 of this code may continue to do business in the state until the Insurance Commissioner has completed the legislative rule as set forth in §33-51-10 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 §33-51-10 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 §33-51-10 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 shall 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.

(3) A person who violates this provision of this article or the legislative rules implementing its provisions may be

fined not less than $1,000 and not more than $10,000 per violation.

(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 §33-51-10 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.

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

The Insurance Commissioner shall 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 192

(Com. Sub. for H. B. 4061 - By Delegates Hill, Pack, Bates, Fleischauer and S. Brown)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated †§33-15-4v and §33-15-22; to amend said code by adding thereto two new sections, designated †§33-16-3gg and §33-16-18; to amend said code by adding thereto two new sections, designated †§33-24-7v and §33-24-45; to amend said code by adding thereto

† Redesignated

two new sections, designated †§33-25-8s and §33-25-22; to amend said code by adding thereto two new sections, designated †§33-25A-8v and §33-25A-36; to amend said code by adding thereto a new article, designated †§33-55-1, †§33-55-2, †§33-55-3, †§33-55-4, †§33-55-5, †§33-55-6, †§33-55-7, †§33-55-8, †§33-55-9, †§33-55-10, §33-55-11, §33-55-12, and §33-55-13, all relating to health plan benefits and benefit networks; creating the Health Benefit Plan Network Access and Adequacy Act; incorporating references to the act into the insurance code; requiring honoring of the optional assignment of certain benefits in dental care insurance programs; detailing revocation and reimbursement requirements; and excluding Medicaid, CHIP, and contracts approved by the Department of Health and Human Resources Bureau for Medical Services.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

†§33-15-4v. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 *et seq.* of this code are made applicable to the provisions of this article.

§33-15-22. Assignment of certain benefits in dental care insurance coverage.

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the

† Redesignated

11 entity, the dentist or dental corporation shall provide a copy
12 of the assignment to the entity.

13 (b) A covered person may revoke an assignment made
14 pursuant to subsection (a) of this section with or without the
15 consent of the provider. The revocation shall be in writing.
16 The covered person shall provide notice of the revocation to
17 the entity. The entity shall send a copy of the revocation
18 notice to the dentist or dental corporation subject to the
19 assignment. The revocation is effective when both the entity
20 and the provider have received a copy of the revocation
21 notice. The revocation is only effective for any charges
22 incurred after both parties have received the revocation
23 notice.

24 (c) If, under an assignment authorized in subsection (a)
25 of this section, a dentist or dental corporation collects
26 payment from a covered person and subsequently receives
27 payment from the entity, the dentist or dental corporation
28 shall reimburse the covered person, less any applicable
29 copayments, deductibles, or coinsurance amounts, within 45
30 days.

31 (d) Nothing in this section limits an entity's ability to
32 determine the scope of the entity's benefits, services, or any
33 other terms of the entity's policies or to negotiate any
34 contract with a licensed health care provider regarding
35 reimbursement rates or any other lawful provisions.

36 (e) Any entity providing dental care shall provide
37 conspicuous notice to the covered person that the
38 assignment of benefits is optional, and that additional
39 payments may be required if the assigned benefits are not
40 sufficient to pay for received services.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

†§33-16-3gg. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 *et seq.* of this code are made applicable to the provisions of this article.

§33-16-18. Assignment of certain benefits in dental care insurance coverage.

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation

† Redesignated

shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

†§33-24-7v. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 *et seq.* of this code is made applicable to the provisions of this article.

§33-24-45. Assignment of certain benefits in dental care insurance coverage.

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and

† Redesignated

notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

ARTICLE 25. HEALTH CARE CORPORATIONS.

†§33-25-8s. Incorporation of the Health Benefit Plan Network Access and Adequacy Act.

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 *et seq.* of this code are made applicable to the provisions of this article.

§33-25-22. Assignment of certain benefits in dental care insurance coverage.

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation

† Redesignated

shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

†§33-25A-8v. Incorporation of the Health Benefit Plan Access and Adequacy Act.

The provisions of the Health Benefit Plan Network Access and Adequacy Act codified at §33-53-1 *et seq.* of this code is made applicable to the provisions of this article.

§33-25A-36. Assignment of certain benefits in dental care insurance coverage.

(a) Any entity regulated under this article that provides dental care coverage to a covered person shall honor an assignment, made in writing by the person covered under the policy, of payments due under the policy to a dentist or a dental corporation for services provided to the covered person that are covered under the policy. Upon notice of the assignment, the entity shall make payments directly to the provider of the covered services. A dentist or dental corporation with a valid assignment may bill the entity and notify the entity of the assignment. Upon request of the entity, the dentist or dental corporation shall provide a copy of the assignment to the entity.

† Redesignated

(b) A covered person may revoke an assignment made pursuant to subsection (a) of this section with or without the consent of the provider. The revocation shall be in writing. The covered person shall provide notice of the revocation to the entity. The entity shall send a copy of the revocation notice to the dentist or dental corporation subject to the assignment. The revocation is effective when both the entity and the provider have received a copy of the revocation notice. The revocation is only effective for any charges incurred after both parties have received the revocation notice.

(c) If, under an assignment authorized in subsection (a) of this section, a dentist or dental corporation collects payment from a covered person and subsequently receives payment from the entity, the dentist or dental corporation shall reimburse the covered person, less any applicable copayments, deductibles, or coinsurance amounts, within 45 days.

(d) Nothing in this section limits an entity's ability to determine the scope of the entity's benefits, services, or any other terms of the entity's policies or to negotiate any contract with a licensed health care provider regarding reimbursement rates or any other lawful provisions.

(e) Any entity providing dental care shall provide conspicuous notice to the covered person that the assignment of benefits is optional, and that additional payments may be required if the assigned benefits are not sufficient to pay for received services.

(f) The provisions of this section shall not apply to insurers or managed care organizations with respect to their Medicaid or CHIP plans or contracts which are reviewed and approved by the Department of Health and Human Resources Bureau for Medical Services.

†ARTICLE 55. HEALTH BENEFIT PLAN NETWORK ACCESS AND ADEQUACY ACT.

† Redesignated

†§33-55-1. Definitions.

1 For purposes of this article:

2 "Authorized representative" means:

3 (A) A person to whom a covered person has given
4 express written consent to represent the covered person;

5 (B) A person authorized by law to provide substituted
6 consent for a covered person; or

7 (C) The covered person's treating health care
8 professional, only when the covered person is unable to
9 provide consent, or a family member of the covered person.

10 "Commissioner" means the Insurance Commissioner of
11 this state.

12 "Covered benefit" or "benefit" means those health care
13 services to which a covered person is entitled under the
14 terms of a health benefit plan.

15 "Covered person" means a policyholder, subscriber,
16 enrollee, or other individual participating in a health benefit
17 plan.

18 "Emergency medical condition" means a physical,
19 mental, or behavioral health condition that manifests itself
20 by acute symptoms of sufficient severity, including severe
21 pain that would lead a prudent layperson, possessing an
22 average knowledge of medicine and health, to reasonably
23 expect, in the absence of immediate medical attention, to
24 result in:

25 (A) Placing the individual's physical, mental, or
26 behavioral health, or, with respect to a pregnant woman, the
27 woman's or her fetus's health in serious jeopardy;

28 (B) Serious impairment to a bodily function;

29 (C) Serious impairment of any bodily organ or part; or

† Redesignated

30 (D) With respect to a pregnant woman who is having
31 contractions:

32 (i) Inadequate time to affect a safe transfer to another
33 hospital before delivery; or

34 (ii) When transfer to another hospital may pose a threat
35 to the health or safety of the woman or fetus.

36 "Emergency services" means, with respect to an
37 emergency condition:

38 (A) A medical or mental health screening examination
39 that is within the capability of the emergency department of
40 a hospital, including ancillary services routinely available to
41 the emergency department to evaluate the emergency
42 medical condition; and

43 (B) Any further medical or mental health examination
44 and treatment, to the extent they are within the capabilities
45 of the staff and facilities available at the hospital to stabilize
46 the patient.

47 "Essential community provider" or "ECP" means a
48 provider that:

49 (A) Serves predominantly low-income, medically
50 underserved individuals, including a health care provider
51 defined in Section 340B(a)(4) of the Public Health Service
52 Act (PHSA); or

53 (B) Is described in Section 1927(c)(1)(D)(i)(IV) of the
54 Social Security Act, as set forth by Section 221 of
55 Pub.L.111-8.

56 "Facility" means an institution providing health care
57 services or a health care setting, including, but not limited
58 to, hospitals and other licensed inpatient centers,
59 ambulatory surgical or treatment centers, skilled nursing
60 centers, residential treatment centers, urgent care centers,

diagnostic, laboratory, and imaging centers, and rehabilitation and other therapeutic health settings.

"Health benefit plan" means a policy, contract, certificate, or agreement entered into, offered, or issued by a health carrier to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services.

"Health care professional" means a physician or other health care practitioner licensed, accredited, or certified to perform specified (physical, mental, or behavioral) health care services consistent with their scope of practice under state law.

"Health care provider" or "provider" means a health care professional, a pharmacy, or a facility.

"Health care services" means services for the diagnosis, prevention, treatment, cure, or relief of a physical, mental, or behavioral health condition, illness, injury, or disease, including mental health and substance use disorders.

"Health carrier" or "carrier" means an entity subject to the insurance laws and rules of this state, or subject to the jurisdiction of the commissioner, that contracts or offers to contract, or enters into an agreement to provide, deliver, arrange for, pay for, or reimburse any of the costs of health care services, including an insurer issuing an accident and sickness insurance policy pursuant to §33-15-1 *et seq.* of this code, an insurer issuing an accident and sickness group policy pursuant to §33-16-1 *et seq.* of this code, a hospital medical and dental corporation licensed pursuant to §33-24-1 *et seq.* of this code, a health care corporation licensed pursuant to §33-25-1 *et seq.* of this code, or a health maintenance organization licensed pursuant to §33-25A-1 *et seq.* of this code. For purposes of this article, the term "health carrier" or "carrier" does not include insurers or managed care organizations with respect to their Medicaid or Children's Health Insurance Program (CHIP) plans or contracts which are reviewed and approved by the

Department of Health and Human Resources Bureau for Medical Services.

"Intermediary" means a person authorized to negotiate and execute provider contracts with health carriers on behalf of health care providers or on behalf of a network.

"Limited scope dental plan" means a plan that provides coverage, substantially all of which is for treatment of the mouth, including any organ or structure within the mouth, which is provided under a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a group benefit plan.

"Limited scope vision plan" means a plan that provides coverage, substantially all of which is for treatment of the eye, that is provided under a separate policy, certificate, or contract of insurance or is otherwise not an integral part of a group benefit plan.

"Network" means the group or groups of participating providers providing services under a network plan.

"Network plan" means a health benefit plan that either requires a covered person to use, or creates incentives, including financial incentives, for a covered person to use health care providers managed, owned, under contract with, or employed by the health carrier.

"Participating provider" means a provider who, under a contract with the health carrier or with its contractor or subcontractor, has agreed to provide health care services to covered persons with an expectation of receiving payment, other than coinsurance, copayments, or deductibles, directly or indirectly from the health carrier.

"Person" means an individual, a corporation, a partnership, an association, a joint venture, a joint stock company, a trust, an unincorporated organization, any similar entity, or any combination of the foregoing.

129 "Primary care" means health care services for a range of
130 common physical, mental, or behavioral health conditions
131 provided by a physician or nonphysician primary care
132 professional.

133 "Primary care professional" means a participating
134 health care professional designated by the health carrier to
135 supervise, coordinate, or provide initial care or continuing
136 care to a covered person, and who may be required by the
137 health carrier to initiate a referral for specialty care and
138 maintain supervision of health care services rendered to the
139 covered person.

140 "Specialist" means a physician or non-physician health
141 care professional who:

142 (A) Focuses on a specific area of physical, mental, or
143 behavioral health or a group of patients; and

144 (B) Has successfully completed required training and is
145 recognized by the state in which he or she practices to
146 provide specialty care.

147 "Specialist" includes a subspecialist who has additional
148 training and recognition above and beyond his or her
149 specialty training.

150 "Specialty care" means advanced medically necessary
151 care and treatment of specific physical, mental, or
152 behavioral health conditions, or those health conditions
153 which may manifest in particular ages or subpopulations,
154 that are provided by a specialist, preferably in coordination
155 with a primary care professional or other health care
156 professional.

157 "Telemedicine" or "Telehealth" means health care
158 services provided through telecommunications technology
159 by a health care professional who is at a location other than
160 where the covered person is located.

"Tiered network" means a network that identifies and groups some or all types of providers and facilities into specific groups to which different provider reimbursement, covered person cost-sharing, or provider access requirements, or any combination thereof, apply for the same services.

"To stabilize" means with respect to an emergency medical condition to provide such medical treatment of the condition as may be necessary to assure, within a reasonable medical probability, that no material deterioration of the condition is likely to result from or occur during the transfer of the individual to or from a facility, or, with respect to an emergency birth with no complications resulting in a continued emergency to deliver the child and the placenta.

"Transfer" means the movement, including the discharge, of an individual outside a hospital's facilities at the direction of any person employed by, or affiliated or associated, directly or indirectly, with the hospital, but does not include the movement of an individual who:

(A) Has been declared dead; or

(B) Leaves the facility without the permission of any such person.

†§33-55-2. Applicability and scope.

(a) Except as provided in subsection (b) of this section, this article applies to all health carriers that offer network plans.

(b) The following provisions of this article do not apply to health carriers that offer network plans that consist solely of limited scope dental plans or limited scope vision plans:

(1) §33-53-3(a)(2) of this code;

(2) §33-53-3(f)(7)(E), §33-53-3(f)(8)(B) and §33-53-3(f)(11) of this code;

† Redesignated

(3) §33-53-4(b)(2) and (3) of this code; and

(4) §33-53-4(c)(1)(A) and (B), §33-53-4(c)(2), §33-53-4(c)(3), §33-53-4(d)(1)(B) and §33-53-4(d)(1)(C) of this code.

†§33-55-3. Network adequacy.

(a)(1) A health carrier providing a network plan shall maintain a network that is sufficient in numbers and appropriate types of providers, including those that serve predominantly low-income, medically underserved individuals, to assure that all covered services to covered persons, including children and adults, will be accessible without unreasonable travel or delay.

(2) Covered persons have access to emergency services 24 hours per day, seven days per week.

(b) The commissioner shall determine sufficiency in accordance with the requirements of this section, and may establish sufficiency by reference to any reasonable criteria, which may include, but are not limited to:

(1) Provider-covered person ratios by specialty;

(2) Primary care professional-covered person ratios;

(3) Geographic accessibility of providers;

(4) Geographic variation and population dispersion;

(5) Waiting times for an appointment with participating providers;

(6) Hours of operation;

(7) The ability of the network to meet the needs of covered persons, which may include low-income persons, children and adults with serious, chronic, or complex health conditions or physical or mental disabilities, or persons with limited English proficiency;

† Redesignated

(8) Other health care service delivery system options, such as telemedicine or telehealth, mobile clinics, centers of excellence, and other ways of delivering care; and

(9) The volume of technological and specialty care services available to serve the needs of covered persons requiring technologically advanced or specialty care services.

(c)(1) A health carrier shall have a process to assure that a covered person obtains a covered benefit at an in-network level of benefits, including an in-network level of cost-sharing, from a nonparticipating provider, or make other arrangements acceptable to the commissioner when:

(A) The health carrier has a sufficient network, but does not have a type of participating provider available to provide the covered benefit to the covered person, or it does not have a participating provider available to provide the covered benefit to the covered person without unreasonable travel or delay; or

(B) The health carrier has an insufficient number or type of participating providers available to provide the covered benefit to the covered person without unreasonable travel or delay.

(2) The health carrier shall specify and inform covered persons of the process a covered person may use to request access to obtain a covered benefit from a non-participating provider as provided in subdivision (1) of this subsection when:

(A) The covered person is diagnosed with a condition or disease that requires specialized health care services or medical services; and

(B) The health carrier:

(i) Does not have a participating provider of the required specialty with the professional training and expertise to treat

or provide health care services for the condition or disease; or

(ii) Cannot provide reasonable access to a participating provider with the required specialty with the professional training and expertise to treat or provide health care services for the condition or disease without unreasonable travel or delay.

(3) The health carrier shall treat the health care services the covered person receives from a nonparticipating provider pursuant to subdivision (2) of this subsection as if the services were provided by a participating provider, including counting the covered person's cost-sharing for such services toward the maximum out-of-pocket limit applicable to services obtained from participating providers under the health benefit plan.

(4) The process described under subdivisions (1) and (2) of this subsection shall ensure that requests to obtain a covered benefit from a nonparticipating provider are addressed in a timely fashion appropriate to the covered person's condition.

(5) The health carrier shall have a system in place that documents all requests to obtain a covered benefit from a nonparticipating provider under this subsection and shall provide this information to the commissioner upon request.

(6) The process established in this subsection is not intended to be used by health carriers as a substitute for establishing and maintaining a sufficient provider network in accordance with the provisions of this article nor is it intended to be used by covered persons to circumvent the use of covered benefits available through a health carrier's network delivery system options.

(7) Nothing in this section prevents a covered person from exercising the rights and remedies available under

applicable state or federal law relating to internal and external claims grievance and appeals processes.

(d)(1) A health carrier shall establish and maintain adequate arrangements to ensure covered persons have reasonable access to participating providers located near their home or business address. In determining whether the health carrier has complied with this provision, the commissioner shall give due consideration to the relative availability of health care providers with the requisite expertise and training in the service area under consideration.

(2) A health carrier shall monitor, on an ongoing basis, the ability, clinical capacity, and legal authority of its participating providers to furnish all contracted covered benefits to covered persons.

(e)(1) Beginning January 1, 2021, a health carrier shall file with the commissioner for review prior to or at the time it files a newly offered network, in a manner and form defined by rule of the commissioner, an access plan meeting the requirements of this article.

(2)(A) The health carrier may request the commissioner to deem sections of the access plan as proprietary information that may not be made public. The health carrier shall make the access plans, absent proprietary information, available online, at its business premises, and to any person upon request.

(B) For the purposes of this subsection, information is proprietary if revealing the information would cause the health carrier's competitors to obtain valuable business information.

(3) The health carrier shall prepare an access plan prior to offering a new network plan and shall notify the commissioner of any material change to any existing network plan within 15 business days after the change

occurs. The carrier shall include in the notice to the commissioner a reasonable timeframe within which it will submit to the commissioner for approval or file with the commissioner, as appropriate, an update to an existing access plan.

(f) The access plan shall describe or contain at least the following:

(1) The health carrier's network, including how the use of telemedicine or telehealth or other technology may be used to meet network access standards, if applicable;

(2) The health carrier's procedures for making and authorizing referrals within and outside its network, if applicable;

(3) The health carrier's process for monitoring and assuring on an ongoing basis the sufficiency of the network to meet the health care needs of populations that enroll in network plans;

(4) The factors used by the health carrier to build its provider network, including a description of the network and the criteria used to select providers;

(5) The health carrier's efforts to address the needs of covered persons, including, but not limited to, children and adults, including those with limited English proficiency or illiteracy, diverse cultural or ethnic backgrounds, physical or mental disabilities, and serious, chronic, or complex medical conditions. This includes the carrier's efforts, when appropriate, to include various types of ECPs in its network;

(6) The health carrier's methods for assessing the health care needs of covered persons and their satisfaction with services;

(7) The health carrier's method of informing covered persons of the plan's covered services and features, including, but not limited to:

(A) The plan's grievance and appeals procedures;

(B) Its process for choosing and changing providers;

(C) Its process for updating its provider directories for each of its network plans;

(D) A statement of health care services offered, including those services offered through the preventive care benefit, if applicable; and

(E) Its procedures for covering and approving emergency, urgent, and specialty care, if applicable;

(8) The health carrier's system for ensuring the coordination and continuity of care:

(A) For covered persons referred to specialty physicians; and

(B) For covered persons using ancillary services, including social services and other community resources, and for ensuring appropriate discharge planning;

(9) The health carrier's process for enabling covered persons to change primary care professionals, if applicable;

(10) The health carrier's proposed plan for providing continuity of care in the event of contract termination between the health carrier and any of its participating providers, or in the event of the health carrier's insolvency or other inability to continue operations. The description shall explain how covered persons will be notified of the contract termination, or the health carrier's insolvency or other cessation of operations, and transitioned to other providers in a timely manner;

(11) The health carrier's process for monitoring access to physician specialist services in emergency room care, anesthesiology, radiology, hospitalist care, and

pathology/laboratory services at their participating hospitals; and

(12) Any other information required by the commissioner to determine compliance with the provisions of this article.

