ACTS

OF THE

LEGISLATURE

OF

WEST VIRGINIA

Regular Session, 2024
Constitutional Amendment, 2024
First Extraordinary Session, 2024
Second Extraordinary Session, 2024

Volume III
Chapters 196 – 271
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WEST VIRGINIA HOUSE OF DELEGATES

HONORABLE ROGER HANSHAW

SPEAKER OF THE HOUSE

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OF THE CLERK OF THE HOUSE

OFFICE OF THE CLERK OF THE HOUSE

STATE CAPITOL
CHARLESTON, WEST VIRGINIA

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Second Extraordinary Session, 2024

GENERAL LAWS

CHAPTER 196

(S. B. 438 - By Senators Woodrum and Deeds)

[Passed March 6, 2024; in effect from passage]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §5-30-2 of the Code of West Virginia, 1931, as amended, relating to requirements for rosters of individuals who have obtained professional, occupational, and trade licenses, registrations, and certificates made available to public; establishing exception for certain authorizing entities; and removing geographical information from rosters.

Be it enacted by the Legislature of West Virginia:

ARTICLE 30. ROSTERS OF INDIVIDUALS AUTHORIZED TO PRACTICE PROFESSIONS, OCCUPATIONS, AND TRADES.

§5-30-2. Roster of licensed, registered, or certified practitioners to be made available to the public; exception.

The secretary or director of every board, commission, agency, or entity that issues licenses, registrations, or certificates, or otherwise authorizes individuals to practice a profession, occupation, or trade in this state, except for those subject to the provisions of §30-1-13 of this code, shall prepare and maintain a complete roster of the names of all persons licensed, registered, certified, or otherwise authorized to practice in this state the profession, occupation, or trade to which such board, commission, agency, or entity relates, arranged alphabetically by name. Each such board, commission, agency, or entity shall make the roster available upon request to any member of the public and shall also place and maintain the roster on its website if it maintains one.

CHAPTER 197

(Com. Sub. for S. B. 667 - By Senators Takubo, Trump, Woelfel, and Plymale)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-3G-1, §30-3G-2, §30-3G-3, §30-3G-4, §30-3G-5, §30-3G-6, §30-3G-7, §30-3G-8, §30-3G-9, §30-3G-10, §30-3G-11, §30-3G-12, and §30-3G-13, all relating to creating the Physician Assistant Licensure Compact; providing for a purpose; creating definitions; providing for state participation in the compact; creating the compact privilege; providing for the designation of the state from which licensee is applying for a compact privilege; defining adverse actions; providing for the establishment of the Physician Assistant Licensure Compact Commission; defining the data system; providing for rulemaking; providing for oversight, dispute resolution, and enforcement; providing for the date of implementation of the Physician Assistant Licensure Compact Commission; providing for construction and severability; and creating the binding effect of the compact.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3G. PHYSICIAN ASSISTANT LICENSURE COMPACT.

§30-3G-1. Purpose.

In order to strengthen access to medical services, and in recognition of the advances in the delivery of medical services, the participating states of the Physician Assistant Licensure Compact

have allied in common purpose to develop a comprehensive process that complements the existing authority of state licensing boards to license and discipline physician assistants and seeks to enhance the portability of a license to practice as a physician assistant while safeguarding the safety of patients. This compact allows medical services to be provided by physician assistants, via the mutual recognition of the licensee's qualifying license by other compact participating states. This compact also adopts the prevailing standard for physician assistant licensure and affirms that the practice and delivery of medical services by the physician assistant occurs where the patient is located at the time of the patient encounter, and therefore requires the physician assistant to be under the jurisdiction of the state licensing board where the patient is located. State licensing boards that participate in this compact retain the jurisdiction to impose adverse action against a compact privilege in that state issued to a physician assistant through the procedures of this compact. The Physician Assistant Licensure Compact will alleviate burdens for military families by allowing active-duty military personnel and their spouses to obtain a compact privilege based on having an unrestricted license in good standing from a participating state.

§30-3G-2. Definitions.

In this compact:

(a) "Adverse action" means any administrative, civil, equitable, or criminal action permitted by a state's laws which is imposed by a licensing board or other authority against a physician assistant license or license application or compact Privilege such as license denial, censure, revocation, suspension, probation, monitoring of the licensee, or restriction on the licensee's practice.

(b) "Compact privilege" means the authorization granted by a remote state to allow a licensee from another participating state to practice as a physician assistant to provide medical services and other licensed activity to a patient located in the remote state under the remote state's laws and regulations.

(c) "Conviction" means a finding by a court that an individual is guilty of a felony or misdemeanor offense through adjudication or entry of a plea of guilt or no contest to the charge by the offender.

(d) "Criminal background check" means the submission of fingerprints or other biometric-based information for a license applicant for the purpose of obtaining that applicant's criminal history record information, as defined in 28 C.F.R. § 20.3(d) (1999), from the state's criminal history record repository as defined in 28 C.F.R. § 20.3(f) (1999).

(e) "Data system" means the repository of information about licensees, including but not limited to license status and adverse actions, which is created and administered under the terms of this compact.

(f) "Executive committee" means a group of directors and ex officio individuals elected or appointed pursuant to §30-3G-7(f)(2) of this code.

(g) "Impaired practitioner" means a physician assistant whose practice is adversely affected by health-related condition(s) that impact their ability to practice.

(h) "Investigative information" means information, records, or documents received or generated by a licensing board pursuant to an investigation.

(i) "Jurisprudence requirement" means the assessment of an individual's knowledge of the laws and rules governing the practice of a physician assistant in a state.

(j) "License" means current authorization by a state, other than authorization pursuant to a compact privilege, for a physician assistant to provide medical services, which would be unlawful without current authorization.

(k) "Licensee" means an individual who holds a license from a state to provide medical services as a physician assistant.

(l) "Licensing board" means any state entity authorized to license and otherwise regulate physician assistants.

(m) "Medical services" means health care services provided for the diagnosis, prevention, treatment, cure or relief of a health condition, injury, or disease, as defined by a state's laws and regulations.

(n) "Model compact" means the model for the Physician Assistant Licensure Compact on file with the Council of State Governments or other entity as designated by the commission.

(o) "Participating state" means a state that has enacted this compact.

(p) "PA" means an individual who is licensed as a physician assistant in a state. For purposes of this compact, any other title or status adopted by a state to replace the term "physician assistant" shall be deemed synonymous with "physician assistant" and shall confer the same rights and responsibilities to the licensee under the provisions of this compact at the time of its enactment.

(q) "PA Licensure Compact Commission", "Compact Commission", or "Commission" mean the national administrative body created pursuant to §30-3G-7(a) of this code.

(r) "Qualifying license" means an unrestricted license issued by a participating state to provide medical services as a physician assistant.

(s) "Remote state" means a participating state where a licensee who is not licensed as a physician assistant is exercising or seeking to exercise the compact privilege.

(t) "Rule" means a regulation promulgated by an entity that has the force and effect of law.

(u) "Significant Investigative Information" means investigative information that a licensing board, after an inquiry or investigation that includes notification and an opportunity for the physician assistant to respond if required by state law, has reason to believe

is not groundless and, if proven true, would indicate more than a minor infraction.

(v) "State" means any state, commonwealth, district, or territory of the United States.

§30-3G-3. State participation in this compact.

(a) To participate in this compact, a participating state shall:

(1) License physician assistants.

(2) Participate in the compact commission's data system.

(3) Have a mechanism in place for receiving and investigating complaints against licensees and license applicants.

(4) Notify the commission, in compliance with the terms of this compact and commission rules, of any adverse action against a licensee or license applicant and the existence of significant investigative information regarding a licensee or license applicant.

(5) Fully implement a criminal background check requirement, within a time frame established by commission rule, by its licensing board receiving the results of a criminal background check and reporting to the commission whether the license applicant has been granted a license.

(6) Comply with the rules of the compact commission.

(7) Utilize passage of a recognized national exam such as the NCCPA PANCE as a requirement for physician assistant licensure.

(8) Grant the compact privilege to a holder of a qualifying license in a participating state.

(b) Nothing in this compact prohibits a participating state from charging a fee for granting the compact privilege.

§30-3G-4. Compact privilege.

(a) To exercise the compact privilege, a licensee must:

(1) Have graduated from a physician assistant program accredited by the Accreditation Review Commission on Education for the Physician Assistant, Inc. or other programs authorized by commission rule.

(2) Hold current NCCPA certification.

(3) Have no felony or misdemeanor conviction.

(4) Have never had a controlled substance license, permit, or registration suspended or revoked by a state or by the United States Drug Enforcement Administration.

(5) Have a unique identifier as determined by commission rule.

(6) Hold a qualifying license.

(7) Have had no revocation of a license or limitation or restriction on any license currently held due to an adverse action.

(8) If a licensee has had a limitation or restriction on a license or compact privilege due to an adverse action, two years must have elapsed from the date on which the license or compact privilege is no longer limited or restricted due to the adverse action.

(9) If a compact privilege has been revoked or is limited or restricted in a participating state for conduct that would not be a basis for disciplinary action in a participating state in which the licensee is practicing or applying to practice under a compact privilege, that participating state shall have the discretion not to consider such action as an adverse action requiring the denial or removal of a compact privilege in that state.

(10) Notify the compact commission that the licensee is seeking the compact privilege in a remote state.

(11) Meet any jurisprudence requirement of a remote state in which the licensee is seeking to practice under the compact privilege and pay any fees applicable to satisfying the jurisprudence requirement.

(12) Report to the commission any adverse action taken by a non-participating state within 30 days after the action is taken.

(b) The compact privilege is valid until the expiration or revocation of the qualifying license unless terminated pursuant to an adverse action. The licensee must also comply with all of the requirements of subsection (a) of this section to maintain the compact privilege in a remote state. If the participating state takes adverse action against a qualifying license, the licensee shall lose the compact privilege in any remote state in which the licensee has a compact privilege until all of the following occur:

(1) The license is no longer limited or restricted; and

(2) Two years have elapsed from the date on which the license is no longer limited or restricted due to the adverse action.

(c) Once a restricted or limited license satisfies the requirements of subsection (b)(1) and (b)(2) of this section, the licensee must meet the requirements of subsection (a) of this section to obtain a compact privilege in any remote state.

(d) For each remote state in which a physician assistant seeks authority to prescribe controlled substances, the physician assistant shall satisfy all requirements imposed by such state in granting or renewing such authority.

§30-3G-5. Designation of the state from which licensee is applying for a compact privilege.

Upon a licensee's application for a compact privilege, the licensee shall identify to the commission the participating state from which the licensee is applying, in accordance with applicable rules adopted by the commission, and subject to the following requirements:

(1) When applying for a compact privilege, the licensee shall provide the commission with the address of the licensee's primary residence and thereafter shall immediately report to the commission any change in the address of the licensee's primary residence.

(2) When applying for a compact privilege, the licensee is required to consent to accept service of process by mail at the licensee's primary residence on file with the commission with respect to any action brought against the licensee by the commission or a participating state, including a subpoena, with respect to any action brought or investigation conducted by the commission or a participating state.

§30-3G-6. Adverse actions.

(a) A participating state in which a licensee is licensed shall have exclusive power to impose adverse action against the qualifying license issued by that participating state.

(b) In addition to the other powers conferred by state law, a remote state shall have the authority, in accordance with existing state due process law, to do all of the following:

(1) Take adverse action against a physician assistant's compact privilege within that state to remove a licensee's compact privilege or take other action necessary under applicable law to protect the health and safety of its citizens.

(2) Issue subpoenas for both hearings and investigations that require the attendance and testimony of witnesses as well as the production of evidence. Subpoenas issued by a licensing board in a participating state for the attendance and testimony of witnesses or the production of evidence from another participating state shall be enforced in the latter state by any court of competent jurisdiction, according to the practice and procedure of that court applicable to subpoenas issued in proceedings pending before it. The issuing authority shall pay any witness fees, travel expenses, mileage and other fees required by the service statutes of the state in which the witnesses or evidence are located.

(3) Notwithstanding subsection (b)(2) of this section, subpoenas may not be issued by a participating state to gather evidence of conduct in another state that is lawful in that other state for the purpose of taking adverse action against a licensee's

compact privilege or application for a compact privilege in that participating state.

(4) Nothing in this compact authorizes a participating state to impose discipline against a physician assistant's compact privilege or to deny an application for a compact privilege in that participating state for the individual's otherwise lawful practice in another state.

(c) For purposes of taking adverse action, the participating state which issued the qualifying license shall give the same priority and effect to reported conduct received from any other participating state as it would if the conduct had occurred within the participating state which issued the qualifying license. In so doing, that participating state shall apply its own state laws to determine appropriate action.

(d) A participating state, if otherwise permitted by state law, may recover from the affected physician assistant the costs of investigations and disposition of cases resulting from any adverse action taken against that physician assistant.

(e) A participating state may take adverse action based on the factual findings of a remote state, provided that the participating state follows its own procedures for taking the adverse action.

(f) Joint investigations:

(1) In addition to the authority granted to a participating state by its respective state physician assistant laws and regulations or other applicable state law, any participating state may participate with other participating states in joint investigations of licensees.

(2) Participating states shall share any investigative, litigation, or compliance materials in furtherance of any joint or individual investigation initiated under this compact.

(g) If an adverse action is taken against a physician assistant's qualifying license, the physician assistant's compact privilege in all remote states shall be deactivated until two years have elapsed after all restrictions have been removed from the state license. All

disciplinary orders by the participating state which issued the qualifying license that impose adverse action against a physician assistant's license shall include a statement that the physician assistant's compact privilege is deactivated in all participating states during the pendency of the order.

(h) If any participating state takes adverse action, it promptly shall notify the administrator of the data system.

§30-3G-7. Establishment of the Physician Assistant Licensure Compact Commission.

(a) The participating states hereby create and establish a joint government agency and national administrative body known as the Physician Assistant Licensure Compact Commission. The commission is an instrumentality of the compact states acting jointly and not an instrumentality of any one state. The commission shall come into existence on or after the effective date of the compact as set forth in §30-3G-11(a) of this code.

(b) Membership, voting, and meetings.

(1) Each participating state shall have and be limited to one delegate selected by that participating state's licensing board or, if the state has more than one licensing board, selected collectively by the participating state's licensing boards.

(2) The delegate shall be either:

(A) A current physician assistant, physician or public member of a licensing board or physician assistant council/committee; or

(B) An administrator of a licensing board.

(3) Any delegate may be removed or suspended from office as provided by the laws of the state from which the delegate is appointed.

(4) The participating state licensing board shall fill any vacancy occurring in the commission within 60 days.

(5) Each delegate shall be entitled to one vote on all matters voted on by the commission and shall otherwise have an opportunity to participate in the business and affairs of the commission. A delegate shall vote in person or by such other means as provided in the bylaws. The bylaws may provide for delegates' participation in meetings by telecommunications, video conference, or other means of communication.

(6) The commission shall meet at least once during each calendar year. Additional meetings shall be held as set forth in this compact and the bylaws.

(7) The commission shall establish, by rule, a term of office for delegates.

(c) The commission shall have the following powers and duties:

(1) Establish a code of ethics for the commission;

(2) Establish the fiscal year of the commission;

(3) Establish fees;

(4) Establish bylaws;

(5) Maintain its financial records in accordance with the bylaws;

(6) Meet and take such actions as are consistent with the provisions of this compact and the bylaws;

(7) Promulgate rules to facilitate and coordinate implementation and administration of this compact. The rules shall have the force and effect of law and shall be binding in all participating states;

(8) Bring and prosecute legal proceedings or actions in the name of the commission, provided that the standing of any state licensing board to sue or be sued under applicable law shall not be affected;

(9) Purchase and maintain insurance and bonds;

(10) Borrow, accept, or contract for services of personnel, including, but not limited to, employees of a participating state;

(11) Hire employees and engage contractors, elect or appoint officers, fix compensation, define duties, grant such individuals appropriate authority to carry out the purposes of this compact, and establish the commission's personnel policies and programs relating to conflicts of interest, qualifications of personnel, and other related personnel matters;

(12) Accept any and all appropriate donations and grants of money, equipment, supplies, materials, and services, and receive, utilize, and dispose of the same: *Provided,* That at all times the commission shall avoid any appearance of impropriety or conflict of interest;

(13) Lease, purchase, accept appropriate gifts or donations of, or otherwise own, hold, improve, or use, any property, real, personal, or mixed: *Provided,* That at all times the commission shall avoid any appearance of impropriety;

(14) Sell, convey, mortgage, pledge, lease, exchange, abandon, or otherwise dispose of any property real, personal, or mixed;

(15) Establish a budget and make expenditures;

(16) Borrow money;

(17) Appoint committees, including standing committees composed of members, state regulators, state legislators or their representatives, and consumer representatives, and such other interested persons as may be designated in this compact and the bylaws;

(18) Provide and receive information from, and cooperate with, law enforcement agencies;

(19) Elect a chair, vice chair, secretary and treasurer and such other officers of the commission as provided in the commission's bylaws;

(20) Reserve for itself, in addition to those reserved exclusively to the commission under the compact, powers that the executive committee may not exercise;

(21) Approve or disapprove a state's participation in the compact based upon its determination as to whether the state's compact legislation departs in a material manner from the model compact language;

(22) Prepare and provide to the participating states an annual report; and perform such other functions as may be necessary or appropriate to achieve the purposes of this compact consistent with the state regulation of physician assistant licensure and practice.

(d) Meetings of the commission.

(1) All meetings of the commission that are not closed pursuant to this subsection shall be open to the public. Notice of public meetings shall be posted on the commission's website at least 30 days prior to the public meeting.

(2) Notwithstanding subsection (d)(2) of this section, the commission may convene a public meeting by providing at least 24 hours prior notice on the commission's website, and any other means as provided in the commission's rules, for any of the reasons it may dispense with notice of proposed rulemaking under §30-3G-9(l) of this code.

(3) The commission may convene in a closed, non-public meeting or non-public part of a public meeting to receive legal advice or to discuss:

(A) Non-compliance of a participating state with its obligations under this compact;

(B) The employment, compensation, discipline, or other matters, practices or procedures related to specific employees, or other matters related to the commission's internal personnel practices and procedures;

(C) Current, threatened, or reasonably anticipated litigation;

(D) Negotiation of contracts for the purchase, lease, or sale of goods, services, or real estate;

(E) Accusing any person of a crime or formally censuring any person;

(F) Disclosure of trade secrets or commercial or financial information that is privileged or confidential;

(G) Disclosure of information of a personal nature where disclosure would constitute a clearly unwarranted invasion of personal privacy;

(H) Disclosure of investigative records compiled for law enforcement purposes;

(I) Disclosure of information related to any investigative reports prepared by or on behalf of or for use of the commission or other committee charged with responsibility of investigation or determination of compliance issues pursuant to this compact;

(J) Legal advice; or

(K) Matters specifically exempted from disclosure by federal or participating states' statutes.

(4) If a meeting, or portion of a meeting, is closed pursuant to this provision, the chair of the meeting or the chair's designee shall certify that the meeting or portion of the meeting may be closed and shall reference each relevant exempting provision.

(5) The commission shall keep minutes that fully and clearly describe all matters discussed in a meeting and shall provide a full and accurate summary of actions taken, including a description of the views expressed. All documents considered in connection with an action shall be identified in such minutes. All minutes and documents of a closed meeting shall remain under seal, subject to release by a majority vote of the commission or order of a court of competent jurisdiction.

(e) Financing of the commission.

(1) The commission shall pay, or provide for the payment of, the reasonable expenses of its establishment, organization, and ongoing activities.

(2) The commission may accept any and all appropriate revenue sources, donations, and grants of money, equipment, supplies, materials, and services.

(3) The commission may levy on and collect an annual assessment from each participating state and may impose compact privilege fees on licensees of participating states to whom a compact privilege is granted to cover the cost of the operations and activities of the commission and its staff, which must be in a total amount sufficient to cover its annual budget as approved by the commission each year for which revenue is not provided by other sources. The aggregate annual assessment amount levied on participating states shall be allocated based upon a formula to be determined by commission rule.

(A) A compact privilege expires when the licensee's qualifying license in the participating state from which the licensee applied for the compact privilege expires.

(B) If the licensee terminates the qualifying license through which the licensee applied for the compact privilege before its scheduled expiration, and the licensee has a qualifying license in another participating state, the licensee shall inform the commission that it is changing to the participating state through which it applies for a compact privilege and pay to the commission any compact privilege fee required by commission rule.

(4) The commission shall not incur obligations of any kind prior to securing the funds adequate to meet the same; nor shall the commission pledge the credit of any of the participating states, except by and with the authority of the participating state.

(5) The commission shall keep accurate accounts of all receipts and disbursements. The receipts and disbursements of the commission shall be subject to the financial review and accounting procedures established under its bylaws. All receipts and

disbursements of funds handled by the commission shall be subject to an annual financial review by a certified or licensed public accountant, and the report of the financial review shall be included in and become part of the annual report of the commission.

(f) The executive committee.

(1) The executive committee shall have the power to act on behalf of the commission according to the terms of this compact and commission rules.

(2) The executive committee shall be composed of nine members:

(A) Seven voting members who are elected by the commission from the current membership of the commission;

(B) One ex officio, nonvoting member from a recognized national physician assistant professional association; and

(C) One ex officio, nonvoting member from a recognized national physician assistant certification organization.

(3) The ex officio members will be selected by their respective organizations.

(4) The commission may remove any member of the executive committee as provided in its bylaws.

(5) The executive committee shall meet at least annually.

(6) The executive committee shall have the following duties and responsibilities:

(A) Recommend to the commission changes to the commission's rules or bylaws, changes to this compact legislation, fees to be paid by compact participating states such as annual dues, and any commission compact fee charged to licensees for the compact privilege;

(B) Ensure compact administration services are appropriately provided, contractual or otherwise;

(C) Prepare and recommend the budget;

(D) Maintain financial records on behalf of the commission;

(E) Monitor compact compliance of participating states and provide compliance reports to the commission;

(F) Establish additional committees as necessary;

(G) Exercise the powers and duties of the commission during the interim between commission meetings, except for issuing proposed rulemaking or adopting commission rules or bylaws, or exercising any other powers and duties exclusively reserved to the commission by the commission's rules; and

(H) Perform other duties as provided in the commission's rules or bylaws.

(7) All meeting of the executive committee at which it votes or plans to vote on matters in exercising the powers and duties of the commission shall be open to the public and public notice of such meetings shall be given as public meetings of the commission are given.

(8) The executive committee may convene in a closed, non-public meeting for the same reasons that the commission may convene in a non-public meeting as set forth in §30-3G-7(d)(3) of this code and shall announce the closed meeting as the commission is required to under §30-3G-7(d)(4) of this code and keep minutes of the closed meeting as the commission is required to under §30-3G-7(d) of this code.

(g) Qualified immunity, defense, and indemnification.

(1) The members, officers, executive director, employees and representatives of the commission shall be immune from suit and liability, both personally and in their official capacity, for any claim for damage to or loss of property or personal injury or other civil liability caused by or arising out of any actual or alleged act, error, or omission that occurred, or that the person against whom the claim is made had a reasonable basis for believing occurred within the

scope of commission employment, duties or responsibilities: *Provided,* That nothing in this paragraph shall be construed to protect any such person from suit or liability for any damage, loss, injury, or liability caused by the intentional or willful or wanton misconduct of that person. The procurement of insurance of any type by the commission shall not in any way compromise or limit the immunity granted hereunder.

(2) The commission shall defend any member, officer, executive director, employee, and representative of the commission in any civil action seeking to impose liability arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or as determined by the commission that the person against whom the claim is made had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided,* That nothing herein shall be construed to prohibit that person from retaining their own counsel at their own expense: *Provided, however*, That the actual or alleged act, error, or omission did not result from that person's intentional, or willful or wanton misconduct.

(3) The commission shall indemnify and hold harmless any member, officer, executive director, employee, and representative of the commission for the amount of any settlement or judgment obtained against that person arising out of any actual or alleged act, error, or omission that occurred within the scope of commission employment, duties, or responsibilities, or that such person had a reasonable basis for believing occurred within the scope of commission employment, duties, or responsibilities: *Provided,* That the actual or alleged act, error, or omission did not result from the intentional, or willful or wanton misconduct of that person.

(4) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission is located. The commission may waive venue and jurisdictional defenses in any proceedings as authorized by commission rules.

(5) Nothing herein shall be construed as a limitation on the liability of any licensee for professional malpractice or misconduct, which shall be governed solely by any other applicable state laws.

(6) Nothing herein shall be construed to designate the venue or jurisdiction to bring actions for alleged acts of malpractice, professional misconduct, negligence, or other such civil action pertaining to the practice of a physician assistant. All such matters shall be determined exclusively by state law other than this compact.

(7) Nothing in this compact shall be interpreted to waive or otherwise abrogate a participating state's state action immunity or state action affirmative defense with respect to antitrust claims under the Sherman Act, Clayton Act, or any other state or federal antitrust or anticompetitive law or regulation.

(8) Nothing in this compact shall be construed to be a waiver of sovereign immunity by the participating states or by the commission.

§30-3G-8. Data system.

(a) The commission shall provide for the development, maintenance, operation, and utilization of a coordinated data and reporting system containing licensure, adverse action, and the reporting of the existence of significant investigative information on all licensed physician assistants and applicants denied a license in participating states.

(b) Notwithstanding any other state law to the contrary, a participating state shall submit a uniform data set to the data system on all physician assistants to whom this compact is applicable (utilizing a unique identifier) as required by the rules of the commission, including:

(1) Identifying information;

(2) Licensure data;

(3) Adverse actions against a license or compact privilege;

(4) Any denial of application for licensure, and the reason(s) for such denial (excluding the reporting of any criminal history record information where prohibited by law);

(5) The existence of significant investigative information; and

(6) Other information that may facilitate the administration of this compact, as determined by the rules of the commission.

(c) Significant investigative information pertaining to a licensee in any participating state shall only be available to other participating states.

(d) The commission shall promptly notify all participating states of any adverse action taken against a licensee or an individual applying for a license that has been reported to it. This adverse action information shall be available to any other participating state.

(e) Participating states contributing information to the data system may, in accordance with state or federal law, designate information that may not be shared with the public without the express permission of the contributing state. Notwithstanding any such designation, such information shall be reported to the commission through the data system.

(f) Any information submitted to the data system that is subsequently expunged pursuant to federal law or the laws of the participating state contributing the information shall be removed from the data system upon reporting of such by the participating state to the commission.

(g) The records and information provided to a participating state pursuant to this compact or through the data system, when certified by the commission or an agent thereof, shall constitute the authenticated business records of the commission, and shall be entitled to any associated hearsay exception in any relevant judicial, quasi-judicial, or administrative proceedings in a participating state.

§30-3G-9. Rulemaking.

(a) The commission shall exercise its rulemaking powers pursuant to the criteria set forth in this section and the rules adopted thereunder. Commission rules shall become binding as of the date specified by the commission for each rule.

(b) The commission shall promulgate reasonable rules in order to effectively and efficiently implement and administer this compact and achieve its purposes. A commission rule shall be invalid and have no force or effect only if a court of competent jurisdiction holds that the rule is invalid because the commission exercised its rulemaking authority in a manner that is beyond the scope of the purposes of this compact, or the powers granted hereunder, or based upon another applicable standard of review.

(c) The rules of the commission shall have the force of law in each participating state: *Provided,* That where the rules of the commission conflict with the laws of the participating state that establish the medical services a physician assistant may perform in the participating state, as held by a court of competent jurisdiction, the rules of the commission shall be ineffective in that state to the extent of the conflict.

(d) If a majority of the legislatures of the participating states rejects a commission rule, by enactment of a statute or resolution in the same manner used to adopt this compact within four years of the date of adoption of the rule, then such rule shall have no further force and effect in any participating state or to any state applying to participate in the compact.

(e) Commission rules shall be adopted at a regular or special meeting of the commission.

(f) Prior to promulgation and adoption of a final rule or rules by the commission, and at least 30 days in advance of the meeting at which the rule will be considered and voted upon, the commission shall file a Notice of Proposed Rulemaking:

(1) On the website of the commission or other publicly accessible platform; and

(2) To persons who have requested notice of the commission's notices of proposed rulemaking, and

(3) In such other way(s) as the commission may by rule specify.

(g) The notice of proposed rulemaking shall include:

(1) The time, date, and location of the public hearing on the proposed rule and the proposed time, date, and location of the meeting in which the proposed rule will be considered and voted upon;

(2) The text of the proposed rule and the reason for the proposed rule;

(3) A request for comments on the proposed rule from any interested person and the date by which written comments must be received; and

(4) The manner in which interested persons may submit notice to the commission of their intention to attend the public hearing or provide any written comments.

(h) Prior to adoption of a proposed rule, the commission shall allow persons to submit written data, facts, opinions, and arguments, which shall be made available to the public.

(i) If the hearing is to be held via electronic means, the commission shall publish the mechanism for access to the electronic hearing.

(1) All persons wishing to be heard at the hearing shall as directed in the Notice of Proposed Rulemaking, not less than five business days before the scheduled date of the hearing, notify the commission of their desire to appear and testify at the hearing.

(2) Hearings shall be conducted in a manner providing each person who wishes to comment a fair and reasonable opportunity to comment orally or in writing.

(3) All hearings shall be recorded. A copy of the recording and the written comments, data, facts, opinions, and arguments received

in response to the proposed rulemaking shall be made available to a person upon request.

(4) Nothing in this section shall be construed as requiring a separate hearing on each proposed rule. Proposed rules may be grouped for the convenience of the commission at hearings required by this section.

(j) Following the public hearing, the commission shall consider all written and oral comments timely received.

(k) The commission shall, by majority vote of all delegates, take final action on the proposed rule and shall determine the effective date of the rule, if adopted, based on the rulemaking record and the full text of the rule.

(1) If adopted, the rule shall be posted on the commission's website.

(2) The commission may adopt changes to the proposed rule provided the changes do not enlarge the original purpose of the proposed rule.

(3) The commission shall provide on its website, an explanation of the reasons for substantive changes made to the proposed rule, as well as reasons for substantive changes not made that were recommended by commenters.

(4) The commission shall determine a reasonable effective date for the rule. Except for an emergency as provided in subsection (l) of this section, the effective date of the rule shall be no sooner than 30 days after the commission issued the notice that it adopted the rule.

(l) Upon determination that an emergency exists, the commission may consider and adopt an emergency rule with 24 hours prior notice, without the opportunity for comment, or hearing, provided that the usual rulemaking procedures provided in this compact and in this section shall be retroactively applied to the rule as soon as reasonably possible, in no event later than 90 days after

the effective date of the rule. For the purposes of this provision, an emergency rule is one that must be adopted immediately by the commission in order to:

(1) Meet an imminent threat to public health, safety, or welfare;

(2) Prevent a loss of commission or participating state funds;

(3) Meet a deadline for the promulgation of a commission rule that is established by federal law or rule; or

(4) Protect public health and safety.

(m) The commission or an authorized committee of the commission may direct revisions to a previously adopted commission rule for purposes of correcting typographical errors, errors in format, errors in consistency, or grammatical errors. Public notice of any revisions shall be posted on the website of the commission. The revision shall be subject to challenge by any person for a period of 30 days after posting. The revision may be challenged only on grounds that the revision results in a material change to a rule. A challenge shall be made as set forth in the notice of revisions and delivered to the commission prior to the end of the notice period. If no challenge is made, the revision will take effect without further action. If the revision is challenged, the revision may not take effect without the approval of the commission.

(n) No participating state's rulemaking requirements shall apply under this compact.

§30-3G-10. Oversight, dispute resolution, and enforcement.

(a) Oversight.

(1) The executive and judicial branches of state government in each participating state shall enforce this compact and take all actions necessary and appropriate to implement the compact.

(2) Venue is proper and judicial proceedings by or against the commission shall be brought solely and exclusively in a court of competent jurisdiction where the principal office of the commission

is located. The commission may waive venue and jurisdictional defenses to the extent it adopts or consents to participate in alternative dispute resolution proceedings. Nothing herein shall affect or limit the selection or propriety of venue in any action against a licensee for professional malpractice, misconduct or any such similar matter.

(3) The commission shall be entitled to receive service of process in any proceeding regarding the enforcement or interpretation of the compact or the commission's rules and shall have standing to intervene in such a proceeding for all purposes. Failure to provide the commission with service of process shall render a judgment or order in such proceeding void as to the commission, this compact, or commission rules.

(b) Default, technical assistance, and termination.

(1) If the commission determines that a participating state has defaulted in the performance of its obligations or responsibilities under this compact or the commission rules, the commission shall provide written notice to the defaulting state and other participating states. The notice shall describe the default, the proposed means of curing the default and any other action that the commission may take and shall offer remedial training and specific technical assistance regarding the default.

(2) If a state in default fails to cure the default, the defaulting state may be terminated from this compact upon an affirmative vote of a majority of the delegates of the participating states, and all rights, privileges, and benefits conferred by this compact upon such state may be terminated on the effective date of termination. A cure of the default does not relieve the offending state of obligations or liabilities incurred during the period of default.

(3) Termination of participation in this compact shall be imposed only after all other means of securing compliance have been exhausted. Notice of intent to suspend or terminate shall be given by the commission to the governor, the majority and minority leaders of the defaulting state's legislature, and to the licensing board(s) of each of the participating states.

(4) A state that has been terminated is responsible for all assessments, obligations, and liabilities incurred through the effective date of termination, including obligations that extend beyond the effective date of termination.

(5) The commission shall not bear any costs related to a state that is found to be in default or that has been terminated from this compact, unless agreed upon in writing between the commission and the defaulting state.

(6) The defaulting state may appeal its termination from the compact by the commission by petitioning the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices. The prevailing member shall be awarded all costs of such litigation, including reasonable attorney's fees.

(7) Upon the termination of a state's participation in the compact, the state shall immediately provide notice to all licensees within that state of such termination:

(A) Licensees who have been granted a compact privilege in that state shall retain the compact privilege for 180 days following the effective date of such termination.

(B) Licensees who are licensed in that state who have been granted a compact privilege in a participating state shall retain the compact privilege for 180 days unless the licensee also has a qualifying license in a participating state or obtains a qualifying license in a participating state before the 180 day period ends, in which case the compact privilege shall continue.

(c) Dispute resolution.

(1) Upon request by a participating state, the commission shall attempt to resolve disputes related to this compact that arise among participating states and between participating and non-participating states.

(2) The commission shall promulgate a rule providing for both mediation and binding dispute resolution for disputes as appropriate.

(d) Enforcement.

(1) The commission, in the reasonable exercise of its discretion, shall enforce the provisions of this compact and rules of the commission.

(2) If compliance is not secured after all means to secure compliance have been exhausted, by majority vote, the commission may initiate legal action in the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices, against a participating state in default to enforce compliance with the provisions of this compact and the commission's promulgated rules and bylaws. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(3) The remedies herein shall not be the exclusive remedies of the commission. The commission may pursue any other remedies available under federal or state law.

(e) Legal action against the commission.

(1) A participating state may initiate legal action against the commission in the U.S. District Court for the District of Columbia or the federal district where the commission has its principal offices to enforce compliance with the provisions of the compact and its rules. The relief sought may include both injunctive relief and damages. In the event judicial enforcement is necessary, the prevailing party shall be awarded all costs of such litigation, including reasonable attorney's fees.

(2) No person other than a participating state shall enforce this compact against the commission.

§30-3G-11. Date of Implementation of the Physician Assistant Licensure Compact Commission.

(a) This compact shall come into effect on the date on which this compact statute is enacted into law in the seventh participating state.

(1) On or after the effective date of the compact, the commission shall convene and review the enactment of each of the states that enacted the compact prior to the commission convening (charter participating states) to determine if the statute enacted by each such charter participating state is materially different than the model compact.

(A) A charter participating state whose enactment is found to be materially different from the model compact shall be entitled to the default process set forth in §30-3G-10(b) of this code.

(B) If any participating state later withdraws from the compact or its participation is terminated, the commission shall remain in existence and the compact shall remain in effect even if the number of participating states should be less than seven. Participating states enacting the compact subsequent to the commission convening shall be subject to the process set forth in §30-3G-7(c)(21) of this code to determine if their enactments are materially different from the model compact and whether they qualify for participation in the compact.

(2) Participating states enacting the compact subsequent to the seven initial Charter participating states shall be subject to the process set forth in §30-3G-7(c)(21) of this code to determine if their enactments are materially different from the model compact and whether they qualify for participation in the compact.

(3) All actions taken for the benefit of the commission or in furtherance of the purposes of the administration of the compact prior to the effective date of the compact or the commission coming into existence shall be considered to be actions of the commission unless specifically repudiated by the commission.

(b) Any state that joins this compact shall be subject to the commission's rules and bylaws as they exist on the date on which this compact becomes law in that state. Any rule that has been

previously adopted by the commission shall have the full force and effect of law on the day this compact becomes law in that state.

(c) Any participating state may withdraw from this compact by enacting a statute repealing the same.

(1) A participating state's withdrawal shall not take effect until 180 days after enactment of the repealing statute. During this 180-day period, all compact privileges that were in effect in the withdrawing state and were granted to licensees licensed in the withdrawing state shall remain in effect. If any licensee licensed in the withdrawing state is also licensed in another participating state or obtains a license in another participating state within the 180 days, the licensee's compact privileges in other participating states shall not be affected by the passage of the 180 days.

(2) Withdrawal shall not affect the continuing requirement of the state licensing board(s) of the withdrawing state to comply with the investigative, and adverse action reporting requirements of this compact prior to the effective date of withdrawal.

(3) Upon the enactment of a statute withdrawing a state from this compact, the state shall immediately provide notice of such withdrawal to all licensees within that state. Such withdrawing state shall continue to recognize all licenses granted pursuant to this compact for a minimum of 180 days after the date of such notice of withdrawal.

(d) Nothing contained in this compact shall be construed to invalidate or prevent any physician assistant licensure agreement or other cooperative arrangement between participating states and between a participating state and non-participating state that does not conflict with the provisions of this compact.

(e) This compact may be amended by the participating states. No amendment to this compact shall become effective and binding upon any participating state until it is enacted materially in the same manner into the laws of all participating states as determined by the commission.

§30-3G-12. Construction and severability.

(a) This compact and the commission's rulemaking authority shall be liberally construed so as to effectuate the purposes, and the implementation and administration of the compact. Provisions of the compact expressly authorizing or requiring the promulgation of rules shall not be construed to limit the commission's rulemaking authority solely for those purposes.

(b) The provisions of this compact shall be severable and if any phrase, clause, sentence, or provision of this compact is held by a court of competent jurisdiction to be contrary to the constitution of any participating state, a state seeking participation in the compact, or of the United States, or the applicability thereof to any government, agency, person or circumstance is held to be unconstitutional by a court of competent jurisdiction, the validity of the remainder of this compact and the applicability thereof to any other government, agency, person, or circumstance shall not be affected thereby.

(c) Notwithstanding subsection (b) of this section, the commission may deny a state's participation in the compact or, in accordance with the requirements of §30-3G-10(b) of this code, terminate a participating state's participation in the compact, if it determines that a constitutional requirement of a participating state is, or would be with respect to a state seeking to participate in the compact, a material departure from the compact. Otherwise, if this compact shall be held to be contrary to the constitution of any participating state, the compact shall remain in full force and effect as to the remaining participating states and in full force and effect as to the participating state affected as to all severable matters.

§30-3G-13. Binding effect of compact.

(a) Nothing herein prevents the enforcement of any other law of a participating state that is not inconsistent with this compact.

(b) Any laws in a participating state in conflict with this compact are superseded to the extent of the conflict.

(c) All agreements between the commission and the participating states are binding in accordance with their terms.

CHAPTER 198

(Com. Sub. for S. B. 786 - By Senator Rucker)

[Passed March 7, 2024; in effect 90 days from passage (June 5, 2024)]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §30-37-13 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §30-37-14, all relating to changing the date that massage therapy establishments are required to be licensed; setting a maximum license fee; authorizing the executive director of the board to issue an emergency order suspending the operations of a massage therapy establishment under certain conditions; establishing reasonable cause for inspection; setting forth requirements for emergency orders; requiring issuance of a complaint describing required compliance measures; setting forth prohibitions regarding massage establishments under an emergency order; providing penalties for certain violations; and providing for appeals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 37. MASSAGE THERAPISTS.

§30-37-13. Massage establishment license required; exemptions; renewals; suspension and revocation; and emergency rule-making authority.

(a) A place of business that is not a sole practitioner, that advertises or offers massage therapy or other massage services must be licensed by the board as a massage establishment as provided by §30-37-1 *et seq.* of this code.

(b) A massage establishment shall employ or contract only with massage therapists licensed in this state to perform massage therapy or other massage services. Documentation of the employment or contract relationship and verification that the licensed massage therapist is a United States citizen or a legal permanent resident with a valid work permit shall be maintained by the massage establishment and shall be made available during any inspection or investigation. Required documentation for each person providing massage therapy or other massage services shall include:

(1) A copy of the current active West Virginia massage therapist license;

(2) Proof of eligibility to work in the United States; and

(3) If an employee, a completed I-9 form, or if under an independent contractor or contract labor agreement, a copy of the contract signed by both the owner or operator of the establishment and the licensed massage therapist.

(c) An adult oriented business may not obtain a license from the board or operate as a massage establishment.

(d) Each applicant for a massage establishment shall:

(1) Submit a completed application on a board approved form; and

(2) Pay the appropriate fee as prescribed by the board by legislative rule.

(e) Exemptions:

(1) A place of business is not required to hold a massage establishment license under this article if:

(A) The place of business is owned by the federal government, the state, or a political subdivision of the state, or otherwise offers massage services as authorized under any other state issued professional or occupational license; or

(B) At the place of business, a licensed massage therapist practices as a sole practitioner;

(2) The sole practitioner does not use a business name or assumed name; or

(3) Uses a business name or an assumed name and provides the massage therapist's full legal name or license number in each advertisement and each time the business name or assumed name appears in writing.

(f) A massage establishment license shall be renewed biennially on a form prescribed by the board, with the appropriate fee.

(g) Massage establishment requirements:

(1) A massage establishment shall post, in a prominent location, the board administered establishment license, the state license of each licensed massage therapist employed by the establishment, and any business licenses required by any state, municipality or local governmental entity;

(2) Properly maintain and secure for each client the initial consultation documents, all session notes, written consent documents, and related billing records; and

(3) Maintain a current list of all establishment employees and/or contractors on the premises at all times which includes:

(A) The full name; and

(B) License number and expiration date of the licensed as a massage therapist.

(h) A massage establishment may not:

(1) Employ or contract with an individual to perform massage services who is not a licensed massage therapist in this state and who is not a United States citizen or a legal resident with a valid work permit;

(2) Allow a nude or partially nude employee to provide massage therapy or other massage services to a customer;

(3) Allow any individual, including a client, license holder, or employee, to engage in sexual contact in the massage establishment;

(4) Allow any individual, including a license holder, employee, or contract employee, to practice massage therapy in the nude or in clothing designed to arouse or gratify the sexual desire of any individual; or

(5) Allow any individual, including a license holder, employee, or contract employee to reside on the premises of the massage establishment.

(i) A licensee of a massage establishment may be disciplined, including the suspension or revocation of the license for cause:

(1) Pursuant to the general provisions of §30-1-1 *et seq.* and §30-37-1 *et seq.* of this code;

(2) For violating any provision of this article;

(3) For violating any applicable state law, rule, or policy; and

(4) For violating any applicable local ordinance.

(j) A license to operate a massage establishment shall be required, starting on July 1, 2025, upon the enactment of this section by the regular session of the Legislature, 2024.

(k) All establishment license holders who are not licensed massage therapists, shall, beginning July 1, 2025, obtain two hours of continuing education on the laws and rules of massage therapy every two years and shall provide the certificate of completion to the board by October 1, 2025, and with the application for biennial renewal of the establishment license.

(l) The board shall propose emergency legislative rules pursuant to §29A-3-1 *et seq.* of this code to establish reasonable fees for the licensure of massage establishments, including the fee

for the establishment license and any establishment inspection fees as determined necessary by the board. The fee for a biennial establishment license may not exceed $100.

§30-37-14. Emergency orders for establishment violations; penalty for continued violation.

(a) The executive director of the board may issue an emergency order suspending the operation of a massage establishment if:

(1) A law-enforcement agency provides notice to the board, that the law-enforcement agency is investigating the massage establishment for an offense pursuant to §61-8-1 *et seq*., §61-14-1 *et seq*., or §30-37-1 *et seq.* of this code, and rules promulgated thereunder; or

(2) The board has reasonable cause to believe that an offense pursuant to §30-37-1 *et seq.* of this code, or the rules promulgated thereunder is being committed at the massage establishment, and upon inspection by the board, one or more violations of §30-37-1 *et seq.* of this code or rules promulgated thereunder are observed; or

(3) Upon inspection of a massage establishment, one or more violations of §30-37-1 *et seq.* of this code or rules promulgated thereunder are observed.

(b) After an inspection where violations were observed, the executive director of the board shall issue an emergency order. If the board believes the massage establishment may be in violation of a local, municipal, or other applicable law, the board shall notify law enforcement of the possible violations.

(c) An emergency order shall identify the massage establishment by its business name, state that the massage establishment is closed by order of the WV Massage Therapy Licensing Board pursuant to §30-37-1 *et seq.* of this code, and rules promulgated thereunder. The massage establishment shall remain closed to the public until the it is in compliance with the provisions of §30-37-1 *et seq.* of this code and rules promulgated thereunder. The board shall provide the massage establishment with a written

summary of the findings of the inspection resulting in the emergency order, describing what compliance measures are necessary. Within three business days the board shall provide to the massage establishment a written complaint resulting in the emergency order suspending the operation of the massage establishment, which describes the compliance measures which must be taken for the emergency order to be rescinded.

(d) The emergency order shall be noticed by being printed on 8 1/2" x 11" paper and taped to the front door of the massage establishment where it is clearly visible to the public.

(e) A massage establishment may not remove the emergency order notice suspending its operations or open for business until it is in compliance with §30-37-1 *et seq.* of this code, and rules promulgated thereunder as verified by a board inspection.

(f) A massage establishment that opens its business to the public while subjected to an emergency order suspending its operations, shall be fined $1,000 per day, for each day of the violation.

(g) If the board has to take legal action against a massage establishment for continued violations of §30-37-1 *et seq.* of this code, and rules promulgated thereunder, the court may triple the applicable fines and order the massage establishment to reimburse the board for all legal fees, and all administrative costs.

(h) A massage establishment may appeal the action of the executive director of the board to the board pursuant to the provisions of §30-1-8 of this code.

CHAPTER 199

(H. B. 4721 - By Delegate Cooper)

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §30-13A-10 of the Code of West Virginia, 1931, as amended, relating to requiring land surveyors to offer to record maps or plats of measured parcels of land made by the surveyor for a reasonable fee.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. LAND SURVEYORS.

§30-13A-10. Scope of Practice.

(a) A licensee may measure a parcel of land and ascertain its boundaries, corners and contents or make any other authoritative measurements and, in the case of measuring a parcel of land, the licensee shall offer to record the map or plat of the measurements of the survey, for a reasonable fee, for the client, in the office of the clerk of the county commission of the county in which the land is located. The practice of surveying can be any of the following, but not limited to:

(1) The performance of a boundary, cadastral, construction, geodetic control, hydrographic, land, mortgage/loan inspection, oil or gas well, partition, photogrammetry, retracement, subdivision or surface mine survey; or

(2) The location, relocation, establishment, reestablishment, laying out or retracement of any property line or boundary of any parcel of land or of any road or utility right-of-way, easement, strip or alignment or elevation of any fixed works by a licensed surveyor.

(b) Activities that must be performed under the responsible charge of a professional surveyor, unless specifically exempted in subsection (c) of this section, include, but are not limited to, the following:

(1) The creation of maps and georeferenced databases representing authoritative locations for boundaries, the location of fixed works, or topography;

(2) Maps and georeferenced databases prepared by any person, firm, or government agency where that data is provided to the public as a survey product;

(3) Original data acquisition, or the resolution of conflicts between multiple data sources, when used for the authoritative location of features within the following data themes: Geodetic control, orthoimagery, elevation and hydrographic, fixed works, private and public boundaries, and cadastral information;

(4) Certification of positional accuracy of maps or measured survey data;

(5) Adjustment or authoritative interpretation of raw survey data;

(6) Geographic Information System (GIS) - based parcel or cadastral mapping used for authoritative boundary definition purposes wherein land title or development rights for individual parcels are, or may be, affected;

(7) Authoritative interpretation of maps, deeds, or other land title documents to resolve conflicting data elements;

(8) Acquisition of field data required to authoritatively position fixed works or cadastral data relative to geodetic control; and

(9) Analysis, adjustment or transformation of cadastral data of the parcel layer(s) with respect to the geodetic control layer within a GIS resulting in the affirmation of positional accuracy.

(c) The following items are not included as activities within the practice of surveying:

(1) The creation of general maps:

(A) Prepared by private firms or government agencies for use as guides to motorists, boaters, aviators, or pedestrians;

(B) Prepared for publication in a gazetteer or atlas as an educational tool or reference publication;

(C) Prepared for or by education institutions for use in the curriculum of any course of study;

(D) Produced by any electronic or print media firm as an illustrative guide to the geographic location of any event; or

(E) Prepared by laypersons for conversational or illustrative purposes. This includes advertising material and users guides.

(2) The transcription of previously georeferenced data into a GIS or LIS by manual or electronic means, and the maintenance thereof, provided the data are clearly not intended to indicate the authoritative location of property boundaries, the precise definition of the shape or contour of the earth, and/or the precise location of fixed works of humans.

(3) The transcription of public record data, without modification except for graphical purposes, into a GIS- or LIS-based cadastre (tax maps and associated records) by manual or electronic means, and the maintenance of that cadastre, provided the data are clearly not intended to authoritatively represent property boundaries. This includes tax maps and zoning maps.

(4) The preparation of any document by any federal government agency that does not define real property boundaries. This includes civilian and military versions of quadrangle topographic maps, military maps, satellite imagery, and other such documents.

(5) The incorporation or use of documents or databases prepared by any federal agency into a GIS/LIS, including but not limited to federal census and demographic data, quadrangle topographic maps, and military maps.

(6) Inventory maps and databases created by any organization, in either hard-copy or electronic form, of physical features, facilities, or infrastructure that are wholly contained within properties to which they have rights or for which they have management responsibility. The distribution of these maps and/or databases outside the organization must contain appropriate metadata describing, at a minimum, the accuracy, method of compilation, data source(s) and date(s), and disclaimers of use clearly indicating that the data are not intended to be used as a survey product.

(7) Maps and databases depicting the distribution of natural resources or phenomena prepared by foresters, geologists, soil scientists, geophysicists, biologists, archeologists, historians, or other persons qualified to document such data.

(8) Maps and georeferenced databases depicting physical features and events prepared by any government agency where the access to that data is restricted by statute. This includes georeferenced data generated by law enforcement agencies involving crime statistics and criminal activities.

CHAPTER 200

(H. B. 5117 - By Delegate Smith)

[Passed February 29, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §30-1-23 of the Code of West Virginia, 1931, as amended, generally relating to the waiver of initial licensing fees for certain individuals.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. GENERAL PROVISIONS APPLICABLE TO ALL STATE BOARDS OF EXAMINATION OR REGISTRATION REFERRED TO IN CHAPTER.

§30-1-23. Waiver of initial licensing fees for certain individuals; definitions.

(a) As used in this section:

(1) "Initial" means obtaining a license in West Virginia for the occupation sought for the first time;

(2) "Low-income individuals" means individuals in the local labor market as defined in §21-1C-2 of this code whose household adjusted gross income is below 130 percent of the federal poverty line. This term also includes any person enrolled in a state or federal public assistance program including, but not limited to, the Temporary Assistance for Needy Families Program, Medicaid, or the Supplemental Nutrition Assistance Program; and

(3) "Military families" means any person who serves as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U.S.C. §101, honorably discharged veterans of those forces, and their

spouses. This term also includes surviving spouses of deceased service members who have not remarried.

(b) Each board or licensing authority referred to in this chapter shall waive all initial occupational licensing fees for the following classes of individuals:

(1) Low-income individuals; and

(2) Military families.

(c) Individuals seeking a waiver of initial occupational licensing fees must apply to the appropriate board or licensing authority in a format prescribed by the board or licensing authority. The board or licensing authority shall process the application within 30 days of receiving it from the applicant.

(d) The board or licensing authority may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this section.

CHAPTER 201

(Com. Sub. for H. B. 5175 - By Delegates Ellington, Tully, Summers, Statler, Toney, Hornby, Lucas, and Longanacre)

[Passed February 29, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18B-16-6; to amend and reenact §18C-3-4 of said code; to repeal §30-7A-7a of said code; and to repeal §30-7B-1, §30-7B-2, §30-7B-3, §30-7B-4, §30-7B-5, §30-7B-6, and §30-7B-7 of said code, all relating to abolishing the Center for Nursing; repealing the supplemental licensure fee for licensed practical nurses, which funds the Center for Nursing; creating within the Higher Education Policy Commission an Office of Nursing Education and Workforce Development; moving the functions of the Center for Nursing to the Office of Nursing Education and Workforce Development; changing name of Center for Nursing Fund to Nursing Scholarship and Workforce Fund; transferring certain fund-related duties from the vice chancellor for administration to the chancellor; modifying funding sources for the fund; and limiting application of the award eligibility requirement that a student in a registered nurse program have completed half of the program to only those students in pre-licensure programs.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18B. HIGHER EDUCATION.