†§33-55-4. Provider directories.

(a)(1)(A) A health carrier shall post electronically a current and accurate provider directory for each of its network plans with the information and search functions, as described in subsection (b) of this section.

(B) In making the directory available electronically, the carrier shall ensure that the general public is able to view all of the current providers for a plan through a clearly identifiable link or tab and without creating or accessing an account or entering a policy or contract number.

(2)(A) The health carrier shall update each network plan provider directory at least monthly.

(B) The health carrier shall periodically audit at least a reasonable sample size of its provider directories for accuracy, and retain documentation of such an audit to be made available to the commissioner upon request.

(3) A health carrier shall provide a print copy, or a print copy of the requested directory information of a current provider directory with the information described in subsection (b) of this section upon request of a covered person or a prospective covered person.

(4) For each network plan, a health carrier shall include in plain language, in both the electronic and print directory, the following general information:

(A) In plain language, a description of the criteria the carrier has used to build its provider network;

† Redesignated

26 (B) If applicable, in plain language, a description of the
27 criteria the carrier has used to tier providers;

28 (C) If applicable, in plain language, how the carrier
29 designates the different provider tiers or levels in the
30 network and identifies for each specific provider, hospital,
31 or other type of facility in the network which tier each is
32 placed, for example, by name, symbols, or grouping, in
33 order for a covered person or a prospective covered person
34 to be able to identify the provider tier; and

35 (D) If applicable, note that authorization or referral may
36 be required to access some providers.

37 (5)(A) A health carrier shall make it clear for both its
38 electronic and print directories what provider directory
39 applies to which network plan, such as including the
40 specific name of the network plan as marketed and issued in
41 this state.

42 (B) The health carrier shall include in both its electronic
43 and print directories a customer service email address and
44 telephone number or electronic link that covered persons or
45 the general public may use to notify the health carrier of
46 inaccurate provider directory information.

47 (6) For the pieces of information required pursuant to
48 subsections (b), (c), and (d) of this section in a provider
49 directory pertaining to a health care professional, a hospital,
50 or a facility other than a hospital, the health carrier shall
51 make available through the directory the source of the
52 information and any limitations, if applicable.

53 (7) A provider directory, whether in electronic or print
54 format, shall accommodate the communication needs of
55 individuals with disabilities, and include a link to or
56 information regarding available assistance for persons with
57 limited English proficiency.

58 (b) The health carrier shall make available through an
59 electronic provider directory, for each network plan, the
60 information under this subsection in a searchable format:

61 (1) For health care professionals:

62 (A) Name;

63 (B) Gender;

64 (C) Participating office location(s);

65 (D) Specialty, if applicable;

66 (E) Medical group affiliations, if applicable;

67 (F) Facility affiliations, if applicable;

68 (G) Participating facility affiliations, if applicable;

69 (H) Languages spoken other than English, if applicable;
70 and

71 (I) Whether accepting new patients.

72 (2) For hospitals:

73 (A) Hospital name;

74 (B) Hospital type (i. e., acute, rehabilitation, children's,
75 cancer);

76 (C) Participating hospital location;

77 (D) Hospital accreditation status; and

78 (3) For facilities, other than hospitals, by type:

79 (A) Facility name;

80 (B) Facility type;

81 (C) Types of services performed; and

82 (D) Participating facility location(s).

83 (c) For the electronic provider directories, for each
84 network plan, a health carrier shall make available the
85 following information in addition to all of the information
86 available under subsection (b) of this section:

87 (1) For health care professionals:

88 (A) Contact information;

89 (B) Board certification(s); and

90 (C) Languages spoken other than English by clinical
91 staff, if applicable.

92 (2) For hospitals: Telephone number; and

93 (3) For facilities other than hospitals: Telephone
94 number.

95 (d)(1) The health carrier shall make available in print,
96 upon request, the following provider directory information
97 for the applicable network plan:

98 (A) For health care professionals:

99 (i) Name;

100 (ii) Contact information;

101 (iii) Participating office location(s);

102 (iv) Specialty, if applicable;

103 (v) Languages spoken other than English, if applicable;
104 and

105 (vi) Whether accepting new patients.

106 (B) For hospitals:

107 (i) Hospital name;

(ii) Hospital type, (i. e., acute, rehabilitation, children's, cancer); and

(iii) Participating hospital location and telephone number; and

(C) For facilities, other than hospitals, by type:

(i) Facility name;

(ii) Facility type;

(iii) Types of services performed; and

(iv) Participating facility location(s) and telephone number.

(2) The health carrier shall include a disclosure in the directory that the information in subdivision (1) of this subsection, included in the directory, is accurate as of the date of printing, and that covered persons or prospective covered persons should consult the carrier's electronic provider directory on its website to obtain current provider directory information.

†§33-55-5. Intermediaries.

A contract between a health carrier and an intermediary shall satisfy all the requirements contained in this section.

(a) A health carrier's statutory responsibility to monitor the offering of covered benefits to covered persons may not be delegated or assigned to the intermediary.

(b) A health carrier has the right to approve or disapprove participation status of a subcontracted provider in its own or a contracted network for the purpose of delivering covered benefits to the carrier's covered persons.

(c) A health carrier shall maintain copies of all intermediary health care subcontracts at its principal place of business in the state, or ensure that it has access to all

† Redesignated

intermediary subcontracts, including the right to make copies to facilitate regulatory review, upon 20 days prior written notice from the health carrier.

(d) If applicable, an intermediary shall transmit utilization documentation and claims-paid documentation to the health carrier. The carrier shall monitor the timeliness and appropriateness of payments made to providers and health care services received by covered persons.

(e) If applicable, an intermediary shall maintain the books, records, financial information, and documentation of services provided to covered persons at its principal place of business in the state and preserve them for two years in a manner that facilitates regulatory review.

(f) An intermediary shall allow the commissioner access to the intermediary's books, records, financial information, and any documentation of services provided to covered persons, as necessary to determine compliance with this article.

(g) A health carrier has the right, in the event of the intermediary's insolvency, to require the assignment to the health carrier of the provisions of a provider's contract addressing the provider's obligation to furnish covered services. If a health carrier requires assignment, the health carrier remains obligated to pay the provider for furnishing covered services under the same terms and conditions as the intermediary prior to the insolvency.

(h) Notwithstanding any other provision of this section, to the extent the health carrier delegates its responsibilities to the intermediary, the carrier shall retain full responsibility for the intermediary's compliance with the requirements of this article.

†§33-55-6. Filing requirements and state administration.

(a) At the time a health carrier files its access plan, the health carrier shall file for approval with the commissioner

† Redesignated

sample contract forms proposed for use with its participating providers and intermediaries.

(b) A health carrier shall submit material changes to a contract that would affect a provision required under this article or implementing regulations to the commissioner for approval at least 30 days prior to use.

(c) The health carrier shall maintain provider and intermediary contracts at its principal place of business in the state, or the health carrier shall have access to all contracts and provide copies to facilitate regulatory review upon 20 days prior written notice from the commissioner.

†§33-55-7. Contracting.

(a) The execution of a contract by a health carrier does not relieve the health carrier of its liability to any person with whom it has contracted for the provision of services, nor of its responsibility for compliance with the law or applicable regulations.

(b) All contracts shall be in writing and subject to review.

(c) All contracts shall comply with applicable requirements of the law and applicable regulations.

†§33-55-8. Enforcement.

(a) If the commissioner determines that a health carrier has not contracted with a sufficient number of participating providers to assure that covered persons have accessible health care services in a geographic area, or that a health carrier's network access plan does not assure reasonable access to covered benefits, or that a health carrier has entered into a contract that does not comply with this article, or that a health carrier has not complied with a provision of this article, the commissioner shall require a modification to the access plan or institute a corrective action plan, as appropriate, that shall be followed by the health carrier, or

† Redesignated

may use any of the commissioner's other enforcement powers to obtain the health carrier's compliance with this article.

(b) The commissioner will not act to arbitrate, mediate, or settle disputes regarding a decision not to include a provider in a network plan or in a provider network or regarding any other dispute between a health carrier, its intermediaries, or one or more providers arising under or by reason of a provider contract or its termination.

†§33-55-9. Rulemaking.

The commissioner shall propose a rule for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to implement the provisions of this article.

†§33-55-10. Penalties.

A violation of this article shall be penalized in accordance with §33-4-11 of this code.

CHAPTER 193

(H. B. 4146 - By Delegates Westfall, Nelson, Porterfield and Espinosa)
[By Request of the West Virginia Insurance Commission]

[Passed March 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §33-4-15a of the Code of West Virginia, 1931, as amended, relating to credit for reinsurance; allowing a credit on an insurer's annual statement when reinsurance is ceded to an assuming insurer and the assuming insurer is licensed in a reciprocal jurisdiction; defining terms; setting forth the criteria required regarding the credit for reinsurance; removing emergency rulemaking authority;

† Redesignated

providing rulemaking authority; imposing requirements and obligations on assuming insurer; imposing requirements for reinsurance agreements; imposing requirements on Insurance Commissioner; providing Insurance Commissioner authority concerning reciprocal jurisdictions and assuming insurers; requiring the Insurance Commissioner to create and publish a list of reciprocal jurisdictions and assuming insurers; and adding effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-15a. Credit for reinsurance.

(a) The purpose of this section is to protect the interest of insureds, claimants, ceding insurers, assuming insurers, and the public generally. The Legislature hereby declares its intent is to ensure adequate regulation of insurers and reinsurers, and the adequate protection for those to whom they owe obligations. In furtherance of that stated interest, it is hereby mandated that upon the insolvency of a non-United States insurer or reinsurer that provides security to fund its United States obligations in accordance with this section, the assets representing the security shall be maintained in the United States and claims shall be filed with and valued by the state Insurance Commissioner with regulatory oversight, and the assets shall be distributed, in accordance with the insurance laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic United States insurance companies. The Legislature further declares that the matters contained in this section are fundamental to the business of insurance in accordance with 15 U.S.C. §§1011-1012.

(b) (1) Credit for reinsurance shall be allowed a domestic ceding insurer as either an asset or a reduction from liability on account of reinsurance ceded only when the reinsurer meets the requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-15a(b)(2)(D), §33-4-15a(b)(2)(E), §33-4-15a(b)(2)(F), or

§33-4-15a(b)(2)(G) of this code: *Provided*, That the commissioner may adopt by rule pursuant to §33-4-15a(e)(2) of this code additional requirements relating to or setting forth:

(A) The valuation of assets or reserve credits;

(B) The amount and forms of security supporting reinsurance arrangements described in §33-4-15a(e)(2) of this code; and/or

(C) The circumstances pursuant to which credit will be reduced or eliminated.

(2) Credit shall be allowed under §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), or §33-4-15a(b)(2)(C) of this code only with respect to cessions of those kinds or classes of business which the assuming insurer is licensed or otherwise permitted to write or assume in its state of domicile or, in the case of a United States branch of an alien assuming insurer, in the state through which it is entered and licensed to transact insurance or reinsurance. Credit shall be allowed under §33-4-15a(b)(2)(C) or §33-4-15a(b)(2)(D) of this code only if the applicable requirements of §33-4-15a(b)(2)(H) of this code have been satisfied.

(A) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is licensed to transact insurance or reinsurance in this state.

(B) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is accredited by the commissioner as a reinsurer in this state. To be eligible for accreditation, a reinsurer must:

(i) File with the commissioner evidence of its submission to this state's jurisdiction;

(ii) Submit to this state's authority to examine its books and records;

(iii) Be licensed to transact insurance or reinsurance in at least one state, or in the case of a United States branch of an alien assuming insurer, be entered through and licensed to transact insurance or reinsurance in at least one state;

(iv) File annually with the commissioner a copy of its annual statement filed with the insurance department of its state of domicile and a copy of its most recent audited financial statement; and

(v) Demonstrate to the satisfaction of the commissioner that it has adequate financial capacity to meet its reinsurance obligations and is otherwise qualified to assume reinsurance from domestic insurers. An assuming insurer is considered to meet this requirement as of the time of its application if it maintains a surplus as regards policyholders in an amount not less than $20 million and its accreditation has not been denied by the commissioner within 90 days after submission of its application.

(C)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that is domiciled in, or in the case of a United States branch of an alien assuming insurer is entered through, a state that employs standards regarding credit for reinsurance substantially similar to those applicable under this statute and the assuming insurer or United States branch of an alien assuming insurer:

(I) Maintains a surplus as regards policyholders in an amount not less than $20 million; and

(II) Submits to the authority of this state to examine its books and records.

(ii) The requirement of §33-4-15a(b)(2)(C)(i)(I) of this code does not apply to reinsurance ceded and assumed pursuant to pooling arrangements among insurers in the same holding company system.

(D)(i) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that maintains a trust fund in

a qualified United States financial institution, as defined in §33-4-15a(d)(2) of this code, for the payment of the valid claims of its United States ceding insurers, their assigns and successors in interest. To enable the commissioner to determine the sufficiency of the trust fund, the assuming insurer shall report annually to the commissioner information substantially the same as that required to be reported on the National Association of Insurance Commissioners' Annual Statement form by licensed insurers. The assuming insurer shall submit to examination of its books and records by the commissioner and bear the expense of examination.

(ii)(I) Credit for reinsurance may not be granted under this paragraph unless the form of the trust and any amendments to the trust have been approved by the commissioner of the state where the trust is domiciled or the commissioner of another state who, pursuant to the terms of the trust instrument, has accepted principal regulatory oversight of the trust.

(II) The form of the trust and any trust amendments also shall be filed with the commissioner of every state in which the ceding insurer beneficiaries of the trust are domiciled. The trust instrument shall provide that contested claims shall be valid and enforceable upon the final order of any court of competent jurisdiction in the United States. The trust shall vest legal title to its assets in its trustees for the benefit of the assuming insurer's United States ceding insurers, their assigns, and successors in interest. The trust and the assuming insurer are subject to examination as determined by the commissioner.

(III) The trust shall remain in effect for as long as the assuming insurer has outstanding obligations due under the reinsurance agreements subject to the trust. No later than February 28 of each year the trustee of the trust shall report to the commissioner in writing the balance of the trust and listing the trust's investments at the preceding year-end and shall certify the date of termination of the trust, if so

planned, or certify that the trust will not expire prior to the following December 31.

(iii) The following requirements apply to the following categories of assuming insurer:

(I) The trust fund for a single assuming insurer shall consist of funds in trust in an amount not less than the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers, and, in addition, the assuming insurer shall maintain a trusteed surplus of not less than $20 million, except as provided in §33-4-15a(b)(2)(D)(iii)(II) of this code.

(II) At any time after the assuming insurer has permanently discontinued underwriting new business secured by the trust for at least three full years, the commissioner with principal regulatory oversight of the trust may authorize a reduction in the required trusteed surplus, but only after a finding, based on an assessment of the risk, that the new required surplus level is adequate for the protection of United States ceding insurers, policyholders, and claimants in light of reasonably foreseeable adverse loss development. The risk assessment may involve an actuarial review, including an independent analysis of reserves and cash flows, and shall consider all material risk factors, including when applicable the lines of business involved, the stability of the incurred loss estimates, and the effect of the surplus requirements on the assuming insurer's liquidity or solvency. The minimum required trusteed surplus may not be reduced to an amount less than 30 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers covered by the trust.

(III)(a) When there is a group, including incorporated and individual unincorporated underwriters for reinsurance ceded under reinsurance agreements with an inception, amendment, or renewal date on or after January 1, 1993, the trust shall consist of a trusteed account in an amount not less

than the respective underwriters' several liabilities attributable to business ceded by United States domiciled ceding insurers to any underwriter of the group.

(b) When there is a group, including incorporated and individual unincorporated underwriters for reinsurance ceded under reinsurance agreements with an inception date on or before December 31, 1992, and not amended or renewed after that date, notwithstanding the other provisions of this section, the trust shall consist of a trusteed account in an amount not less than the respective underwriters' several insurance and reinsurance liabilities attributable to business written in the United States.

(c) In addition to the trusts described in §33-4-15a(b)(2)(D)(iii)(III)(a) and §33-4-15a(b)(2)(D)(iii)(III)(b) of this code, the group shall maintain in trust a trusteed surplus of which $100 million shall be held jointly for the benefit of the United States domiciled ceding insurers of any member of the group for all years of account.

(d) The incorporated members of the group may not be engaged in any business other than underwriting as a member of the group and are subject to the same level of regulation and solvency control by the group's domiciliary regulator as are the unincorporated members.

(e) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, the group shall provide to the commissioner an annual certification by the group's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the group.

(IV) When there is a group of incorporated underwriters under common administration, the group shall:

(a) Have continuously transacted an insurance business outside the United States for at least three years immediately prior to making application for accreditation;

(b) Maintain aggregate policyholders' surplus of at least $10 billion;

(c) Maintain a trust fund in an amount not less than the group's several liabilities attributable to business ceded by United States domiciled ceding insurers to any member of the group pursuant to reinsurance contracts issued in the name of the group;

(d) In addition, maintain a joint trusteed surplus of which $100 million shall be held jointly for the benefit of United States domiciled ceding insurers of any member of the group as additional security for these liabilities; and

(e) Within 90 days after its financial statements are due to be filed with the group's domiciliary regulator, make available to the commissioner an annual certification of each underwriter member's solvency by the member's domiciliary regulator and financial statements of each underwriter member of the group prepared by its independent public accountant.

(E) Credit shall be allowed when the reinsurance is ceded to an assuming insurer that has been certified by the commissioner as a reinsurer in this state and secures its obligations in accordance with the requirements of this paragraph.

(i) In order to be eligible for certification, the assuming insurer shall meet the following requirements:

(I) The assuming insurer shall be domiciled and licensed to transact insurance or reinsurance in a qualified jurisdiction, as determined by the commissioner pursuant to §33-4-15a(b)(2)(E)(iii) of this code;

(II) The assuming insurer shall maintain minimum capital and surplus, or its equivalent, in an amount to be determined by the commissioner pursuant to a rule proposed pursuant to §33-4-15a(e) of this code;

(III) The assuming insurer shall maintain financial strength ratings from two or more rating agencies deemed acceptable by the commissioner pursuant to a rule proposed pursuant to §33-4-15a(e) of this code;

(IV) The assuming insurer shall agree to submit to the jurisdiction of this state, appoint the commissioner as its agent for service of process in this state, and agree to provide security for 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded by United States ceding insurers if it resists enforcement of a final United States judgment;

(V) The assuming insurer shall agree to meet applicable information filing requirements as determined by the commissioner, both with respect to an initial application for certification and on an ongoing basis; and

(VI) The assuming insurer shall satisfy any other requirements for certification deemed relevant by the commissioner.

(ii) An association including incorporated and individual unincorporated underwriters may be a certified reinsurer. In order to be eligible for certification, in addition to satisfying requirements of §33-4-15a(b)(2)(E)(i) of this code:

(I) The association shall satisfy its minimum capital and surplus requirements through the capital and surplus equivalents (net of liabilities) of the association and its members, which shall include a joint central fund that may be applied to any unsatisfied obligation of the association or any of its members, in an amount determined by the commissioner to provide adequate protection;

(II) The incorporated members of the association may not be engaged in any business other than underwriting as a member of the association and shall be subject to the same level of regulation and solvency control by the association's domiciliary regulator as are the unincorporated members; and

(III) Within 90 days after its financial statements are due to be filed with the association's domiciliary regulator, the association shall provide to the commissioner an annual certification by the association's domiciliary regulator of the solvency of each underwriter member; or if a certification is unavailable, financial statements, prepared by independent public accountants, of each underwriter member of the association.

(iii) The commissioner shall create and publish a list of qualified jurisdictions, under which an assuming insurer licensed and domiciled in such jurisdiction is eligible to be considered for certification by the commissioner as a certified reinsurer.

(I) In order to determine whether the domiciliary jurisdiction of a non-United States assuming insurer is eligible to be recognized as a qualified jurisdiction, the commissioner shall evaluate the appropriateness and effectiveness of the reinsurance supervisory system of the jurisdiction, both initially and on an ongoing basis, and consider the rights, benefits, and the extent of reciprocal recognition afforded by the non-United States jurisdiction to reinsurers licensed and domiciled in the United States. A qualified jurisdiction shall agree to share information and cooperate with the commissioner with respect to all certified reinsurers domiciled within that jurisdiction. A jurisdiction may not be recognized as a qualified jurisdiction if the commissioner has determined that the jurisdiction does not adequately and promptly enforce final United States judgments and arbitration awards. Additional factors may be considered in the discretion of the commissioner.