ARTICLE 16. HEALTH CARE EDUCATION.

§18B-16-6. Nursing Education and Workforce Development Programs.

(a) There is hereby created within the commission an office of nursing education and workforce development for the purpose of addressing the issues of education, recruitment, and retention of nurses in West Virginia. The commission is the state's designated nursing workforce center.

(b) The duties of the office shall include, but are not limited to:

(1) Promoting and coordinating, through the schools of nursing in the state's institutions of higher education, opportunities for nurses prepared at the certificate, associate degree, and bachelor degree levels to obtain higher degrees;

(2) Supporting initiatives for expansion of nursing programs;

(3) Administering the nursing scholarship program designed to benefit nurses who practice or teach in state nursing programs as provided in §18C-3-4 of this code;

(4) Gathering, quantifying, and disseminating dependable data on current nursing educational programs and workforce capacities; and

(5) Performing other activities necessary or expedient to accomplish the purposes and implement the provisions of this section and §18C-3-4 of this code.

CHAPTER 18C. STUDENT LOANS; SCHOLARSHIPS AND STATE AID

ARTICLE 3. HEALTH PROFESSIONALS STUDENT LOAN PROGRAMS.

§18C-3-4. Nursing Scholarship Program; Nursing Scholarship and Workforce Fund; administration, scholarship awards; service requirements.

(a) There is continued in the State Treasury a special revolving fund account known as the "Nursing Scholarship and Workforce Fund" to be administered by the commission to implement the provisions of this section and §18B-16-6 of this code. Any moneys

in the account on the effective date of this section are continued under the commission's administrative authority. Balances remaining in the fund at the end of the fiscal year do not expire or revert to the general revenue. All costs associated with the administration of this section and §18B-16-6 of this code shall be paid from the Nursing Scholarship and Workforce Fund under the direction of the chancellor or his or her designee. Administrative costs are to be minimized and the maximum amount feasible is to be used to fund awards for students in nursing programs.

(b) The account is funded from the following sources:

(1) All moneys currently on deposit in the account or which are due or become due for deposit into the account as obligations made under the previous enactment of this section;

(2) Repayments, including interest as set by the chancellor or his or her designee, collected from recipients who fail to practice or teach in West Virginia under the terms of the scholarship agreement;

(3) Appropriation provided by the Legislature;

(4) Amounts provided by nursing or medical associations, hospitals, or other nursing or medical provider organizations in this state, or by a political subdivision of the state under an agreement that requires the recipient to practice nursing in this state or in the political subdivision providing the funds for a predetermined period of time and in such capacity as set forth in the agreement; and

(5) Any other funds from any source as may be added to the account.

(c) The commission shall administer a scholarship, designated the Nursing Scholarship Program, designed to benefit nurses who practice in hospitals and other health care institutions in West Virginia or teach in state nursing programs.

(1) Awards are available for students enrolled in accredited nursing programs in West Virginia. A recipient shall execute an

agreement to fulfill a service requirement or repay the amount of any award received.

(2) Awards are made as follows, subject to the rule required by this section:

(A) An award for any student may not exceed the full cost of education for program completion.

(B) An award of up to $3,000 is available for a student in a licensed practical nurse education program. A recipient is required to practice nursing in West Virginia for one year following program completion.

(C) An award of up to $7,500 is available for a student in a registered nurse education program: *Provided*, That students enrolled in pre-licensure programs must have completed half of the required nursing credits for that program to be eligible for an award. A recipient is required to teach or practice nursing in West Virginia for two years following program completion.

(D) An award of up to $15,000 is available to a student in a nursing master's degree program or a doctoral nursing or education program. A recipient is required to teach in West Virginia for two years following program completion.

(E) An award of up to $1,000 per year is available for a student obtaining a licensed practical nurse teaching certificate. A recipient is required to teach in West Virginia for one year per award received.

(d) An award recipient shall satisfy one of the following conditions:

(1) Fulfill the service requirement pursuant to this section and the legislative rule authorized in subsection (e) below; or

(2) Repay the commission for the amount awarded, together with accrued interest as stipulated in the service agreement.

(e) The commission shall promulgate a rule for legislative approval pursuant to §29A-3A-1 *et seq.* of this code to implement and administer this section. The rule shall provide for the following:

(1) Eligibility and selection criteria for program participation;

(2) Terms of a service agreement which a recipient shall execute as a condition of receiving an award;

(3) Repayment provisions for a recipient who fails to fulfill the service requirement;

(4) Forgiveness options for death or disability of a recipient;

(5) An appeal process for students denied participation or ordered to repay awards; and

(6) Additional provisions as necessary to implement this section.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7A. PRACTICAL NURSES.

§30-7A-7a. Supplemental fees to fund Center for Nursing; emergency rules.

[Repealed.]

ARTICLE 7B. CENTER FOR NURSING.

§30-7B-1. Definitions.

[Repealed.]

§30-7B-2. West Virginia Center for Nursing.

[Repealed.]

§30-7B-3. Center's powers and duties.

[Repealed.]

§30-7B-4. Board of directors.

[Repealed.]

§30-7B-5. Powers and duties of the board of directors.

[Repealed.]

§30-7B-6. Expense reimbursement.

[Repealed.]

§30-7B-7. Reports.

[Repealed.]

CHAPTER 202

(Com. Sub. for H. B. 5326 - By Delegates Lucas, Kump, Kelly, Westfall, Phillips, Shamblin, Garcia, Hillenbrand, Toney, Campbell, and Dean)

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §30-38B-1, §30-38B-2, §30-38B-3, §30-38B-4, §30-38B-5, §30-38B-6, §30-38B-7, and §30-38B-8, all relating to providing for the prohibition of real estate service agreements that are unfair to an owner of residential real estate; prohibiting the recording of such agreements so that the public records will not be clouded by them; providing that recording unfair real estate service agreements is prohibited; and providing for remedies.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38B. UNFAIR REAL ESTATE SERVICES AGREEMENTS ACT.

§30-38B-1. Short title.

This article shall be known and may be cited as the "Unfair Real Estate Services Agreements Act".

§30-38B-2. Definitions.

The following words and phrases when used in this act shall have the meanings given to them in this section unless the context clearly indicates otherwise:

"Consumer" means a person who is the recipient or anticipated recipient of any real estate service.

"Person" means any individual, corporation, corporate fiduciary, partnership, limited partnership, limited liability company, joint venture or association as defined by §30-40-4 of this code.

"Real estate service" means an act or acts requiring a real estate license in accordance with §30-40-3 of this code.

"Real estate service agreement" means a contract under which a real estate service provider agrees to provide any real estate service to a consumer.

"Real estate service provider" means any person providing or who is anticipated to provide real estate services to a consumer pursuant to a real estate service agreement.

"Recording" means presenting a document to a county recorder of deeds for official placement in the public land records.

"Residential real estate" means any interest in real property located within the state of West Virginia that consists of not less than one nor more than four residential dwelling units.

"Unfair Real Estate Service Agreement" means any real estate service agreement that:

(1) Purports to run with the land or to be binding on future owners of interests in the real property; or

(2) Purports to create or allow a lien, encumbrance or other security interest in the property; or

(3) Allows for the contract to be assigned without timely notification to the owner of the property; or

(4) Creates a listing agreement for a residential property that lasts for more than 365 days from the listing date.

§30-38B-3. Enforceability.

Any unfair real estate service agreement entered after the effective date of this Act is void and unenforceable as a matter of law.

§30-38B-4. Deceptive act.

If a person enters into an unfair real estate service agreement with a consumer that agreement shall *per se* be deemed a deceptive act under §46A-6-104 of this code.

§30-38B-5. Recording prohibited; notice.

(a) No person shall record or cause to be recorded an unfair real estate service agreement or notice or memorandum thereof in this state.

(b) If an unfair real estate service agreement is recorded in this state, it shall not provide actual or constructive notice against an otherwise bona fide purchaser or creditor.

§30-38B-6. Petition to circuit court; recording of court order; costs and attorney's fees.

If an unfair real estate service agreement or a notice or memorandum thereof is recorded in this state, any party with an interest in the real property that is the subject of that agreement may petition the circuit court, in the county where the recording exists, for a court order declaring the agreement unenforceable. This court order shall be recorded in the office of the county clerk and state that the agreement is unenforceable. Any person that files a petition pursuant to this subsection shall be entitled to reasonable attorney's fees and costs related to the petition. No provision of this section shall preclude an action for slander of title, and an action for slander of title and an action under this article may be brought in the same action.

§30-38B-7. Right of recovery.

(a) Any consumer with an interest in real property that is the subject of an unfair real estate service agreement, whether or not any lien or other notice is filed against the property in the office of

the county clerk, may bring a civil action against the real estate service provider for violations of this article and the court may award any of the following:

(1) Such preliminary and other equitable or declaratory relief as may be appropriate;

(2) An order that the consumer is not required to repay or reimburse any moneys paid to the consumer by the real estate service provider;

(3) Actual damages suffered by the consumer, with a minimum amount of $5,000, unless the consumer is 60 years or older, in which case the minimum damages shall be $15,000.

(4) Reasonable attorneys' fees and other litigation costs reasonably incurred.

(b) This section does not replace or supersede any other remedy at law or equity that the consumer may have.

§30-38B-8. Relationship to other laws.

Nothing in this law shall alter or amend any part of §30-40-1 *et seq.* of this code.

CHAPTER 203

(H. B. 5569 - By Delegate Phillips)

[Passed March 4, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §30-38A-15 of the Code of West Virginia, 1931, as amended, relating to prohibiting the requirement that appraisers pay for background checks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38A. APPRAISAL MANAGEMENT COMPANIES REGISTRATION ACT.

§30-38A-15. Prohibited acts.

(a) An appraisal management company or any person acting for an appraisal management company as a controlling person, owner, director, officer, agent, employee or independent contractor may not:

(1) Improperly influence or attempt to improperly influence the development, reporting, result or review of an appraisal through:

(A) Intimidation, inducement, coercion, extortion, collusion, bribery, compensation, blackmail, threat of exclusion from future appraisal work or any other means that unduly influences or pressures the appraiser;

(B) Withholding payment to an appraiser or compensating the appraiser at less than the customary and reasonable rate for appraisal services unless for breach of contract; or

(C) Expressly or impliedly promise future business, promotions or increased compensation to an appraiser;

(2) Knowingly employ a person to a position of responsibility who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;

(3) Knowingly enter into a contract with a person for the performance of appraisal services who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;

(4) Knowingly enter into a contract, agreement or other business relationship for the purpose of obtaining real estate appraisal services with a firm that employs or contracts with a person who has had a license or certificate to act as an appraiser refused, denied, canceled, revoked or surrendered in this state or any other jurisdiction, and not subsequently granted or reinstated;

(5) Knowingly fail to separate and disclose any fees charged to a client by the appraisal management company for an appraisal by an appraiser from fees charged to a client by the appraisal management company for appraisal management services;

(6) Prohibit an appraiser from stating, in a submitted appraisal, the fee paid by the appraisal management company to the appraiser for the appraisal;

(7) Require an appraiser to pay for a background check required by the AMC as a condition of being added to the AMCs panel of appraisers;

(8) Request, allow or require an appraiser to collect any portion of the fee, including the appraisal fee, charged by the appraisal management company to the client;

(9) Require an appraiser to provide the registrant with the appraiser's signature or seal in any form;

(10) Alter, amend or change an appraisal submitted by an appraiser;

(11) Remove an appraiser's signature or seal from an appraisal;

(12) Add information to or remove information from an appraisal with the intent to change the conclusion of the appraisal;

(13) Remove an appraiser from an appraiser panel without 20 days prior written notice to the appraiser and an opportunity for the appraiser to be heard;

(14) Enter into an agreement or contract for the performance of appraisal services with an appraiser who is not in good standing with the board;

(15) Request or require an appraiser to provide an estimated, predetermined or desired valuation in an appraisal;

(16) Request or require an appraiser to provide estimated values or comparable sales at any time prior to the appraiser completing an appraisal;

(17) Condition a request for an appraisal or the payment of an appraisal fee on:

(A) An opinion, conclusion or valuation reached; or

(B) A preliminary estimate or opinion requested from an appraiser;

(18) Provide to an appraiser an anticipated, estimated, encouraged or desired value for an appraisal or a proposed or targeted amount to be loaned or borrowed, except that a copy of the sales contract for the purchase transaction may be provided;

(19) Require an appraiser to indemnify or hold harmless an appraisal management company for any liability, damage, losses or claims arising out of the services provided by the appraisal management company;

(20) Have a direct or indirect interest, financial or otherwise, in the property or transaction involving the appraisal;

(21) Provide to an appraiser or a person related to the appraiser stock or other financial or nonfinancial benefits;

(22) Obtain, use or pay for a second or subsequent appraisal or order an automated valuation model, unless:

(A) There is a reasonable basis to believe that the initial appraisal was flawed and the basis is clearly and appropriately noted in the file;

(B) The second or subsequent appraisal, or automated valuation model is done under a bona fide prefunding or post-funding appraisal review or quality control process;

(C) The second appraisal is required by law; or

(D) The second or subsequent appraisal or automated valuation model is ordered by a client; or

(23) Commit an act or practice that impairs or attempts to impair an appraiser's independence, objectivity or impartiality.

(b) This section does not prohibit an appraisal management company from requesting that an appraiser:

(1) Provide additional information about the basis for a valuation;

(2) Correct objective factual errors in an appraisal;

(3) Provide further detail, substantiation or explanation for the appraiser's conclusion; or

(4) Consider additional appropriate property information, including the consideration of additional comparable properties to make or support an appraisal.

CHAPTER 204

(H. B. 5582 - By Delegate Phillips)

[Passed March 7, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §30-38-1, §30-38-3, §30-38-6, §30-38-7, and §30-38-11 of the Code of West Virginia, 1931, as amended, relating to updating the requirements regarding real estate appraisal licenses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 38. THE REAL ESTATE APPRAISER LICENSING AND CERTIFICATION ACT.

§30-38-1. Real estate appraiser license required; exceptions.

(a) It is unlawful for any person, for compensation or valuable consideration, to prepare a valuation appraisal or a valuation appraisal report relating to real estate or real property in this state without first being licensed or certified as provided in this article. This section shall not be construed to apply to persons who do not render significant professional assistance in arriving at a real estate appraisal analysis, opinion or conclusion. Nothing in this article may be construed to prohibit any person who is licensed to practice in this state under any other law from engaging in the practice for which he or she is licensed.

(b) No person other than a person licensed or certified under this article may use the title of licensed appraiser or certified appraiser or any title, designation or abbreviation likely to create the impression that the person is licensed or certified by the state.

(c) This article does not apply to:

(1) A real estate broker or salesperson licensed by this state who, in the ordinary course of his or her business, gives an opinion to a potential seller or third party as to the recommended listing price of real estate or an opinion to a potential purchaser or third party as to the recommended purchase price of real estate, when this opinion as to the listing price or the purchase price is not to be referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged;

(2) A casual or drive-by inspection of real estate in connection with a consumer loan secured by the real estate, when the inspection is not referred to as an appraisal, no opinion is rendered as to the value of the real estate and no fee is charged for the inspection;

(3) An employee who renders an opinion as to the value of real estate for his or her full-time employer, for the employer's internal use only and performed in the regular course of the employee's position, when the opinion is not referred to as an appraisal and no fee is charged;

(4) Appraisals of personal property, including, but not limited to, jewelry, household furnishings, vehicles and manufactured homes not attached to real estate;

(5) Any officer or employee of the United States, or of the State of West Virginia or a political subdivision thereof, when the employee or officer is performing his or her official duties: *Provided,* That such individual does not furnish advisory service for compensation to the public or act as an independent contracting party in West Virginia or any subdivision thereof in connection with the appraisal of real estate or real property: *Provided, however,* That this exception shall not apply with respect to federally related transactions as defined in Title XI of the United States Code, entitled "Financial Institutions Reform, Recovery, and Enforcement Act of 1989"; or

(6) An individual not licensed in accordance with §30-38-1, *et seq.* of this code who completes an evaluation of the value of real estate serving as collateral for a loan made by a financial institution

insured by the federal deposit insurance corporation: *Provided,* That the evaluation is in a format that includes the following statements in a conspicuous location and in bold print: "This evaluation has been prepared in compliance with §30-38-1(c)(6) and the following conditions are satisfied, (A) The amount of the loan is equal to or less than the federal de minimus threshold; (B) the evaluation is used solely by the lender in its records to document the collateral value; (C) the evaluation clearly indicates on its face that it is for the lender's internal use only; (D) the evaluation is not labeled an appraisal and explicitly states that the evaluation was performed by an individual that is not licensed as an appraiser in accordance with §30-38-1, *et seq.* Individuals performing these evaluations may be compensated for their services.

§30-38-3. Definitions.

As used in this article, the following terms have the following meanings:

(a) "Appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser relating to the nature, quality, value, or utility of specified interests in, or aspects of, identified real estate or identified real property. An appraisal may be classified by the nature of the assignment as a valuation appraisal, an analysis assignment, or a review assignment.

(b) "Analysis assignment" means an analysis, opinion, or conclusion prepared by a real estate appraiser that relates to the nature, quality, or utility of identified real estate or identified real property.

(c) "Appraisal foundation" means the appraisal foundation established on November 30, 1987, as a not-for-profit corporation under the laws of Illinois.

(d) "Appraisal report" means any communication, written or oral, of an appraisal. An appraisal report may be classified by the nature of the assignment as a "valuation report", "analysis report", or "review report". For purposes of this article, the testimony of an

appraiser dealing with the appraiser's analyses, conclusions, or opinions concerning identified real estate or identified real property is considered an oral appraisal report.

(e) "Board" means the real estate appraiser licensing and certification board established by the provisions of this article.

(f) "Certified appraisal report" means a written appraisal report that is certified by a state licensed or certified real estate appraiser. When a real estate appraiser identifies an appraisal report as "certified", the real estate appraiser must indicate the type of licensure or certification he or she holds. By certifying an appraisal report, a state licensed residential real estate appraiser, a state certified general real estate appraiser, or a state certified residential real estate appraiser represents to the public that the report meets the appraisal standards established by this article.

(g) "Certified real estate appraiser" means a person who holds a current, valid certification as a state certified residential real estate appraiser or a state certified general real estate appraiser issued to him or her under the provisions of this article.

(h) "Complex appraisal" means an appraisal that: (1) For nonresidential property, relies on all three approaches to value, being the cost approach, the income approach, and the sales comparison approach, or does not have the characteristics of a noncomplex appraisal; and (2) for residential property, relies to any significant degree on at least two of the three approaches to value, with one approach being the sales comparison approach, or one in which the property to be appraised, the form of ownership, or the market conditions are atypical.

(i) "Cost approach" means an approach to valuing real estate that requires an appraiser to: (1) Develop an opinion of site value by an appropriate appraisal method or technique; (2) analyze comparable cost data as are available to estimate the cost new of the improvements if any; and (3) analyze comparable data as are available to estimate the difference between the cost new and the present worth of the improvements, also called accrued depreciation.

(j) "Evaluation" means an opinion about the market value of real estate that is:

(1) Made in accordance with the 2010 "Interagency Appraisal and Evaluation Guidelines" developed by the following federal agencies that regulate financial institutions: The Federal Reserve Board; The Office of the Comptroller of the Currency; The Federal Deposit Insurance Corporation; The Office of Thrift Supervision; and the National Credit Union Administration,

(2) Provided to a financial institution for use in a real estate related transaction for which an appraisal is not required by the federal agencies listed in subsection (j)(1) of this section.

(k) "Income approach" means an approach to valuing real estate that requires an appraiser to: (1) Analyze comparable rental data as are available to estimate the market rental of the property; (2) analyze comparable operating expense data as are available to estimate the operating expenses of the property; (3) analyze comparable data as are available to estimate rates of capitalization or rates of discount; and (4) base projections of future rent and expenses on reasonably clear and appropriate evidence.

(l) "Licensed real estate appraiser" means a person who holds a current, valid license as a state licensed residential real estate appraiser issued to him or her under the provisions of this article.

(m) "Noncomplex appraisal" means an appraisal for which: (1) There is an active market of essentially identical properties; (2) adequate data is available to the appraiser; (3) adjustments to comparable sales are not large in the aggregate, specifically not exceeding the trading range found in the market of essentially identical properties; and (4) for residential properties, the contract sales price falls within the market norm or median sales price for homes or lots within the same area.

(n) "Real estate" means an identified parcel or tract of land, including improvements, if any.

(o) "Real estate appraisal activity" means the act or process of making an appraisal of real estate or real property and preparing an appraisal report.

(p) "Real estate appraiser" means a person who engages in real estate appraisal activity for a fee or other valuable consideration.

(q) "Real property interests" means one or more defined interests, benefits, or rights inherent in the ownership of real estate.

(r) "Review assignment" means an analysis, opinion, or conclusion prepared by a real estate appraiser that forms an opinion as to the adequacy and appropriateness of a valuation appraisal or an analysis assignment.

(s) "Sales comparison approach" means an approach to valuing real estate that requires an appraiser to analyze such comparable sales data as are available to indicate a value conclusion.

(t) "Valuation appraisal" means an analysis, opinion, or conclusion prepared by a real estate appraiser that estimates the value of an identified parcel of real estate or identified real property at a particular point in time.

§30-38-6. Board created; appointments, qualifications, terms, oath, removal of members; quorum; meetings; disqualification from participation; compensation; records; employing staff.

(a) The West Virginia Real Estate Appraiser Licensing and Certification Board, which consists of nine members appointed by the Governor with the advice and consent of the Senate, is continued.

(1) Each member shall be a resident of the State of West Virginia, except the appraisal management company representative is not required to be a resident of West Virginia.

(2) Four members shall be certified real estate appraisers having at least five years' experience in appraisal as a principal line

of work immediately preceding their appointment, and shall remain certified real estate appraisers throughout their terms.

(3) Two members shall have at least five years' experience in real estate lending as employees of financial institutions.

(4) Two members may not be engaged in the practice of real estate appraisal, real estate brokerage or sales, or have any financial interest in these practices.

(5) One member shall be a representative from an appraisal management company registered under the provisions of §30-38A-1, *et seq.* of this code.

(6) No member of the board may concurrently be a member of the West Virginia Real Estate Commission.

(7) Not more than three appraiser members may be appointed from a congressional district.

(b) Members will be appointed for three-year terms, which are staggered in accordance with the initial appointments under prior enactment of this act.

(1) No member may serve for more than three consecutive terms.

(2) Before entering upon the performance of his or her duties, each member shall subscribe to the oath required by section five, article IV of the constitution of this state.

(3) The Governor shall, within 60 days following the occurrence of a vacancy on the board, fill the vacancy by appointing a person who meets the requirements of this section for the unexpired term.

(4) Any member may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office.

(c) The board shall elect a chairman.

(d) A majority of the members of the board constitutes a quorum.

(e) The board shall meet at least once in each calendar quarter on a date fixed by the board.

(1) The board may, upon its own motion, or shall upon the written request of three members of the board, call additional meetings of the board upon at least 24 hours' notice.

(2) No member may participate in a proceeding before the board to which a corporation, partnership, or unincorporated association is a party, and of which he or she is or was at any time in the preceding 12 months a director, officer, owner, partner, employee, member, or stockholder.

(3) A member may disqualify himself or herself from participation in a proceeding for any other cause the member considers sufficient.

(f) The appointed members will receive compensation and expense reimbursement in accordance with the provisions of §30-1-11 of this code.

(g) The board may employ and authorize staff as necessary to perform the functions of the board, to be paid out of the board fund created by the provisions of this article. Persons employed by any real estate agent, broker, appraiser, or lender, or by any partnership, corporation, association, or group engaged in any real estate business, may not be employed by the board. The board may hire a licensed or certified appraiser whose license status is inactive or who is not employed by any of the prohibited employers listed.

§30-38-7. General powers and duties.

The board shall:

(a) Define by rule the type of educational experience, appraisal experience and equivalent experience that will meet the statutory requirements of this article;

(b) Establish examination specifications as prescribed herein and provide for appropriate examinations;

(c) Establish registration requirements and procedures for appraisal management companies under the provisions of §30-38a-1, *et seq.*;

(d) Approve or disapprove applications for certification and licensure;

(e) Approve or disapprove applications for registration under the provisions of §30-38a-1, *et seq.*;

(f) Define by rule continuing education requirements for the renewal of certifications and licenses;

(g) Censure, suspend or revoke licenses and certification as provided in this article;

(h) Suspend or revoke registrations under the provisions of §30-38a-1, *et seq.*;

(i) Hold meetings, hearings and examinations;

(j) Establish procedures for submitting, approving and disapproving applications;

(k) Maintain an accurate registry of the names, addresses and contact information of all persons certified or issued a license to practice under this article;

(l) Maintain an accurate registry of the names, addresses and contact information of all persons and firms registered under the provisions of article thirty-eight-a of this chapter;

(m) Maintain accurate records on applicants and licensed or certified real estate appraisers;

(n) Maintain accurate records on applicants under the provisions of article thirty-eight-a of this chapter;

(o) Issue to each licensed or certified real estate appraiser a copy of their current active license credential via an electronic format of the board's choosing;

(p) Issue registration numbers to registrants under the provisions of article thirty-eight-a of this chapter;

(q) Deposit all fees collected by the board to the credit of the West Virginia appraiser licensing and certification board fund established in the office of the State Treasurer. The board shall disburse moneys from the account to pay the cost of board operation. Disbursements from the account may not exceed the moneys credited to it;

(r) Keep records and make reports as required by article one of this chapter; and

(s) Perform any other functions and duties necessary to carry out the provisions of this article and article thirty-eight-a of this chapter.

§30-38-11. Applications for license or certification; renewals.

(a) An individual who desires to engage in real estate appraisal activity in this state shall make application for a license, in writing, on a form as the board may prescribe.

(b) To assist the board in determining whether grounds exist to deny the issuance of a license to an applicant, the board may require the fingerprinting of every applicant for an original license.

(c) The payment of the appropriate fee must accompany all applications for original certification and renewal of certification and all applications to take an examination.

(d) At the time of filing an application for original certification or for renewal of certification, each applicant shall sign a pledge to comply with the standards of professional appraisal practice and the ethical rules to be observed by an appraiser. Each applicant shall also certify that he or she understands the types of

misconduct, as set forth in this article, for which disciplinary proceedings may be initiated.

(e) To obtain a renewal of license or certification under this article, the holder of a current license or certification shall make application and pay the prescribed fee to the board no earlier than 120 days nor later than 30 days prior to the expiration date of the current license or certification. Each application for renewal must be accompanied by evidence in the form prescribed by the board that the applicant has completed the continuing education requirements for renewal specified in this article and the board's rules.