(II) A list of qualified jurisdictions shall be published through the National Association of Insurance Commissioners' Committee Process. The commissioner shall consider this list in determining qualified jurisdictions. If the commissioner approves a jurisdiction as qualified that does not appear on the list of qualified jurisdictions, the commissioner shall provide thoroughly documented justification in accordance with criteria to be developed by rules proposed pursuant to §33-4-15a(e) of this code.

(III) United States jurisdictions that meet the requirement for accreditation under the National Association of Insurance Commissioners' financial standards and accreditation program shall be recognized as qualified jurisdictions.

(IV) If a certified reinsurer's domiciliary jurisdiction ceases to be a qualified jurisdiction, the commissioner may suspend the reinsurer's certification indefinitely, in lieu of revocation.

(iv) The commissioner shall assign a rating to each certified reinsurer, giving due consideration to the financial strength ratings that have been assigned by rating agencies considered acceptable to the commissioner as developed by rules proposed pursuant to §33-4-15a(e) of this code. The commissioner shall publish a list of all certified reinsurers and their ratings.

(v) A certified reinsurer shall secure obligations assumed from United States ceding insurers under this paragraph at a level consistent with its rating, as specified in rules proposed pursuant to §33-4-15a(e) of this code.

(I) In order for a domestic ceding insurer to qualify for full financial statement credit for reinsurance ceded to a certified reinsurer, the certified reinsurer shall maintain security in a form acceptable to the commissioner and consistent with the provisions of §33-4-15a(c) of this code, or in a multibeneficiary trust in accordance with §33-4-

15a(b)(2)(D) of this code, except as otherwise provided in this paragraph.

(II) If a certified reinsurer maintains a trust to fully secure its obligations subject to §33-4-15a(b)(2)(D) of this code, and chooses to secure its obligations incurred as a certified reinsurer in the form of a multibeneficiary trust, the certified reinsurer shall maintain separate trust accounts for its obligations incurred under reinsurance agreements issued or renewed as a certified reinsurer with reduced security as permitted by this paragraph or comparable laws of other United States jurisdictions and for its obligations subject to §33-4-15a(b)(2)(D) of this code. It shall be a condition to the grant of certification under this paragraph that the certified reinsurer shall have bound itself, by the language of the trust and agreement with the commissioner with principal regulatory oversight of each such trust account, to fund, upon termination of any such trust account, out of the remaining surplus of such trust any deficiency of any other such trust account.

(III) The minimum trusteed surplus requirements provided in §33-4-15a(b)(2)(D) of this code are not applicable with respect to a multibeneficiary trust maintained by a certified reinsurer for the purpose of securing obligations incurred under this paragraph, except that such trust shall maintain a minimum trusteed surplus of $10 million.

(IV) With respect to obligations incurred by a certified reinsurer under this paragraph, if the security is insufficient, the commissioner shall reduce the allowable credit by an amount proportionate to the deficiency, and has the discretion to impose further reductions in allowable credit upon finding that there is a material risk that the certified reinsurer's obligations may not be paid in full when due.

(V) For purposes of this paragraph, a certified reinsurer whose certification has been terminated for any reason shall be treated as a certified reinsurer required to secure 100

370 percent of its obligations. If the commissioner continues to
371 assign a higher rating as permitted by other provisions of
372 this section, this requirement does not apply to a certified
373 reinsurer in inactive status or to a reinsurer whose
374 certification has been suspended. As used in this paragraph,
375 the term "terminated" refers to revocation, suspension,
376 voluntary surrender, and inactive status.

377 (vi) If an applicant for certification has been certified as
378 a reinsurer in a National Association of Insurance
379 Commissioners' accredited jurisdiction, the commissioner
380 may defer to that jurisdiction's certification, and may defer
381 to the rating assigned by that jurisdiction, and such
382 assuming insurer shall be considered to be a certified
383 reinsurer in this state.

384 (vii) A certified reinsurer that ceases to assume new
385 business in this state may request to maintain its
386 certification in inactive status in order to continue to qualify
387 for a reduction in security for its in-force business. An
388 inactive certified reinsurer shall continue to comply with all
389 applicable requirements of this paragraph, and the
390 commissioner shall assign a rating that takes into account,
391 if relevant, the reasons why the reinsurer is not assuming
392 new business.

393 (F)(i) Credit shall be allowed when the reinsurance is
394 ceded to an assuming insurer meeting each of the conditions
395 set forth in this paragraph.

396 (I) The assuming insurer shall have its head office or be
397 domiciled in, as applicable, and be licensed in a reciprocal
398 jurisdiction. A "reciprocal jurisdiction" is a jurisdiction that
399 meets one of the following:

400 (a) A non-United States jurisdiction that is subject to an
401 in-force covered agreement with the United States, each
402 within its legal authority, or, where there is a covered
403 agreement between the United States and European Union,
404 is a member state of the European Union. For purposes of

405 this paragraph, a "covered agreement" is an agreement
406 entered into pursuant to Dodd-Frank Wall Street Reform
407 and Consumer Protection Act, 31 U.S.C. §§313 and 314,
408 that is currently in effect or in a period of provisional
409 application and addresses the elimination, under specified
410 conditions, of collateral requirements as a condition for
411 entering into any reinsurance agreement with a ceding
412 insurer domiciled in this state or for allowing the ceding
413 insurer to recognize credit for reinsurance;

414 (b) A United States jurisdiction that meets the
415 requirements for accreditation under the National
416 Association of Insurance Commissioners' financial
417 standards and accreditation program; or

418 (c) A qualified jurisdiction, as determined by the
419 commissioner pursuant to §33-4-15a(b)(2)(E)(iii) of this
420 code, which is not otherwise described in §33-4-
421 15a(b)(2)(F)(i)(I)(a) or §33-4-15a(b)(2)(F)(i)(I)(b) of this
422 code and which meets certain additional requirements,
423 consistent with the terms and conditions of in-force covered
424 agreements, as specified in rules proposed pursuant to §33-
425 4-15a(e) of this code.

426 (II) The assuming insurer shall have and maintain, on an
427 ongoing basis, minimum capital and surplus, or its
428 equivalent, calculated according to the methodology of its
429 domiciliary jurisdiction, in an amount to be set forth in rules
430 proposed pursuant to §33-4-15a(e) of this code. If the
431 assuming insurer is an association, including incorporated
432 and individual unincorporated underwriters, it must have
433 and maintain, on an ongoing basis, minimum capital and
434 surplus equivalents (net of liabilities), calculated according
435 to the methodology applicable in its domiciliary
436 jurisdiction, and a central fund containing a balance in
437 amounts to be set forth in rules proposed pursuant to §33-4-
438 15a(e) of this code.

439 (III) The assuming insurer shall have and maintain, on
440 an ongoing basis, a minimum solvency or capital ratio, as

applicable, which will be set forth in rules proposed pursuant to §33-4-15a(e) of this code. If the assuming insurer is an association, including incorporated and individual unincorporated underwriters, it must have and maintain, on an ongoing basis, a minimum solvency or capital ratio in the reciprocal jurisdiction where the assuming insurer has its head office or is domiciled, as applicable, and is also licensed.

(IV) The assuming insurer shall agree and provide adequate assurance to the commissioner, in a form specified by the commissioner and as set forth in rules proposed pursuant to §33-4-15a(e) of this code, as follows:

(a) The assuming insurer shall provide prompt written notice and explanation to the commissioner if it falls below the minimum requirements set forth in §33-4-15a(b)(2)(F)(i)(II) or §33-4-15a(b)(2)(F)(i)(III) of this code, or if any regulatory action is taken against it for serious noncompliance with applicable law;

(b) The assuming insurer shall consent in writing to the jurisdiction of the courts of this state and to the appointment of the commissioner as agent for service of process. The commissioner may require that consent for service of process be provided to the commissioner and included in each reinsurance agreement. Nothing in this provision may limit, or in any way alter, the capacity of parties to a reinsurance agreement to agree to alternative dispute resolution mechanisms, except to the extent such agreements are unenforceable under applicable insolvency or delinquency laws;

(c) The assuming insurer shall consent in writing to pay all final judgments, wherever enforcement is sought, obtained by a ceding insurer or its legal successor, that have been declared enforceable in the jurisdiction where the judgment was obtained;

(d) Each reinsurance agreement shall include a provision requiring the assuming insurer to provide security in an amount equal to 100 percent of the assuming insurer's liabilities attributable to reinsurance ceded pursuant to that agreement if the assuming insurer resists enforcement of a final judgment that is enforceable under the law of the jurisdiction in which it was obtained or a properly enforceable arbitration award, whether obtained by the ceding insurer or by its legal successor on behalf of its resolution estate; and

(e) The assuming insurer shall confirm that it is not presently participating in any solvent scheme of arrangement which involves this state's ceding insurers, and agree to notify the ceding insurer and the commissioner and to provide security in an amount equal to 100 percent of the assuming insurer's liabilities to the ceding insurer, should the assuming insurer enter into such a solvent scheme of arrangement. The security shall be in a form consistent with the provisions of §33-4-15a(b)(2)(E) and §33-4-15a(c) of this code and as specified by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(V) The assuming insurer or its legal successor shall provide, if requested by the commissioner, on behalf of itself and any legal predecessors, certain documentation to the commissioner, as specified by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(VI) The assuming insurer shall maintain a practice of prompt payment of claims under reinsurance agreements, pursuant to criteria set forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(VII) The assuming insurer's supervisory authority shall confirm to the commissioner on an annual basis, as of the preceding December 31 or at the annual date otherwise statutorily reported to the reciprocal jurisdiction, that the assuming insurer complies with the requirements set forth

in §33-4-15a(b)(2)(F)(i)(II) and §33-4-15a(b)(2)(F)(i)(III) of this code.

(VIII) Nothing in this subparagraph precludes an assuming insurer from providing the commissioner with information on a voluntary basis.

(ii) In addition to the list of reciprocal jurisdictions published through the National Association of Insurance Commissioners' committee process, the commissioner shall timely create and publish a list of reciprocal jurisdictions.

(I) The commissioner's list shall include any reciprocal jurisdiction as defined under §33-4-15a(b)(2)(F)(i)(I)(a) and §33-4-15a(b)(2)(F)(i)(I)(b) of this code and shall consider any other reciprocal jurisdiction included on the National Association of Insurance Commissioners' list. The commissioner may approve a jurisdiction that does not appear on the National Association of Insurance Commissioners' list of reciprocal jurisdictions in accordance with criteria to be developed by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(II) The commissioner may remove a jurisdiction from the list of reciprocal jurisdictions upon a determination that the jurisdiction no longer meets the requirements of a reciprocal jurisdiction, in accordance with a process set forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code, except that the commissioner may not remove from the list a reciprocal jurisdiction as defined under §33-4-15a(b)(2)(F)(i)(I)(a) and §33-4-15a(b)(2)(F)(i)(I)(b) of this code. Upon removal of a reciprocal jurisdiction from the list, credit for reinsurance ceded to an assuming insurer which has its home office or is domiciled in that jurisdiction shall be allowed, if otherwise allowed pursuant to this section.

(iii) The commissioner shall timely create and publish a list of assuming insurers that have satisfied the conditions

set forth in this paragraph and to which cessions shall be granted credit in accordance with this paragraph. The commissioner may add an assuming insurer to the list if a National Association of Insurance Commissioners accredited jurisdiction has added the assuming insurer to a list of such assuming insurers or if, upon initial eligibility, the assuming insurer submits the information to the commissioner as required under §33-4-15a(b)(2)(F)(i)(IV) of this code and complies with any additional requirements that the commissioner may impose by rules proposed pursuant to §33-4-15a(e) of this code, except to the extent that they conflict with an applicable covered agreement.

(iv) If the commissioner determines that an assuming insurer no longer meets one or more of the requirements under this paragraph, the commissioner may revoke or suspend the eligibility of the assuming insurer for recognition under this paragraph in accordance with procedures set forth by the commissioner in rules proposed pursuant to §33-4-15a(e) of this code.

(I) While an assuming insurer's eligibility is suspended, no reinsurance agreement issued, amended, or renewed after the effective date of the suspension qualifies for credit except to the extent that the assuming insurer's obligations under the contract are secured in accordance with §33-4-15a(c) of this code.

(II) If an assuming insurer's eligibility is revoked, no credit for reinsurance may be granted after the effective date of the revocation with respect to any reinsurance agreements entered into by the assuming insurer, including reinsurance agreements entered into prior to the date of revocation, except to the extent that the assuming insurer's obligations under the contract are secured in a form acceptable to the commissioner and consistent with the provisions of §33-4-15a(c) of this code.

(v) If subject to a legal process of rehabilitation, liquidation, or conservation, as applicable, the ceding

insurer, or its representative, may seek and, if determined appropriate by the court in which the proceedings are pending, may obtain an order requiring that the assuming insurer post security for all outstanding ceded liabilities.

(vi) Nothing in this paragraph may limit or in any way alter the capacity of parties to a reinsurance agreement to agree on requirements for security or other terms in that reinsurance agreement, except as expressly prohibited by this section or other applicable law or regulation.

(vii) Credit may be taken under this paragraph only for reinsurance agreements entered into, amended, or renewed on or after the effective date of the statute adding this paragraph, and only with respect to losses incurred and reserves reported on or after the later of:

(I) The date on which the assuming insurer has met all eligibility requirements pursuant to §33-4-15a(b)(2)(F)(i) of this code; and

(II) The effective date of the new reinsurance agreement, amendment, or renewal.

(a) This subparagraph does not alter or impair a ceding insurer's right to take credit for reinsurance, to the extent that credit is not available under this paragraph, as long as the reinsurance qualifies for credit under any other applicable provision of this section.

(b) Nothing in this paragraph may authorize an assuming insurer to withdraw or reduce the security provided under any reinsurance agreement except as permitted by the terms of the agreement.

(c) Nothing in this paragraph may limit, or in any way alter, the capacity of parties to any reinsurance agreement to renegotiate the agreement.

(G) Credit shall be allowed when the reinsurance is ceded to an assuming insurer not meeting the requirements

of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), §33-4-15a(b)(2)(D), §33-4-15a(b)(2)(E), or §33-4-15a(b)(2)(F) of this code, but only as to the insurance of risks located in jurisdictions where the reinsurance is required by applicable law or regulation of that jurisdiction.

(H)(i) If the assuming insurer is not licensed, accredited, or certified to transact insurance or reinsurance in this state, the credit permitted by §33-4-15a(b)(2)(C) and §33-4-15a(b)(2)(D) of this code may not be allowed unless the assuming insurer agrees in the reinsurance agreements:

(I) If there is a failure of the assuming insurer to perform its obligations under the terms of the reinsurance agreement, the assuming insurer, at the request of the ceding insurer, shall submit to the jurisdiction of any court of competent jurisdiction in any state of the United States, will comply with all requirements necessary to give the court jurisdiction, and will abide by the final decision of the court or of any appellate court upon an appeal; and

(II) To designate the Secretary of State as its true and lawful attorney upon whom may be served any lawful process in any action, suit, or proceeding instituted by or on behalf of the ceding insurer.

(ii) This paragraph is not intended to conflict with or override the obligation of the parties to a reinsurance agreement to arbitrate their disputes, if this obligation is created in the agreement.

(I) If the assuming insurer does not meet the requirements of §33-4-15a(b)(2)(A), §33-4-15a(b)(2)(B), §33-4-15a(b)(2)(C), or §33-4-15a(b)(2)(F) of this code, the credit permitted by §33-4-15a(b)(2)(D) or §33-4-15a(b)(2)(E) of this code may not be allowed unless the assuming insurer agrees in the trust agreements to the following conditions:

(i) Notwithstanding any other provisions in the trust instrument, if the trust fund is inadequate because it contains an amount less than the amount required by §33-4-15a(b)(2)(D)(iii) of this code, or if the grantor of the trust has been declared insolvent or placed into receivership, rehabilitation, liquidation, or similar proceedings under the laws of its state or country of domicile, the trustee shall comply with an order of the commissioner with regulatory oversight over the trust or with an order of a court of competent jurisdiction directing the trustee to transfer to the commissioner with regulatory oversight all of the assets of the trust fund.

(ii) The assets shall be distributed by and claims shall be filed with and valued by the commissioner with regulatory oversight in accordance with the laws of the state in which the trust is domiciled that are applicable to the liquidation of domestic insurance companies.

(iii) If the commissioner with regulatory oversight determines that the assets of the trust fund or any part thereof are not necessary to satisfy the claims of the United States ceding insurers of the grantor of the trust, the assets, or part thereof shall be returned by the commissioner with regulatory oversight to the trustee for distribution in accordance with the trust agreement.

(iv) The grantor shall waive any right otherwise available to it under United States law that is inconsistent with this provision.

(J) If an accredited or certified reinsurer ceases to meet the requirements for accreditation or certification, the commissioner may suspend or revoke the reinsurer's accreditation or certification.

(i) The commissioner shall give the reinsurer notice and opportunity for hearing. The suspension or revocation may not take effect until after the commissioner's order on hearing, unless:

682 (I) The reinsurer waives its right to hearing;

683 (II) The commissioner's order is based on regulatory
684 action by the reinsurer's domiciliary jurisdiction or the
685 voluntary surrender or termination of the reinsurer's
686 eligibility to transact insurance or reinsurance business in its
687 domiciliary jurisdiction or in the primary certifying state of
688 the reinsurer under §33-4-15a(b)(2)(E)(vi) of this code; or

689 (III) The commissioner finds that an emergency requires
690 immediate action and a court of competent jurisdiction has
691 not stayed the commissioner's action.

692 (ii) While a reinsurer's accreditation or certification is
693 suspended, no reinsurance contract issued or renewed after
694 the effective date of the suspension qualifies for credit
695 except to the extent that the reinsurer's obligations under the
696 contract are secured in accordance with §33-4-15a(c) of this
697 code. If a reinsurer's accreditation or certification is
698 revoked, no credit for reinsurance may be granted after the
699 effective date of the revocation except to the extent that the
700 reinsurer's obligations under the contract are secured in
701 accordance with §33-4-15a(b)(2)(E)(v) or §33-4-15a(c) of
702 this code.

703 (K) Concentration Risk.

704 (i) A ceding insurer shall take steps to manage its
705 reinsurance recoverables proportionate to its own book of
706 business. A domestic ceding insurer shall notify the
707 commissioner within 30 days after reinsurance recoverables
708 from any single assuming insurer, or group of affiliated
709 assuming insurers, exceeds 50 percent of the domestic
710 ceding insurer's last reported surplus to policyholders, or
711 after it is determined that reinsurance recoverables from any
712 single assuming insurer, or group of affiliated assuming
713 insurers, is likely to exceed this limit. The notification shall
714 demonstrate that the exposure is safely managed by the
715 domestic ceding insurer.

(ii) A ceding insurer shall take steps to diversify its reinsurance program. A domestic ceding insurer shall notify the commissioner within 30 days after ceding to any single assuming insurer, or group of affiliated assuming insurers, more than 20 percent of the ceding insurer's gross written premium in the prior calendar year, or after it has determined that the reinsurance ceded to any single assuming insurer, or group of affiliated assuming insurers, is likely to exceed this limit. The notification shall demonstrate that the exposure is safely managed by the domestic ceding insurer.

(c) (1) An asset or a reduction from liability for the reinsurance ceded by a domestic insurer to an assuming insurer not meeting the requirements of §33-4-15a(b) of this code shall be allowed in an amount not exceeding the liabilities carried by the ceding insurer: *Provided*, That the commissioner may adopt by rule pursuant to §33-4-15a(e)(2) of this code specific additional requirements relating to or setting forth:

(A) The valuation of assets or reserve credits;

(B) The amount and forms of security supporting reinsurance arrangements described in §33-4-15a(e)(2) of this code; and/or

(C) The circumstances pursuant to which credit will be reduced or eliminated.

(2) The reduction shall be in the amount of funds held by or on behalf of the ceding insurer, including funds held in trust for the ceding insurer, under a reinsurance contract with the assuming insurer as security for the payment of obligations thereunder, if the security is held in the United States subject to withdrawal solely by, and under the exclusive control of, the ceding insurer; or, in the case of a trust, held in a qualified United States financial institution, as defined in §33-4-15a(d)(2) of this code. This security may be in the form of:

(A) Cash;

(B) Securities listed by the Securities Valuation Office of the National Association of Insurance Commissioners, including those deemed exempt from filing as defined by the Purposes and Procedures Manual of the Securities Valuation Office, and qualifying as admitted assets;

(C)(i) Clean, irrevocable, unconditional letters of credit, issued or confirmed by a qualified United States financial institution, as defined in §33-4-15a(d)(1) of this code, effective no later than December 31 of the year for which the filing is being made, and in the possession of, or in trust for, the ceding insurer on or before the filing date of its annual statement;

(ii) Letters of credit meeting applicable standards of issuer acceptability as of the dates of their issuance (or confirmation) shall, notwithstanding the issuing (or confirming) institution's subsequent failure to meet applicable standards of issuer acceptability, continue to be acceptable as security until their expiration, extension, renewal, modification, or amendment, whichever first occurs; or

(D) Any other form of security acceptable to the commissioner.