(f) If the board determines that an applicant for renewal has failed to meet the requirements for renewal of license or certification through mistake, misunderstanding, or circumstances beyond the control of the applicant, the board may extend the term of the applicant's license or certification for a period not to exceed six months upon payment by the applicant of a prescribed fee for the extension. If the applicant for renewal of license or certification satisfies the requirements for renewal during the extension period, the beginning date of his or her renewal license or certificate shall be the day following the expiration of the certificate previously held by the applicant.

(g) If a state-licensed or certified real estate appraiser under this article fails to renew his or her license or certification prior to its expiration or within any period of extension granted by the board pursuant to this article, the applicant may obtain a renewal of his or her license or certification by satisfying all of the requirements for renewal and filing an application for renewal, accompanied by a late renewal fee: *Provided*, That the applicant can demonstrate they could resume practicing with reasonable skill and safety in accordance with §30-1-8a of this code.

(h) The board may deny the issuance or renewal of a license or certification for any reason enumerated in this article or in the rules of the board, or for any reason for which it may refuse an initial license or certification.

(i)(1) If the board denies issuance of a renewal of a license or certification, or denies an initial license or certification application, the board shall provide a written statement to the applicant for an initial license or certification, or applicant for a renewal of a license or certification, clearly describing the deficiencies of the application for his or her license or certificate.

(2) The board shall provide this statement to an initial applicant or a renewal applicant within 15 calendar days of its decision to deny licensure or certification. The board may send its statement through the United States mail, electronic mail service, or both, to ensure it reaches the applicant or renewal applicant.

(3) If the basis for the denial is due to submitted appraisals failing to conform to the Uniform Standards of Professional Appraisal Practice (USPAP), the board shall provide written guidance to the applicant describing, in detail, each aspect of each submitted appraisal that does not conform to USPAP and the corrective action necessary to remedy nonconformity. The board shall provide 60 days to the applicant to remedy any nonconformity. The applicant shall resubmit any corrected appraisals on or before the 60th day and the board shall reevaluate the appraisals only pertaining to any nonconformity. If the nonconformity or nonconformities are remedied and resubmitted on or before the 60th day, the board shall accept the appraisal for purposes of issuing a license.

CHAPTER 205

(H. B. 5632 - By Delegates Lucas, Warner, Howell, Akers, Adkins, Crouse, Dean, Campbell, Maynor, and Ross)

[Passed March 6, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §30-40-4, §30-40-12, and §30-40-17 of the Code of West Virginia, 1931, as amended, relating to the West Virginia Real Estate License Act; adding a definition for "property management"; qualifications for broker's license; and obligations of nonresident brokers.

Be it enacted by the Legislature of West Virginia:

ARTICLE 40. WEST VIRGINIA REAL ESTATE LICENSE ACT.

§30-40-4. Definitions.

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

"Applicant" means any person who is making application to the commission for a license.

"Associate broker" means any person who qualifies for a broker's license, but who is employed or engaged by a licensed broker to engage in any activity regulated by this article, in the name of and under the direct supervision of the licensed broker.

"Broker" means any person who for compensation or with the intention or expectation of receiving or collecting compensation:

(1) Lists, sells, purchases, exchanges, options, rents, manages, leases, or auctions any interest in real estate; or

(2) Directs or assists in the procuring of a prospect calculated or intended to result in a real estate transaction; or

(3) Advertises or holds himself or herself out as engaged in, negotiates, or attempts to negotiate, or offers to engage in any activity enumerated in subdivision (1) of this subsection.

"Cancelled" means a license that was not renewed by December 31 of the year in which license expired;

"Commission" means the West Virginia Real Estate Commission as established §30-40-6 of this code.

"Compensation" means fee, commission, salary, or other valuable consideration, in the form of money or otherwise.

"Designated broker" means a person holding a broker's license who has been appointed by a partnership, association, corporation, or other form of business organization engaged in the real estate brokerage business, to be responsible for the acts of the business and to whom the partners, members, or board of directors have delegated full authority to conduct the real estate brokerage activities of the business organization.

"Distance education" means courses of asynchronous instruction in which instruction takes place through media where the teacher and student are separated by time.

"Entity" means a business, company, corporation, limited liability company, association, or partnership.

"Expired" means a license that was not renewed by July 1.

"Inactive" means a licensee who is not authorized to conduct any real estate business and is not required to comply with any continuing education requirements.

"License" means a license to act as a broker, associate broker, or salesperson.

"Licensee" means a person holding a license.

"Member" means a commissioner of the Real Estate Commission.

"Principal" means a person or entity that authorizes a licensee to act on his, her, or its behalf.

"Property management" means the overseeing and management of commercial and residential real estate properties. This includes taking care of all of the daily operations for a property which may include, but is not limited to, collecting rent, collecting or holding security deposits on behalf of the property owner, handling maintenance, paying vendors for repairs, and fielding tenant complaints. The amount of responsibilities the property manager has depends on their contract with the owner of the property.

"Real estate" means any interest or estate in land, and anything permanently affixed to land.

"Salesperson" means a person employed or engaged by or on behalf of a broker to do or deal in any activity included in this article, in the name of and under the direct supervision of a broker, other than an associate broker: *Provided*, That for the purposes of receiving compensation, a salesperson may designate an entity to receive any compensation payable to the salesperson, including, but not limited to, a limited liability corporation or an S-corporation.

"Team" means any group of two or more associate brokers and/or salespersons, and other non-licensed professionals, affiliated with the same broker or company acting as one agent representative for the principal.

§30-40-12. Qualifications for broker's license.

(a) An applicant for a broker's license shall:

(1) Submit evidence satisfactory to the commission of either: (i) Real estate experience as a licensed real estate salesperson during the two years prior to the date of application showing the applicant's representation of a buyer or seller in a minimum of 20

closed transactions; if the applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of 20 closed transactions of at least one year in duration; or if the applicant is engaged solely in the management of a real estate brokerage company, active involvement in a minimum of 20 closed transactions; or (ii) regardless of the number of years as a licensed salesperson: a minimum of 40 closed transactions; if the applicant is engaged solely in the leasing or renting of real estate, representation of the landlord or tenant in a minimum of 40 closed transactions of at least one year duration; or if the applicant is engaged solely in the management of a real estate brokerage company, active involvement in a minimum of 40 closed transactions. For the purposes of this section, a "closed transaction" means a transaction that resulted in the real estate being conveyed from seller to buyer in which the applicant represented the seller, buyer, or both, or a transaction that resulted in the consummation of a lease of no less than one year in duration in which the applicant represented either the landlord or tenant of the real estate;

(2) Submit satisfactory evidence of having completed the required education course as provided for in §30-40-14 of this code; and

(3) Successfully pass the examination or examinations provided by the commission.

(b) No broker's license shall be issued in the name of an entity except through one of its members or officers.

(c) No broker's license may be issued in the name of an entity unless each member or officer who will engage in the real estate business, obtains a license as a real estate salesperson or associate broker.

§30-40-17. Place of business; branch offices; display of certificates; custody of license certificates; change of address; change of employer by a salesperson or associate broker; license certificates; term of license.

(a) Every person holding a broker's license under the provisions of this article shall:

(1) Have and maintain a definite place of business within this state, which shall be a room or rooms used for the transaction of real estate business and any allied business. The definite place of business shall be designated in the license certificate issued by the commission and the broker may not transact business at any other location within this state, unless such other location is properly licensed by the commission as a branch office. A broker who is a nonresident of this state may not be required to maintain an active place of business in this state if the nonresident broker's state of original licensure is party to an active reciprocity agreement with the commission that does not require West Virginia licensees holding licenses in that state to maintain an office in that state;

(2) Conspicuously display his or her branch office license in each branch office;

(3) Make application to the commission before changing the address of any office or within 10 days after any change;

(4) Maintain in his or her custody and control the license of each associate broker and salesperson affiliated with him or her; and

(5) Promptly return the license of any associate broker or salesperson whose affiliation with the broker is terminated.

(b) Every person holding an associate broker's or salesperson's license under the provisions of this article shall:

(1) Conduct real estate brokerage activities only under the direct supervision and control of his or her affiliated broker, which shall be designated in the license certificate; and

(2) Promptly make application to the commission of any change of employing broker: *Provided*, That it shall be unlawful to perform any act contained in this article, either directly or indirectly, after affiliation has been terminated until the associate

broker or salesperson has made application to the commission for a change of affiliated broker and the application is approved.

(c) The commission shall issue a license certificate which shall:

(1) Be in such form and size as shall be prescribed by the commission;

(2) Display the seal of the commission and shall contain such other information as the commission may prescribe: *Provided*, That a salesperson's and an associate broker's license shall show the name of the broker by whom he or she is affiliated;

(3) If an active licensee, be mailed or delivered to the broker's main office address;

(4) If an inactive licensee, be held in the commission office; and

(5) Be valid for a period that coincides with the fiscal year beginning on July 1 and ending on June 30.

CHAPTER 206

(Com. Sub. for S. B. 370 - By Senator Woodrum)

[Passed March 1, 2024; in effect from passage]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §6C-2-5 and §6C-2-8 of the Code of West Virginia, 1931, as amended, all relating to updating Public Employees Grievance Board procedure to reflect that Level 3 decisions be appealed to the Intermediate Court of Appeals; and establishing venue for the enforceability of final orders issued by an administrative law judge.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. PUBLIC EMPLOYEES GRIEVANCE PROCEDURE.

§6C-2-5. Enforcement and appeal.

(a) The decision of the administrative law judge is final upon the parties and is enforceable in the circuit court situated in the judicial district in which the grievant is employed.

(b) An appeal of the decision of the administrative law judge shall be to the Intermediate Court of Appeals in accordance with §51-11-4(b)(4) of this code and the Rules of Appellate Procedure.

§6C-2-8. Employee organizations may not be compelled to disclose certain communications; exceptions.

(a) Except as otherwise provided in this section, an employee organization or an agent of an employee organization may not be compelled to disclose any communication or information the employee organization or agent received or acquired in confidence

from a public employee, while the employee organization or agent was acting in a representative capacity concerning a public employee grievance or an investigation of a potential public employee grievance, regardless of whether the public employee is a member of the employee organization: *Provided*, That the confidentiality established under this section does not apply to written communications between the employee and the employee organization.

(b) (1) The confidentiality established under this section applies only to the extent that the communication or information is germane to a grievance or potential grievance of the employee.

(2) The confidentiality established under this subsection continues after termination of:

(A) The employee's employment; or

(B) The representative relationship of the employee organization or its agent with the public employee.

(3) The confidentiality established under this subsection protects the communication or information received or acquired by the employee organization or its agent, but does not protect the employee from being compelled to disclose, to the extent provided by law, the facts underlying the communication or information.

(c) The protection for confidential communications provided by this section only extends to proceedings under the public employees grievance procedure. Nothing in this section may be construed to extend the confidentiality to circuit court, appellate proceedings, or other proceedings outside of the public employees grievance procedure.

(d) An employee organization or its agent shall disclose to the employer as soon as possible a communication or information described in subsection (a) of this section to the extent the employee organization or its agent reasonably believes:

(1) It is necessary to prevent certain death or substantial bodily harm;

(2) It is necessary to prevent the employee from committing a crime, fraud, or any act that is reasonably certain to result in substantial injury to the financial interests or property of another or to rectify or mitigate the action after it has occurred;

(3) The communication or information constitutes an admission that the employee has committed a crime; or

(4) It is necessary to comply with a court order or other law.

(e) An employee organization or its agent may disclose a communication or information described in subsection (a) of this section in order to:

(1) Secure legal advice about the compliance of the employee organization or its agent with a court order or other law;

(2) Establish a claim or defense on behalf of the employee organization or its agent in a controversy between the employee and the employee organization or its agent;

(3) Establish a defense to a criminal charge or civil claim against the employee organization or its agent based on conduct in which the employee was involved; or

(4) Respond to allegations in any proceeding concerning the performance of professional duties by the employee organization or its agent on behalf of the employee.

(f) An employee organization or its agent may disclose a communication or information described in subsection (a) of this section, without regard to whether the disclosure is made within the public employees grievance procedure, in the following circumstances:

(1) The employee organization has obtained the express written or oral consent of the employee;

(2) The employee has, by other act or conduct, waived the confidentiality of the communication or information; or

(3) The employee is deceased or has been adjudicated incompetent by a court of competent jurisdiction and the employee organization has obtained the written or oral consent of the personal representative of the employee's estate or of the employee's guardian.

(g) If there is a conflict between the application of this section and any federal or state labor law, the provisions of the federal or other state law shall control.

CHAPTER 207

(Com. Sub. for H. B. 4883 - By Delegates Hanshaw (Mr. Speaker), Hornbuckle, Howell, Pushkin, Vance, Nestor, and Young)

[By Request of the Executive]

[Passed March 9, 2024; in effect July 1, 2024.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §15-2-5 of the Code of West Virginia, 1931, as amended; to amend and reenact §18A-4-2 of said code; and to amend and reenact §18A-4-8a of said code, all relating to increasing annual salaries of certain employees of the state; increasing the salaries of members of the West Virginia State Police and certain personnel thereof; increasing annual salaries of public school teachers; increasing annual salaries of school service personnel; and providing an effective date for these increases.

Be it enacted by the Legislature of West Virginia:

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-5. Career progression system state; salaries; exclusion from wage and hour laws, with supplemental payment; bond; leave time for members called to duty in guard or reserves.

(a) The superintendent shall establish within the West Virginia State Police a system to provide for: (1) The promotion of members to the supervisory ranks of sergeant, first sergeant, second lieutenant, and first lieutenant; (2) the classification of nonsupervisory members within the field operations force to the

ranks of trooper, senior trooper, trooper first class, or corporal; and (3) the temporary reclassification of members assigned to administrative duties as administrative support specialist I-VIII. The promotion of individuals in the forensic laboratory shall include the classifications of Evidence Custodians I-IV, Forensic Technicians I-III, Forensic Scientists I-VI, and Forensic Scientist Supervisors I-IV, based on the Forensic Lab Career Progression System.

(b) The superintendent may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code for the purpose of ensuring consistency, predictability, and independent review of any system developed under the provisions of this section.

(c) The superintendent shall provide to each member a written manual governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation and testing of members for promotion or reclassification and the subsequent placement of any members on a promotional eligibility or reclassification recommendation list. A written manual shall also be provided to individuals within the forensic laboratory governing any system established under the provisions of this section and specific procedures shall be identified for the evaluation of promotion or reclassification of those individuals.

(d) Effective July 1, 2024, members shall receive annual salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)	
SUPERVISORY AND NONSUPERVISORY RANKS	
Cadet During Training	$53,724
Cadet Trooper After Training	$60,984
Trooper Second Year	$61,996
Trooper Third Year	$62,379

Senior Trooper	$62,778
Trooper First Class	$63,384
Corporal	$63,990
Sergeant	$68,291
First Sergeant	$70,442
Second Lieutenant	$72,592
First Lieutenant	$74,743
Captain	$76,894
Major	$79,044
Lieutenant Colonel	$81,195
ANNUAL SALARY SCHEDULE (BASE PAY)	
ADMINISTRATION SUPPORT SPECIALIST CLASSIFICATION	
I	$61,996
II	$62,778
III	$63,384
IV	$63,990
V	$68,291
VI	$70,442
VII	$72,592
VIII	$74,743

Effective July 1, 2024, designated individuals within the forensic laboratory shall receive annual base salaries payable at least twice per month as follows:

ANNUAL SALARY SCHEDULE (BASE PAY)	
EVIDENCE CUSTODIAN	
I	$50,850
II	$53,178
III	$56,839
IV	$59,866
FORENSIC TECHNICIAN	
I	$53,050
II	$54,744
III	$58,626
FORENSIC SCIENTIST	
I	$60,250
II	$62,434
III	$64,538
IV	$66,937
V	$70,463
VI	$74,263
FORENSIC SCIENTIST SUPERVISOR	
I	$76,962

II	$80,526
III	$84,304
IV	$88,308

Each member of the West Virginia State Police whose salary is fixed and specified in this annual salary schedule is entitled to the length of service increases set forth in subsection (e) of this section and supplemental pay as provided in subsection (g) of this section.

(e) Each member of the West Virginia State Police whose salary is fixed and specified pursuant to this section shall receive, and is entitled to, an increase in salary over that set forth in subsection (d) of this section for grade in rank, based on length of service, including that service served before and after the effective date of this section with the West Virginia State Police as follows: Beginning on January 1, 2015, and continuing thereafter, at the end of two years of service with the West Virginia State Police, the member shall receive a salary increase of $500 to be effective during his or her next year of service and a like increase at yearly intervals thereafter, with the increases to be cumulative. The forensic laboratory employees whose salaries are fixed and specified pursuant to this section, shall receive, and are entitled to, an increase in salary over that set forth in subsection (d) of this section, in accordance with §15-2-7(h) of this code.

(f) In applying the salary schedules set forth in this section where salary increases are provided for length of service, members of the West Virginia State Police in service at the time the schedules become effective shall be given credit for prior service and shall be paid the salaries the same length of service entitles them to receive under the provisions of this section.

(g) The Legislature finds and declares that because of the unique duties of members of the West Virginia State Police, it is not appropriate to apply the provisions of state wage and hour laws to them. Accordingly, members of the West Virginia State Police

are excluded from the provisions of state wage and hour laws. This express exclusion shall not be construed as any indication that the members were or were not covered by the wage and hour laws prior to this exclusion.

In lieu of any overtime pay they might otherwise have received under the wage and hour laws, and in addition to their salaries and increases for length of service, members who have completed basic training and who are exempt from federal Fair Labor Standards Act guidelines may receive supplemental pay as provided in this section.

The authority of the superintendent to propose a legislative rule or amendment thereto for promulgation in accordance with §29A-3-1 *et seq.* of this code to establish the number of hours per month which constitute the standard pay period for the members of the West Virginia State Police is hereby continued. The rule shall further establish, on a graduated hourly basis, the criteria for receipt of a portion or all of supplemental payment when hours are worked in excess of the standard pay period. The superintendent shall certify at least twice per month to the West Virginia State Police payroll officer the names of those members who have worked in excess of the standard pay period and the amount of their entitlement to supplemental payment. The supplemental payment may not exceed $200 per pay period. The superintendent and civilian employees of the West Virginia State Police are not eligible for any supplemental payments.

(h) Each member of the West Virginia State Police, except the superintendent and civilian employees, shall execute, before entering upon the discharge of his or her duties, a bond with security in the sum of $5,000 payable to the State of West Virginia, conditioned upon the faithful performance of his or her duties, and the bond shall be approved as to form by the Attorney General and as to sufficiency by the Governor.

(i) In consideration for compensation paid by the West Virginia State Police to its members during those members' participation in the West Virginia State Police Cadet Training Program pursuant to §30-29-8 of this code, the West Virginia State Police may require

of its members by written agreement entered into with each of them in advance of such participation in the program that, if a member should voluntarily discontinue employment any time within one year immediately following completion of the training program, he or she shall be obligated to pay to the West Virginia State Police a pro rata portion of such compensation equal to that part of such year which the member has chosen not to remain in the employ of the West Virginia State Police.

(j) Any member of the West Virginia State Police who is called to perform active duty training or inactive duty training in the National Guard or any reserve component of the armed forces of the United States annually shall be granted, upon request, leave time not to exceed 30 calendar days for the purpose of performing the active duty training or inactive duty training and the time granted may not be deducted from any leave accumulated as a member of the West Virginia State Police.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-2. State minimum salaries for teachers.

(a) For school year 2024-2025, and continuing thereafter, each teacher shall receive the amount prescribed in the State Minimum Salary Schedule as set forth in this section, specific additional amounts prescribed in this section or article, and any county supplement in effect in a county pursuant to §18A-4-5a of this code during the contract year.

STATE MINIMUM SALARY SCHEDULE

Years Exp	4th Class	3rd Class	2nd Class	A.B.	A.B. 15	M.A.	M.A. 15	M.A. 30	M.A. 45	Doctorate
0	39,057	39,746	40,012	41,455	42,216	43,983	44,744	45,505	46,266	47,301
1	39,385	40,074	40,340	41,973	42,734	44,502	45,263	46,023	46,784	47,819

2	39,714	40,402	40,668	42,492	43,253	45,020	45,781	46,542	47,303	48,338
3	40,042	40,730	40,996	43,011	43,771	45,539	46,300	47,060	47,821	48,856
4	40,614	41,302	41,568	43,773	44,534	46,302	47,063	47,823	48,584	49,619
5	40,942	41,630	41,896	44,292	45,053	46,820	47,581	48,342	49,103	50,138
6	41,270	41,958	42,224	44,810	45,571	47,339	48,100	48,860	49,621	50,656
7	41,598	42,287	42,552	45,329	46,090	47,857	48,618	49,379	50,140	51,175
8	41,926	42,615	42,881	45,847	46,608	48,376	49,137	49,897	50,658	51,693
9	42,254	42,943	43,209	46,366	47,127	48,894	49,655	50,416	51,177	52,212
10	42,583	43,271	43,537	46,886	47,646	49,414	50,175	50,936	51,696	52,731
11	42,911	43,599	43,865	47,404	48,165	49,933	50,693	51,454	52,215	53,250
12	43,239	43,927	44,193	47,923	48,683	50,451	51,212	51,973	52,733	53,768
13	43,567	44,255	44,521	48,441	49,202	50,970	51,730	52,491	53,252	54,287
14	43,895	44,583	44,849	48,960	49,720	51,488	52,249	53,010	53,770	54,805
15	44,223	44,911	45,177	49,478	50,239	52,007	52,767	53,528	54,289	55,324
16	44,551	45,239	45,505	49,997	50,757	52,525	53,286	54,047	54,807	55,842
17	44,879	45,568	45,833	50,515	51,276	53,044	53,805	54,565	55,326	56,361
18	45,207	45,896	46,162	51,034	51,795	53,562	54,323	55,084	55,845	56,880
19	45,535	46,224	46,490	51,552	52,313	54,081	54,842	55,602	56,363	57,398
20	45,863	46,552	46,818	52,071	52,832	54,599	55,360	56,121	56,882	57,917
21	46,192	46,880	47,146	52,589	53,350	55,118	55,879	56,639	57,400	58,435
22	46,520	47,208	47,474	53,108	53,869	55,636	56,397	57,158	57,919	58,954
23	46,848	47,536	47,802	53,627	54,387	56,155	56,916	57,676	58,437	59,472
24	47,176	47,864	48,130	54,145	54,906	56,674	57,434	58,195	58,956	59,991
25	47,504	48,192	48,458	54,664	55,424	57,192	57,953	58,714	59,474	60,509
26	47,832	48,520	48,786	55,182	55,943	57,711	58,471	59,232	59,993	61,028
27	48,160	48,848	49,114	55,701	56,461	58,229	58,990	59,751	60,511	61,546
28	48,488	49,177	49,442	56,219	56,980	58,748	59,508	60,269	61,030	62,065
29	48,816	49,505	49,771	56,738	57,498	59,266	60,027	60,788	61,548	62,583
30	49,144	49,833	50,099	57,256	58,017	59,785	60,545	61,306	62,067	63,102

31	49,473	50,161	50,427	57,775	58,536	60,303	61,064	61,825	62,585	63,620
32	49,801	50,489	50,755	58,293	59,054	60,822	61,583	62,343	63,104	64,139
33	50,129	50,817	51,083	58,812	59,573	61,340	62,101	62,862	63,623	64,658
34	50,457	51,145	51,411	59,330	60,091	61,859	62,620	63,380	64,141	65,176
35	50,785	51,473	51,739	59,849	60,610	62,377	63,138	63,899	64,660	65,695

(b) Six hundred dollars shall be paid annually to each classroom teacher who has at least 20 years of teaching experience. The payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

(c) Effective July 1, 2019, each classroom teacher providing math instruction in the teacher's certified area of study for at least 60 percent of the time the teacher is providing instruction to students shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience notwithstanding the maximum experience provided on the salary schedule.

(d) Effective July 1, 2019, each classroom teacher certified in special education and employed as a full-time special education teacher, as defined by the State Superintendent, shall be considered to have three additional years of experience only for the purposes of the salary schedule set forth in subsection (a) of this section: *Provided*, That for any classroom teacher who satisfies these requirements and whose years of experience plus the three additional years due to them exceeds the years of experience provided for on the salary schedule shall be paid the additional amount equivalent to three additional years of experience

notwithstanding the maximum experience provided on the salary schedule.

(e) In accordance with §18A-4-5 of this code, each teacher shall be paid the supplement amount as applicable for his or her classification of certification or classification of training and years of experience as follows, subject to the provisions of that section:

(1) For "4th Class" at zero years of experience, $1,781. An additional $38 shall be paid for each year of experience up to and including 35 years of experience;

(2) For "3rd Class" at zero years of experience, $1,796. An additional $67 shall be paid for each year of experience up to and including 35 years of experience;

(3) For "2nd Class" at zero years of experience, $1,877. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(4) For "A.B." at zero years of experience, $2,360. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(5) For "A.B. + 15" at zero years of experience, $2,452. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(6) For "M.A." at zero years of experience, $2,644. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(7) For "M.A. + 15" at zero years of experience, $2,740. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(8) For "M.A. + 30" at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience;

(9) For "M.A. + 45" at zero years of experience, $2,836. An additional $69 shall be paid for each year of experience up to and including 35 years of experience; and

(10) For "Doctorate" at zero years of experience, $2,927. An additional $69 shall be paid for each year of experience up to and including 35 years of experience.

These payments: (i) Shall be in addition to any amounts prescribed in the applicable State Minimum Salary Schedule, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5a of this code; (ii) shall be paid in equal monthly installments; and (iii) shall be considered a part of the state minimum salaries for teachers.

§18A-4-8a. Service personnel minimum monthly salaries.

(a) Effective July 1, 2024, the minimum monthly pay for each service employee shall be as follows:

(1) For school year 2024-2025 and continuing thereafter, the minimum monthly pay for each service employee whose employment is for a period of more than three and one-half hours a day shall be at least the amounts indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision and the minimum monthly pay for each service employee whose employment is for a period of three and one-half hours or less a day shall be at least one-half the amount indicated in the State Minimum Pay Scale Pay Grade Schedule set forth in this subdivision.