(d)(1) For purposes of §33-4-15a(c)(2)(C) of this code, a "qualified United States financial institution" means an institution that:

(A) Is organized or, in the case of a United States office of a foreign banking organization, licensed, under the laws of the United States or any state thereof;

(B) Is regulated, supervised, and examined by United States federal or state authorities having regulatory authority over banks and trust companies; and

(C) Has been determined by either the commissioner or the Securities Valuation Office of the National Association of Insurance Commissioners to meet such standards of financial condition and standing as are considered necessary and appropriate to regulate the quality of financial institutions whose letters of credit will be acceptable to the commissioner.

(2) A "qualified United States financial institution" means, for purposes of those provisions of this section specifying those institutions that are eligible to act as a fiduciary of a trust, an institution that:

(A) Is organized, or, in the case of a United States branch or agency office of a foreign banking organization, licensed, under the laws of the United States or any state thereof and has been granted authority to operate with fiduciary powers; and

(B) Is regulated, supervised, and examined by federal or state authorities having regulatory authority over banks and trust companies.

(e)(1) The commissioner may, to implement the provisions of this section, propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(2) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code applicable to reinsurance arrangements as described in §33-4-15a(e)(2)(A) of this code.

(A) A rule adopted pursuant to §33-4-15a(e)(2) of this code may apply only to reinsurance relating to:

(i) Life insurance policies with guaranteed nonlevel gross premiums or guaranteed nonlevel benefits;

(ii) Universal life insurance policies with provisions resulting in the ability of a policyholder to keep a policy in force over a secondary guarantee period;

(iii) Variable annuities with guaranteed death or living benefits;

(iv) Long-term care insurance policies; or

(v) Such other life and health insurance and annuity products as to which the National Association of Insurance Commissioners adopts model regulatory requirements with respect to credit for reinsurance.

(B) A rule adopted pursuant to §33-4-15a(e)(2)(A)(i) or §33-4-15a(e)(2)(A)(ii) of this code, may apply to any treaty containing:

(i) Policies issued on or after January 1, 2015; and/or

(ii) Policies issued prior to January 1, 2015, if risk pertaining to such pre-2015 policies is ceded in connection with the treaty, in whole or in part, on or after January 1, 2015.

(C) A rule adopted pursuant to §33-4-15a(e)(2) of this code may require the ceding insurer, in calculating the amounts or forms of security required to be held under rules proposed under this authority, to use the Valuation Manual adopted by the National Association of Insurance Commissioners under Section 11B(1) of the National Association of Insurance Commissioners' Standard Valuation Law, including all amendments adopted by the National Association of Insurance Commissioners and in effect on the date as of which the calculation is made, to the extent applicable.

(D) A rule adopted pursuant to this §33-4-15a(e)(2) of this code shall not apply to cessions to an assuming insurer that:

(i) Meets the conditions set forth in Section 2F of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law in this state or, if this state has not adopted provisions substantially equivalent to Section 2F of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law, the assuming insurer is operating in accordance with provisions substantially equivalent to Section 2F of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law in a minimum of five other states; or

(ii) Is certified in this state or, if this state has not adopted provisions substantially equivalent to Section 2E of the National Association of Insurance Commissioners' Credit for Reinsurance Model Law, certified in a minimum of five (5) other states; or

(iii) Maintains at least $250 million in capital and surplus when determined in accordance with the National Association of Insurance Commissioners' Accounting Practices and Procedures Manual, including all amendments thereto adopted by the National Association of Insurance Commissioners, excluding the impact of any permitted or prescribed practices; and is

(I) Licensed in at least 26 states; or

(II) Licensed in at least 10 states, and licensed or accredited in a total of at least 35 states.

(E) The authority to adopt rules pursuant to §33-4-15a(e)(2) of this code does not limit the commissioner's general authority to adopt rules pursuant to §33-4-15a(e)(1) of this code.

(f) This section shall become effective on January 1, 2019, and shall apply to all cessions under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2019. The amendments to this

section enacted during the regular session of the Legislature in the year 2020 shall apply to all cessions under reinsurance agreements that have an inception, anniversary, or renewal date on or after January 1, 2021.

CHAPTER 194

(H. B. 4149 - By Delegates Westfall, Queen, Barrett, Waxman, Hott, Williams, D. Jeffries, Kessinger, Porterfield and Espinosa)

[Passed February 27, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 7, 2020.]

AN ACT to amend and reenact §33-4-2 of the Code of West Virginia, 1931, as amended, relating to insurance; clarifying when insurance code chapter provisions are not applicable; adding definitions; and clarifying "service contract" and "warranty" definitions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. GENERAL PROVISIONS.

§33-4-2. Application of chapter to particular types of insurers.

(a) No provision of this chapter shall apply to:

(1) Hospital service corporations and medical service corporations except as stated in §33-24-1 *et seq.* of this code;

(2) Fraternal benefit societies except as stated in §33-23-1 *et seq.* of this code;

(3) Farmers' mutual fire insurance companies except as stated in §33-22-1 *et seq.* of this code;

(4) Warranties;

(5) Service contracts;

(6) Maintenance agreements.

(b) For the purposes of this article:

(1) "Holder" means a resident of this state who either purchases a service agreement or is legally in possession of a service contract and is entitled to enforce the rights of the original purchaser of the service contract.

(2) "Incidental costs" means expenses specified in a vehicle protection product warranty that are incurred by the warranty holder due to the failure of a vehicle protection product to perform as provided in the contract. Incidental costs may be reimbursed in either a fixed amount specified in the vehicle protection product warranty or by use of a formula itemizing specific incidental costs incurred by the warranty holder.

(3) "Maintenance agreement" means a contract for a limited period that provides only for scheduled maintenance.

(4) "Provider" means a person who is obligated to a holder pursuant to the terms of a service contract to repair, replace, or perform maintenance on or to indemnify the holder for the costs of repairing, replacing, or performing maintenance on goods.

(5) "Road hazard" means a hazard that is encountered while driving a motor vehicle, which may include potholes, rocks, wood debris, metal parts, glass, plastic, curbs, or composite scraps.

(6) "Service contract" means an agreement entered into for a separately stated consideration and for a specified term under which a provider agrees to repair, replace, or maintain a product or provide indemnification for the repair,

replacement, or maintenance of a product for operational or structural failure caused by a defect in materials or workmanship or by normal wear. A service contract may additionally provide for incidental payment or indemnity under limited circumstances, including towing, rental, and emergency road service or for the repair or replacement of a product for damage resulting from power surges or accidental damage incurred in handling the product. "Service contract" includes a contract or agreement that provides for one or more of the following:

(A) The repair or replacement of tires or wheels on a motor vehicle damaged as a result of coming into contact with road hazards;

(B) The removal of dents, dings, or creases on a motor vehicle that can be repaired using the process of paintless dent removal without affecting the existing paint finish and without replacing vehicle body panels, sanding, bonding, or painting;

(C) The repair of chips or cracks in, or the replacement of, motor vehicle windshields as a result of damage caused by road hazards;

(D) The replacement of a motor vehicle key or key-fob in the event that the key or key-fob becomes inoperable or is lost or stolen;

(E) The repair of damage to the interior components of a motor vehicle caused by wear and tear;

(F) The cosmetic repair of minor damage such as scuffs, scratches, scrapes, or rash on exterior surfaces of a motor vehicle; or

(G) In conjunction with a motor vehicle leased for use, the repair, replacement, or maintenance of property, or indemnification for repair, replacement, or maintenance, due to excess wear and use, damage for items such as tires, paint cracks or chips, interior stains, rips or scratches,

exterior dents or scratches, windshield cracks or chips, missing interior or exterior parts, or excess mileage that result in a lease-end charge, or any other charge for damage that is deemed as excess wear and use by a lessor under a motor vehicle lease, provided any such payment does not exceed the purchase price of the vehicle.

(7) "Vehicle protection product" means a protective chemical, substance, device, or system that: (A) is installed on or applied to a motor vehicle; (B) is designed to prevent loss or damage to a motor vehicle from a specific cause; and (C) includes a vehicle protection product warranty. "Vehicle protection product" does not include fuel additives, oil additives, or other chemical products applied to the engine, transmission, or fuel system.

(8) "Vehicle protection product warranty" means a warranty that provides that if the vehicle protection product fails to prevent loss or damage to a motor vehicle from a specific cause, the warrantor will pay to or on behalf of the warranty holder specified incidental costs as a result of the failure of the vehicle protection product to perform pursuant to the terms of the vehicle protection product warranty.

(9) "Warranty" means in relation to a product or service an undertaking that guarantees indemnity for defective parts, mechanical or electrical breakdown, labor costs, or other remedial measures, such as repair or replacement of the product or repetition of services, and that is made solely by the manufacturer, importer, or seller of the product or services made without payment of additional consideration, not negotiated or separated from the sale of the product or service and incidental to the sale of the product or service. "Warranty" includes a vehicle protection product warranty.

CHAPTER 195

(Com. Sub. for H. B. 4198 - By Delegates Pyles, Pushkin, Lavender-Bowe and S. Brown)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-16-28; to amend said code by adding thereto a new section, designated †§33-15-4w; to amend said code by adding thereto a new section, designated †§33-16-3hh; to amend said code by adding thereto a new section, designated †§33-24-7w; to amend said code by adding thereto a new section, designated †§33-25-8t; to amend said code by adding thereto a new section, designated †§33-25A-8w; and to amend said code by adding thereto a new section, designated †§33-58-1, all relating to permitting a person to obtain a 12-month supply of contraceptive drugs; incorporating these provisions into the West Virginia Public Employees Insurance Act; and incorporating these provisions into the sections of insurance code.

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.

† Redesignated

§5-16-28. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

†§33-15-4w. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

†§33-16-3hh. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

†§33-24-7w. Incorporation of the coverage for 12-month refill for contraceptive drugs.

1 The provision requiring coverage for 12-month refill for
2 contraceptive drugs codified at §33-53-1 of this code is
3 made applicable to the provisions of this article.

ARTICLE 25. HEALTH CARE CORPORATIONS.

† Redesignated

†§33-25-8t. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-1 of this code is made applicable to the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

†§33-25A-8w. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-1 of this code is made applicable to the provisions of this article.

†ARTICLE 58. REQUIRED COVERAGE FOR HEALTH INSURANCE.

†§33-58-1. Coverage and dispensing birth control.

(a) Notwithstanding a prohibition or limitation contained within the provisions of §33-1-1 *et seq.* and §5-16-1 of this code an insurer subject to §5-16-1 *et seq.*, §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code which amends, renews, or delivers a health policy on or after January 1, 2021, that provides coverage for contraceptive drugs, shall provide coverage for a 12-month refill of contraceptive drugs obtained at one time by the insured after the insured has completed the initial supply of the drugs, unless the insured requests a smaller supply or the prescribing provider instructs that the insured must receive a smaller supply. A health benefit plan that provides coverage shall allow the insured to receive the contraceptive drugs on-site at the provider's office, if available, and dispensing practices must follow all clinical guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs.

† Redesignated

19 (b) A health benefit plan that provides coverage for
20 hormonal contraceptives, in the absence of clinical
21 contraindications, may not impose utilization controls or
22 other forms of medical management limiting the supply of
23 contraceptive drugs that may be dispensed or furnished by
24 a provider or pharmacy, or at a location licensed or
25 otherwise authorized to dispense drugs or supplies, to an
26 amount that is less than a 12-month supply.

27 (c) This section does not exclude coverage for
28 contraceptive drugs as prescribed by a provider for reasons
29 other than contraceptive purposes, such as decreasing the
30 risk of ovarian cancer or eliminating symptoms of
31 menopause, or for contraception that is necessary to
32 preserve the life or health of an enrollee.

33 (d) Nothing in this section requires a health benefit plan
34 to cover contraceptive drugs provided by a provider,
35 pharmacy, or at a location authorized to dispense drugs or
36 supplies, that does not participate in the health benefit plan's
37 provider or pharmacy network, as appliable, except as may
38 be otherwise authorized or required by state law or by the
39 plan's policies governing out-of-network coverage.

40 (e) For purposes of this section, the term "contraceptive
41 drugs" means all drugs approved by the United States Food
42 and Drug Administration that are used to prevent
43 pregnancy, including, but not limited to, hormonal drugs
44 administered orally, transdermally, and intravaginally.

CHAPTER 196

(H. B. 4359 - By Delegates Westfall and Porterfield)
[By Request of the West Virginia Insurance Commission]

[Passed February 27, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 7, 2020.]

AN ACT to amend and reenact §33-6-34 of the Code of West Virginia, 1931, as amended, relating to modifying the filing fees for insurers; permitting multiple insurers to make a single filing with a fee collected from each insurer; defining "filing"; and deleting language.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. THE INSURANCE POLICY.

§33-6-34. Fee for form, rate, and rule filing.

(a) As used in this section, "filing" means any form filing made pursuant to §33-6-8 of this code or any rule or rate filing made pursuant to this chapter.

(b) A fee of $100 shall be submitted with each filing for each insurer, irrespective of the number of forms, rules, or rates included within or affected by the filing. If a filing is made on behalf of more than one insurer, other than a filing made by a rating organization licensed by the commissioner, the applicable fee shall be $100 multiplied by the number of insurers on whose behalf the filing is made. Fees submitted pursuant to this section may not be refunded, and a resubmission of a filing previously disapproved by the commissioner shall be considered a new filing for the purposes of the filing fee. Any request by the commissioner for additional information pertaining to a form filing shall not be considered a new filing for purposes of the filing fee. All fees collected pursuant to this section shall be used for the operation of the offices of the Insurance Commissioner.

CHAPTER 197

(Com. Sub. for H. B. 4361 - By Delegates Westfall, Azinger, Nelson, Hott, D. Jeffries and Espinosa)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto two new sections, designated §33-41-4a, and §33-41-11a; and to amend and reenact §33-41-2, §33-41-5, §33-41-8, §33-41-11, and §33-41-12 of said code, all relating to insurance law violations; defining "fraudulent insurance act"; allowing Insurance Commissioner to accept proceeds from court ordered forfeiture proceedings; creating special revenue fund; providing for legislative appropriation of fund; requiring person engaged in the business of insurance to report to the Insurance Commissioner suspected insurance law violations; permitting insurance fraud unit to administer oaths or affirmations, execute search and arrest warrants, make arrests upon probable cause without a warrant, and participate in the prosecution of workers' compensation fraud; making the commission of a fraudulent insurance act a violation of law; mandating that a person convicted of a felony involving dishonesty, breach of trust, or a law reasonably related to the business of insurance is disqualified from participating in the business of insurance; requiring insurance companies to have antifraud initiatives; allowing the Insurance Commissioner to promulgate rules; and providing for criminal penalties and restitution for insurance law violations.

Be it enacted by the Legislature of West Virginia:

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.

§33-41-2. Definitions.

As used in this article:

(a) "Benefits" mean money payments, goods, services, or other thing of value paid in response to a claim filed with an insurer based upon a policy of insurance.

(b) "Business of insurance" means the writing of insurance, including the writing of workers' compensation insurance under the provisions of §23-1-1 *et seq.* of this code, self-insurance by an employer or employer group for workers' compensation risk including the risk of catastrophic injuries under the provisions of §23-1-1 *et seq.* of this code, or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf.

(c) "Claim" means an application or request for payment or benefits provided under the terms of a policy of insurance.

(d) "Commissioner" means the Insurance Commissioner of West Virginia or his or her designee.

(e) "Fraudulent insurance act" means an act or omission committed by a person who knowingly and with intent to defraud misrepresents or conceals any material information concerning one or more of the following:

(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker, or its agent, false information as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance or renewal of an insurance policy or reinsurance contract;

(B) The rating of an insurance policy or reinsurance contract;

(C) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(D) Premiums paid on an insurance policy or reinsurance contract;

(E) Payments made in accordance with the terms of an insurance policy or reinsurance contract;

(F) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;

(G) The financial condition of an insurer or reinsurer;

(H) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;

(I) The issuance of written evidence of insurance; or

(J) The reinstatement of an insurance policy.

(2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;

(3) Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance;

(4) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance;

(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other

legal authority for the transaction of the business of insurance; or

(6) Attempt to commit, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subdivision.

(f) "Health care provider" means a person, partnership, corporation, facility, or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical therapist, or psychologist.

(g) "Insurance" means a contract or arrangement in which a person undertakes to:

(1) Pay or indemnify another person as to loss from certain contingencies called "risks", including through reinsurance;

(2) Pay or grant a specified amount or determinable benefit to another person in connection with ascertainable risk contingencies;

(3) Pay an annuity to another person;

(4) Act as surety; or

(5) Self-insurance for workers' compensation risk, including the risk of catastrophic injuries pursuant to the provisions of §23-1-1 *et seq.* of this code.

(h) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers' mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care

corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group, or other insurer, regardless of the type of coverage written, including the writing of workers' compensation insurance or self insurance under the provisions of this code, benefits provided, or guarantees made by each. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer.

(i) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, trustees, an unincorporated organization, or any similar business entity, or any combination of the foregoing. "Person" also includes hospital service corporations, medical service corporations, and dental service corporations as defined in §33-24-1 *et seq.* of this code, health care corporations as defined in, §33-25-1 *et seq.* of this code, or a health maintenance organization organized pursuant to §33-25A-1 *et seq.* of this code.

(j) "Policy" means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance, coverage by a self-insured employer or employer group for its workers' compensation risk including its risk of catastrophic injuries or reinsurance, affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

(k) "Reinsurance" means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

(l) "Statement" means any written or oral representation made to any person, insurer or authorized agency. A

statement includes, but is not limited to, any oral report or representation; any insurance application, policy, notice or statement; any proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, or other evidence of loss, injury or expense; any bill for services, diagnosis, prescription, hospital or doctor record, X-ray, test result or other evidence of treatment, services or expense; and any application, report, actuarial study, rate request or other document submitted or required to be submitted to any authorized agency. A statement also includes any written or oral representation recorded by electronic or other media.

(m) "Unit" means the insurance fraud unit established pursuant to the provisions of this article acting collectively or by its duly authorized representatives.

§33-41-4a. Acceptance of forfeiture proceeds by commissioner; creation of special revenue fund; court awards of investigation costs.

(a) The commissioner may accept proceeds of court ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts.

(b) Forfeiture proceeds shall be deposited into the special revenue account established in subsection (c) of this section, and the commissioner may make expenditures from the fund in order to effectuate the purposes of this article.

(c) The Insurance Fraud Prevention Fund is hereby created. The fund shall be administered by the commissioner and shall consist of all moneys made available from court ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts, including all interest or other return earned from investment of the fund which may be invested in the manner permitted by §12-6C-9 of this code. Expenditures from the fund shall be for the purposes set forth in this article and are not authorized from collections but are to be made only in

accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1, *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1, *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2021, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

§33-41-5. Mandatory reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.

(a) A person engaged in the business of insurance having knowledge or a reasonable belief that a fraudulent insurance act or another crime related to the business of insurance is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent insurance act or another crime related to the business of insurance is being, will be, or has been committed may provide to the commissioner the information requested by, and in a manner prescribed by, the commissioner.

(c) The commissioner may prescribe a reporting form to facilitate reporting of possible fraudulent insurance acts or other offenses related to the business of insurance for use by persons other than those persons referred to in subsection (a) of this section.

(d) Notwithstanding any other provision of this code, a person engaged in the business of insurance shall furnish and disclose any information, including documents, materials, or other information in its possession concerning a fraudulent insurance act or a suspected fraudulent

insurance act to the commissioner. Disclosures provided pursuant to this section are subject to the confidentiality provisions set forth in §33-41-7 of this code.

§33-41-8. Creation of Insurance Fraud Unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia Insurance Fraud Unit within the offices of the commissioner. The commissioner may employ full-time supervisory, legal, and investigative personnel for the unit who shall be qualified by training and experience in the areas of detection, investigation, or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The director of the unit is a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, and supplies, and shall employ and train personnel, including legal counsel, investigators, auditors and clerical staff necessary for the unit to carry out its duties and responsibilities under this article as the commissioner determines is necessary.