STATE MINIMUM PAY SCALE PAY GRADE SCHEDULE								
Years	PAY GRADE							
Exp.	A	B	C	D	E	F	G	H
0	2,377	2,398	2,440	2,493	2,546	2,609	2,641	2,714
1	2,409	2,431	2,472	2,525	2,579	2,642	2,673	2,747
2	2,442	2,463	2,505	2,558	2,611	2,674	2,706	2,779

3	2,474	2,496	2,538	2,591	2,644	2,707	2,739	2,812
4	2,507	2,529	2,570	2,623	2,676	2,740	2,771	2,846
5	2,540	2,561	2,603	2,656	2,709	2,772	2,804	2,878
6	2,572	2,594	2,637	2,689	2,742	2,805	2,837	2,911
7	2,606	2,626	2,669	2,721	2,774	2,838	2,869	2,944
8	2,639	2,659	2,702	2,754	2,807	2,870	2,902	2,976
9	2,671	2,692	2,735	2,788	2,840	2,903	2,934	3,009
10	2,704	2,725	2,767	2,820	2,872	2,937	2,968	3,042
11	2,737	2,758	2,800	2,853	2,905	2,969	3,001	3,074
12	2,769	2,791	2,832	2,886	2,939	3,002	3,033	3,107
13	2,802	2,823	2,865	2,918	2,971	3,034	3,066	3,140
14	2,835	2,856	2,898	2,951	3,004	3,067	3,099	3,172
15	2,867	2,889	2,930	2,983	3,036	3,100	3,131	3,205
16	2,900	2,921	2,963	3,016	3,069	3,132	3,164	3,238
17	2,932	2,954	2,997	3,049	3,102	3,165	3,197	3,271
18	2,965	2,987	3,029	3,081	3,134	3,198	3,229	3,304
19	2,999	3,019	3,062	3,114	3,167	3,230	3,262	3,336
20	3,031	3,052	3,095	3,148	3,200	3,263	3,295	3,370
21	3,064	3,084	3,127	3,180	3,232	3,296	3,327	3,404
22	3,097	3,118	3,160	3,213	3,265	3,329	3,361	3,436
23	3,129	3,151	3,193	3,246	3,299	3,363	3,395	3,470
24	3,162	3,183	3,225	3,278	3,331	3,397	3,428	3,504
25	3,195	3,216	3,258	3,311	3,365	3,429	3,462	3,536
26	3,227	3,249	3,290	3,345	3,399	3,463	3,494	3,570
27	3,260	3,281	3,323	3,377	3,431	3,495	3,528	3,603
28	3,293	3,314	3,357	3,411	3,465	3,529	3,562	3,637
29	3,325	3,348	3,390	3,443	3,498	3,563	3,594	3,671
30	3,359	3,380	3,424	3,477	3,531	3,595	3,628	3,704

31	3,392	3,414	3,458	3,511	3,565	3,629	3,662	3,737
32	3,426	3,447	3,490	3,544	3,597	3,663	3,694	3,771
33	3,460	3,480	3,524	3,578	3,631	3,695	3,728	3,804
34	3,492	3,514	3,558	3,612	3,665	3,729	3,762	3,837
35	3,526	3,548	3,590	3,644	3,697	3,763	3,795	3,871
36	3,560	3,581	3,624	3,678	3,732	3,796	3,829	3,903
37	3,592	3,615	3,658	3,712	3,766	3,830	3,862	3,937
38	3,626	3,647	3,690	3,744	3,798	3,863	3,895	3,971
39	3,660	3,681	3,724	3,778	3,832	3,896	3,929	4,003
40	3,692	3,715	3,757	3,811	3,866	3,930	3,962	4,037

(2) Each service employee shall receive the amount prescribed in the State Minimum Pay Scale Pay Grade in accordance with the provisions of this subsection according to their class title and pay grade as set forth in this subdivision:

CLASS TITLE	PAY GRADE
Accountant I	D
Accountant II	E
Accountant III	F
Accounts Payable Supervisor	G
Aide I	A
Aide II	B
Aide III	C
Aide IV	D

Aide V – Temporary Authorization	E
Aide V	F
Aide VI – Temporary Authorization	E
Aide VI	F
Audiovisual Technician	C
Auditor	G
Autism Mentor	F
Braille Specialist	E
Bus Operator	D
Buyer	F
Cabinetmaker	G
Cafeteria Manager	D
Carpenter I	E
Carpenter II	F
Chief Mechanic	G
Clerk I	B
Clerk II	C
Computer Operator	E
Cook I	A
Cook II	B

Cook III	C
Crew Leader	F
Custodian I	A
Custodian II	B
Custodian III	C
Custodian IV	D
Director or Coordinator of Services	H
Draftsman	D
Early Childhood Classroom Assistant Teacher I	E
Early Childhood Classroom Assistant Teacher II	E
Early Childhood Classroom Assistant Teacher III	F
Educational Sign Language Interpreter I	F
Educational Sign Language Interpreter II	G
Electrician I	F
Electrician II	G
Electronic Technician I	F
Electronic Technician II	G
Executive Secretary	G

Food Services Supervisor	G
Foreman	G
General Maintenance	C
Glazier	D
Graphic Artist	D
Groundsman	B
Handyman	B
Heating and Air Conditioning Mechanic I	E
Heating and Air Conditioning Mechanic II	G
Heavy Equipment Operator	E
Inventory Supervisor	D
Key Punch Operator	B
Licensed Practical Nurse	F
Locksmith	G
Lubrication Man	C
Machinist	F
Mail Clerk	D
Maintenance Clerk	C
Mason	G
Mechanic	F

Mechanic Assistant	E
Office Equipment Repairman I	F
Office Equipment Repairman II	G
Painter	E
Paraprofessional	F
Payroll Supervisor	G
Plumber I	E
Plumber II	G
Printing Operator	B
Printing Supervisor	D
Programmer	H
Roofing/Sheet Metal Mechanic	F
Sanitation Plant Operator	G
School Bus Supervisor	E
Secretary I	D
Secretary II	E
Secretary III	F
Sign Support Specialist	E
Supervisor of Maintenance	H
Supervisor of Transportation	H

Switchboard Operator-Receptionist	D
Truck Driver	D
Warehouse Clerk	C
Watchman	B
Welder	F
WVEIS Data Entry and Administrative Clerk	B

(b) An additional $12 per month is added to the minimum monthly pay of each service person who holds a high school diploma or its equivalent.

(c) An additional $11 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds 12 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(2) A service person who holds 24 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(3) A service person who holds 36 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(4) A service person who holds 48 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(5) A service employee who holds 60 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(6) A service person who holds 72 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(7) A service person who holds 84 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(8) A service person who holds 96 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(9) A service person who holds 108 college hours or comparable credit obtained in a trade or vocational school as approved by the state board;

(10) A service person who holds 120 college hours or comparable credit obtained in a trade or vocational school as approved by the state board.

(d) An additional $40 per month also is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds an associate's degree;

(2) A service person who holds a bachelor's degree;

(3) A service person who holds a master's degree;

(4) A service person who holds a doctorate degree.

(e) An additional $11 per month is added to the minimum monthly pay of each service person for each of the following:

(1) A service person who holds a bachelor's degree plus 15 college hours;

(2) A service person who holds a master's degree plus 15 college hours;

(3) A service person who holds a master's degree plus 30 college hours;

(4) A service person who holds a master's degree plus 45 college hours; and

(5) A service person who holds a master's degree plus 60 college hours.

(f) Each service person is paid a supplement, as set forth in §18A-4-5 of this code, of $164 per month, subject to the provisions of that section. These payments: (i) Are in addition to any amounts prescribed in the applicable State Minimum Pay Scale Pay Grade, any specific additional amounts prescribed in this section and article and any county supplement in effect in a county pursuant to §18A-4-5b of this code; (ii) are paid in equal monthly installments; and (iii) are considered a part of the state minimum salaries for service personnel.

(g) When any part of a school service person's daily shift of work is performed between the hours of 6:00 p. m. and 5:00 a. m. the following day, the employee is paid no less than an additional $10 per month and one half of the pay is paid with local funds.

(h) Any service person required to work on any legal school holiday is paid at a rate one and one-half times the person's usual hourly rate.

(i) Any full-time service personnel required to work in excess of their normal working day during any week which contains a school holiday for which they are paid is paid for the additional hours or fraction of the additional hours at a rate of one and one-half times their usual hourly rate and paid entirely from county board funds.

(j) A service person may not have his or her daily work schedule changed during the school year without the employee's written consent and the person's required daily work hours may not be changed to prevent the payment of time and one-half wages or the employment of another employee.

(k) The minimum hourly rate of pay for extra duty assignments as defined in §18A-4-8b of this code is no less than one seventh of the person's daily total salary for each hour the person is involved

in performing the assignment and paid entirely from local funds: *Provided*, That an alternative minimum hourly rate of pay for performing extra duty assignments within a particular category of employment may be used if the alternate hourly rate of pay is approved both by the county board and by the affirmative vote of a two-thirds majority of the regular full-time persons within that classification category of employment within that county: *Provided, however*, That the vote is by secret ballot if requested by a service person within that classification category within that county. The salary for any fraction of an hour the employee is involved in performing the assignment is prorated accordingly. When performing extra duty assignments, persons who are regularly employed on a one-half day salary basis shall receive the same hourly extra duty assignment pay computed as though the person were employed on a full-day salary basis.

(l) The minimum pay for any service personnel engaged in the removal of asbestos material or related duties required for asbestos removal is their regular total daily rate of pay and no less than an additional $3 per hour or no less than $5 per hour for service personnel supervising asbestos removal responsibilities for each hour these employees are involved in asbestos-related duties. Related duties required for asbestos removal include, but are not limited to, travel, preparation of the work site, removal of asbestos, decontamination of the work site, placing and removal of equipment and removal of structures from the site. If any member of an asbestos crew is engaged in asbestos-related duties outside of the employee's regular employment county, the daily rate of pay is no less than the minimum amount as established in the employee's regular employment county for asbestos removal and an additional $30 per each day the employee is engaged in asbestos removal and related duties. The additional pay for asbestos removal and related duties shall be payable entirely from county funds. Before service personnel may be used in the removal of asbestos material or related duties, they shall have completed a federal Environmental Protection Act-approved training program and be licensed. The employer shall provide all necessary protective equipment and maintain all records required by the Environmental Protection Act.

(m) For the purpose of qualifying for additional pay as provided in §18A-5-8 of this code, an aide is considered to be exercising the authority of a supervisory aide and control over pupils if the aide is required to supervise, control, direct, monitor, escort, or render service to a child or children when not under the direct supervision of a certified professional person within the classroom, library, hallway, lunchroom, gymnasium, school building, school grounds, or wherever supervision is required. For purposes of this section, "under the direct supervision of a certified professional person" means that certified professional person is present, with and accompanying the aide.

CHAPTER 208

(Com. Sub. for S. B. 300 - By Senators Deeds, Grady, Plymale, Takubo, Woodrum, Woelfel, Stuart, Jeffries, and Phillips)

[Passed February 8, 2024; in effect from passage]
[Approved by the Governor on February 19, 2024.]

AN ACT to repeal §5-11-1, §5-11-2, §5-11-3, §5-11-4, §5-11-5, §5-11-6, §5-11-7, §5-11-8, §5-11-9, §5-11-9a, §5-11-10, §5-11-11, §5-11-12, §5-11-13, §5-11-14, §5-11-15, §5-11-16, §5-11-17, §5-11-18, §5-11-19, and §5-11-20 of the Code of West Virginia, 1931, as amended; to repeal §5-11A-1, §5-11A-2, §5-11A-3, §5-11A-3a, §5-11A-4, §5-11A-5, §5-11A-6, §5-11A-7, §5-11A-8, §5-11A-9, §5-11A-10, §5-11A-11, §5-11A-12, §5-11A-13, §5-11A-14, §5-11A-15, §5-11A-16, §5-11A-17, §5-11A-18, §5-11A-19, and §5-11A-20 of said code; to repeal §5-11B-1, §5-11B-2, §5-11B-3, §5-11B-4, §5-11B-5, §5-11B-6, and §5-11B-7 of said code; to amend and reenact §5F-2-1a of said code; to amend and reenact §9-5-27 of said code; to repeal §16-1-22, §16-1-22a, §16-1-22b, and §16-1-22c of said code; to repeal §16-2E-1, §16-2E-2, §16-2E-3, §16-2E-4, and §16-2E-5 of said code; to repeal §16-2N-1, §16-2N-2, and §16-2N-3 of said code; to repeal §16-5B-1, §16-5B-2, §16-5B-3, §16-5B-4, §16-5B-5, §16-5B-5a, §16-5B-6, §16-5B-7, §16-5B-8, §16-5B-9, §16-5B-10, §16-5B-11, §16-5B-12, §16-5B-13, §16-5B-14, §16-5B-15, §16-5B-16, §16-5B-17, §16-5B-18, §16-5B-19, and §16-5B-20 of said code; to repeal §16-5C-1, §16-5C-2, §16-5C-3, §16-5C-4, §16-5C-5, §16-5C-6, §16-5C-7, §16-5C-8, §16-5C-9, §16-5C-9a, §16-5C-10, §16-5C-11, §16-5C-12, §16-5C-12a, §16-5C-13, §16-5C-14, §16-5C-15, §16-5C-18, §16-5C-19, §16-5C-20, §16-5C-21, and §16-5C-22 of said code; to repeal §16-5D-1, §16-5D-2, §16-5D-3, §16-5D-4, §16-5D-5, §16-5D-6, §16-5D-7, §16-5D-8, §16-5D-9,

§16-5D-10, §16-5D-11, §16-5D-12, §16-5D-13, §16-5D-14, §16-5D-15, and §16-5D-18 of said code; to repeal §16-5E-1, §16-5E-1a, §16-5E-2, §16-5E-3, §16-5E-3a, §16-5E-4, §16-5E-5, and §16-5E-6 of said code; to repeal §16-5H-1, §16-5H-2, §16-5H-3, §16-5H-4, §16-5H-5, §16-5H-6, §16-5H-7, §16-5H-8, §16-5H-9, and §16-5H-10 of said code; to repeal §16-5I-1, §16-5I-2, §16-5I-3, §16-5I-4, §16-5I-5, and §16-5I-6 of said code; to repeal §16-5N-1, §16-5N-2, §16-5N-3, §16-5N-4, §16-5N-5, §16-5N-6, §16-5N-7, §16-5N-8, §16-5N-9, §16-5N-10, §16-5N-11, §16-5N-12, §16-5N-13, §16-5N-14, §16-5N-15, and §16-5N-16 of said code; to repeal §16-5O-1, §16-5O-2, §16-5O-3, §16-5O-4, §16-5O-5, §16-5O-6, §16-5O-7, §16-5O-8, §16-5O-9, §16-5O-10, §16-5O-11, and §16-5O-12 of said code; to repeal §16-5R-1, §16-5R-2, §16-5R-3, §16-5R-4, §16-5R-5, §16-5R-6, and §16-5R-7 of said code; to repeal §16-5W-1, §16-5W-2, §16-5W-3, and §16-5W-4 of said code; to repeal §16-5Y-1, §16-5Y-2, §16-5Y-3, §16-5Y-4, §16-5Y-5, §16-5Y-6, §16-5Y-7, §16-5Y-8, §16-5Y-9, §16-5Y-10, §16-5Y-11, §16-5Y-12, and §16-5Y-13 of said code; to repeal §16-5AA-1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, §16-5AA-6, §16-5AA-7, §16-5AA-8, §16-5AA-9, and §16-5AA-10 of said code; to repeal §16-49-1, §16-49-2, §16-49-3, §16-49-4, §16-49-5, §16-49-6, §16-49-7, §16-49-8, and §16-49-9 of said code; to amend said code by adding thereto a new chapter, designated §16B-1-1, §16B-2-1, §16B-2-2, §16B-2-3, §16B-2-4, §16B-3-1, §16B-3-2, §16B-3-3, §16B-3-4, §16B-3-5, §16B-3-5a, §16B-3-6, §16B-3-7, §16B-3-8, §16B-3-9, §16B-3-10, §16B-3-11, §16B-3-12, §16B-3-13, §16B-3-14, §16B-3-15, §16B-3-16, §16B-3-17, §16B-3-18, §16B-3-19, §16B-3-20, §16B-4-1, §16B-4-2, §16B-4-3, §16B-4-4, §16B-4-5, §16B-4-6, §16B-4-7, §16B-4-8, §16B-4-9, §16B-4-9a, §16B-4-10, §16B-4-11, §16B-4-12, §16B-4-12a, §16B-4-13, §16B-4-14, §16B-4-15, §16B-4-16, §16B-4-17, §16B-4-18, §16B-4-19, §16B-4-20, §16B-5-1, §16B-5-2, §16B-5-3, §16B-5-4, §16B-5-5, §16B-5-6, §16B-5-7, §16B-5-8, §16B-5-9, §16B-5-10, §16B-5-11, §16B-5-12, §16B-5-13, §16B-5-14, §16B-5-15, §16B-5-16, §16B-6-1, §16B-6-1a, §16B-6-2, §16B-6-3, §16B-6-3a, §16B-6-4, §16B-6-5, §16B-6-6, §16B-7-1, §16B-7-2, §16B-7-3, §16B-7-4, §16B-7-5, §16B-7-6,

§16B-7-7, §16B-7-8, §16B-7-9, §16B-7-10, §16B-8-1, §16B-8-2, §16B-8-3, §16B-8-4, §16B-8-5, §16B-8-6, §16B-9-1, §16B-9-2, §16B-9-3, §16B-9-4, §16B-9-5, §16B-9-6, §16B-9-7, §16B-9-8, §16B-9-9, §16B-9-10, §16B-9-11, §16B-9-12, §16B-9-13, §16B-9-14, §16B-9-15, §16B-9-16, §16B-10-1, §16B-10-2, §16B-10-3, §16B-10-4, §16B-10-5, §16B-10-6, §16B-10-7, §16B-10-8, §16B-10-9, §16B-10-10, §16B-10-11, §16B-10-12, §16B-11-1, §16B-11-2, §16B-11-3, §16B-11-4, §16B-11-5, §16B-11-6, §16B-11-7, §16B-12-1, §16B-12-2, §16B-12-3, §16B-13-1, §16B-13-2, §16B-13-3, §16B-13-4, §16B-13-5, §16B-13-6, §16B-13-7, §16B-13-8, §16B-13-9, §16B-13-10, §16B-13-11, §16B-13-12, §16B-13-13, §16B-14-1, §16B-14-2, §16B-14-3, §16B-14-4, §16B-14-5, §16B-14-6, §16B-14-7, §16B-14-8, §16B-14-9, §16B-14-10, §16B-15-1, §16B-15-2, §16B-15-3, §16B-15-4, §16B-15-5, §16B-15-6, §16B-15-7, §16B-15-8, §16B-15-9, §16B-16-1, §16B-16-2, §16B-16-3, §16B-16-4, §16B-16-5, §16B-16-6, §16B-16-7, §16B-16-8, §16B-16-9, §16B-16-10, §16B-17-1, §16B-17-2, §16B-17-3, §16B-17-4, §16B-17-5, §16B-17-6, §16B-17-7, §16B-17-8, §16B-17-9, §16B-17-9a, §16B-17-10, §16B-17-11, §16B-17-12, §16B-17-13, §16B-17-14, §16B-17-15, §16B-17-16, §16B-17-17, §16B-17-18, §16B-17-19, §16B-17-20, §16B-18-1, §16B-18-2, §16B-18-3, §16B-18-3a, §16B-18-4, §16B-18-5, §16B-18-6, §16B-18-7, §16B-18-8, §16B-18-9, §16B-18-10, §16B-18-11, §16B-18-12, §16B-18-13, §16B-18-14, §16B-18-15, §16B-18-16, §16B-18-17, §16B-18-18, §16B-18-19, §16B-18-20, §16B-19-1, §16B-19-2, §16B-19-3, §16B-19-4, §16B-19-5, §16B-19-6, §16B-19-7, §16B-20-1, §16B-20-2, §16B-20-3, §16B-20-4, §16B-20-5, §16B-21-1, §16B-21-2, and §16B-21-3; to amend and reenact §25-1B-7 of said code; to amend and reenact §27-1-9 of said code; to amend and reenact §27-1A-6 and §27-1A-7 of said code; to amend and reenact §27-9-1 and §27-9-2 of said code; to amend and reenact §27-17-1 and §27-17-3 of said code; to amend and reenact §49-1-203 of said code; and to repeal §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 of said code, all relating to the organization of the Office of the Inspector General; moving related units, programs, and commissions that are affiliated

with the Office of Inspector General into the same chapter; setting for findings; setting forth duties and powers; providing for rulemaking authority; setting forth qualifications for directors; requiring directors to be appointed by a certain date; and making technical and stylistic changes.

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 11. HUMAN RIGHTS COMMISSION.

§5-11-1. Short title.

[Repealed.]

§5-11-2. Declaration of policy.

[Repealed.]

§5-11-3. Definitions.

[Repealed.]

§5-11-4. Powers and objectives.

[Repealed.]

§5-11-5. Composition; appointment, terms, and oath of members; compensation and expenses.

[Repealed.]

§5-11-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

[Repealed.]

§5-11-7. Assistance to commission; legal services.

[Repealed.]

§5-11-8. Commission powers; functions; services.

[Repealed.]

§5-11-9. Unlawful discriminatory practices.

[Repealed.]

§5-11-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

[Repealed.]

§5-11-10. Discriminatory practices; investigations, hearings, procedures and orders.

[Repealed.]

§5-11-11. Appeal and enforcement of commission orders

[Repealed.]

§5-11-12. Local human relations commissions.

[Repealed.]

§5-11-13. Exclusiveness of remedy; exceptions.

[Repealed.]

§5-11-14. Penalty.

[Repealed.]

§5-11-15. Construction; severability.

[Repealed.]

§5-11-16. Certain records exempt.

[Repealed.]

§5-11-17. Posting of law and information.

[Repealed.]

§5-11-18. Injunctions in certain housing complaints.

[Repealed.]

§5-11-19. Private club exemption.

[Repealed.]

§5-11-20. Violations of human rights; civil action by attorney general.

[Repealed.]

ARTICLE 11A. WEST VIRGINIA FAIR HOUSING ACT.

§5-11A-1. Short title.

[Repealed.]

§5-11A-2. Declaration of policy.

[Repealed.]

§5-11A-3. Definitions.

[Repealed.]

§5-11A-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

[Repealed.]

§5-11A-4. Application of article.

[Repealed.]

§5-11A-5. Discrimination in sale or rental of housing and other prohibited practices.

[Repealed.]

§5-11A-6. Discrimination in residential real estate-related transactions.

[Repealed.]

§5-11A-7. Discrimination in provision of brokerage services.

[Repealed.]

§5-11A-8. Religious organization or private club exemption.

[Repealed.]

§5-11A-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

[Repealed.]

§5-11A-10. Education and conciliation; conferences and consultations; reports.

[Repealed.]

§5-11A-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

[Repealed.]

§5-11A-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

[Repealed.]

§5-11A-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

[Repealed.]

§5-11A-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by Attorney General.

[Repealed.]

§5-11A-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

[Repealed.]

§5-11A-16. Interference, coercion, or intimidation; enforcement by civil action.

[Repealed.]

§5-11A-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication instate register.

[Repealed.]

§5-11A-18. Effect on other laws.

[Repealed.]

§5-11A-19. Severability of provisions.

[Repealed.]

§5-11A-20. Rules to implement article.

[Repealed.]

ARTICLE 11B. PREGNANCY WORKERS' FAIRNESS ACT.

§5-11B-1. Short title.

[Repealed.]

§5-11B-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

[Repealed.]

§5-11B-3. Remedies and enforcement.

[Repealed.]

§5-11B-4. Rule-making.

[Repealed.]

§5-11B-5. Definitions.

[Repealed.]

§5-11B-6. Relationship to other laws.

[Repealed.]

§5-11B-7. Reports.

[Repealed.]

CHAPTER 5F. REORGANIZATION OF THE EXECUTIVE BRANCH OF STATE GOVERNMENT.

ARTICLE 2. TRANSFER OF AGENCIES AND BOARDS.

§5F-2-1a. Termination of the department of health and human resources; transfer and incorporation of agencies and boards legislative intent; creation of new departments.

(a) It is the intent of the Legislature to devolve the functions of the Department of Health and Human Resources into three new and separate departments of the executive branch as provided in this Act over a period of transition that concludes with the termination of the Department of Health and Human Resources. It is the intent of the Legislature that the provisions of this Act be construed to achieve the restructuring and reallocation of the powers, duties and

functions of the Department of Health and Human Resources to the three new departments created in this section in an orderly manner designed to maintain the delivery of services that have heretofore been provided by the Department of Health and Human Resources by the new departments during the transition and beyond the termination of the Department of Health and Human Resources without disruption and to streamline and, where possible, to share administrative and operative expenses where common to each of the new departments. To that end, the Secretary of the Department of Health and Human Resources, the Secretary of the Department of Human Services, the Secretary of the Department of Health and the Secretary of the Department of Health Facilities shall enter into a memorandum of understanding to effect the provisions of this Act that shall, at a minimum, create a Office of Shared Administration mutually administered by the secretaries that shall coordinate efforts with the Department of Administration to maximize efficiencies and function of services in an effort to contain expenses within the Department of Human Services, the Department of Health and the Department of Health Facilities. The Office of Shared Administration shall implement a plan to maximize function and efficiency administrative services for the purpose of streamlining administrative services and reducing expenses within the departments. The Office of Shared Administration shall complete implementation by June 30, 2024, and shall provide quarterly updates to the Legislative Oversight Commission on Health and Human Resources Accountability.

(b) The Department of Human Services created under §5F-1-2 of this code is a separate and distinct department of the executive branch. The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Department of Human Services:

(1) Bureau for Social Services;

(2) Bureau for Medical Services;

(3) Bureau for Child Support Enforcement;

(4) Bureau for Family Assistance;

(5) Bureau for Behavioral Health; and

(6) Any other agency or entity hereinafter established within the Department of Human Services by an act of the Legislature.

(c) (1) The Department of Health created under §5F-1-2 of this code is a separate and distinct department of the executive branch. The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Department of Health:

(A) Bureau for Public Health;

(B) Office of Emergency Medical Services;

(C) Office of the Chief Medical Examiner;

(D) Center for Threat Preparedness;

(E) Health Care Authority; and

(F) Any other agency or entity hereinafter established within the Department of Health by an act of the Legislature.

(2) The Office of the Inspector General is a separate and autonomous agency within the Department of Health as provided in §16B-2-1. The following agencies and boards, including all of the allied, advisory, affiliated, or related entities and funds associated with any agency or board, are transferred to, incorporated in and administered as a part of the Office of the Inspector General. The Office of the Inspector General, shall include:

(A) Office of Health Facility Licensure and Certification;

(B) Board of Review;

(C) Foster Care Ombudsman;

(D) Olmstead Office;

(E) Investigations and Fraud Management;

(F) Quality Control;

(G) Mental Health Ombudsman;

(H) WV Clearance for Access: Registry and Employment Screening; and

(I) Human Rights Commission.

(d) The Department of Health Facilities created under §5F-1-2 of this code is a separate and distinct department of the executive branch. The following state facilities, including all of the allied, advisory, affiliated, or related entities and funds associated with any state facility, are transferred to, incorporated in and administered as a part of the Department of Health Facilities:

(1) Hopemont Hospital;

(2) Jackie Withrow Hospital;

(3) John Manchin, Sr. Health Care Center;

(4) Lakin Hospital;

(5) Mildred Mitchell-Bateman Hospital;

(6) Welch Community Hospital;

(7) William R. Sharpe Jr. Hospital; and

(8) Any other agency or entity hereinafter established within the Department of Health Facilities by an act of the Legislature.

(e) Any secretary may recommend that a bureau, office, board, commission or other state entity be included or excluded from the organization of the departments created in this section to the Joint Committee on Government and Finance and the Legislative Commission on Health and Human Resources Accountability.

(f) All programs, orders, determinations, rules, permits, grants, contracts, certificates, bonds, authorizations and privileges which have been issued, promulgated, made, granted or allowed to become pursuant to authority provided by this code to the Department of Health and Human Resources or the Secretary of that Department that are in effect on the dates of the creation of the new departments as provided in this section shall continue in effect according to their terms until modified, terminated, superseded, set aside or revoked by the department or secretary that assumes authority over the subject matter of the same under the provisions of this Act.

CHAPTER 9. HUMAN SERVICES.

ARTICLE 5. MISCELLANEOUS PROVISIONS.

*§9-5-27. Transitioning foster care into managed care.

(a) "Eligible services" means acute care, including medical, pharmacy, dental, and behavioral health services.

(b) The secretary shall transition to a capitated Medicaid program for a child classified as a foster child and a child placed in foster care under Title IV-E of the Social Security Act who is living in the state by January 1, 2020. The program shall be statewide, fully integrated, and risk based; shall integrate Medicaid-reimbursed eligible services; and shall align incentives to ensure the appropriate care is delivered in the most appropriate place and time.

(c) The secretary shall make payments for the eligible services, including home and community-based services, using a managed care model.

(d) The secretary shall submit, if necessary, applications to the United States Department of Health and Human Services for waivers of federal Medicaid requirements that would otherwise be

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***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act, and H. B. 4594 (Chapter 166), which passed subsequent to this Act.

violated in the implementation of the program and shall consolidate any additional waivers where appropriate: *Provided*, That this subsection does not apply to the Aged and Disabled Waiver, the Intellectual/Developmental Disabilities Waiver, and the Traumatic Brain Injury Waiver.

(e) If a selected managed care organization ceases to contract to provide Medicaid managed care services, it must provide all patient records, including medical records, to the next selected managed care organization to ensure the Eligible Medicaid Beneficiaries do not experience an interruption in care.

(f) In designing the program, the secretary shall ensure that the program:

(1) Reduces fragmentation and offers a seamless approach to meeting participants' needs;

(2) Delivers needed supports and services in the most integrated, appropriate, and cost-effective way possible;

(3) Offers a continuum of acute care services, which includes an array of home and community-based options; and

(4) Includes a comprehensive quality approach across the entire continuum of care services;

(g) An employee of the department who, as a function of that employment, has engaged in the development of any contract developed pursuant to the requirements of this section may not for a period of two years thereafter be employed by any agency or company that has benefitted or stands to benefit directly from a contract between the department and that agency or company.

(h) Any managed care company selected as the managed care contractor pursuant to the provisions of this article shall have at least 80 percent of the total full-time equivalent positions allocated to manage care of foster children in West Virginia according to the contract must have a primary workplace in the state of West Virginia.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2. OFFICE OF THE INSPECTOR GENERAL, DUTIES, AND POWERS.

§16-1-22. Office of the Inspector General.

[Repealed.]

§16-1-22a. Judicial Review of decisions of contested cases.

[Repealed.]

§16-1-22b. Authority to subpoena witnesses and documents when investigating the provision of medical assistance programs.

[Repealed.]

§16-1-22c. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

[Repealed.]

ARTICLE 2E. BIRTHING CENTERS.

§16-2E-1. Definitions.

[Repealed.]

§16-2E-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

[Repealed.]

§16-2E-3. State director of health to establish rules and regulations; legislative findings; emergency filing.

[Repealed.]

§16-2E-4. Insurance.

[Repealed.]

§16-2E-5. Violations; penalties; injunction.

[Repealed.]

ARTICLE 2N. NEONATAL ABSTINENCE SYNDRONE CENTER.

§16-2N-1. Neonatal Abstinence Centers authorized; licensure required.

[Repealed.]

§16-2N-2. Rules; minimum standards for neonatal abstinence centers.

[Repealed.]

§16-2N-3. Certificate of need; exemption from moratorium.

[Repealed.]

ARTICLE 5B. HOSPITALS AND SIMILAR INSTITUTIONS.

§16-5B-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

[Repealed.]

§16-5B-2. Hospitals and institutions to obtain license; qualifications of applicant.

[Repealed.]

§16-5B-3. Application for license.

[Repealed.]

§16-5B-4. License fees.

[Repealed.]

§16-5B-5. Inspection.

[Repealed.]

§16-5B-5a. Accreditation reports accepted for periodic license inspection.

[Repealed.]

§16-5B-6. State director of health -to issue licenses; suspension or revocation.

[Repealed.]

§16-5B-7. Judicial review.

[Repealed.]

§16-5B-8. State board of health to establish standards; director enforces.

[Repealed.]

§16-5B-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

[Repealed.]

§16-5B-10. Information not to be disclosed; exception.

[Repealed.]

§16-5B-11. Violations; penalties.

[Repealed.]

§16-5B-12. Injunction; severability.

[Repealed.]

§16-5B-13. Hospital-based paternity program.

[Repealed.]

§16-5B-14. Rural Emergency Hospital Act.

[Repealed.]

§16-5B-15. Hospital visitation.

[Repealed.]

§16-5B-16. Public notice regarding the closure of a licensed health care facility or hospital.

[Repealed.]

§16-5B-17. Healthcare-associated infection reporting.

[Repealed.]

§16-5B-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

[Repealed.]

§16-5B-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability.

[Repealed.]

§16-5B-20. Patient safety and transparency.

[Repealed.]

ARTICLE 5C NURSING HOMES.

§16-5C-1. Purpose.

[Repealed.]

§16-5C-2. Definitions.

[Repealed.]

§16-5C-3. Powers, duties, and rights of secretary.

[Repealed.]

§16-5C-4. Administrative and inspection staff.

[Repealed.]

§16-5C-5. Rules; minimum standards for nursing homes.

[Repealed.]

§16-5C-6. License required; application; fees; duration; renewal.

[Repealed.]

§16-5C-7. Cost disclosure; surety for resident funds.

[Repealed.]

§16-5C-8. Investigation of complaints.

[Repealed.]

§16-5C-9. Inspections.

[Repealed.]

§16-5C-9a. Exemptions.

[Repealed.]

§16-5C-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

[Repealed.]

§16-5C-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of

interest; collection of assessments; promulgation of rules to conform with federal requirements.

[Repealed.]

§16-5C-12. License denial, limitation, suspension, or revocation.

[Repealed.]

§16-5C-12a. Independent informal dispute resolution.

[Repealed.]

§16-5C-13. Judicial Review.

[Repealed.]

§16-5C-14. Legal counsel and services of the department.

[Repealed.]

§16-5C-15. Unlawful acts; penalties; injunctions; private right of action.

[Repealed.]

§16-5C-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

[Repealed.]

§16-5C-19. Federal law; legislative rules.

[Repealed.]

§16-5C-20. Hospice palliative care required to be offered.

[Repealed.]

§16-5C-21. Employment restrictions.

[Repealed.]

§16-5C-22. Jury trial waiver to be a separate document.

[Repealed.]

ARTICLE 5D. ASSISTED LIVING RESIDENCES.

§16-5D-1. Purpose.

[Repealed.]

§16-5D-2. Definitions.

[Repealed.]

§16-5D-3. Powers, duties, and rights of secretary.

[Repealed.]

§16-5D-4. Administrative and inspection staff.

[Repealed.]

§16-5D-5. Rules; minimum standards for assisted living residences.

[Repealed.]

§16-5D-6. License required; application; fees; duration; renewal.

[Repealed.]

§16-5D-7. Cost disclosure; surety for residents' funds.

[Repealed.]

§16-5D-8. Investigation of complaints.

[Repealed.]

§16-5D-9. Inspections.

[Repealed.]

§16-5D-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

[Repealed.]

§16-5D-11. Enforcement actions; assessment of interest; collection of assessments; hearings.

[Repealed.]

§16-5D-12. License denial; limitation, suspension, or revocation.

[Repealed.]

§16-5D-13. Judicial review.

[Repealed.]

§16-5D-14. Legal counsel and services for the secretary.

[Repealed.]

§16-5D-15. Unlawful acts; penalties; injunctions; private right of action.

[Repealed.]

§16-5D-18. Separate accounts for residents' personal funds; consent for use; records; penalties.

[Repealed.]

ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16-5E-1. Purpose.

[Repealed.]

§16-5E-1a. Powers, rights and duties of the director.

[Repealed.]

§16-5E-2. Definitions.

[Repealed.]

§16-5E-3. Registration of service providers required; form of registration; information to be provided.

[Repealed.]

§16-5E-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.

[Repealed.]

§16-5E-4. Public availability of registry.

[Repealed.]

§16-5E-5. Inspections; right of entry.

[Repealed.]

§16-5E-6. Enforcement; criminal penalties.

[Repealed.]

ARTICLE 5H. CHRONIC PAIN CLINIC LICENSING ACT.

§16-5H-1. Purpose and short title.

[Repealed.]

§16-5H-2. Definitions.

[Repealed.]

§16-5H-3. Pain management clinics to obtain license; application; fees and inspections.

[Repealed.]

§16-5H-4. Operational requirements.

[Repealed.]

§16-5H-5. Exemptions.

[Repealed.]

§16-5H-6. Inspection.

[Repealed.]

§16-5H-7. Suspension; revocation.

[Repealed.]

§16-5H-8. Violations; penalties; injunction.

[Repealed.]

§16-5H-9. Rules.

[Repealed.]

§16-5H-10. Advertisement disclosure.

[Repealed.]

ARTICLE 5I. HOSPICE LICENSURE ACT.

§16-5I-1. Purpose and short title.

[Repealed.]

§16-5I-2. Definitions.

[Repealed.]

§16-5I-3. Hospices to obtain license; application; fees and inspections.

[Repealed.]

§16-5I-4. Suspension; revocation.

[Repealed.]

§16-5I-5. Secretary of Health and Human Resources to establish rules.

[Repealed.]

§16-5I-6. Violations; penalties; injunction.

[Repealed.]

ARTICLE 5N. RESIDENTIAL CARE COMMUNITIES.

§16-5N-1. Purpose.

[Repealed.]

§16-5N-2. Definitions.

[Repealed.]

§16-5N-3. Powers, duties, and rights of director.

[Repealed.]

§16-5N-4. Administrative and inspection staff.

[Repealed.]

§16-5N-5. Rules; minimum standards for residential care communities.

[Repealed.]

§16-5N-6. License required; application; fees; duration; renewal.

[Repealed.]

§16-5N-7. Cost disclosure; residents' funds; nursing care; fire code.

[Repealed.]

§16-5N-8. Investigation of complaints.

[Repealed.]

§16-5N-9. Inspections.

[Repealed.]

§16-5N-10. Reports of inspections; plans of correction; assessment of penalties, fees and costs; use of funds derived therefrom; hearings.

[Repealed.]

§16-5N-11. License limitation, suspension, and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

[Repealed.]

§16-5N-12. Administrative appeals from civil penalty assessment, license limitation, suspension, or revocation.

[Repealed.]

§16-5N-13. Judicial review.

[Repealed.]

§16-5N-14. Legal counsel and services for the director.

[Repealed.]

§16-5N-15. Unlawful acts; penalties; injunctions; private right of action.

[Repealed.]

§16-5N-16. Availability of reports and records.

[Repealed.]

ARTICLE 5O. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16-5O-1. Short title.

[Repealed.]

§16-5O-2. Definitions.

[Repealed.]

§16-5O-3. Administration of medications; performance of health maintenance tasks; maintenance of liability insurance in facilities.

[Repealed.]

§16-5O-4. Exemption from licensure; statutory construction.

[Repealed.]

§16-5O-5. Instruction and training.

[Repealed.]

§16-5O-6. Availability of records; eligibility requirements of facility staff.

[Repealed.]

§16-5O-7. Oversight of medication administration and performance of health maintenance tasks by the approved medication assistive personnel.

[Repealed.]

§16-5O-8. Withdrawal of authorization.

[Repealed.]

§16-5O-9. Fees.

[Repealed.]

§16-5O-10. Limitations on medication administration or performance of health maintenance tasks.

[Repealed.]

§16-5O-11. Rules.

[Repealed.]

§16-5O-12. Advisory Committee.

[Repealed.]

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-1. Name of act.

[Repealed.]

§16-5R-2. Findings and declarations.

[Repealed.]

§16-5R-3. Definition of Alzheimer's special care unit/program.

[Repealed.]

§16-5R-4. Alzheimer's special care disclosure required.

[Repealed.]

§16-5R-5. Standards for care; rules.

[Repealed.]

§16-5R-6. Alzheimer's and dementia care training; rules.

[Repealed.]

§16-5R-7. Establishment of a central registry.

[Repealed.]

ARTICLE 5W. REGULATION OF BEHAVIORAL HEALTH.

§16-5W-1. Reporting.

[Repealed.]

§16-5W-2. Independent Mental Health Ombudsman.

[Repealed.]

§16-5W-3. Intellectual and Developmental Disabilities Waiver Program workforce study.

[Repealed.]

§16-5W-4. Annual capitation rate review.

[Repealed.]

ARTICLE 5Y. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16-5Y-1. Purpose.

[Repealed.]

§16-5Y-2. Definitions.

[Repealed.]

§16-5Y-3. Opioid treatment programs to obtain license; application; fees and inspections.

[Repealed.]

§16-5Y-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

[Repealed.]

§16-5Y-5. Operational requirements.

[Repealed.]

§16-5Y-6. Restrictions; variances and waivers.

[Repealed.]

§16-5Y-7. Inspection; inspection warrant.

[Repealed.]

§16-5Y-8. License and registration limitation; denial; suspension; revocation.

[Repealed.]

§16-5Y-9. Violations; penalties; injunction.

[Repealed.]

§16-5Y-10. Advertisement disclosure.

[Repealed.]

§16-5Y-11. State Opioid Treatment Authority.

[Repealed.]

§16-5Y-12. Moratorium; certificate of need.

[Repealed.]

§16-5Y-13. Rules; minimum standards for medication-assisted treatment programs.

[Repealed.]

ARTICLE 5AA. MEDICATION ADMINISTERD BY UNLICENSED PERSONNEL IN NURSING HOMES.

§16-5AA-1. Definitions.

[Repealed.]

§16-5AA-2. Administration of medications.

[Repealed.]

§16-5AA-3. Exemption from licensure; statutory construction.

[Repealed.]

§16-5AA-4. Instruction and training.

[Repealed.]

§16-5AA-5. Eligibility requirements of nursing home staff.

[Repealed.]

§16-5AA-6. Oversight of approved medication assistive personnel.

[Repealed.]

§16-5AA-7. Withdrawal of authorization.

[Repealed.]

§16-5AA-8. Fees.

[Repealed.]

§16-5AA-9. Limitations on medication administration.

[Repealed.]

§16-5AA-10. Permissive participation.

[Repealed.]

ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.

§16-49-1. Definitions.

[Repealed.]

§16-49-2. Background check program for the department, covered providers, and covered contractors.

[Repealed.]

§16-49-3. Prescreening and criminal background checks.

[Repealed.]

§16-49-4. Notice of ineligibility; prohibited participation as direct access personnel or department employee.

[Repealed.]

§16-49-5. Variance; appeals.

[Repealed.]

§16-49-6. Provisional employment pending completion of background check.

[Repealed.]

§16-49-7. Clearance for subsequent employment.

[Repealed.]

§16-49-8. Fees.

[Repealed.]

§16-49-9. Rules; penalties; confidentiality; immunity.

[Repealed.]

CHAPTER 16B. INSPECTOR GENERAL.

ARTICLE 1. OFFICE OF THE INSPECTOR GENERAL, LEGISLATIVE FINDINGS.

§16B-1-1. Legislative Findings.

It is declared to be the public policy of this state that:

(1) The Department of Health, the Department of Human Services, and the Department of Health Facilities need separate and independent oversight by an autonomous agency to protect the vulnerable citizens served by these agencies.

(2) The Office of Inspector General shall be free of all influence, control, and direction by the Department of Health, the Department of Human Services, and the Department of Health Facilities over which it: exercises oversight and accountability, promotes transparency, and monitors legal compliance.

(3) The Office of Inspector General shall be continued to provide oversight, transparency, and accountability to the Department of Health, the Department of Human Services, and the Department of Health Facilities. The powers of the Office of Inspector General shall be interpreted broadly to effectuate this legislative purpose.

ARTICLE 2. OFFICE OF THE INSPECTOR GENERAL, DUTIES, AND POWERS.

§16B-2-1. Office of the Inspector General continued; appointment and qualifications of Director of Office of Health Facility Licensure and Certification and the Director of Investigations and Fraud Management Units.

(a) The Office of the Inspector General is continued as a separate and autonomous agency within the Department of Health. The Department of Health shall provide administrative support, at the request of the Office of Inspector General. Shared services shall be provided at the request of the Office of the Inspector General when the same cannot be accomplished with current staffing within the Office of the Inspector General. The Office of Inspector General shall be headed by the Inspector General and is comprised of the offices as provided in §5F-2-1a of this code. Any administrative supports or shared services provided or received by the Office of the Inspector General are not subject to review by the Department of Health, the Department of Human Services, or the Department of Health Facilities.

(b) (1) The Inspector General shall be appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the Senate.

(A) The term of the Inspector General is five years.

(B) At the end of a term, the Inspector General is eligible to be reappointed for one additional term. The Inspector General shall continue to serve until a successor is appointed.

(C) If a vacancy occurs in the office, an interim Inspector General may be appointed as successor to serve for the remainder of the unexpired term.

(2) The Inspector General may be removed by the Governor only for:

(A) Misconduct in office;

(B) Persistent failure to perform the duties of the Office; or

(C) Conduct prejudicial to the proper administration of justice.

(c) The Inspector General shall be professionally qualified through experience or education in at least two of the following areas:

(1) Law;

(2) Auditing;

(3) Government operations;

(4) Financial management; or

(5) Health policy.

(d) The Inspector General shall be paid an annual salary as provided in the budget.

(e) Funding for the office shall be as provided in the state budget.

(f) The Inspector General shall:

(1) Conduct and supervise investigations, perform inspections, evaluations, and review, and provide quality control for the programs of the Department of Human Services, the Department of Health, and the Department of Health Facilities to promote legal, regulatory, programmatic, and fiscal compliance.

(2) Investigate fraud, waste, and abuse of the Department of Human Services, the Department of Health, and the Department of Health Facilities' funds, and conduct, whether by acts or omissions in the Department of Human Services, the Department of Health, and the Department of Health Facilities, that threatens or has the reasonable likelihood to threaten public safety or demonstrates negligence, incompetence, or malfeasance;

(3) Cooperate with and coordinate investigative efforts with the Medicaid Fraud Control Unit within the Office of the Attorney General, and where a preliminary investigation establishes a sufficient basis to warrant referral, shall refer such matters to the Medicaid Fraud Control Unit;

(4) Cooperate with and coordinate investigative efforts with departmental programs and other state and federal agencies to ensure a provider is not subject to duplicative audits; and

(5) Be empowered to consult with the Legislature for policy development;

(6) (A) Organize a board of review, consisting of a chairman appointed by the Inspector General and as many assistants or employees as may be determined by the Inspector General and as may be required by federal laws and rules respecting assistance; the board of review to have such powers of a review nature and such additional powers as may be granted to it by the Inspector General and as may be required by federal laws and rules respecting assistance;

(B) Provide by rules, review, and appeal procedures within the office as may be required by applicable federal laws and rules respecting assistance, and as will provide applicants for, and

recipients of, all classes of assistance, an opportunity to be heard by the board of review, a member thereof, or individuals designated by the board, upon claims involving denial, reduction, closure, delay, or other action or inaction pertaining to public assistance;

(7) (A) May subpoena any person or evidence, administer oaths, take and certify affidavits, and take depositions and other testimony for the purpose of investigating fraud, waste, and abuse of Department of Health, Department of Human Services, or Department of Health Facilities' funds, or behavior in the same departments that threaten public safety or demonstrate negligence, incompetence, or malfeasance;

(B) If a person fails to comply with a lawful order or subpoena issued under this subsection, on petition of the Inspector General or a designated Assistant Inspector General, a court of competent jurisdiction may compel:

(i) Compliance with the order or subpoena; or

(ii) Testimony or the production of evidence;

(C) Within 30 business days after receiving a complaint or allegation, the Inspector General shall respond to the individual who filed the complaint or allegation with:

(i) A preliminary indication of whether the Office of the Inspector General is able to investigate the complaint or allegation; and

(ii) If the Office of the Inspector General is unable to investigate the complaint or allegation because of a conflict of interest, the Office of the Inspector General shall refer the complaint or allegation to another unit of government or law enforcement.

(g) Neither the secretary nor any employee of the Department of Human Services, Department of Health, or the Department of Health Facilities may prevent, inhibit, or prohibit or cause to be prevented, inhibited, or prohibited, the Inspector General or his or her employees from initiating, carrying out, or completing any

investigation, inspection, evaluation, review, or other activity oversight of public integrity by the Office of the Inspector General.

(h) The Inspector General formulates, approves, and submits his or her budget to the Governor for consideration by the Governor.

(i) The Inspector General shall supervise all personnel of the Office of the Inspector General. Qualification, compensation, and personnel practice relating to the employees of the Office of the Inspector General, shall be governed by the classified service.

(j) Employ and discharge within the Office of the Inspector General employees, including professional employees such as investigators and other professional personnel as may be necessary to carry out the functions of the Inspector General, which employees shall continue to be within the classified service provisions of §29-6-1 *et seq.* of this code and rules promulgated thereunder, except for the Inspector General.

(k) Cause the various sections of the Office of the Inspector General to be operated effectively, efficiently, and economically, and to develop goals, policies, and plans that are necessary or desirable for the effective, efficient, and economical operation of the Office of the Inspector General.

(l) Eliminate or consolidate positions and name a person to fill more than one position.

(m) Reorganize internal functions or operations.

(n) 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 Inspector General to enter into 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.

(o) 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. The Inspector General may promulgate emergency rules pursuant to §29A-3-15 of this code to effectuate the purposes of this section.

(p) Delegate to administrators the duties the Inspector General may deem appropriate, from time to time, to facilitate execution of the powers, authority, and duties delegated to the Inspector General.

(q) Transfer permanent state employees between units of the Inspector General.

(r) Enter into memorandums of understanding;

(s) Take any other action involving or relating to internal management not otherwise prohibited by law;

(t) All legislative rules currently in effect impact the Office of the Inspector General or its programs will continue to remain in full force and effect.

(u) (1) The Director of Office of Health Facility Licensure and Certification shall be appointed by the Governor, within 90 days of a vacancy, subject to the advice and consent of the Senate;

(2) The Director of the Office of Health Facility Licensure and Certification shall have at least eight years' experience in the field of licensure and regulatory matters; and

(v)(1) The Director of Investigations and Fraud Management shall be appointed by the Governor, subject to advice and consent of the Senate.

(2) The Director of Investigations and Fraud Management shall have at least eight years' experience in the field of investigations and fraud matters.

(w) The Inspector General, the Director of The Office of Health Facility Licensure and Certification and the Director of the Investigations and Fraud Management may not be the same person.

§16B-2-2. Board of Review- judicial review of decisions of contested cases.

(a) The Board of Review shall provide a fair, impartial, and expeditious grievance and appeal process to applicants or recipients of assistance as defined in §9-1-2 *et seq.* of this code and to all parties of contested cases arising under §29A-5-1 et seq..

(b) The Bureau of Medical Services shall provide a fair, impartial, and expeditious grievance and appeal process to providers of Medicaid services.

(c) Any party adversely affected or aggrieved by a final decision or order of the board or the bureau may seek judicial review of that decision by filing an appeal to the Intermediate Court of Appeals as provided in §29A-5-4 *et seq.* of this code.

(d) The process established by this section is the exclusive remedy for judicial review of final decisions of the Board of Review and the Bureau for Medical Services.

§16B-2-3. Board of Review; subpoena powers.

(a) The Inspector General and the Chair of the Board of Review may subpoena witnesses, papers, records, documents and any other information or data it considers necessary for its determination. They shall issue all subpoenas and subpoenas duces tecum in the name of the appropriate entity.

(b) Requests for subpoenas and subpoenas duces tecum shall be in writing and shall contain a statement acknowledging that the requesting party agrees to pay all fees for the attendance and travel of witnesses.

(c) A subpoena or subpoena duces tecum issued at the request of an entity shall be served by the party at least five days before the return date, either by personal service by a person over 18 years of age or by registered or certified mail, return receipt requested. If service is by mail, the five-day notice period shall not begin until the date the person or entity receives the subpoena or subpoena duces tecum.

(d) Fees for the attendance of witnesses are the same as for witnesses before the circuit court of this State and shall be paid by the party requesting the issuance of the subpoena or subpoena duces tecum.

(e) In any case of disobedience or neglect of any subpoena or subpoena duces tecum, or any refusal of a witness to testify to any matter regarding which he or she may be lawfully interrogated, the issuing entity may apply to the Circuit Court of Kanawha County, and the court shall compel obedience through the same manner as a subpoena or subpoena duces tecum is enforced in Kanawha County Circuit Court.

§16B-2-4. Authority of Investigations and Fraud Management Division to subpoena witnesses and documents.

(a) When the Investigations and Fraud Management Unit of the Office of the Inspector General, which is charged with investigating welfare fraud and intra-agency employee misconduct, has credible information that indicates a person has engaged in an act or activity related to the Department of Human Services, the Department of Health, or the Department of Health Facilities programs, benefits, or intra-agency employee misconduct which is subject to prosecution, it may conduct an investigation to determine if the act has been committed. To the extent necessary to the investigation, the Inspector General or an employee of the Office of the Inspector General may administer oaths or affirmations and issue subpoenas for witnesses and documents relevant to the investigation, including information concerning the existence, description, nature, custody, condition, and location of any book, record, documents or other tangible thing, and the identity and location of persons having knowledge of relevant facts or any matter reasonably calculated to lead to the discovery of admissible evidence.

When the Investigations and Fraud Management Unit has probable cause to believe that a person has engaged in an act or activity which is subject to prosecution relating to the Department of Human Services, the Department of Health, or the Department of Health Facilities programs, benefits, or intra-agency employee

misconduct, the Inspector General or an employee of the Office of the Inspector General may request search warrants and present and swear or affirm criminal complaints.

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

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

(d) The Investigations and Fraud Management Unit may not make public the name or identity of a person whose acts or conduct is investigated pursuant to this section or the facts disclosed in an investigation except as the same may be used in any legal action or enforcement proceeding brought pursuant to this code or federal law.

ARTICLE 3. HOSPITALS AND SIMILAR INSTITUTIONS.