(b) It is the duty of the unit to:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of any of the following provisions of this code relating to the business of insurance have been or are being committed: §33-1-1 *et seq.* and §23-1-1 *et seq.* of this code; §61-3-1 *et seq.* of this code; and §61-4-5 of this code. Notwithstanding any provision of this code to the contrary, the unit may, with the agreement of the Director of the Public Employees Insurance Agency, conduct investigations related to possible fraud under §5-16-1 *et seq.* of this code;

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state, and local law-enforcement and regulatory agencies, persons engaged in the business of insurance and the general

public to determine whether the reports require further investigation;

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts; and

(4) Perform any other duties related to the purposes of this article assigned to it by the commissioner.

(c) The unit may:

(1) Inspect, copy, or collect records and evidence;

(2) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(3) Administer oaths and affirmations;

(4) Share records and evidence with federal, state, or local law-enforcement or regulatory agencies, and enter into interagency agreements. For purposes of carrying out investigations under this article, the unit shall be considered a criminal justice agency under all federal and state laws and regulations and as such shall have access to any information that is available to other criminal justice agencies concerning violations of the insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors;

(6) Execute search warrants and arrest warrants for criminal violations of the insurance laws of West Virginia or related criminal laws: *Provided*, That those persons designated by the commissioner to do so meet the requirements of and are certified as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

(7) Arrest upon probable cause, without a warrant a person found in the act of violating or attempting to violate an insurance law of West Virginia or related criminal law: *Provided*, That those persons designated by the commissioner to do so meet the requirements of and are certified as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

(8) Conduct investigations outside this state. If the information the unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the unit to examine at the place where the information is located. The unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the unit, and may respond to similar requests from officials of other states;

(9) Initiate investigations and participate in the development of, and, if necessary, the prosecution of, any health care provider, including a provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance; and

(10) Initiate investigations and participate in the development of, and, if necessary, the investigation, control, and prosecution of, any workers' compensation fraud, as previously assigned to the workers' compensation fraud and abuse unit created pursuant to §23-1-1b of this code.

(d) Specific personnel of the unit designated by the commissioner may operate vehicles owned or leased for the state displaying Class A registration plates.

(e) Notwithstanding any provision of this code to the contrary, specific personnel of the unit designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency, and Correction, which shall include the

successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police: *Provided*, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of §30-29-1 of this code; and

(f) The unit is not subject to the provisions of §6-9A-1 *et seq.* of this code and the investigations conducted by the unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code.

§33-41-11. Fraudulent insurance acts; interference and participation of convicted felons prohibited.

(a) A person shall not commit a fraudulent insurance act as defined in §33-41-2 of this code.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this article or investigations of suspected or actual violations of this article.

(c) A person convicted of a felony involving dishonesty or breach of trust, or a felony violation law reasonably related to the business of insurance, shall not participate in the business of insurance.

(d) A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust, or of a felony reasonably related to the business of insurance, to participate in the business of insurance.

§33-41-11a. Insurer antifraud initiatives.

(a) Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

(b) Antifraud initiatives may include:

(1) Fraud investigators, who may be insurer employees or independent contractors; or

(2) An antifraud plan submitted to the commissioner. Antifraud plans submitted to the commissioner are privileged and confidential, are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code, and are not subject to discovery or subpoena in a civil or criminal action.

(c) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to set forth requirements or standards for the submission of insurer antifraud plans.

§33-41-12. Civil and criminal penalties; injunctive relief; employment disqualification; restitution.

(a) A person or entity engaged in the business of insurance or a person or entity making a claim against an insurer who violates any provision of this article may be subject to the following:

(1) Where applicable, suspension or revocation of license or certificate of authority or a civil penalty of up to $10,000 per violation, or where applicable, both. Suspension or revocation of license or certificate of authority or imposition of civil penalties may be pursuant to an order of the commissioner issued pursuant to the provisions of §33-2-13 of this code. The commissioner's order may require a person found to be in violation of this article to make reasonable restitution to persons aggrieved by violations of this article. The commissioner may assess a person sanctioned pursuant to the provisions of this section the cost of investigation;

(2) Notwithstanding any other provision of law, a civil penalty imposed pursuant to the provisions of this section is mandatory and not subject to suspension;

(3) A person convicted of a felony violation law reasonably related to the business of insurance shall be disqualified from engaging in the business of insurance; and

(4) The commissioner may apply for a temporary or permanent injunction in any appropriate circuit court of this state seeking to enjoin and restrain a person from violating or continuing to violate the provisions of this article or rule promulgated under this article, notwithstanding the existence of other remedies at law. The circuit court shall have jurisdiction of the proceeding and have the power to make and enter an order or judgment awarding temporary or permanent injunctive relief restraining any person from violating or continuing to violate any provision of this article or rule promulgated under the article as in its judgment is proper.

(b) Any person who commits a violation of the provisions of §33-41-11 of this code where the benefit sought is $1,000 or more in value is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than 10 years, fined not more than $10,000, or both fined and imprisoned, or in the discretion of the court, confined in jail for not more than one year and fined not more than $10,000, or both fined and confined.

(c) Any person who commits a violation of the provisions of §33-41-11 of this code where the benefit sought is less than $1,000 in value is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or fined not more than $2,500, or both fined and confined.

(d) Any person convicted of a violation of §33-41-11 of this code is subject to the restitution provisions of §61-11A-1 of this code.

(e) A court may award to the unit or other law-enforcement agency investigating a violation of §33-41-11

of this code or other criminal offense related to the business of insurance its cost of investigation.

(f) In addition to the provisions of this section, the offenses enumerated in §61-3-24e through §61-3-24h, inclusive, of this code are applicable to matters concerning workers' compensation insurance.

CHAPTER 198

(H. B. 4466 - By Delegates Hott, Westfall, Nelson, Williams, Howell, Porterfield and Espinosa)

[Passed March 4, 2020; in effect July 1, 2020.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-53-1, §33-53-2, §33-53-3, §33-53-4, §33-53-5, §33-53-6 and §33-53-7, all relating to certificates of insurance for property or casualty insurance; specifying short title; defining terms; establishing form requirements; providing limitations for certificates of service; setting forth limitations on use; addressing notice requirements; setting forth applicability and internal effective date; and providing for enforcement by Commissioner of Insurance, for penalties, and for rulemaking.

Be it enacted by the Legislature of West Virginia:

ARTICLE 53. CERTIFICATES OF INSURANCE.

§33-53-1. Short title.

This article shall be known as the "Certificates of Insurance Act".

§33-53-2. Definitions.

For purposes of this article:

"Certificate of insurance" means a document or instrument, regardless of how titled or described, that is prepared or issued by an insurer or insurance producer as evidence or confirmation of the existence of property or casualty insurance coverage. The term does not include a statement of declaration, policy of insurance, insurance binder, policy endorsement, or automobile insurance identification or information card.

"Insurance producer" means a person required to be licensed under the laws of this state to sell, solicit, or negotiate property or casualty insurance.

"Insurer" means any organization that issues property or casualty insurance.

"Person" means any individual, partnership, corporation, association, or other legal entity, including any government or governmental subdivision or agency.

§33-53-3. Certificate forms.

(a) The Commissioner of Insurance shall prohibit the use of a certificate of insurance form if the form:

(1) Is unfair, misleading, or deceptive, or violates public policy; or

(2) Violates any law, including any rule promulgated by the commissioner.

(b) A certificate of insurance is not a policy of insurance and does not affirmatively or negatively amend, extend, or alter the coverage afforded by the policy to which the certificate of insurance makes reference. A certificate of insurance does not confer to any person new or additional rights beyond what the referenced policy of insurance expressly provides.

§33-53-4. Limitations on use.

(a) A person may not:

(1) Prepare, issue, or request or require the issuance of a certificate of insurance that contains any false or misleading information concerning the policy of insurance to which the certificate of insurance refers; or

(2) Prepare, issue, or request or require the issuance of a certificate of insurance that purports to affirmatively or negatively alter, amend, or extend the coverage provided by the policy of insurance to which the certificate of insurance refers.

(b) A certificate of insurance may not warrant that the policy of insurance referenced in the certificate comply with the insurance or indemnification requirements of a contract and the inclusion of a contract number or description within a certificate of insurance may not be interpreted as doing such.

§33-53-5. Notice requirements.

A person is entitled to notice of cancellation, nonrenewal, or any material change, and to any similar notice concerning a policy of insurance only if the person has such notice rights under the terms of the policy of insurance or any endorsement to the policy. The terms and conditions of the notice are governed by the policy of insurance or endorsement and may not be altered by a certificate of insurance.

§33-53-6. Applicability.

(a) The provisions of this article apply to all certificates of insurance issued in connection with a property or casualty insurance policy issued or renewed on or after July 1, 2020, and in connection with property, operations, or risks located in this state, regardless of where the policyholder, insurer,

insurance producer, or person requesting or requiring the issuance of a certificate of insurance is located.

(b) A certificate of insurance or any other document or correspondence prepared, issued, requested, or required in violation of this article is void.

§33-53-7. Enforcement, penalties and rulemaking.

(a) The Commissioner of Insurance shall examine and investigate the activities of any person that the commissioner reasonably believes has been or is engaged in an act or practice prohibited by this article.

(b) The commissioner may enforce the provisions of this article by any means permissible in this chapter, including by issuing orders to cease and desist. Any person who violates a provision of this article may, after notice and hearing pursuant to §33-2-13 of this code, be fined by the commissioner a sum not to exceed $1,000 per violation.

(c) The commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, necessary or reasonable to carry out the provisions of this article.

CHAPTER 199

(H. B. 4477 - By Delegates Westfall, Nelson, Criss, Queen, Householder, Espinosa and Porterfield)

[Passed February 28, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §33-27A-1, §33-27A-2, §33-27A-3, §33-27A-4, §33-27A-5, §33-27A-6, §33-

27A-7, §33-27A-8, §33-27A-9, §33-27A-10, §33-27A-11, §33-27A-12, §33-27A-13, and §33-27A-14, all relating to creating the enactment and operation of the West Virginia mutual to mutual insurance holding company act; providing a short title; defining certain terms; establishing a procedure for reorganization of a mutual insurance company into a stock company; providing voting rights of mutual policy holders regarding reorganization and associated notice of public hearings; requiring review of reorganization plan by the Insurance Commissioner, and establishing procedures therefor; establishing procedures for amendment of articles of incorporation of mutual holding companies; requiring continued corporate existence of reorganized mutual insurance companies; stating responsible party for payment of costs and expenses of reorganization; establishing procedures for reorganization of a mutual insurance company; related to membership in a mutual insurance company; establishing the applicability of other laws to the reorganization and resultant companies; prescribing that the mutual insurance company be treated as an insurer; providing the time in which a reorganization may be challenged; and authorizing the Insurance Commissioner to implement necessary rules.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27A. WEST VIRGINIA MUTUAL TO MUTUAL INSURANCE HOLDING COMPANY ACT.

§33-27A-1. Short Title.

1 This article may be cited as the "West Virginia Mutual
2 to Mutual Insurance Holding Company Act."

§33-27A-2. Definitions.

1 As used in this article:

2 "Intermediate holding company" means a stock
3 corporation that owns all of the shares of voting stock of one
4 or more recognized stock companies after a reorganization
5 pursuant to this article. "Intermediate holding company"

also means a stock company that is the parent or subsidiary of another intermediate holding company.

"Mutual insurance company" means a domestic or foreign mutual Insurance company. "Mutual insurance holding company" means a domestic mutual insurance holding company incorporated pursuant to a reorganization plan adopted pursuant to this article, which company is the parent company of a reorganized stock company or of an intermediate holding company.

"Policyholder" means the person, group of persons, association, corporation, partnership, member or other entity named as the insured under a mutual policy of insurance.

"Reorganization plan" means a reorganization plan adopted by a mutual insurance company's board of directors in accordance with the provisions of this article.

"Reorganized stock company" means the domestic or foreign stock insurance company resulting from a domestic or foreign mutual insurance company's reorganization under this article.

"Voting Stock" means securities of any class or any ownership interests having voting power for the election of directors, trustees, or management of a person, other than securities having voting power only as a result of the occurrence of a contingency.

§33-27A-3. Conversion of mutual insurance company into stock company that is majority owned subsidiary of mutual insurance holding company.

(a) A mutual insurance company, by itself or together with one or more mutual insurance companies acting pursuant to a joint reorganization plan, may reorganize in accordance with the requirements of this article, notwithstanding other provisions of this chapter or the provisions of §23-2C-3 of this code.

(b) (1) Such a reorganization plan may only be adopted by the affirmative vote of not less than two-thirds of the mutual insurance company's board of directors.

(2) At any time prior to the mailing of the notice to policyholders required pursuant to §33-27A-4 of this code, a mutual insurance company's board of directors may amend the reorganization plan by affirmative vote of not less than two-thirds of the board of directors. At any time before a reorganization plan has received approval of the Insurance Commissioner, a mutual insurance company's board of directors may withdraw the reorganization plan by the affirmative vote of not less than two-thirds of the board of directors.

(c) A reorganization plan shall provide for the incorporation of a mutual insurance holding company, and shall provide for the continuation of the corporate existence of the mutual insurance company as a stock insurance company.

(d) A reorganization plan shall provide that all of the initial shares of voting stock of a reorganized stock company shall be issued to its parent mutual insurance holding company or to an intermediate holding company. Nothing in this article shall be construed as limiting or restricting the authority of a reorganized stock company or of an intermediate holding company to issue securities other than voting stock.

(e) A reorganization plan shall provide that the membership interests of the policyholders of a mutual insurance company shall become membership interests in the mutual insurance holding company, and that concurrently the policyholder's membership interests in the mutual insurance company shall be extinguished.

(f) A reorganization plan shall provide that the policyholders of the reorganized stock company shall become members of the mutual insurance holding company

in accordance with the articles of the incorporation and of the mutual holding company.

(g) A reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the voting stock of the reorganized stock company. Alternatively, a reorganization plan shall provide that the mutual insurance holding company shall at all times own a majority of the voting stock of an intermediate holding company, which intermediate holding companies shall at all times own all of the voting stock of the reorganized stock company. The shares of voting stock required to be owned by the mutual insurance holding company, and by the intermediate holding company, if any, shall not be pledged, hypothecated, or in any way incumbered with regard to any obligation, guarantee or commitment undertaken by or on behalf of the mutual insurance holding company, or the intermediate holding company, if any.

(h) The board of directors of a mutual insurance company shall file all of the following with the Insurance Commissioner within 90 days after adopting a reorganization plan:

(1) The reorganization plan;

(2) The forms of notices to be provided to policyholders;

(3) The form of proxy, if any, to be solicited from policyholders;

(4) The proposed articles of incorporation for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company. The articles of incorporation shall be signed by the chairperson of the board, the president or vice-president, and by the secretary or an assistant secretary of the mutual insurance company.

(5) Such other documents or information as may be required by the Insurance Commissioner.

(i) Nothing in this article shall limit or restrict an intermediate holding company's authority to form or acquire the control of other corporations, whether domestic or foreign, profit or nonprofit.

§33-27A-4. Voting rights of mutual policyholders regarding reorganization; notice of public hearing.

(a) A reorganization plan adopted by a mutual insurance company's board of directors shall be voted upon by the mutual insurance company's policyholders at a policyholders meeting. A policyholder is entitled to cast only one vote, in person or by proxy, on the reorganization plan regardless of the number of policies or contracts that the policyholder may own or hold. Only proxies specifically related to the reorganization plan shall be used in determining whether the reorganization plan is approved.

(b) All policyholders shall be given notice of the policyholders meeting to vote upon the reorganization plan at least 30 days prior to the date fixed for the policyholder's meeting. Notice of the time and place of such meeting shall be sent by mail to each policyholder at the policyholder's post office address as it appears on the books and records of the company. The notice shall include a summary of the reorganization plan adopted by the board of directors, including an analysis of the material financial aspects and potential for dissolution of the policyholder's interests in the mutual insurance company under the reorganization plan, a uniform ballot for voting on the question of the reorganization plan, and a statement informing the policyholders that the Insurance Commissioner may fix a time and place for a public hearing on the reorganization plan, to be held within 30 days after the Insurance Commissioner's receipt of written notice from the of the policyholders approval of the reorganization plan.

(c) A reorganization plan shall be approved upon receiving the affirmative vote of at least a majority of the votes cast by policyholders.

(d) If a reorganization plan is approved at the policyholder's meeting:

(1) The board of directors of the mutual insurance company shall provide the Insurance Commissioner with written notice of that approval within 10 days after the policyholder's meeting.

(2) The Insurance Commissioner may within 10 days after receiving notice from the board of directors, provide written notice to the mutual insurance company of the commissioner's intent to conduct one or more public hearings on the reorganization plan. At a minimum, the Insurance Commissioner's notice to the mutual insurance company shall include a time and a place for the first public hearing which shall be held within 30 days after the commissioner's receipt from the board of directors.

(3) Within 10 days after the mutual insurance company's receipt of a notice from the Insurance Commissioner of his or her intent to conduct one or more public hearings on the reorganization plan, if such notice is provided, the mutual insurance company shall provide notice of the time and place of such hearing by causing this information to be published once each week for two consecutive weeks in a newspaper with statewide circulation and in the county of the state in which the mutual insurance company has its principle office.

(e) The proposed articles of incorporation for the mutual insurance holding company and a reorganized stock company and if applicable, for the intermediate holding company, as filed with the Insurance Commissioner, shall also be voted on by the mutual insurance company's policyholders at the policyholder meeting held pursuant to this section. The articles of incorporation shall be adopted upon receiving the affirmative vote of at least a majority of those casts by policyholders.

(f) At all public hearings conducted by the Insurance Commissioner pursuant to this article, the commissioner may summon and compel attendance and testimony of witnesses and the production of books and papers. The Insurance Commissioner shall hear the testimony of the person that is claiming to be adversely affected by the reorganization plan, and of others wishing to comment on the reorganization plan. Such persons may present a position and offer comments concerning the reorganization plan, including a position and comments concerning whether the reorganization plan is fair and equitable to the mutual insurance company policyholders and whether it complies with the provisions of this article.

(g) A mutual insurance company's failure to provide a member or members with notice required by this section shall not impair the validity of any action taken under this article, if the mutual insurance company has complied substantially and in good faith with all those requirements. The determination as to such compliance shall be made by the Insurance Commissioner.

§33-27A-5. Review of plan by Insurance Commissioner; filing requirements.

(a) A mutual insurance company shall not proceed with a reorganization plan approved by the mutual insurance company's policyholders until the reorganization plan has been reviewed by and has received the approval of the Insurance Commissioner and the articles of incorporation for the mutual insurance holding company and reorganized stock company, if any, for an intermediate holding company, have also been examined and approved by the Insurance Commissioner.

(b) The Insurance Commissioner shall approve a reorganization plan if upon review, he or she finds all of the following:

(1) The adoption, approval and contents of the reorganization plan comply with the provisions of this article,

(2) The mutual insurance company has properly filed all documents, forms, and other information required by this article;

(3) The reorganization plan is fair and equitable to the mutual insurance company's policyholders.

(c) The Insurance Commissioner may retain qualified experts, at the mutual insurance company's expense, to assist in reviewing the reorganization plan.

(d) The Insurance Commissioner shall approve or reject the reorganization plan not later than 60 days after the latter of the approval of the reorganization plan by the mutual insurance company's policyholders or the completion of public hearings held in accordance with this article. The Insurance Commissioner may extend this time period by an additional 60 days by providing written agreement to the mutual insurance company.

(e) Upon deciding to approve or reject a reorganization plan, the Insurance Commissioner shall notify the mutual insurance company of the decision by regular mail. If the Insurance Commissioner rejects a reorganization plan, the commissioner's notice shall detail the reasons for the rejection.

(f) A mutual insurance company shall file the following documents with the Insurance Commissioner within 30 days after receiving notice from the commissioner of his or her approval of a reorganization plan:

(1) The minutes of the policyholders meeting at which the reorganization plan was approved;

(2) The articles of incorporation for the mutual insurance holding company and the reorganized stock

company, and if applicable, for an intermediate holding company, as adopted by the mutual insurance company's policyholders under this article.

(g) Upon obtaining the approval of the Insurance Commissioner, the mutual insurance company's board of directors shall file the following with the Secretary of State:

(1) A Certificate of Reorganization, signed by the chairperson of the board, the president or a vice-president, and a secretary or an assistant secretary of the mutual insurance company. The articles of incorporation for the mutual insurance holding company and the reorganized stock company, and, if applicable, for an intermediate holding company as adopted by the mutual insurance company's policyholders pursuant to this article, shall accompany the Certificate of Reorganization.