§16B-3-1. Health facilities and certain other facilities operated in connection therewith to obtain license; exemptions; meaning of hospital, etc.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof shall establish, conduct, or maintain in the State of West Virginia any ambulatory health care facility, ambulatory surgical facility, freestanding or operated in connection with a hospital, or extended care facility operated in connection with a

hospital, without first obtaining a license therefor in the manner hereinafter *Provided,* That only one license shall be required for any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof who operates any combination of an ambulatory health care facility, ambulatory surgical facility, hospital, extended care facility operated in connection with a hospital, or more than one thereof, at the same location. Ambulatory health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with a hospital operated by the federal government shall be exempt from the provisions of this article.

A hospital or extended care facility operated in connection with a hospital, within the meaning of this article, shall mean any institution, place, building, or agency in which an accommodation of five or more beds is maintained, furnished, or offered for the hospitalization of the sick or injured: *Provided,* That nothing contained in this article shall apply to nursing homes, rest homes, personal care facilities, homes for the aged, extended care facilities not operated in connection with a hospital, boarding homes, homes for the infirm or chronically ill, convalescent homes, hotels or other similar places that furnish to their guests only board and room, or either of them: *Provided, however,* That the hospitalization, care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, shall not be deemed to constitute the premises a hospital or extended care facility operated in connection with a hospital, within the meaning of this article. "Hospital" shall include state hospitals as defined by §27-1-6 of this code.

An "ambulatory health care facility" shall include any facility which provides health care or mental health care to noninstitutionalized persons on an outpatient basis. This definition does not include the legally authorized practice of medicine by any one or more persons in the private office of any health care provider.

"Ambulatory surgical facility" means a facility which provides surgical treatment to patients not requiring hospitalization. This

definition does not include the legally authorized practice of surgery by any one or more persons in the private office of any health care provider.

"Director" means the director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Office of Health Facilities Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

The Inspector General designates the director of the Office of the Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

Nothing in this article or the rules and regulations adopted pursuant to the provisions of this article shall be construed to authorize the licensure, supervision, regulation, or control in any manner of: (1) Private offices of physicians, dentists, or other practitioners of the healing arts; or (2) dispensaries and first aid stations located within business or industrial establishments maintained solely for the use of employees: *Provided,* That such facility does not contain inpatient or resident beds for patients or employees who generally remain in the facility for more than 24 hours.

Nothing in this article shall authorize any person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or agency thereof to engage in any manner in the practice of medicine, as defined by law. This article shall not be construed to restrict or modify any statute pertaining to the placement or adoption of children.

§16B-3-2. Hospitals and institutions to obtain license; qualifications of applicant.

No person, partnership, association, corporation, or any state or local governmental unit or any division, department, board, or

agency thereof may continue to operate an existing ambulatory health care facility, ambulatory surgical facility, hospital, or extended care facility operated in connection with a hospital, or open an ambulatory health care facility, ambulatory surgical facility, a hospital or extended care facility operated in connection with a hospital, unless such operation shall have been approved and regularly licensed by the state as hereinafter provided. Licenses shall be issued for a particular number by type of beds and/or type of services. Any change in the number by type of bed and/or type of services shall require the issuance of a new license.

Before a license shall be issued under this article, the person applying, if an individual, shall submit evidence satisfactory to the Office of Health Facility Licensure and Certification that he or she is not less than 18 years of age, of reputable and responsible character, and otherwise qualified. In the event the applicant is an association, corporation, or governmental unit, like evidence shall be submitted as to the members thereof and the persons in charge.

Every applicant shall, in addition, submit satisfactory evidence of his or her ability to comply with the minimum standards and with all rules and regulations lawfully promulgated. Every applicant shall further submit satisfactory evidence that he or she has implemented the paternity program created pursuant to §16B-3-13 of this code.

§16B-3-3. Application for license.

Any person, partnership, association, or corporation, or any state or local governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the state Office of Health Facility Licensure and Certification a verified application stating the name of the applicant, and if the applicant is an individual, his or her age, the type of institution to be operated, the location thereof, the name of the person in charge thereof, and such other information as the Office of Health Facility Licensure and Certification may require. An application on behalf of a corporation, association, or governmental unit shall be made by any two officers thereof or by its managing agents and shall contain like information. The application shall be on a form

prescribed, prepared, and furnished by the Office of Health Facility Licensure and Certification.

§16B-3-4. License fees.

(a) The application of any person, partnership, association, corporation, or any state or local government unit for a license to operate a hospital or extended care facility operated in connection with a hospital, shall be accompanied by a fee to be determined by the number of beds available for patients, according to the following schedule of fees:

(1) Those with five beds but less than 50 beds shall pay a fee of $500;

(2) Those with 50 beds or more and less than 100 beds shall pay a fee of $750;

(3) Those with 100 beds or more and less than 200 beds shall pay a fee of $1,000; and (4) those with 200 beds or more shall pay a fee of $1,250.

(b) The director may annually adjust the licensure fees for inflation based upon the consumer price index.

(c) The application of any person, partnership, association, corporation, or local governmental unit for a license to operate an ambulatory health care facility or ambulatory surgical facility shall be accompanied by a reasonable fee to be determined by the director, based on the number of patients served by the facility.

(d) No such fee shall be refunded.

(e) All licenses issued under this article shall expire on June 30 following their issuance, shall be on a form prescribed by the Office of Health Facility Licensure and Certification, shall not be described in the application, shall be posted in a conspicuous place on the licensed premises, and may be renewed from year to year upon application, investigation, and payment of the license fee, as in the case of the procurement of an original license: *Provided,* That any such license in effect on June 30 of any year, for which

timely application for renewal, together with payment of the proper fee, has been made to the Office of Health Facility Licensure and Certification in conformance with the provisions of this article and, the rules and regulations issued thereunder, and prior to the expiration date of such license, shall continue in effect until: (a) June 30 next following the expiration date of such license, (b) the date of the revocation or suspension of such license pursuant to the provisions of this article, or (c) the date of issuance of a new license, whichever date first occurs: *Provided, however,* That in the case of the transfer of ownership of a facility with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director.

(f) All fees received by the Office of Health Facility Licensure and Certification under the provisions of this article shall be deposited in accordance with §16-1-13 of this code.

§16B-3-5. Inspection.

Every building, institution, or establishment for which a license has been issued shall be inspected periodically by a duly appointed representative of the Office of Health Facility Licensure and Certification under rules and regulations to be promulgated by the Inspector General. Inspection reports shall be prepared on forms prescribed by the Office of Health Facility Licensure and Certification. Institutions licensed hereunder shall in no way be exempt from being inspected or licensed under the laws of this state relative to hotels, restaurants, lodginghouses, boardinghouses, and places of refreshment.

§16B-3-5a. Accreditation reports accepted for periodic license inspection.

Notwithstanding any other provision of this article, a periodic license inspection shall not be conducted by the Office of Health Facility Licensure and Certification for a hospital if the hospital has applied for and received an exemption from that requirement: *Provided,* That no exemption granted diminishes the right of the

Office of Health Facility Licensure and Certification to conduct complaint inspections.

The Office of Health Facility Licensure and Certification shall grant an exemption from a periodic license inspection during the year following accreditation if a hospital applies by submitting evidence of its accreditation by the Joint Commission on Accreditation of Health Care Organizations or the American Osteopathic Association, or any accrediting organization approved by the Centers for Medicare and Medicaid Services, and submits a complete copy of the accrediting organization's accreditation report.

If the accreditation of a hospital is for a period longer than one year, the Office of Health Facility Licensure and Certification may conduct at least one license inspection of the hospital after the first year of accreditation and before the accreditation has expired and may conduct additional license inspections if needed. Hospitals receiving a three-year accreditation shall conduct annual self-evaluations using the current year accreditation manual for hospitals unless the Office of Health Facility Licensure and Certification informs the hospital that the hospital will be inspected by the Office of Health Facility Licensure and Certification. Hospitals are not required to conduct self-evaluations for any calendar year during which they are inspected by the Office of Health Facility Licensure and Certification. These self-evaluations shall be completed and placed on file in the hospital by March 31 of each year. Hospitals shall make the results of the self-evaluation available to the Office of Health Facility Licensure and Certification upon requested.

Accreditation reports filed with the Office of Health Facility Licensure and Certification shall be treated as confidential in accordance with §16B-3-10 of this code.

§16B-3-6. Office of Health Facility Licensure and Certification to issue licenses; suspension or revocation.

The Office of Health Facility Licensure and Certification is hereby authorized to issue licenses for the operation of ambulatory

health care facilities, ambulatory surgical facilities, hospitals, or extended care facilities operated in connection with hospitals which are found to comply with the provisions of this article and with all regulations lawfully promulgated by the Inspector General.

The Office of Health Facility Licensure and Certification is hereby authorized to suspend or revoke a license issued hereunder, on any of the following grounds:

(1) Violation of any of the provisions of this article or the rules and regulations issued pursuant thereto;

(2) Knowingly permitting, aiding, or abetting the commission of any illegal act in such institution;

(3) Conduct or practices detrimental to the health or safety of the patients and employees of such institution; or

(4) Operation of beds or services not specified in the license.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time, and place set for the hearing on the complaint, which date shall not be less than 30 days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the Office of Health Facility Licensure and Certification if, when, and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of §29A-5-1 of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in

connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

§16B-3-7. Judicial review.

Any applicant or licensee who is dissatisfied with the decision of the Office of Health Facility Licensure and Certification as a result of the hearing provided in §16B-3-6 of this code may, within thirty days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

The Board of Review shall promptly certify and file in the court the transcript of the hearings on which its decision is based.

Findings of fact by the Office of Health Facility Licensure and Certification shall be considered as prima facie correct, but the court may remand the case to the Office of Health Facility Licensure and Certification for the taking of further evidence. The Office of Health Facility Licensure and Certification may thereupon make new or modified findings of fact which shall likewise be considered as prima facie correct. All evidence in the case shall be confidential until the final order is issued by the court, which order shall be made public.

The court shall have the power to affirm, modify, or reverse the decision of the Office of Health Facility Licensure and Certification and either the applicant or licensee or the Office of the Inspector General may appeal from the court's decision to the Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

§16B-3-8. Inspector General to establish standards; director enforces.

The Inspector General shall have the power to promulgate rules and regulations in accordance with the provisions of §29-1-1 *et seq.* of this code and the director shall have the power to enforce such rules and regulations, as the Inspector General may establish, not in conflict with any provision of this article, as it finds necessary,

or in the public interest, in order to protect patients in institutions required to be licensed under this article from detrimental practices and conditions, or to ensure adequate provision for their accommodations and care. No rule or regulation or standard of the Inspector General shall be adopted or enforced which would have the effect of denying a license to a hospital or other institution required to be licensed hereunder, solely by reason of the school or system of practice employed or permitted to be employed by physicians therein: *Provided,* That such school or system of practice is recognized by the laws of this state.

The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

§16B-3-9. Hospitals and similar institutions required to supply patients, upon request, with one specifically itemized statement of charges assessed to patient, at no cost to patient.

Any hospital, or other similar institution, required to be licensed under this article, upon request, shall supply to any patient who has received services from the hospital, whether on an inpatient or outpatient basis, one itemized statement which describes with specificity the exact service or medication for which a charge is assessed to the patient at the institution, at no additional cost to the patient. In the event of the death of any such patient, a relative or guardian may make such request and shall receive such statement at no additional cost.

§16B-3-10. Information not to be disclosed; exception.

Information received by the Office of Health Facility Licensure and Certification under the provisions of this article shall be confidential and shall not be publicly disclosed except in a proceeding involving the question of the issuance or revocation of a license.

§16B-3-11. Violations; penalties.

Any person, partnership, association, or corporation, and any state or local governmental unit or any division, department, board,

or agency thereof establishing, conducting, managing, or operating an ambulatory health care facility, ambulatory surgical facility, a hospital, or extended care facility operated in connection with a hospital, without first obtaining a license therefor as herein provided, or violating any provision of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by imprisonment in the county jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion of the court. For each subsequent offense the fine may be increased to not more than $500, with imprisonment in the county jail for a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

§16B-3-12. Injunction; severability.

Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or state or any local governmental unit, or any division, department, board, or agency thereof, to restrain or prevent the establishment, conduct, management, or operation of any ambulatory health care facility, ambulatory surgical facility, hospital, or extended care facility operated in connection with a hospital without first obtaining a license therefor in the manner hereinbefore provided.

If any part of this article shall be declared unconstitutional, such declaration shall not affect any other part thereof.

§16B-3-13. Hospital-based paternity program.

(a) Every public and private hospital licensed pursuant to §16B-3-2 of this code and every birthing center licensed pursuant to §16B-20-1 *et seq.* of this code, that provides obstetrical services in West Virginia, shall participate in the hospital-based paternity program.

(b) The Bureau for Child Support Enforcement as described in §48-18-101 of this code shall provide all public and private hospitals and all birthing centers providing obstetric services in this state with:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of §16-5-10 of this code; and

(3) The telephone number for the Bureau for Child Support Enforcement that a parent may call for further information regarding the establishment of paternity.

(c) Prior to the discharge from any facility included in this section of any mother who has given birth to a live infant, the administrator, or his or her assignee, shall ensure that the following materials are provided to any unmarried woman and any person holding himself or herself to be the natural father of the child:

(1) Information regarding the establishment of paternity;

(2) An acknowledgment of paternity fulfilling the requirements of §16-5-10 of this code; and

(3) The telephone number for the Bureau for Child Support Enforcement that a parent may call for further information regarding the establishment of paternity.

(d) The Bureau for Child Support Enforcement shall notify the Office of Health Facility Licensure and Certification of any failure of any hospital or birthing center to conform with the requirements of this section.

(e) Any hospital or birthing center described in this article should provide the information detailed in subsection (c) of this section at any time when such facility is providing obstetrical services.

§16B-3-14. Rural Emergency Hospital Act.

(a) Definitions – As used in this section:

(1) "Critical Access Hospital" means a hospital that has been deemed eligible and received designation as a critical access hospital by the Centers for Medicare and Medicaid Services (CMS).

(2) "Rural Emergency Hospital" means a facility that:

(A) Was a critical access hospital;

(B) Does not provide acute care inpatient services; and

(C) Provides, at a minimum, rural emergency hospital services.

(3) "Rural Emergency Hospital Services" means emergency department services and observation care furnished by a rural emergency hospital that does not exceed an annual per patient average of 24 hours in such rural emergency hospital.

(4) "Staffed Emergency Department" means an emergency department of a rural emergency hospital that meets the following requirements:

(A) The emergency department is staffed 24 hours a day, seven days a week; and

(B) A licensed physician, advanced practice registered nurse, clinical nurse specialist, or physician assistant is available to furnish rural emergency hospital services in the facility 24 hours a day.

(b) A hospital located in an urban area (Metropolitan Statistical Areas (MSA) county), can be considered rural for the purposes of a designation as a critical access hospital pursuant to U.S.C. §1395i-4(c)(2) if it meets the following criteria:

(1) Is enrolled as both a Medicaid and Medicare provider and accepts assignment for all Medicaid and Medicare patients;

(2) Provides emergency health care services to indigent patients;

(3) Maintains 24-hour emergency services; and

(4) Is located in a county that has a rural population of 50 percent or greater as determined by the most recent United States decennial census.

(c) A critical access hospital may apply to be licensed as a rural emergency hospital if:

(1) It has been designated as a critical access hospital for at least one year; and

(2) It is designated as a critical access hospital at the time of application for licensure as a rural emergency hospital.

(d) In addition to the requirements of subsection (c) of this section, rural emergency hospital shall, at a minimum:

(1) Provide rural emergency hospital services through a staffed emergency department;

(2) Treat all patients regardless of insurance status; and

(3) Have in effect a transfer agreement with a Level I or Level II trauma center.

(e) A rural emergency hospital may:

(1) With respect to services furnished on an outpatient basis, provide other medical and health services as specified by the Inspector General through rulemaking; and

(2) Include a unit of a facility that is a distinct part licensed as a skilled nursing facility to furnish post-hospital extended care services.

(f) The Inspector General 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 section.

§16B-3-15. Hospital visitation.

(a) A public or private hospital licensed pursuant to the provisions of §16B-3-2 of this code is required to permit patient

visitation privileges for nonrelatives unless otherwise requested by the patient or legal designee. For purposes of this section, the term "legal designee" means and includes those persons 18 years of age or older, and appointed by the patient to make health care decisions for the patient pursuant to the provisions of §16-30-6 of this code.

(b) It is the intent of the Legislature that this section facilitate a patient's visitation with nonrelative individuals, and may not, in any way, restrict or limit allowable uses and disclosures of protected health information pursuant to the Health Insurance Portability and Accountability Act, 42 U.S.C. §1320d-2 and the accompanying regulations in 45 CFR 164.500.

(c) No provision of this section may be construed to prevent a hospital from otherwise restricting visitation privileges in order to prevent harm to the patient or disruption to the facility.

§16B-3-16. Public notice regarding the closure of a licensed health care facility or hospital.

(a) Any hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility, freestanding or operated in connection with a hospital licensed in the State of West Virginia under this article that intends to terminate operations, shall provide at least three weeks' notice of such intent to the public prior to the actual termination of operations. Pursuant to the provisions of §59-3-1 *et seq.* of this code, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located, and a notice shall be published on the facility's web page within the same time frame. The first publication of the Class III legal advertisement shall occur at least three weeks prior to the date the hospital or facility intends to terminate operations. The Class III legal advertisement shall include, but is not limited to, a statement, along with the specific or proximate date, that the hospital, extended care facility operated in connection with a hospital, ambulatory health care facility, or ambulatory surgical facility, freestanding or operated in connection with a hospital,

intends to terminate operations, and where medical records, including, but not limited to, all imaging studies may be obtained.

(b) Upon closure, the hospital or facility shall cause a Class III legal advertisement to be published in all qualified newspapers of general circulation where the hospital or facility is geographically located informing the public where medical records, including, but not limited to, all imaging studies may be obtained. This notice shall include contact information. A notice shall also be placed on the facility web page.

(c) The hospital or facility shall respond to requests for medical records made pursuant to the publication requirements in this section within 30 days.

(d) A notification of any change in location of the patient's medical records shall be published in a newspaper of general circulation as set forth in subsection (a) of this section. The confidentiality of the medical records shall be maintained during storage.

(e) If the facility fails to produce the requested records within 30 days, a penalty of $25 per day may be assessed by a court with jurisdiction.

(f) This section is effective retroactively to September 1, 2019, and continues in effect thereafter. The applicable penalties are only effective for requests for medical records made after the effective date of passage of this section.

§16B-3-17. Healthcare-associated infection reporting.

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

(1) "Centers for Disease Control and Prevention" or "CDC" means the United States Department of Health and Human Services Centers for Disease Control and Prevention;

(2) "National Healthcare Safety Network" or "NHSN" means the secure Internet-based data collection surveillance system managed by the Division of Healthcare Quality Promotion at the

CDC, created by the CDC for accumulating, exchanging, and integrating relevant information on infectious adverse events associated with healthcare delivery.

(3) "Hospital" means hospital as that term is defined in §16-29B-3(b)(8) of this code.

(4) "Healthcare-associated infection" means a localized or systemic condition that results from an adverse reaction to the presence of an infectious agent or a toxin of an infectious agent that was not present or incubating at the time of admission to a hospital.

(5) "Physician" means a person licensed to practice medicine by either the Board of Medicine or the board of osteopathy.

(6) "Nurse" means a person licensed in West Virginia as a registered professional nurse in accordance with §30-7-1 *et seq.* of this code.

(b) The Secretary of the Department of Health is hereby directed to create an Infection Control Advisory Panel whose duty is to provide guidance and oversight in implementing this section. The advisory panel shall consist of the following members:

(1) Two board-certified or board-eligible physicians, affiliated with a West Virginia hospital or medical school, who are active members of the Society for Health Care Epidemiology of America and who have demonstrated an interest in infection control;

(2) One physician who maintains active privileges to practice in at least one West Virginia hospital;

(3) Three infection control practitioners, two of whom are nurses, each certified by the Certification Board of Infection Control and Epidemiology, and each working in the area of infection control. Rural and urban practice must be represented;

(4) A statistician with an advanced degree in medical statistics;

(5) A microbiologist with an advanced degree in clinical microbiology;

(6) The Director of the Division of Disease Surveillance and Disease Control in the Bureau for Public Health or a designee; and

(7) The director of the Office of Health Facility Licensure and Certification, or his or her designee.

(c) The advisory panel shall:

(1) Provide guidance to hospitals in their collection of healthcare-associated infections;

(2) Provide evidence-based practices in the control and prevention of healthcare associated infections;

(3) Establish reasonable goals to reduce the number of healthcare-associated infections;

(4) Develop plans for analyzing infection-related data from hospitals;

(5) Develop healthcare-associated advisories for hospital distribution;

(6) Review and recommend to the Secretary of the Department of Health the manner in which the reporting is made available to the public to assure that the public understands the meaning of the report; and

(7) Other duties as identified by the Secretary of the Department of Health.

(d) Hospitals shall report information on healthcare-associated infections in the manner prescribed by the CDC National Healthcare Safety Network (NHSN). The reporting standard prescribed by the CDC National Healthcare Safety Network (NHSN) shall be the reporting system of the hospitals in West Virginia.

(e) Hospitals who fail to report information on healthcare associated infections in the manner and time frame required by the Secretary of the Department of Health shall be fined the sum of $5,000 for each such failure.

(f) The Infection Control Advisory Panel shall provide the results of the collection and analysis of all hospital data to the Secretary of the Department of Health for public availability and the Bureau for Public Health for consideration in their hospital oversight and epidemiology and disease surveillance responsibilities in West Virginia.

(g) Data collected and reported pursuant to this act may not be considered to establish standards of care for any purposes of civil litigation in West Virginia.

(h) The Secretary of the Department of Health shall require that all hospitals implement and initiate this reporting requirement.

§16B-3-18. Designation of comprehensive, primary, acute, and thrombectomy capable stroke-ready hospitals; reporting requirements; rulemaking.

(a) A hospital, as that term is defined in §16B-3-1 *et seq.* of this code, shall be recognized by the Office of Emergency Medical Services as a comprehensive stroke center (CSC), thrombectomy-capable stroke center (TSC), primary stroke center (PSC), or an acute stroke-ready hospital (ASRH), upon submitting verification of certification as granted by the American Heart Association, the joint commission, or other nationally recognized organization to the Office of Emergency Medical Services. A hospital shall immediately notify the Office of Emergency Medical Services of any change in its certification status.

(b) The Office of Emergency Medical Services shall gain access to, and utilize, a nationally recognized stroke database that compiles information and statistics on stroke care that align with the stroke consensus metrics developed and approved by the American Heart Association and the American Stroke Association, for the purpose of improving stroke care and access across the State of West Virginia. The Office of Emergency Medical Services shall, upon request, provide the data accessed and utilized relating to comprehensive stroke centers, thrombectomy-capable stroke centers, primary stroke centers, and acute stroke-ready hospitals to the advisory committee in §16B-3-18(d) of this code.

(c) The Office of Emergency Medical Services shall provide annually, by June 1, a list of all hospitals recognized pursuant to the provisions of §16-3-18(a) of this code to the medical director of each licensed emergency medical services agency in this state. This list shall be maintained by the Office of Emergency Medical Services and shall be updated annually on its website.

(d) The Secretary of the Department of Health shall continue a stroke advisory committee which shall function as an advisory body to the secretary and report no less than biannually at regularly scheduled meetings. Its functions shall include:

(1) Increasing stroke awareness;

(2) Promoting stroke prevention and health policy recommendations relating to stroke care;

(3) Advising the Office of Emergency Medical Services on the development of stroke networks;

(4) Utilizing stroke care data to provide recommendations to the Office of Emergency Medical Services to improve stroke care throughout the state;

(5) Identifying and making recommendations to overcome barriers relating to stroke care; and

(6) Review and make recommendations to the State Medical Director of the Office of Emergency Medical Services regarding prehospital care protocols including:

(A) The assessment, treatment, and transport of stroke patients by licensed emergency medical services agencies; and

(B) Plans for the triage and transport, within specified time frames of onset symptoms, of acute stroke patients to the nearest comprehensive stroke center, thrombectomy-capable stroke center, primary stroke center, or acute stroke-ready hospital.

(e) The advisory committee as set forth §16B-3-18(d) of this code shall consist of no more than 14 members. Membership of the advisory committee shall include:

(1) A representative of the Department of Health;

(2) A representative of an association with the primary purpose of promoting better heart health;

(3) A registered emergency medical technician;

(4) Either an administrator or physician representing a critical access hospital;

(5) Either an administrator or physician representing a teaching or academic hospital;

(6) A representative of an association with the primary purpose of representing the interests of all hospitals throughout the state; and

(7) A clinical and administrative representative of hospitals from each level of stroke center certification by a national certifying body (CSC, TSC, PSC, and ASRH).

(f) Of the members first appointed, three shall be appointed for a term of one year, three shall be appointed for a term of two years, and the remaining members shall be appointed for a term of three years. The terms of subsequent appointees shall be three years. Members may be reappointed for additional terms.

(g) Nothing in this section may permit the Office of Emergency Medical Services to conduct inspections of hospitals in relation to recognition as a stroke center as set forth in this section: *Provided*, That nothing in this section may preclude inspections of hospitals by the Office of Emergency Medical Services which are otherwise authorized by this code.

§16B-3-19. Hospital police departments; appointment of hospital police officers; qualifications; authority; compensation and removal; law-enforcement grants; limitations on liability.

(a) The governing board of a hospital licensed under §16B-3-2 of this code may establish a hospital police department and appoint

qualified individuals to serve as hospital police officers upon any premises owned or leased by the hospital and under the jurisdiction of the governing board, subject to the conditions and restrictions established in this section.

(1) A person who fulfills the certification requirements for law-enforcement officers under §30-29-5 of this code is considered qualified for appointment as a hospital police officer.

(2) A retired police officer may qualify for appointment as a hospital police officer if he or she meets the certification requirements under §30-29-5 of this code.

(3) Before performing duties as a hospital police officer in any county, a person shall qualify as is required of county police officers by:

(A) Taking and filing an oath of office as required by §6-1-1 *et seq.* of this code; and

(B) Posting an official bond as required by §6-2-1 *et seq.* of this code.

(b) A hospital police officer may carry a gun and any other dangerous weapon while on duty if the officer fulfills the certification requirement for law-enforcement officers under §30-29-5 of this code.

(c) It is the duty of a hospital police officer to preserve law and order:

(1) On the premises under the jurisdiction of the governing board and its affiliated properties; and

(2) On any street, road, or thoroughfare, except controlled access highways, immediately adjacent to or passing through the premises under the jurisdiction of the governing board, to which the officer is assigned by the chief executive officer or his or her designee: *Provided*, That a hospital police officer may only enforce the provisions of §17C-1-1 *et seq.* of this code upon request of a local law-enforcement agency.