(2) A statement signed by the chairperson of the board, the president or a vice-president, and the secretary and an assistant secretary, of the mutual insurance company, of the manner of the adoption of the articles of the incorporation for the mutual insurance holding company and the reorganized stock company, and, if factual, for an intermediate holding company;

(3) Copies of the approval obtained from the Insurance Commissioner under this article.

(4) Reorganization plan shall be effective upon the filing of all of the documents and statements required above or at such later date as the Certificate of Reorganization may provide.

(5) After a reorganization plan takes effect, the Insurance Commissioner shall have jurisdiction over the mutual insurance holding company, and if applicable, over an intermediate holding company, in order to ensure that the interests of the mutual insurance company's policyholders are protected.

§33-27A-6. Amending articles of incorporation of mutual holding company.

Proposed amendments to the articles of incorporation of a mutual insurance holding company may be adopted at any members' meeting. The board of directors of a mutual insurance holding company shall provide notice of any members meeting conducting a vote on the adoption of the amendment to the articles of incorporation by publication in a newspaper of general circulation, published in the county where the company's principle place of business is located, at least 30 days prior to the members meeting. Where the amendment is not inconsistent with the Constitution and laws of the State of West Virginia and of the United States, the amendment may be adopted by the affirmative vote of at least three-fifths of the members present and voting at the meeting.

§33-27A-7. Corporate existence of mutual company continue in recognized stock company.

(a) Upon a reorganization plan taking effect in accordance with this article, the corporate existence of the mutual insurance company shall continue in the reorganized stock company. On the effective date of the reorganization, all of the assets, rights, franchises and interests of the mutual insurance company in and to every species of property whether real, personal, or mixed and in any accompanying causes of action shall be vested in the reorganized stock company without any deed or transfer, and a reorganized stock company shall assume all of the obligations and liabilities of the mutual insurance company.

(b) Unless otherwise specified in a reorganization plan, those persons who are the directors and officers of a mutual insurance company on the effective date of the reorganization shall serve as the directors and officers of the reorganized stock company until new directors and officers are elected pursuant to the recognized stock company's articles of incorporation.

§33-27A-8. Payment of costs and expenses of reorganization.

All costs and expenses for the process of a reorganization under this article shall be paid for or reimbursed by the mutual insurance company, the reorganized stock company, or an intermediate holding company.

§33-27A-9. Reorganization of mutual company.

(a) A mutual insurance company may reorganize by merging its policyholders members' interests into a domestic or foreign mutual insurance holding company and continuing the corporate existence of the mutual insurance company as a reorganized stock company. A mutual company reorganizing under this article shall comply with all applicable laws of this state and of foreign jurisdictions, to affect the reorganization.

(b) A domestic or foreign mutual insurance holding company may reorganize by merging or consolidating its membership interests into another domestic or foreign mutual insurance holding company. A domestic or foreign mutual insurance holding company reorganizing under this subdivision shall comply with all applicable provisions of this article and all applicable laws of foreign jurisdictions, to affect the reorganization.

§33-27A-10. Membership interest in mutual company.

A membership interest in a mutual insurance holding company is not a security under the laws of this state. No member of a mutual insurance holding company may transfer membership in the mutual insurance holding company or any right arising from membership.

§33-27A-11. Applicability of other laws.

(a) The provisions of §33-5-24 of this code shall apply to a mutual insurance holding company as if the mutual insurance holding company were a domestic mutual

insurance company. The members of the mutual insurance holding company are deemed to be members of a domestic mutual insurance company for all purposes of all such sections.

(b) For a period of five years following the effective date of a reorganization under this article, no person shall acquire control of a reorganized stock company without compliance with the provisions of §33-27-1 *et seq.* of this code. For purposes of this subdivision, "control" has the same meaning as set out in §33-27-2 of this code, except that control is presumed to exist if any person, directly or indirectly, owns, controls, holds with the power to vote, or holds proxies representing 5 percent or more of the voting securities of any other person.

(c) An intermediate holding company or if there is no such company, a reorganized stock company shall not issue shares of stock, in addition to the shares issued pursuant to the reorganization plan under which the company was formed, without the prior approval of the mutual insurance holding company as its majority shareholder. The prior approval of the mutual insurance holding company must be evidenced by a resolution of the board of directors of the mutual insurance holding company delivered to the board of directors in the intermediate holding company or the reorganized stock company prior to the issuance of the additional shares.

(d) A mutual insurance holding company, and an intermediate holding company, if any, are deemed to be insurers subject to the provisions of this chapter.

§33-27A-12. Holding company treated as insurer.

(a) A mutual insurance holding company, and, if applicable, its intermediate holding company, are deemed to be insurers subject to the provisions of §33-10-1 *et seq.* of this code. A mutual insurance holding company and the intermediate holding company accordingly are deemed to

be parties to any proceeding under such article involving an insurance company of the subsidiary of the mutual insurance holding company or of the intermediate holding company as a result of a reorganization under this article.

(b) In any proceeding under §33-10-1 *et seq.* of this code involving a reorganized stock company, the assets of the mutual insurance holding company, and if applicable, its intermediate holding company, are deemed to be assets of the reorganization stock company for purposes of satisfying claims of the policyholders of the reorganized stock company.

(c) A mutual insurance holding company, and, if applicable, its intermediate holding company, shall not be dissolved or liquidated without compliance with the provisions of §33-10-1 *et seq.* of this code. Such companies are deemed to be domestic insurance companies for purposes of a dissolution or liquidation.

§33-27A-13. Actions challenging reorganization.

Any action challenging the validity of, or arising out of, actions taken or proposed to be taken in connection with a reorganization under this article shall be commenced no later than 30 days after the effective date of the reorganization.

§33-27A-14. Powers of Insurance Commissioner.

The West Virginia Insurance Commissioner may adopt rules as he or she deems necessary to carry out the purposes of this article.

CHAPTER 200

(H. B. 4496 - By Delegates Shott, Criss, Graves, Steele, Howell, D. Kelly, Miller, N. Brown, Maynard, Mandt and Fast)
[By Request of the Department of Military Affairs and Public Safety]

[Passed February 4, 2020; in effect ninety days from passage.]
[Approved by the Governor on February 17, 2020.]

AN ACT to amend and reenact §29-12-5a of the Code of West Virginia, 1931, as amended, relating to removing the specific mandate of the Board of Risk and Insurance Management to purchase liability insurance for the Division of Corrections and Rehabilitation and its employees.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. STATE INSURANCE.

§29-12-5a. Liability insurance for county boards of education, their employees and members, the county superintendent of schools, and public charter schools electing to obtain coverage; written notice of coverage to insureds.

(a) In accordance with the provisions of this article, the State Board of Risk and Insurance Management shall provide appropriate professional or other liability insurance for all county boards of education, teachers, supervisory and administrative staff members, service personnel, county superintendents of schools, and school board members: *Provided*, That the Board of Risk and Insurance Management is not required to provide insurance for every property, activity, or responsibility of county boards of education, teachers, supervisory, and administrative staff members, service personnel, county superintendents of schools, and school board members.

(b) Insurance provided by the Board of Risk and Insurance Management pursuant to the provisions of subsection (a) of this section shall cover claims, demands, actions, suits, or judgments by reason of alleged negligence or other acts resulting in bodily injury or property damage to any person within or without any school building if, at the time of the alleged injury, the teacher, supervisor, administrator, service personnel employee, county superintendent, or school board member was acting in the discharge of his or her duties, within the scope of his or her office, position or employment, under the direction of the county board of education, or in an official capacity as a county superintendent or as a school board member.

(c) Insurance coverage provided by the Board of Risk and Insurance Management pursuant to subsection (a) of this section shall be in an amount to be determined by the State Board of Risk and Insurance Management, but in no event less than $1,250,000 for each occurrence. In addition, each county board of education shall purchase, through the Board of Risk and Insurance Management, excess coverage of at least $5 million for each occurrence. The cost of this excess coverage will be paid by the respective county boards of education. Any insurance purchased under this section shall be obtained from a company licensed to do business in this state.

(d) The insurance policy provided by the Board of Risk and Insurance Management pursuant to subsection (a) of this section shall include comprehensive coverage, personal injury coverage, malpractice coverage, corporal punishment coverage, legal liability coverage, as well as a provision for the payment of the cost of attorney's fees in connection with any claim, demand, action, suit, or judgment arising from such alleged negligence or other act resulting in bodily injury under the conditions specified in this section.

(e) The county superintendent and other school personnel shall be defended by the county board or an insurer in the case of suit, unless the act or omission shall

not have been within the course or scope of employment or official responsibility or was motivated by malicious or criminal intent.

(f) At least annually, beginning with the 2019-2020 school year, county boards shall provide written notice of insurance coverage to each of its insureds, including teachers, supervisors, administrators, service personnel employees, county superintendent, and school board members. The notice shall identify the coverages, monetary limits of insurance, and duty to defend for each occurrence as provided to insureds by the Board of Risk and Insurance Management under this section. The written notice may be sent via email, or via first-class mail to the insured's last mailing address known to the county board. The written notice shall also include contact information for the Board of Risk and Insurance Management.

(g) The provisions of this section apply to public charter schools that have been authorized pursuant to §18-5G-1 *et seq.* of this code and have included in their charter contract entered into pursuant to §18-5G-7 of this code a determination to obtain insurance coverage from the Board of Risk and Insurance Management pursuant to this section. If a public charter school elects to obtain coverage pursuant to this section:

(1) Any provision in this section applicable to a county board also applies to a charter school governing board;

(2) Any provision in this section applicable to a school board member also applies to a member of a charter school governing board; and

(3) Any provision of this section applicable to teachers, supervisory and administrative staff members, and service personnel employed by a county board also applies to teachers, supervisory or administrative staff members, and service personnel employed by a public charter school.

(h) The amendments to this section during the 2019 First Extraordinary Session of the Legislature shall be effective for fiscal years beginning on or after July 1, 2019: *Provided,* That the amendment to subsection (c) of this section during the 2019 First Extraordinary Session of the Legislature shall be effective for fiscal years beginning on or after July 1, 2020.

CHAPTER 201

(H. B. 4502 - By Delegates Westfall, Porterfield, Espinosa and Bates)
[By Request of the West Virginia Insurance Commission]

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §33-12B-4a and §33-12B-11a of the Code of West Virginia, 1931, as amended; to amend and reenact §33-12B-1, §33-12B-3, §33-12B-4, §33-12B-5, §33-12B-6, §33-12B-7, §33-12B-8, §33-12B-9, §33-12B-10, §33-12B-11, and §33-12B-12 of said code; and to amend said code by adding thereto three new sections, designated §33-12B-2, §33-12B-13, and §33-12B-15, all relating to insurance adjusters; defining terms; providing licensure requirements for company, independent, and public adjusters; providing exceptions to adjuster license requirements; permitting temporary licensure; providing for qualifications for a resident adjuster license; authorizing the Insurance Commissioner to conduct criminal history checks for prospective adjusters; requiring fingerprinting; authorizing imposition of fees and civil penalties; specifying jurisdiction and agent for service of process; authorizing change in license expiration date without fee refund or increase; providing for adjuster lines of authority; providing for probation, suspension, revocation, refusal, or termination of adjuster

license; requiring adjusters to complete continuing education; requiring Board of Insurance Agent Education to develop program of continuing education for adjusters; authorizing rulemaking; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

(a) "Automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims which:

(1) May only be used by a licensed adjuster, licensed producer, or supervised individuals operating pursuant to §33-12B-3(a)(14) of this code;

(2) Must comply with all claims payments requirements of the insurance code; and

(3) Must be certified as compliant with this section by a licensed adjuster that is an officer of the entity which employs the individuals operating pursuant to §33-12B-3(a)(14) of this code.

(b) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(c) "Company adjuster" means an adjuster who is a staff employee of an insurance company, who is paid by the insurance company, and who investigates, negotiates, or settles claims.

(d) "Home state" means the District of Columbia or any state, commonwealth, or territory of the United States in which an adjuster maintains his or her principal place of residence or business and in which he or she is licensed to act as a resident adjuster. If a person's principal place of

residence or business does not license adjusters for the type of adjuster license sought in this state, he or she shall designate as his or her home state any state in which he or she has such a license.

(e) "Independent adjuster" means a person who:

(1) Is an individual, a business entity, an independent contractor, or an employee of a contractor, who contracts for compensation with insurers or self-insurers;

(2) Is one whom the insurer's or self-insurer's tax treatment of the individual is consistent with that of an independent contractor, rather than as an employee, as defined in the Internal Revenue Code, United States Code, Title 26, Subtitle C; and

(3) Investigates, negotiates, or settles property, casualty, or workers' compensation claims for insurers or self-insurers.

(f) "Individual" means a natural person.

(g) "Insurance emergency" means a temporary situation, as declared by the commissioner pursuant to §33-2-10a of this code, when the number of licensed adjusters in this state is inadequate to meet the demands of the public.

(h) "Person" means an individual or business entity.

(i) "Public adjuster" means any person who, for compensation or any other thing of value on behalf of the insured:

(1) Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

(2) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy on behalf of an insured.

§33-12B-2. License required.

(a) No person may act or hold himself, herself, or itself out as a company adjuster, an independent adjuster, or a public adjuster in this state unless the person is licensed in accordance with this article or is exempt from licensure under this article.

(b) The license shall contain the licensee's name, address, personal identification number, the date of issuance, expiration date, and any other information the commissioner deems necessary.

(c) A person licensed as a public adjuster shall not misrepresent to a claimant that he, she, or it is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

(d) The commissioner shall license an individual as a company adjuster, independent adjuster, or public adjuster. An individual may be licensed concurrently under separate

licenses but shall not act as an adjuster representing the interests of the insured and the insurer with respect to the same claim.

§33-12B-3. Exemptions from license requirement.

(a) Notwithstanding any other provisions of this article, a company adjuster license or independent adjuster license shall not be required of the following:

(1) Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

(2) A person employed only for the purpose of obtaining facts surrounding a claim or furnishing technical assistance to a licensed company or independent adjuster;

(3) An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses, investigate or determine coverage, or determine claim payments;

(4) A person who solely performs executive, administrative, managerial, or clerical duties, or any combination thereof, and who does not investigate, negotiate, or settle insurance claims with policyholders, claimants, or their legal representative;

(5) A licensed health care provider or its employee who is not responsible for determining compensability;

(6) A managed care organization or any of its employees or an employee of any organization providing managed care services, so long as the managed care organization or employee referenced herein is not determining compensability;

(7) A person who settles reinsurance or subrogation claims between insurers;

(8) An officer, director, or manager of an authorized insurer, surplus lines insurer, a risk retention group, or an attorney-in-fact of a reciprocal insurer;

(9) A manager of the United States branch of an alien insurer;

(10) A person who investigates, negotiates, or settles life, accident and health, annuity, or disability insurance claims;

(11) An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer;

(12) A licensed individual producer, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer to whom claim authority has been granted by the insurer;

(13) A business entity licensed under the authority of §33-46-1 *et seq.* of this code;

(14) Individuals who collect claim information from, or furnish claim information to, insureds or claimants, and who conduct data entry, including entering data into an automated claims adjudication system are exempt from licensure under this article: *Provided*, That the individuals are under the supervision of a licensed adjuster or licensed producer: *Provided, however*, That no more than 25 persons are under the supervision of one licensed adjuster or licensed producer; or

(15) Company adjusters employed by an insurer outside of this state who adjust claims solely by telephone, fax, Unites States mail, and electronic mail, and who do not physically enter this state in the course of adjusting such claims: *Provided*, That such adjusters shall be subject to the jurisdiction of, and regulation by, the commissioner in regard to their adjustment of West Virginia claims: *Provided, however*, That the commissioner may require

such adjusters to complete continuing education, not to exceed requirements pursuant to §33-12B-13(d) of this code, to address any deficiencies with respect to their claims handling practices.

(b) Notwithstanding any other provisions of this article, a public adjuster license shall not be required of the following:

(1) Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

(2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster;

(4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(5) A person who settles subrogation claims between insurers.

§33-12B-4. Temporary licensure for emergency company or independent adjusters.

(a) In the event of a declared insurance emergency, an insurer shall notify the commissioner with an application for temporary emergency licensure for each individual who will act as an emergency company adjuster or emergency independent adjuster on behalf of the insurer.

(b) A person who is otherwise qualified to adjust claims, but not already licensed in this state when the insurance emergency has been declared, may act as an emergency company or independent adjuster and adjust claims if, within five days of the declared insurance emergency, the

insurer notifies the commissioner by providing the following information in a format proposed by the commissioner:

(1) Name and address of the individual;

(2) National Producer Number of the individual if the individual has a National Producer Number;

(3) Name of the insurer which the company or independent adjuster will represent;

(4) Effective date of the contract between the insurer and independent adjuster, if applicable;

(5) Insurance emergency or loss control number;

(6) Insurance emergency event name; and

(7) Any other information the commissioner deems necessary.

(c) An emergency company or independent adjuster's license shall remain in force for a period not to exceed 90 days, unless extended for an additional period by the commissioner.

(d) The fee for emergency company or independent adjuster application for licensure shall be in an amount specified in §33-12B-8 of this code. The fee shall be due and payable at the time of application for licensure.

§33-12B-4a. Exemptions from license.

[Repealed]

§33-12B-5. Qualifications for resident adjuster's license; examination; exemptions.

(a) An individual applying for a resident adjuster license shall make application to the commissioner and declare under penalty of suspension, revocation, or refusal of the

license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(1) Is 18 years of age or more;

(2) Is a resident of West Virginia, or eligible to designate West Virginia as his or her home state;

(3) Is trustworthy, competent, reliable, and of good reputation, evidence of which may be determined by the commissioner;

(4) Has a business or mailing address in this state for acceptance of service of process or, if residing outside of this state, acknowledges that by adjusting claims in this state he or she is subject to this state's jurisdiction, pursuant to §56-3-33 of this code, and automatically appoints the West Virginia Secretary of State as his or her agent for service of process;

(5) Has not committed any act that is a ground for probation, suspension, revocation, or refusal of an adjuster's license as set forth in §33-12B-11 of this code;

(6) Has successfully passed the written examination for the line or lines of authority for which the person has applied; and

(7) Has paid the fees applicable to licensure.

(b)(1) A resident individual applying for an adjuster license shall pass a written examination unless exempt pursuant to §33-12B-5(b)(5) or §33-12B-5(b)(6) of this code. The examination shall test the knowledge of the individual concerning the line or lines of authority for which application is made, if applicable, the duties and responsibilities of an adjuster, and the insurance laws and rules of this state. However, to qualify for an adjuster license with the crop line of authority, the commissioner may

accept, in lieu of such an examination, certification that the individual has passed a proficiency examination approved by the United States Department of Agriculture Risk Management Agency.

(2) Each examinee shall pay a nonrefundable $25 examination fee for each examination to the commissioner, which fees shall be used for the purposes set forth in §33-3-13 of this code. The commissioner may, at his or her discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

(3) An individual who fails to appear for the examination as scheduled, or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(4) An individual who initially fails to pass an examination required by this section is limited to seven additional attempts to pass the examination.

(5) An individual who applies for an adjuster license in this state, who was previously licensed for the same lines of authority in another jurisdiction, shall not be required to complete any prelicensing examination. This exemption is only available if the individual is currently licensed in that jurisdiction, or if the application is received within 90 days of the cancellation of the applicant's previous license, and if the prior jurisdiction issues a certification that, at the time of cancellation, the applicant was in good standing in that jurisdiction or the jurisdiction's adjuster database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the adjuster is or was licensed in good standing for the line of authority requested. The certification must be of a license

with the same line of authority for which the individual has applied.

(6) An individual licensed as an adjuster in another jurisdiction who moves to this state shall make application within 90 days of establishing legal residence to become a resident licensee pursuant to this section: *Provided*, That no pre-licensing examination shall be required of that individual to obtain any line of authority previously held in the prior jurisdiction, except where the commissioner determines otherwise by rule.

(7) Examinations may be developed and conducted under rules proposed by the commissioner.

(8) Examinations required by this subsection are applicable for individual adjusters first licensed on or after July 1, 2021, or for individual adjusters who add a line of authority to an existing adjuster license on or after July 1, 2021.

(c) A business entity applying for a resident independent or public adjuster license shall make application to the commissioner on forms proposed by the commissioner and shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

(1) Is eligible to designate West Virginia as its home state;

(2) Has a business or mailing address in this state for acceptance of service of process;

(3) Has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws and rules of this state; and

(4) Has not committed an act that is a ground for probation, suspension, revocation, or refusal of an independent or public adjuster's license as set forth in §33-12B-11 of this code.

(d) The requirements of this section do not apply to temporary licenses issued to emergency company adjusters or emergency independent adjusters.

§33-12B-6. Authorization for criminal history record check; fees.

(a) In furtherance of the national goal of promoting uniformity and reciprocity among the states, commonwealths, territories, and the District of Columbia with regard to adjuster licensing, this section sets forth the requirements to obtain access to the Federal Bureau of Investigation Criminal Justice Information Services Division criminal history record information and to secure information or reports from the Federal Bureau of Investigation Criminal Justice Information Services Division. The scope of this section is to set forth the applicability of the criminal history record check to applicants for a home state insurance adjuster license.

(b) As used in this section, the following terms have the meanings ascribed in this subsection, unless a different meaning is clearly required by the context:

(1) "Applicant" means a natural person applying for:

(A) An initial home state license as an insurance adjuster;

(B) An additional line of authority under an existing home state insurance adjuster license where a criminal history record check has not been obtained; or

(C) A resident insurance adjuster license under change of home state provisions.

"Applicant" does not mean a person applying for renewal or continuation of a home state insurance adjuster license or a nonresident insurance adjuster license.

(2) "Fingerprint" means an impression of the lines on the finger taken for the purpose of identification. The impression may be obtained electronically or in ink converted to an electronic format.

(c) In order to make a determination of adjuster license eligibility, the commissioner is authorized to require fingerprints of applicants and to submit the fingerprints and the fee required to perform a criminal history record check to the West Virginia State Police and to the Federal Bureau of Investigation.

(d) The commissioner shall require a criminal history record check on each applicant in accordance with this section. The commissioner shall require each applicant to submit a full set of fingerprints, including a scanned file from a hard copy fingerprint, in order for the commissioner to obtain and receive national criminal history records from the Federal Bureau of Investigation's Criminal Justice Information Services Division.

(e) The commissioner shall collect a fee from each applicant in an amount sufficient to cover:

(1) The cost of the collection and transmittal of fingerprints by persons, including local law enforcement agencies that are approved by the commissioner to capture fingerprints, to the West Virginia State Police and the Federal Bureau of Investigation; and

(2) The cost of any amounts charged by the West Virginia State Police and the Federal Bureau of Investigation to perform the criminal history record checks.

(f) The commissioner may contract for the collection and transmission of fingerprints authorized under this section and may order that the fee for collecting and

transmitting fingerprints be payable directly by the applicant to the contractor.

(g) The commissioner is authorized to receive criminal history record information directly from the Federal Bureau of Investigation, in lieu of via transmission of the information from the Federal Bureau of Investigation to the West Virginia State Police.

(h) The commissioner shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this section as confidential and shall apply security measures consistent with the Federal Bureau of Investigation's Criminal Justice Information Services Division standards for the electronic storage of fingerprints and necessary identifying information. The commissioner shall limit the use of records solely to the purposes authorized in this section. The fingerprints and the criminal history record information in the custody of the commissioner are not subject to subpoena, other than one issued in a criminal action or investigation, are confidential by law and privileged, and are not subject to discovery or admissible in evidence in any private civil action.

§33-12B-7. Lines of authority.

(a) An independent adjuster or a company adjuster may qualify for a license in one or more of the following lines of authority:

(1) Property and casualty;

(2) Workers' compensation; or

(3) Crop.

(b) A public adjuster may only qualify for a license designating a property and casualty line of authority.

§33-12B-8. License fees.

(a) The annual fee for an individual adjuster license shall be $25.

(b) The annual fee for a business entity adjuster license shall be $200.

(c) The fee for a temporary emergency adjuster license shall be $25.

(d) All fees collected pursuant to this section shall be used for the purposes set forth in §33-3-13 of this code.

§33-12B-9. Licensing of nonresident adjusters.

(a) A nonresident applicant for an adjuster license who holds a similar license in his or her home state may be licensed as a nonresident adjuster in this state if the applicant's home state has established, by law or regulation, like requirements for the licensing of a resident of this state as a nonresident adjuster.

(b) As a condition of continuing a nonresident adjuster license, the licensee must maintain a license in his or her home state. The commissioner may verify the adjuster's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(c) If a nonresident adjuster desires to become a resident adjuster, he or she must apply to become one within 90 days of establishing legal residency in this state.

(d) If a nonresident adjuster has his or her license suspended, terminated, or revoked by his or her home state, the adjuster must immediately notify the commissioner of that action and, with respect to license terminations or revocations, surrender the license to the commissioner.

(e) A resident of Canada may be licensed as a nonresident adjuster under this section if that person has obtained a resident or home state adjuster license in another United States jurisdiction.

§33-12B-10. Expiration of license; renewal.

(a) The commissioner may, in his or her discretion, fix the dates of expiration of respective licenses for all adjusters in any manner as is considered by him or her to be advisable for an efficient distribution of the workload of his or her office. If the expiration date so fixed would upon first occurrence shorten the period for which a license fee has theretofore been paid, no refund of the unearned fee shall be made. If the expiration date so fixed would upon first occurrence lengthen the period for which license fee had theretofore been paid, the commissioner shall charge no additional fee for the lengthened period. If another date is not so fixed by the commissioner, each license shall, unless continued as herein above provided, expire at midnight on May 31 next following the date of issuance, and the commissioner shall renew annually the license of all such licensees who qualify, and make application therefor, and have paid the fees set forth in this article.

(b) An adjuster whose license expires may, if application is made within one year of the expiration date, be reissued a license upon payment of twice the renewal fee.

(c) The commissioner may waive any renewal requirement for any adjuster who is unable to comply due to military service, long-term medical disability, or other extenuating circumstance.

(d) As a condition of the renewal of an adjuster license with the designation of a crop insurance line of authority, the commissioner may require that the licensee demonstrate that he or she has maintained certification of proficiency issued or approved by the United States Department of Agriculture Risk Management Agency.

§33-12B-11. Denial, revocation, suspension, probation, or refusal to renew license; penalties; violations.

(a) The commissioner may examine and investigate the business affairs and conduct of persons applying for or

holding an adjuster license to determine whether such person is trustworthy and competent or has been or is engaged in any violation of the insurance laws or rules of this state or in any unfair or deceptive acts or practices in any state.

(b) If the commissioner denies an initial or renewal application for a license, he or she shall notify the applicant or licensee in writing of the reason for such action. The applicant or licensee may, within 10 days of receipt of such notice, make written demand for a hearing before the commissioner to determine the reasonableness of the action, and such hearing shall be held in accordance with the provisions of §33-2-13 of this code.

(c) Whenever, after notice and hearing, the commissioner is satisfied that any adjuster has violated any provision of this chapter or of rules promulgated or proposed hereunder, or is incompetent or untrustworthy, he or she shall place the adjuster on probation or refuse to issue, revoke, suspend, or, if renewal of license is pending, refuse to renew the license of such adjuster. In addition to placing a licensee on probation or revoking, suspending, or refusing to renew or issue his or her license, the commissioner may in his or her discretion order such licensee to pay to the State of West Virginia an administrative penalty in a sum not to exceed $1,000 for each violation. Upon the failure of a licensee to pay within 30 days a civil penalty imposed by the commissioner, his or her license shall be revoked or suspended by the commissioner.

(d) Each of the following shall constitute a violation under this article:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(2) Violating any insurance statute, rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of or pleaded nolo contendere to any felony;

(7) Having been convicted of or pleaded nolo contendere to a misdemeanor in connection with his or her activities relating to the business of insurance;

(8) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) Having an insurance license or its equivalent suspended, revoked, or refused in any other state, province, district, or territory;

(10) Forging any document or signature relating to an insurance transaction or fraudulently procuring a forged signature to any document related to an insurance transaction;

(11) Cheating, including improperly using notes or any other reference material, in the course of taking an examination for an insurance license;

(12) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;

(13) Failing to comply with an administrative or court order imposing a child support obligation; or

(14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax which remains unpaid.

(e) Orders issued pursuant to this section are subject to the judicial review provisions of §33-2-14 of this code.

§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization of temporary emergency adjusters; applications; limitations and authority.

[Repealed]

§33-12B-12. Rules.

The commissioner may 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.

§33-12B-13. Continuing education.

(a) The purpose of this section is to provide continuing education requirements for individual adjusters under guidelines established by the commissioner's office in conjunction with the Board of Insurance Agent Education as provided in §33-12-7 of this code.

(b) This section applies to company adjusters, independent adjusters, and public adjusters licensed pursuant to §33-12B-2 of this code.

(c) This section shall not apply to:

(1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or

(2) Licensees holding nonresident adjuster licenses who have met substantially similar continuing education requirements of their designated home state and whose home state gives credit to residents of this state on the same basis.

(d)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing education for adjusters and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual adjuster complete more than 24 hours of continuing insurance education biennially.

(2) The biennium mandatory continuing education provisions of this section become effective on the reporting period beginning July 1, 2021.

(3) The commissioner and the Board of Insurance Agent Education, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, adjusters' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(e) An individual who holds an adjuster license and who is not exempt shall satisfactorily complete a minimum of 24 hours of continuing education courses, of which three hours must be in ethics, reported to the commissioner on a biennial basis in conjunction with their license renewal cycle.

(f) Every individual adjuster subject to the continuing education requirements shall furnish, at intervals and on forms as may be proposed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the adjuster. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(g) Subject to the approval of the commissioner, the active annual membership by an adjuster in an organization

or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing education may be awarded to an adjuster for membership in a professional insurance organization during a biennial reporting period.

(h) Adjusters who exceed the minimum continuing education requirement for the biennial reporting period may carry over a maximum of six credit hours only into the next reporting period.

(i) Any individual adjuster failing to meet the requirements mandated in this section and who has not been granted an extension of time with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance, shall have his or her license automatically suspended and no further license may be issued to the person until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(j) The commissioner shall notify the individual adjuster of his or her suspension pursuant to subsection (i) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to §33-12B-2(b) of this code. Any individual insurance adjuster who has had a suspension order entered against him or her pursuant to this section may, within 30 calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(k) Any individual adjuster who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license

automatically terminated and is subject to the licensing and examination requirements of §33-12B-5 of this code.

(l) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for adjusters. The commissioner shall charge a fee of $25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the $25 course submission fee.

§33-12B-15. Effective date for 2020 amendments.

The effective date of the amendments made to this article during the 2020 regular legislative session is July 1, 2021.

CHAPTER 202

(Com. Sub. for H. B. 4543 - By Delegates Hill, Pack, Fleischauer, Bates, Jennings, Summers, Atkinson, C. Thompson, Angelucci, Rohrbach and Nelson)

[Passed March 7, 2020; in effect from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to repeal §33-15C-1 of the Code of West Virginia, 1931, as amended; to repeal §33-16-16 of said code; to amend said code by adding thereto a new section, designated §5-16-7g; and to amend said code by adding thereto a new article, designated †§33-59-1, all relating generally to required health insurance coverage for diabetics; providing cost sharing in prescription insulin drugs; providing related findings; providing definitions; requiring insurance coverage for prescription insulin drugs; establishing cost sharing for a prescription insulin drug; establishing cost sharing for designated equipment and supplies related to the treatment and management of diabetes; requiring insurance coverage for diabetes education and medical visits; limiting some insurance coverage; providing for coverage pursuant to the West Virginia Public Employees Insurance Act; and providing that education related to diabetes may be provided by health care providers.

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.

† Redesignated

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-7g. Coverage for prescription insulin drugs.

(a) A policy, plan, or contract that is issued or renewed on or after July 1, 2020, shall provide coverage for prescription insulin drugs pursuant to this section.

(b) For the purposes of this subdivision, "prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes, and includes at least one type of insulin in all of the following categories:

(1) Rapid-acting;

(2) Short-acting;

(3) Intermediate-acting;

(4) Long-acting;

(5) Pre-mixed insulin products;

(6) Pre-mixed insulin/GLP-1 RA products; and

(7) Concentrated human regular insulin.

(c) Cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed $100 for a 30-day supply of a covered prescription insulin, regardless of the quantity or type of prescription insulin used to fill the covered person's prescription needs.

(d) Nothing in this section prevents the agency from reducing a covered person's cost sharing by an amount greater than the amount specified in this subsection.

(e) No contract between the agency or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision (i) authorizing the agency's pharmacy benefits manager or the pharmacy to charge, (ii)

requiring the pharmacy to collect, or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the agency as provided in subsection (c) of this section.

(f) The agency shall provide coverage for the following equipment and supplies for the treatment or management of diabetes for both insulin-dependent and noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(g) The agency shall provide coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets. Coverage for self-management education and education relating to diet shall be provided by a health care practitioner who has been appropriately trained as provided in §33-53-1(k) of this code.

(h) The education may be provided by a health care practitioner as part of an office visit for diabetes diagnosis or treatment, or by a licensed pharmacist for instructing and monitoring a patient regarding the proper use of covered equipment, supplies, and medications, or by a certified diabetes educator or registered dietitian.

(i) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

CHAPTER 33. INSURANCE.

ARTICLE 15C. DIABETES INSURANCE.

§33-15C-1. Insurance for diabetics.

1 [Repealed.]

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-16. Insurance for diabetics.

1 [Repealed.]

†ARTICLE 59. REQUIRED COVERAGE FOR HEALTH INSURANCE.

†§33-59-1. Cost sharing in prescription insulin drugs.

1 (a) *Findings.* –

2 (1) It is estimated that over 240,000 West Virginians are
3 diagnosed and living with type 1 or type 2 diabetes and
4 another 65,000 are undiagnosed;

5 (2) Every West Virginian with type 1 diabetes and many
6 with type 2 diabetes rely on daily doses of insulin to survive;

7 (3) The annual medical cost related to diabetes in West
8 Virginia is estimated at $2.5 billion annually;

9 (4) Persons diagnosed with diabetes will incur medical
10 costs approximately 2.3 times higher than persons without
11 diabetes;

12 (5) The cost of insulin has increased astronomically,
13 especially the cost of insurance copayments, which can
14 exceed $600 per month. Similar increases in the cost of
15 diabetic equipment and supplies, and insurance premiums
16 have resulted in out-of-pocket costs for many West Virginia
17 diabetics in excess of $1,000 per month;

† Redesignated

(6) National reports indicate as many as one in four type 1 diabetics underuse, or ration, insulin due to these increased costs. Rationing insulin has resulted in nerve damage, diabetic comas, amputation, kidney damage, and even death; and

(7) It is important to enact policies to reduce the costs for West Virginians with diabetes to obtain life-saving and life-sustaining insulin.

(b) As used in this section:

(1) "Cost-sharing payment" means the total amount a covered person is required to pay at the point of sale in order to receive a prescription drug that is covered under the covered person's health plan.

(2) "Covered person" means a policyholder, subscriber, participant, or other individual covered by a health plan.

(3) "Health plan" means any health benefit plan, as defined in §33-16-1a(h) of this code, that provides coverage for a prescription insulin drug.

(4) "Pharmacy benefits manager" means an entity that engages in the administration or management of prescription drug benefits provided by an insurer for the benefit of its covered persons.

(5) "Prescription insulin drug" means a prescription drug that contains insulin and is used to treat diabetes.

(c) Each health plan shall cover at least one type of insulin in all the following categories:

(1) Rapid-acting;

(2) Short-acting;

(3) Intermediate-acting;

(4) Long-acting;

(5) Pre-mixed insulin products;

(6) Pre-mixed insulin/GLP-1 RA products; and

(7) Concentrated human regular insulin.

(d) Notwithstanding the provisions of §33-1-1 *et seq.* of this code, an insurer subject to §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 which issues or renews a health insurance policy on or after July 1, 2020, shall provide coverage for prescription insulin drugs pursuant to this section.

(e) Cost sharing for a 30-day supply of a covered prescription insulin drug shall not exceed $100 for a 30-day supply of a covered prescription insulin, regardless of the quantity or type of prescription insulin used to fill the covered person's prescription needs.

(f) Nothing in this section prevents an insurer from reducing a covered person's cost sharing to an amount less than the amount specified in subsection (e) of this section.

(g) No contract between an insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code or its pharmacy benefits manager and a pharmacy or its contracting agent shall contain a provision: (i) Authorizing the insurer's pharmacy benefits manager or the pharmacy to charge; (ii) requiring the pharmacy to collect; or (iii) requiring a covered person to make a cost-sharing payment for a covered prescription insulin drug in an amount that exceeds the amount of the cost-sharing payment for the covered prescription insulin drug established by the insurer pursuant to subsection (e) of this code.

(h) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code shall provide coverage for the following equipment and supplies for the treatment and/or management of diabetes for both insulin-dependent and

noninsulin-dependent persons with diabetes and those with gestational diabetes: Blood glucose monitors, monitor supplies, insulin, injection aids, syringes, insulin infusion devices, pharmacological agents for controlling blood sugar, and orthotics.

(i) An insurer subject to §33-15-1 *et seq.*, §33-16-1 *et seq.*, §33-24-1 *et seq.*, §33-25-1 *et seq.*, and §33-25A-1 of this code shall include coverage for diabetes self-management education to ensure that persons with diabetes are educated as to the proper self-management and treatment of their diabetes, including information on proper diets.

(j) All health care plans must offer an appeals process for persons who are not able to take one or more of the offered prescription insulin drugs noted in subsection (c) of this code. The appeals process shall be provided to covered persons in writing and afford covered persons and their health care providers a meaningful opportunity to participate with covered persons health care providers.

(k) Diabetes self-management education shall be provided by a health care practitioner who has been appropriately trained. The Secretary of the Department of Health and Human Resources shall promulgate legislative rules to implement training requirements and procedures necessary to fulfill provisions of this subsection: *Provided*, That any rules promulgated by the secretary shall be done after consultation with the Coalition for Diabetes Management, as established in §16-5Z-1 *et seq.* of this code.

(l) A pharmacy benefits manager, a health plan, or any other third party that reimburses a pharmacy for drugs or services shall not reimburse a pharmacy at a lower rate and shall not assess any fee, charge-back, or adjustment upon a pharmacy on the basis that a covered person's costs sharing is being impacted.

CHAPTER 203

(Com. Sub. for S. B. 547 - By Senators Trump and Plymale)

[Passed March 7, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend and reenact §21-3E-16 of the Code of West Virginia, 1931, as amended; and to amend and reenact §21A-6-3 of said code, all relating to unemployment compensation; revising provisions relating to employer testing, notice, termination, and forfeiture of unemployment compensation benefits; and providing that violation of an employer's drug-free workplace program, or violation of an employer's alcohol-free workplace program, can still be grounds for a finding of gross misconduct.

Be it enacted by the Legislature of West Virginia:

CHAPTER 21. LABOR.

ARTICLE 3E. THE WEST VIRGINIA SAFER WORKPLACE ACT.

§21-3E-16. Employer testing; notice; termination; forfeiture.

1 If an employer implements a drug-free workplace
2 program in accordance with this article, which includes
3 notice, education, and procedural requirements for testing
4 for drugs and alcohol pursuant to this law, the employer may
5 require the employee to submit to a test for the presence of
6 drugs or alcohol. If an employee is terminated because
7 alcohol or a drug is found to be present in the employee's
8 system at a level proscribed by the employer's policy, the
9 employee, if injured at the time of the intoxication, forfeits

indemnity benefits under the Workers' Compensation Laws. However, the employer's drug-free workplace program must notify all employees that it is a condition of employment for an employee to refrain from reporting to work or working with the presence of drugs or alcohol in his or her body and that policy must also state that if an injured employee refuses to submit to a test for drugs or alcohol that employee forfeits eligibility for indemnity benefits under the Workers' Compensation Laws. Employers who do not notify their employees of this condition of employment waive their right to assert that eligibility for benefits is entirely forfeited.

Nothing in this section may be construed or determined to affect §23-4-2(a) of this code and the provisions of said section shall be the sole manner in which intoxication may be proven to establish such intoxication as the proximate cause of an injury for purposes of said chapter.

CHAPTER 21A. UNEMPLOYMENT COMPENSATION.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-3. Disqualification for benefits.

Upon the determination of the facts by the commissioner, an individual is disqualified for benefits:

(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least 30 working days.

For the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer if the individual leaves his or her most recent work with an employer and if he or she in fact, within a 14-day calendar period, does return to employment with the last preceding employer with whom he or she was previously employed

within the past year prior to his or her return to work, and which last preceding employer, after having previously employed the individual for 30 working days or more, laid off the individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within 30 days of leaving the job that his or her work aggravated, worsened, or will worsen the individual's health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks immediately following that week; or for the week in which he or she was discharged from his or her last 30-day employing unit for misconduct and the six weeks immediately following that week. The disqualification carries a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for 30 days during his or her benefit year, whether or not the days are consecutive, the maximum benefit amount is increased by the amount of the decrease imposed under the disqualification; except that:

If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last 30 days employing unit for one of the following reasons: Gross misconduct consisting

of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if the assault is committed at the individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter 60A of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety-sensitive positions as defined in §21-1D-2 of this code; violation of an employer's drug-free workplace program; violation of an employer's alcohol-free workplace program; arson, theft, larceny, fraud, or embezzlement in connection with his or her work; or any other gross misconduct, he or she is disqualified for benefits until he or she has thereafter worked for at least 30 days in covered employment: *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the act or acts.

(3) For the week in which he or she failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his or her customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. The disqualification carries a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For any week or portion thereof in which he or she did not work as a result of:

(a) A strike or other bona fide labor dispute which caused him or her to leave or lose his or her employment.

(b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied benefits by reason of a lockout. However, the operation of a facility by nonstriking employees of the company, contractors, or other personnel is not a reason to grant employees of the company on strike unemployment compensation benefit payments. If the operation of a facility is with workers hired to permanently replace the employees on strike, the employees would be eligible for benefits.

(c) For the purpose of this subsection, an individual shall be determined to leave or lose his or her employment by reason of a lockout where the individual employee has established that: (i) The individual presented himself or herself physically for work at the workplace on the first day of such lockout or on the first day he or she is able to present himself at the workplace or herself; and (ii) the employer denied the individual the opportunity to perform work.

(d) For purposes of this subsection, an individual is determined to be permanently replaced where the individual employee establishes that: (i) He or she is currently employed by an employer who is the subject of a strike or other bona fide labor dispute; and (ii) the position of the employee has been occupied by another employee who has been notified they are permanently replacing the employee who previously occupied the position. Employees or contractors who are hired to perform striking employees' work on a temporary basis, such as the duration of a strike or other bona fide labor dispute, or a shorter period of time, may not be determined to have permanently replaced a striking employee.

(5) For a week with respect to which he or she is receiving or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental, or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least 30 working days: *Provided*, That an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits pursuant to this subdivision: *Provided, however*, That the account of the employer of an individual who leaves the employment to accompany a spouse reassigned from one military assignment to another may not be charged.

(7) Benefits may not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the later of the seasons (or similar periods).

(8) (a) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the

application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated in this subdivision for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are applicable under the provisions of this section.

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status may be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university, or other educational institution, he or she is attending that school, college, university, or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) Establishes a well-grounded fear of imminent layoff

supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.

(12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration in the form of an annuity, pension, or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments, or remuneration: *Provided*, That if the amount of benefits is not a multiple of $1, it shall be computed to the next lowest multiple of $1: *Provided, however*, That there is no disqualification if in the individual's base period there are no wages which were paid by the base period employer or chargeable employer paying the remuneration, or by a fund into which the employer has paid during the base period: *Provided further*, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension, or other retirement pay from a base period employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for 52 weeks thereafter, beginning with the date of the decision, if the commissioner finds the individual who within 24 calendar months immediately preceding the decision, has made a

232 false statement or representation knowing it to be false or
233 knowingly fails to disclose a material fact, to obtain or
234 increase any benefit or payment under this article: *Provided*,
235 That disqualification under this subdivision does not
236 preclude prosecution under §21A-10-7 of this code.

CHAPTER 204

(Com. Sub. for H. B. 2646 - By Delegates Higginbotham, Foster, Wilson, Sypolt, Hardy, Butler, Atkinson and Cadle)

[Passed March 6, 2020; in effect ninety days from passage.]
[Approved by the Governor on March 25, 2020.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §21-5-4a, relating to providing a safe harbor for employers to correct underpayment or nonpayment of wages and fringe benefits due to separated employees prior to the filing of a lawsuit; prohibiting an employee from seeking liquidated damages or attorney's fees when bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment without first making a written demand to the employer; requiring the employer to inform the employee in writing of who the authorized representative is and where to send a written demand; exempting employee from compliance where employer fails to provide written notice; providing a time limit during which the employer must correct the nonpayment or underpayment; permitting an employee to file a written demand with the employer on behalf of a class; and allowing the class action to proceed if only the named employee is paid; and defining the term "written demand".

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§21-5-4a. Safe Harbor.

(a) An employee, in bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment as contemplated by §21-5-4 of this code, is not entitled to seek liquidated damages or attorney's fees from an employer without first making a written demand, as defined in subsection (c) of this section, to the employer seeking the payment of any alleged underpayment or nonpayment as set forth in this section: *Provided*, That upon separation or with the issuance of the final paycheck, the employer shall notify the employee in writing who the employer's authorized representative is and where to send a written demand by both e-mail and regular mail: Provided however, that if the employer fails to provide the required written notice, the employee is not required to comply with the provisions of this section. Upon receiving a written demand, the employer has seven calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after seven days, the employer has not corrected the alleged underpayment or nonpayment, or paid all undisputed amounts due to the employee, the employee may seek liquidated damages and attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this article without making a written demand to the employer.

(b) In a class action lawsuit brought under this article for the underpayment or nonpayment of wages and fringe benefits due upon the employees' separation of employment, the employee, prior to the filing of the class action, shall submit a written demand stating it is a demand for all other employees similarly situated for the underpayment or nonpayment of their wages and fringe benefits: *Provided*, That if only the underpayment or nonpayment of wages and fringe benefits of the named employee is corrected, a class action may proceed for the

underpayment or nonpayment of wages and fringe benefits still owed to the other members of the class.

(c) For purposes of this section, a "written demand" means any writing, including e-mail, from or on behalf of an employee stating that the employer has not paid all of the wages or fringe benefits which the employee is owed.

CHAPTER 205

(Com. Sub. for S. B. 323 - By Senator Maynard)

[Passed January 30, 2020; in effect from passage.]
[Approved by the Governor on February 10, 2020.]

AN ACT to amend and reenact §64-2-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of 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 rules for the general administration of records management and preservation; authorizing the Department of Administration to promulgate a legislative rule relating to retention and disposal scheduling; authorizing the Department of Administration to promulgate a legislative rule relating to management of records maintained by the records center; authorizing the Department of Administration to promulgate a legislative rule relating to exemptions from management services provided by the fleet management division; authorizing the Department of Administration to promulgate a legislative rule relating to financial services reporting; and authorizing Public Defender Services to promulgate a

legislative rule relating to payment of fees and reimbursement of expenses of court-appointed attorneys.

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 26, 2019, authorized under the authority of §5A-8-8 of this code, relating to the Department of Administration (rules for the general administration of records management and preservation, 148 CSR 12), is authorized.

(b) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §5A-8-8 of this code, relating to the Department of Administration (retention and disposal scheduling, 148 CSR 13), is authorized.

(c) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §5A-8-8 of this code, relating to the Department of Administration (management of records maintained by the records center, 148 CSR 14), is authorized.

(d) The legislative rule filed in the State Register on July 8, 2019, authorized under the authority of §5A-12-9 of this code, relating to the Department of Administration (exemptions from management services provided by the fleet management division, 148 CSR 23), is authorized.

(e) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §5A-2B-2 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 October 29,

2019, relating to the Department of Administration (financial services reporting, 148 CSR 24), is authorized.

§64-2-2. Public Defender Services.

The legislative rule filed in the State Register on July 22, 2019, authorized under the authority of §29-21-5 of this code, modified by the Public Defender Services to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 2, 2020, relating to the Public Defender Services (payment of fees and reimbursement of expenses of court-appointed attorneys, 89 CSR 01), is authorized.

CHAPTER 206

(Com. Sub. for S. B. 339 - By Senator Maynard)

[Passed March 5, 2020; in effect from passage.]
[Approved by the Governor on March 24, 2020.]

AN ACT to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, 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 public water systems; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to fees for permits; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to vital statistics; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of

Health and Human Resources to promulgate a legislative rule relating to primary care support program; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to primary care seed money grants; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—general provisions; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—grower/processors; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—laboratories; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—dispensaries; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to medical cannabis program—safe harbor letter; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the collection and exchange of data related to overdoses; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to qualifications for a provisional license to practice as a social worker within the Department of Health and Human Resources; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to pilot program for drug screening of applicants for cash assistance; and authorizing the Health Care Authority to promulgate a legislative rule relating to critical access hospitals.

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 16, 2019, 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 4, 2019, relating to the Department of Health and Human Resources (public water systems, 64 CSR 03), is authorized.

(b) The legislative rule filed in the State Register on July 16, 2019, authorized under the authority of §16-1-11(d) 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 19, 2019, relating to the Department of Health and Human Resources (fees for permits, 64 CSR 30), is authorized.

(c) The legislative rule filed in the State Register on July 16, 2019, authorized under the authority of §16-5-3 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 4, 2019, relating to the Department of Health and Human Resources (vital statistics, 64 CSR 32), is authorized.

(d) The legislative rule filed in the State Register on July 16, 2019, authorized under the authority of §16-4C-23 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 4, 2019, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized.

(e) The legislative rule filed in the State Register on July 25, 2019, authorized under the authority of §16-2H-2(d) 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 19, 2019, relating to the Department of Health and Human Resources (primary care support program, 64 CSR 70), is authorized, with the following amendment:

On page 4, by striking subsection 4.2.

(f) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §16-2H-2(d) of this code, relating to the Department of Health and Human Resources (primary care seed money grants, 64 CSR 71), is authorized.

(g) The legislative rule filed in the State Register on July 25, 2019, authorized under the authority of §16A-3-1(b) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2019, relating to the Department of Health and Human Resources (medical cannabis program—general provisions, 64 CSR 109), is authorized, with the following amendment:

On page 5, by striking subsection 2.36 and inserting a new subsection 2.36 to read as follows: 2.36 "Medical cannabis" means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.

(h) The legislative rule filed in the State Register on July 25, 2019, authorized under the authority of §16A-3-1(b) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2019, relating to the Department of Health and Human Resources (medical cannabis program—grower/processors, 64 CSR 110), is authorized, with the following amendments:

On page 4, by striking subsection 2.29 and inserting a new subsection 2.29 to read as follows: 2.29 "Medical cannabis" means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.;

On page 12, subdivision 8.1.d., after the words "minimum of", by deleting the words "four years" and inserting in lieu thereof the words "two years"; and

On page 13, subparagraph 8.2.f.2., after the words "recording for", by deleting the words "four years" and inserting in lieu thereof the words "two years".

And,

On page 15, by striking section §64-110-10 and inserting in lieu thereof a new §64-110-10 to read as follows:

"§64-110-10. Forms of medical cannabis.

10.1. A grower/processor may only process medical cannabis for dispensing to a patient or caregiver in the following forms:

10.1.a. Pill;

10.1.b. Oil;

10.1.c. Topical forms, including gel, creams, and ointments;

10.1.d. A form medically appropriate for administration by vaporization or nebulization;

10.1.e. Liquid;

10.1.f. Dermal patch; or

10.1.g. Dry leaf or plant form.

10.2. A grower/processor may not manufacture, produce, or assemble any medical cannabis product, instrument, or device without prior written approval of the bureau.

(i) The legislative rule filed in the State Register on July 25, 2019, authorized under the authority of §16A-3-1(b) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2019, relating to the Department of Health and Human Resources (medical cannabis program—laboratories, 64 CSR 111), is authorized, with the following amendment:

On page 3, by striking subsection 2.15 and inserting a new subsection 2.15 to read as follows: 2.15 "Medical cannabis" means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.

(j) The legislative rule filed in the State Register on July 25, 2019, authorized under the authority of §16A-3-1(b) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on October 4, 2019, relating to the Department of Health and Human Resources (medical cannabis program—dispensaries, 64 CSR 112), is authorized, with the following amendments:

On page 3, by striking subsection 2.19 and inserting a new subsection 2.19 to read as follows: 2.19 "Medical cannabis" means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.; and

On page 12, subdivision 11.1.d., after the words "minimum of", by deleting the words "four years" and inserting in lieu thereof the words "two years".

(k) The legislative rule filed in the State Register on July 24, 2019, authorized under the authority of §16A-3-1(b) 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 19, 2019, relating to the Department of Health and Human Resources (medical cannabis program—safe harbor letter, 64 CSR 113), is authorized, with the following amendment:

On page 1, by striking subsection 2.7 and inserting a new subsection 2.7 to read as follows: 2.7 "Medical cannabis" means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.

(l) The legislative rule filed in the State Register on July 22, 2019, authorized under the authority of §16-5T-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 21, 2019, relating to the Department of Health and Human Resources (collection and exchange of data related to overdoses, 69 CSR 14), is authorized.

(m) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 7, 2020, relating to the Department of Health and Human Resources (minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults in West Virginia, 78 CSR 03), is authorized.

(n) The legislative rule filed in the State Register on July 24, 2019, authorized under the authority of §30-30-16(c)(2) 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 25, 2019, relating to the Department of Health and Human Resources (qualifications for a provisional license to practice as a social worker within the Department of Health and Human Resources, 78 CSR 24), is authorized.

(o) The legislative rule filed in the State Register on September 4, 2019, authorized under the authority of §9-3-6 of this code, relating to the Department of Health and Human Resources (pilot program for drug screening of applicants for cash assistance, 78 CSR 26), is authorized.

§64-5-2. Health Care Authority.

The legislative rule filed in the State Register on July 16, 2019, authorized under the authority of §16-5B-14(d) of this code, modified by the Health Care Authority to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 22, 2019, relating to the Health Care Authority (critical access hospitals, 65 CSR 09), is authorized.

CHAPTER 207

(Com. Sub. for S. B. 357 - By Senator Maynard)

[Passed February 5, 2020; in effect from passage.]
[Approved by the Governor on February 14, 2020.]

AN ACT to amend and reenact §64-7-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to

authorizing certain agencies of the Department of Revenue to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee; authorizing the Insurance Commissioner to promulgate a legislative rule relating to Medicare supplement insurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to credit for reinsurance; authorizing the Insurance Commissioner to promulgate a legislative rule relating to pharmacy auditing entities and pharmacy benefit managers; authorizing the Racing Commission to promulgate a legislative rule relating to thoroughbred racing; 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 consumers sales and service tax and use tax—drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices per se exemption, motor vehicles per se exemption; and authorizing the State Tax Department to promulgate a legislative rule relating to exchange of information pursuant to written agreement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. AUTHORIZATION FOR DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Insurance Commissioner.

(a) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commissioner (Medicare supplement insurance, 114 CSR 24), is authorized.

(b) The legislative rule filed in the State Register on March 26, 2019, authorized under the authority of §33-4-15a(e)(1) of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on October 29, 2019, relating to the Insurance Commissioner (credit for reinsurance, 114 CSR 40), is authorized.

(c) The legislative rule filed in the State Register on December 6, 2019, authorized under the authority of §33-51-10 of this code, relating to the Insurance Commissioner (pharmacy auditing entities and pharmacy benefit managers, 114 CSR 99), is authorized.

§64-7-2. Racing Commission.

The legislative rule filed in the State Register on July 18, 2019, 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 December 20, 2019, relating to the Racing Commission (thoroughbred racing, 178 CSR 01), is authorized.

§64-7-3. State Tax Department.

(a) The legislative rule filed in the State Register on July 15, 2019, authorized under the authority of §11-10-5t of this code, relating to the State Tax Department (payment of taxes by electronic funds transfer, 110 CSR 10F), is authorized.

(b) The legislative rule filed in the State Register on July 16, 2019, authorized under the authority of §11-10-5 of this code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2019, relating to the State Tax Department (consumers sales and service tax and use tax—drugs, durable medical goods, mobility-enhancing equipment, and prosthetic devices per se exemption, motor vehicles per se exemption, 110 CSR 15C), is authorized.

(c) The legislative rule filed in the State Register on July 15, 2019, authorized under the authority of §11-10-5 of this

code, modified by the State Tax Department to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2019, relating to the State Tax Department (exchange of information pursuant to written agreement, 110 CSR 50C), is authorized.

CHAPTER 208

(Com. Sub. for S. B. 364 - By Senator Maynard)

[Passed February 12, 2020; in effect from passage.]
[Approved by the Governor on February 24, 2020.]

AN ACT to amend and reenact §64-8-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing certain agencies of the Department of Transportation to promulgate legislative rules; authorizing the rules as filed and as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; authorizing the Division of Highways to promulgate a legislative rule relating to use of state road rights-of-way and adjacent areas; authorizing the Division of Highways to promulgate a legislative rule relating to transportation of hazardous wastes upon the roads and highways; authorizing the Division of Highways to promulgate a legislative rule relating to small wireless facilities on Division of Highways rights-of-way; authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to a safety and treatment program; and authorizing the Division of Motor Vehicles to promulgate a legislative rule relating to State Vehicle Title, Registration, and Relicensing Project of 2018.

Be it enacted by the Legislature of West Virginia:

ARTICLE 8. AUTHORIZATION FOR DEPARTMENT OF TRANSPORTATION TO PROMULGATE LEGISLATIVE RULES.

§64-8-1. Division of Highways.

(a) The legislative rule filed in the State Register on July 29, 2019, authorized under the authority of §17-2A-8(24) of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 8, 2020, relating to the Division of Highways (use of state road rights-of-way and adjacent areas, 157 CSR 06), is authorized with the following amendments:

On page 11, by striking out subsection 3.8 and inserting in lieu thereof a new subsection 3.8 to read as follows:

3.8. Utility Installations. All publicly and privately owned utilities, including but not limited to, electric, communication, gas, oil, petroleum products, chemical, water, steam, sewage, drainage, and similar facilities that are to be accommodated, adjusted or relocated within state highway right-of-way, shall be in accordance with the Division's interpretive rule promulgated under section 10 of this rule.

On page 11, by striking out paragraph 3.8.d.3. and inserting in lieu thereof a new paragraph 3.8.d.3. to read as follows:

3.8.d.3. "Notice requesting removal or relocation and utility liability. In accordance with the interpretive rule promulgated under section 10 of this rule, the Division shall provide notice to affected utilities when relocations of existing facilities are required for highway projects. If the utility fails to comply with the notice as provided in W.Va. Code §17-4-17b(d), the utility is liable for all costs, fees, penalties, or other charges incurred by the Division as a result of the utility's failure to timely relocate, unless a written extension is granted by the Division".;

On page 12, by striking out all of subdivision 3.8.e.

And,

On page 36, by adding a new section 10. to read as follows:

§157-6-10. Promulgation of interpretive rule and legislative rule on fees.

10.1. The Division shall promulgate an interpretive rule in accordance with W. Va. Code §29A-3-1 *et seq.* setting forth the requirements for accommodating utilities on highway right-of-way and the adjustment and relocation of utility facilities on highway projects. The interpretive rule may not contain any type of fee.

10.2. The Division shall promulgate any fees levied on a utility or telecommunications provider by legislative rule in accordance with W. Va. Code §29A-3-1 *et seq.*

(b) The legislative rule filed in the State Register on July 26, 2019, authorized under the authority of §22-18-7(a) of this code, relating to the Division of Highways (transportation of hazardous wastes upon the roads and highways, 157 CSR 07), is authorized.

(c) The legislative rule filed in the State Register on July 29, 2019, authorized under the authority of §31H-2-3 of this code, modified by the Division of Highways to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 8, 2020, relating to the Division of Highways (small wireless facilities on Division of Highways rights-of-way, 157 CSR 13), is authorized with the following amendments:

On page 2, by striking out subsection 2.7 and renumbering the remaining subsections;

On page 5, subsection 4.4, after the words: "the application.", by inserting the following: "When

determining the time in which an application must be acted upon, if the final day to act falls on a federal or state holiday, the date to act upon the application shall be the next weekday that is not a federal or state holiday.";

On page 5, subsection 4.5. by striking out the word "business";

On page 5, subdivision 4.5.1. by striking out the word "business";

On page 5, subdivision 4.5.2. by striking out the words "business days";

And,

On page 8, subsection 5.1. by striking out the word "business".

§64-8-2. Division of Motor Vehicles.

(a) The legislative rule filed in the State Register on August 19, 2019, authorized under the authority of §17C-5A-3 of this code, modified by the Division of Motor Vehicles to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 6, 2019, relating to the Division of Motor Vehicles (safety and treatment program, 91 CSR 15), is authorized.

(b) The legislative rule filed in the State Register on July 29, 2019, authorized under the authority of §17A-3-25 of this code, relating to the Division of Motor Vehicles (State Vehicle Title, Registration, and Relicensing Project of 2018, 91 CSR 24), is authorized.