(A) For the purposes of this subdivision, the hospital police officer is a law-enforcement officer pursuant to the provisions of §30-29-1 *et seq.* of this code;

(B) The hospital police officer has and may exercise all the powers and authority of a law-enforcement officer as to offenses committed within the area assigned;

(C) The hospital police officer is subject to all the requirements and responsibilities of a law-enforcement officer;

(D) Authority assigned pursuant to this subdivision does not supersede in any way the authority or duty of other law-enforcement officers to preserve law and order on such hospital premises;

(E) Hospital police officers may assist a local law-enforcement agency on public highways. The assistance may be provided to control traffic in and around premises owned by the state or political subdivision when:

(i) Traffic is generated as a result of activities or events conducted or sponsored by the hospital; and

(ii) The assistance has been requested by the local law-enforcement agency;

(F) Hospital police officers may assist a local law-enforcement agency in any location under the agency's jurisdiction at the specific request of the agency; and

(G) Hospital police officers shall enforce the general policies and procedures of the hospital as established by the chief executive officer or his or her designee.

(d) The salary of a hospital police officer is paid by the employing hospital's governing board. The hospital shall furnish each hospital police officer with a firearm and an official uniform to be worn while on duty. The hospital shall furnish, and require each officer while on duty to wear, a shield with the appropriate

inscription and to carry credentials certifying the person's identity and authority as a hospital police officer.

(e) The governing board of the employing hospital may at its pleasure revoke the authority of any hospital police officer and such officers serve at the will and pleasure of the governing board. The chief executive officer of the hospital or his or her designee shall report the termination of employment of a hospital police officer by filing a notice to that effect in the office of the clerk of each county in which the hospital police officer's oath of office was filed.

(f) For the purpose of hospital police officers appointed and established in this section, the civil service provisions of §8-14-1 *et seq.* of this code and the investigation and interrogation provisions of §8-14A-1 *et seq.* of this code shall not apply.

(g) A hospital police officer shall not be subject to civil or criminal liability unless one of the following applies:

(1) His or her acts or omissions were manifestly outside the scope of employment or official responsibilities;

(2) His or her acts or omissions were with malicious purpose, in bad faith, or in a wanton or reckless manner; or

(3) Liability is expressly imposed upon the hospital police officer by any other provision of this code.

(h) A hospital police officer shall be trained in crisis de-escalation techniques consistent with the goals and objectives of this section: *Provided,* That within 180 days of beginning work as a hospital police officer, the employing hospital shall provide crisis management training to a hospital police officer through a program approved by the Law-Enforcement Professional Standards Subcommittee established by §30-29-2 of this code.

§16B-3-20. Patient safety and transparency.

(a) As used in this section:

"Acuity-based patient classification system" means a set of criteria based on scientific data that acts as a measurement instrument which predicts registered nursing care requirements for individual patients based on severity of patient illness, need for specialized equipment and technology, intensity of nursing interventions required, and the complexity of clinical nursing judgment needed to design, implement, and evaluate the patient's nursing care plan consistent with professional standards of care. The acuity system criteria shall take into consideration the patient care services provided by registered nurses, licensed practical nurses, and other health care personnel.

"Competency" means those observable and measurable knowledge, skills, abilities and personal attributes, as determined by the facility, that demonstrate a nurse's ability to safely perform expected nursing duties of a unit.

"Direct-care registered nurse" means a registered nurse, who is a member of the facility's staff, has no management role or responsibility, and accepts direct responsibility and accountability to carry out medical regimens, nursing or other bedside care for patients.

"Facility" means a hospital, licensed pursuant to the provisions of this article, a licensed private or state-owned and operated general acute-care hospital, an acute psychiatric hospital, or any acute-care unit within a state operated facility.

"Nursing care" means care which falls within the scope of practice, as provided §30-7-1 *et seq.* of this code.

"Orientation" means the process that the facility develops to provide initial training and information to clinical staff relative to job responsibilities and the organization's mission and goals.

"Unit" means those areas of the hospital organization not considered departments which provide specialized patient care.

"Unit Nurse Staffing Committee" means a committee made up of facility employees which includes a minimum of 51 percent of direct-care registered nurses who regularly provide direct nursing

care to patients on the unit of the facility for which the nurse staffing plan is developed.

(b) The Legislature finds that to better improve the quality and efficiency of health care and to better facilitate planning for future states of emergency in West Virginia, a comprehensive system for nurses should be established to create staffing plans to ensure facilities are adequately staffed to handle the daily workload that may accompany a state of emergency. Further, the Legislature finds that nurses in West Virginia fall under the definition of "critical infrastructure," and by establishing a comprehensive staffing plan, West Virginia will be better equipped to deal with employment and staffing issues associated with higher acuity treatment in facilities. Additionally, the Legislature finds that based upon the nature of the acuity-based patient classification system it relies upon confidential patient information to generate a staffing plan model and therefore both the classification system and the staffing plan are considered confidential records as defined in §30-3C-3 of this code and are therefore not subject to discovery in any civil action or administrative proceeding.

(c) A facility shall:

(1) Develop, by July 1, 2024, an acuity-based patient classification system to be used to establish the staffing plan to be used for each unit;

(2) Direct each unit nurse staffing committee to annually review the facility's current acuity- based patient classification system and submit recommendations to the facility for changes based on current standards of practice; and

(3) Provide orientation, competency validation, education, and training programs in accordance with a nationally-recognized accrediting body recognized by the Centers for Medicare and Medicaid Services or in accordance with the Office of Health Facility Licensure and Certification. The orientation shall include providing for orientation of registered nursing staff to assigned clinical practice areas.

ARTICLE 4. NURSING HOMES.

§16B-4-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective and financially efficient care and treatment of persons who are convalescing or whose physical or mental condition requires them to receive a degree of nursing or related health care greater than that necessary for well individuals. Such care and treatment require a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings. In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary, and governmental nursing homes it is the policy of this state to encourage, promote, and require the maintenance of nursing homes so as to ensure protection of the rights and dignity of those using the services of such facilities.

The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§16B-4-2. Definitions.

As used in this article, unless a different meaning appears from the context:

"Deficiency" means a nursing home's failure to meet the requirements specified in §16B-4-1 *et seq.* of this code and rules promulgated thereunder.

"Department" means the Department of Health.

"Director" means the director of the office of Health Facility Licensure and Certification.

"Distance learning technologies" means computer-centered technologies delivered over the internet, broadcasts, recordings, instructional videos, or videoconferencing.

"Household" means a private home or residence which is separate from or unattached to a nursing home.

"Immediate jeopardy" means a situation in which the nursing home's noncompliance with one or more of the provisions of this article or rules promulgated thereunder has caused or is likely to cause serious harm, impairment or death to a resident.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Nursing home" or "facility" means any institution, residence, or place, or any part or unit thereof, however named, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of providing accommodations and care, for a period of more than 24 hours, for four or more persons who are ill or otherwise incapacitated and in need of extensive, ongoing nursing care due to physical or mental impairment or which provides services for the rehabilitation of persons who are convalescing from illness or incapacitation.

The care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute a nursing home within the meaning of this article. Nothing contained in this article applies to nursing homes operated by the federal government; or extended care facilities operated in conjunction with a hospital; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 *et seq.* of this code.

"Nursing care" means those procedures commonly employed in providing for the physical, emotional, and rehabilitation needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedure contributing to rehabilitation, and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person.

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure Certification within the Office of Inspector General.

"Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state.

"Resident" means an individual living in a nursing home.

"Review organization" means any committee or organization engaging in peer review or quality assurance, including, but not limited to, a medical audit committee; a health insurance review committee; a professional health service plan review committee or organization; a dental review committee; a physician's advisory committee; a podiatry advisory committee; a nursing advisory committee; any committee or organization established pursuant to a medical assistance program; any committee or organization established or required under state or federal statutes rules or regulations; and any committee established by one or more state or local professional societies or institutes, to gather and review information relating to the care and treatment of residents for the purposes of:

Evaluating and improving the quality of health care rendered, reducing morbidity or mortality, or establishing and enforcing guidelines designed to keep within reasonable bounds the cost of health care.

"Sponsor" means the person or agency legally responsible for the welfare and support of a resident.

"Substantial compliance" means a level of compliance with the rules such that no deficiencies exist or such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

The Inspector General may define in the rules any term used herein which is not expressly defined.

§16B-4-3. Powers, duties, and rights of Inspector General.

In the administration of this article, the Inspector General shall have the following powers, duties, and rights:

(a) To enforce rules and standards promulgated hereunder for nursing homes;

(b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of nursing homes;

(c) To enforce rules promulgated hereunder governing the qualification of applicants for nursing home licenses, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of such federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated to the department by the Legislature;

(f) To receive and disburse for purposes authorized by this article any funds that may come to the department by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the department’s operation, or otherwise;

(g) To make contracts, and to execute all instruments necessary or convenient in carrying out the Inspector General’s functions and

duties; and all such contracts, agreements, and instruments will be executed by the Inspector General;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for nursing homes for clinical, administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of nursing homes and to the health, care, treatment, and service in general of such homes;

(k) To assess civil penalties for violations of facility standards, in accordance with §16B-4-10 of this code;

(l) To inspect any nursing home and any records maintained therein that are necessary to determine compliance with licensure laws or Medicare or Medicaid certification, subject to the provisions of §16B-4-9 and §16B-4-10 of this code;

(m) To establish and implement procedures, including informal conferences, investigations, and hearings, subject to applicable provisions of §29A-3-1 *et seq.* of this code, and to enforce compliance with the provisions of this article and with rules issued hereunder;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of rules issued hereunder. Such action may be taken by the director without the sanction of the prosecuting attorney of

the county in which proceedings are instituted if the officer fails or refuses to discharge his or her duty. The circuit court of the county in which the conduct has occurred or, if emergency circumstances require, the Circuit Court of Kanawha County shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the Inspector General or any person acting under the Inspector General's direction be required to give security for costs;

(p) To delegate authority to the director's employees and agents to perform all functions of the director;

(q) To make available to the Governor, the Legislature, and the public at all times online access through the Office of Health Facility Licensure and Certification website, the following information. The online information will describe the licensing and investigatory activities of the Office of Health Facility Licensure and Certification during the year. The online information will include a list of all nursing homes in the state, whether such homes are proprietary or nonproprietary; the name of the administrator or administrators; the total number of beds; the legal name of the facility; state identification number; health investigations information and reports; life safety investigations information and reports; and whether or not those nursing homes listed accept Medicare and Medicaid residents; and

(r) To establish a formal process for licensed facilities to file complaints about the inspection process or inspectors.

(s) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

§16B-4-4. Administrative and inspection staff.

The director may, at such time or times as he or she may deem necessary, employ such administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the Office of Health Facility Licensure and Certification shall be members of the state

civil service system and inspectors shall be trained to perform their assigned duties. Such inspectors and other employees as may be duly designated by the director shall act as the director's representatives and, under the direction of the director, shall enforce the provisions of this article and all duly promulgated regulations and, in the discharge of official duties, shall have the right of entry into any place maintained as a nursing home.

§16B-4-5. Rules; minimum standards for nursing homes.

(a) All rules shall be proposed for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code. The Inspector General shall recommend the adoption, amendment, or repeal of such rules as may be necessary or proper to carry out the purposes and intent of this article.

(b) The Inspector General shall recommend rules establishing minimum standards of operation of nursing homes including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to nursing homes by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy;

(B) A statement of the rights and responsibilities of residents in nursing homes which prescribe, as a minimum, such a statement of residents' rights as included in the United States Department of Health and Human Services regulations, in force on the effective date of this article, governing participation of nursing homes in the Medicare and Medicaid programs pursuant to 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq*.;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the nursing home;

(E) The procedures and inspections for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution, independent informal dispute resolution, and administrative due process, and when such remedies are available;

(2) Minimum numbers of administrators, medical directors, nurses, aides, and other personnel according to the occupancy of the facility;

(3) Qualifications of the facility's administrators, medical directors, nurses, aides, and other personnel;

(4) Safety requirements;

(5) Sanitation requirements;

(6) Personal services to be provided;

(7) Dietary services to be provided;

(8) Medical records;

(9) Social and recreational activities to be made available;

(10) Pharmacy services;

(11) Nursing services;

(12) Medical services;

(13) Physical facility;

(14) Resident rights;

(15) Visitation privileges that:

(A) Permit immediate access to a resident, subject to the resident's right to deny or withdraw consent at any time, by immediate family or other relatives of the resident;

(B) Permit immediate access to a resident, subject to reasonable restrictions and the resident's right to deny or withdraw consent at any time, by others who are visiting with the consent of the resident; and

(C) Permit access to other specific persons or classes of persons consistent with state and federal law; and

(16) Admission, transfer, and discharge rights.

(c) To ensure compliance with §29A-3-11(b)(3) of this code, the Inspector General shall amend his or her legislative rule to exempt federally certified Medicare and Medicaid nursing facilities from provisions addressed in the federal regulations.

(d) The director shall permit the nonclinical instruction portions of a nurse aide training program approved by the Office of Health Facility Licensure and Certification to be provided through distance learning technologies.

§16B-4-6. License required; application; fees; duration; renewal.

No person may establish, operate, maintain, offer, or advertise a nursing home within this state unless and until he or she obtains a valid license therefor as hereinafter provided, which license remains unsuspended, unrevoked, and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any nursing home, as defined in §16B-4-2 of this code, which is being operated without a valid license from the Inspector General. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for nursing homes, as established by this article and the rules lawfully promulgated hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address, and principal occupation:

(A) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant;

(B) Of each officer and director of a corporate applicant;

(C) Of each trustee and beneficiary of an applicant which is a trust; and

(D) Where a corporation has a proprietary interest of 25 percent or more in an applicant, the name, address, and principal occupation of each officer and director of the corporation;

(3) The name and address of the owner of the premises of the nursing home or proposed nursing home, if he or she is a different person from the applicant, and in such case, the name and address:

(A) Of each person who, as a stockholder or otherwise, has a proprietary interest 10 percent or more in the owner;

(B) Of each officer and director of a corporate applicant; and

(C) Of each trustee and applicant, the name, address, and principal occupation of each officer and director of the corporation;

(4) Where the applicant is the lessee or the assignee of the nursing home or the premises of the proposed nursing home, a signed copy of the lease and any assignment thereof;

(5) The name and address of the nursing home or the premises of the proposed nursing home;

(6) A description of the nursing home to be operated;

(7) The bed quota of the nursing home;

(8) An organizational plan for the nursing home indicating the number of persons employed or to be employed and the positions and duties of all employees;

(9) The name and address of the individual who is to serve as administrator;

(10) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the director may require;

(11) A listing of other states in which the applicant owns, operates, or manages a nursing home or long-term care facility; and

(12) Such additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to §16B-4-6(a) of this code, and inspection of the applicant nursing home pursuant to §16B-4-9 and §16B-4-10 of this code, the director shall issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a nursing home by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years or consistent poor performance in other states;

(2) That the facility is under the supervision of an administrator who is licensed pursuant to the provisions of §30-25-1 *et seq.* of this code; and

(3) That the facility is in substantial compliance with standards established pursuant to §16B-4-5 of this code, and such other requirements for a license as may be established by rule under this article.

Any license issued by the director shall state the maximum bed capacity for which it is issued, the date the license was issued, and the expiration date. Such licenses shall be issued for a period not to exceed 15 months for nursing homes: *Provided*, That any license in effect for which timely application for renewal, together with payment of the proper fee has been made to the director in

conformance with the provisions of this article and the rules issued thereunder, and prior to the expiration date of the license, shall continue in effect until:

(A) Six months following the expiration date of the license; or

(B) The date of the revocation or suspension of the license pursuant to the provisions of this article; or

(C) The date of issuance of a new license, whichever date first occurs.

Each license shall be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided*, That in the case of the transfer of ownership of a facility with an unexpired license, the application by the proposed new owner shall be filed with the director no later than 30 days before the proposed date of transfer. Upon receipt of proof of the transfer of ownership, the application shall have the effect of a license for three months. The director shall issue or deny a license within three months of the receipt of the proof of the transfer of ownership. Every license shall be posted in a conspicuous place in the nursing home for which it is issued so as to be accessible to and in plain view of all residents of and visitors to the nursing home.

(c) A license is renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee, and contingent upon evidence of compliance with the provisions of this article and rules promulgated hereunder. Any application for renewal of a license shall include a report by the licensee in such form and containing such information as shall be prescribed by the director, including a statement of any changes in the name, address, management, or ownership information on file with the director. All holders of facility licenses as of the effective date of this article shall include, in the first application for renewal filed thereafter, such information as is required for initial applicants under the provisions of §16B-4-6(a) of this code.

(d) In the case of an application for a renewal license, if all requirements of §16B-4-6 of this code are not met, the director may at his or her discretion issue a provisional license, provided that care given in the nursing home is adequate for resident needs and the nursing home has demonstrated improvement and evidences potential for substantial compliance within the term of the license: *Provided*, That a provisional license may not be issued for a period greater than six months, may not be renewed, and may not be issued to any nursing home that is a poor performer.

(e) A nonrefundable application fee in the amount of $200 for an original nursing home license shall be paid at the time application is made for the license. Direct costs of initial licensure inspections or inspections for changes in licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $15 per bed per year for nursing homes, except the annual rate per bed may be assessed for licenses issued for less than 15 months. Annually, the director may adjust the licensure fees for inflation based upon the increase in the consumer price index during the last 12 months. All such license fees shall be due and payable to the director, annually, and in the manner set forth in the rules promulgated hereunder. The fee and application shall be submitted to the director who shall retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with §16-1-13 of this code.

§16B-4-7. Cost disclosure; surety for resident funds.

(a) Each nursing home shall disclose in writing to all residents at the time of admission a complete and accurate list of all costs which may be incurred by them, and shall notify the residents 30 days in advance of changes in costs. The nursing home shall make available copies of the list in the nursing home's business office for inspection. Residents may not be liable for any cost not so disclosed.

(b) If the nursing home handles any money for residents within the facility, the licensee or his or her authorized representative shall either: (1) Give a bond; or (2) obtain and maintain commercial insurance with a company licensed in this state in an amount consistent with this subsection and with the surety as the director shall approve. The bond or insurance shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee; shall administer the funds on behalf of the resident in the manner directed by the depositor; shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident; and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond or obtain insurance in a sum at least 1.25 times the average amount of funds deposited with the nursing home during the nursing home's previous fiscal year.

This insurance policy shall specifically designate the resident as the beneficiary or payee reimbursement of lost funds. Regardless of the type of coverage established by the facility, the facility shall reimburse, within 30 days, the resident for any losses directly and seek reimbursement through the bond or insurance itself. Whenever the director determines that the amount of any bond or insurance required pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any such bond or insurance is impaired by any recovery against the bond or insurance, the director may require the licensee to file an additional bond or insurance in such amount as necessary to adequately protect the money of residents being handled.

The provisions of this subsection do not apply if the licensee handles less than $35 per resident per month in the aggregate. Nursing homes certified to accept payment by Medicare and Medicaid must meet the requirements for surety bonds as listed in the applicable federal regulations.

§16B-4-8. Investigation of complaints.

(a) The director shall establish rules for prompt investigation of all complaints of alleged violations by nursing homes of

applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures shall include provisions for ensuring the confidentiality of the complainant and for promptly informing the complaint and the nursing home involved of the results of the investigation.

(b) If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy.

(1) A nursing home or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16B-4-12a of this code.

(2) No later than 20 working days following the last day of a complaint investigation, the director shall transmit to the nursing home a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(c) No nursing home may discharge or in any manner discriminate against any resident, legal representative, or employee for the reason that the resident, legal representative, or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any nursing home constitutes ground for the suspension or revocation of the license of the nursing home as provided in §16B-4-11 and §16B-4-12 of this code. Any type of discriminatory treatment of a resident, legal representative, or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of such action, shall raise a rebuttable presumption that such action was taken by the nursing home in retaliation for such complaint or action.

§16B-4-9. Inspections.

The director and any duly designated employee or agent shall have the right to enter upon and into the premises of any nursing home at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as a nursing home without a license. If entry is refused by the owner or person in charge of the nursing home, the director may apply to the circuit court of the county in which the nursing home is located or the Circuit Court of Kanawha County for a warrant authorizing inspection to conduct the following inspections:

(1) An initial inspection prior to the issuance of a license pursuant to §16B-4-6 of this code;

(2) A license inspection for a nursing home, which shall be conducted at least once every 15 months, if the nursing home has not applied for and received an exemption from the requirement as provided for in this section;

(3) The director, by the director's authorized employees or agents, shall conduct at least one inspection prior to issuance of a license pursuant to §16B-4-6 of this code, and shall conduct periodic unannounced inspections thereafter, to determine compliance by the nursing home with applicable rules promulgated thereunder. All facilities shall comply with regulations of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. Any nursing home aggrieved by a determination or assessment made pursuant to this section, shall have the right to an administrative appeal as set forth in §16B-4-12 of this code;

(4) A complaint inspection based on a complaint received by the director. If, after investigation of a complaint, the director determines that the complaint is substantiated, the director may invoke any applicable remedies available pursuant to §16B-4-11 of this code.

§16B-4-9a. Exemptions.

(a) The director may grant an exemption from a license inspection if a nursing home was found to be in substantial compliance with the provisions of this chapter at its most recent inspection and there have been no substantiated complaints thereafter. The director may not grant more than one exemption in any two-year period.

(b) The director may grant an exemption to the extent allowable by federal law from a standard survey, only if the nursing home was found to be in substantial compliance with certification participation requirements at its previous standard inspection and there have been no substantiated complaints thereafter.

(c) The director may grant an exemption from periodic license inspections if a nursing home receives accreditation by an accrediting body approved by the director and submits a complete copy of the accreditation report. The accrediting body shall identify quality of care measures that assure continued quality care of residents. The director may not grant more than one exemption in any two-year period.

(d) If a complaint is substantiated, the director has the authority to immediately remove the exemption.

§16B-4-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-4-8 and §16B-4-9 of this code shall be in writing and filed with the director and shall list all deficiencies in the nursing home's compliance with the provisions of this article and the rules adopted hereunder.

(1) No later than 10 working days following the last day of the inspection, the director shall transmit to the nursing home a copy of such report and shall specify a time within which the nursing home shall submit a plan for correction of such deficiencies.

(2) Additionally, notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal.

(3) A nursing home adversely affected by an order or citation of a deficient practice issued pursuant to this section may request the independent informal dispute resolution process contained in §16B-4-12a of this code.

(4) The plan submitted by the nursing home shall be approved, rejected, or modified by the director.

(5) The inspectors or the nursing home shall allow audio taping of the exit conference with the expense to be paid by the requesting party.

(b) With regard to a nursing home with deficiencies and upon its failure to submit a plan of correction which is approved by the director, or to correct any deficiency within the time specified in an approved plan of correction, the director, in consultation with the Inspector General, may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article: *Provided*, That any action by the director shall be stayed until federal proceedings arising from the same deficiencies are concluded.

(c) Nothing in this section may be construed to prohibit the director from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, the violation of the rule jeopardizes the health or safety of residents, or where the violation of the rule is the second or subsequent such violation occurring during a period of 12 full months.

(d) Civil penalties assessed against nursing home shall not be less than $50 nor more than $8,000: *Provided*, That the director, in consultation with the Inspector General, may not assess a penalty under state licensure for the same deficiency or violation cited under federal law and may not assess a penalty against a nursing

home if the nursing home corrects the deficiency within 20 days of receipt of written notice of the deficiency unless it is a repeat deficiency or the nursing home is a poor performer.

(e) In determining whether to assess a penalty, and the amount of penalty to be assessed, the director, in consultation with the Inspector General shall consider:

(1) How serious the noncompliance is in relation to direct resident care and safety;

(2) The number of residents the noncompliance is likely to affect;

(3) Whether the noncompliance was noncompliance during a previous inspection;

(4) The opportunity the nursing home has had to correct the noncompliance; and

(5) Any additional factors that may be relevant.

(f) The range of civil penalties shall be as follows:

(1) For a deficiency which presents immediate jeopardy to the health, safety, or welfare of one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $3,000 nor more than $8,000;

(2) For a deficiency which actually harms one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $1,000 nor more than $3,000;

(3) For a deficiency which has the potential to harm one or more residents, the director, in consultation with the Inspector General, may impose a civil penalty of not less than $50 nor more than $1,000;

(4) For a repeated deficiency, the director, in consultation with the Inspector General, may impose a civil penalty of up to 150

percent of the penalties provided in §16B-4-10(f)(1) through §16B-4-10(f)(3) of this code; and

(5) If no plan of correction is submitted as established in this rule, a penalty may be assessed in the amount of $100 a day unless a reasonable explanation has been provided and accepted by the director, in consultation with the Inspector General.

(g) The director, in consultation with the Inspector General, shall assess a civil penalty of not more than $1,000 against an individual who willfully and knowingly certifies a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment. The director, in consultation with the Inspector General, shall impose a civil penalty of not more than $5,000 against an individual who willfully and knowingly causes another individual to certify a material and false statement in a resident assessment. Such penalty shall be imposed with respect to each such resident assessment.

(h) The director, in consultation with the Inspector General, shall assess a civil penalty of not more than $2,000 against any individual who notifies, or causes to be notified, a nursing home of the time or date on which an inspection is scheduled to be conducted under this article or under 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*

(i) If the director, in consultation with the Inspector General, assesses a penalty under this section, the director shall cause delivery of notice of such penalty by personal service or by certified mail. Said notice shall state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which the director, in consultation with the Inspector General, assessed the penalty and selected the amount of the penalty.

(j) The Inspector General shall, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16B-4-12 of this code within 30 days of receipt of notice of such assessment, or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of

Review's final order, or which has been affirmed on judicial review, as provided in §16B-4-13 of this code. All money collected by assessments of civil penalties or interest shall be paid into a special resident benefit account and shall be applied by the Inspector General for:

(1) The protection of the health or property of facility residents;

(2) Long-term care educational activities;

(3) The costs arising from the relocation of residents to other nursing homes when no other funds are available; and

(4) In an emergency situation in which there are no other funds available, the operation of a facility pending correction of deficiencies or closure.

(k) The opportunity for a hearing on an action taken under this section shall be as provided in §16B-4-12 of this code.

§16B-4-11. Ban on admissions; closure; transfer of residents; appointment of temporary management; assessment of interest; collection of assessments; promulgation of rules to conform with federal requirements.

(a) The director, in consultation with the Inspector General, may reduce the bed quota of the nursing home or impose a ban on new admissions, where he or she finds upon inspection of the nursing home that the licensee is not providing adequate care under the nursing home's existing bed quota, and that reduction in quota or ban on new admissions, or both, would place the licensee in a position to render adequate care. A reduction in bed quota or a ban on new admissions, or both, may remain in effect until the nursing home is determined by the director to be in substantial compliance with the rules. In addition, the director shall determine that the facility has the management capability to ensure continued substantial compliance with all applicable requirements. The director, in consultation with the Inspector General, shall evaluate the continuation of the admissions ban or reduction in bed quota on a continuing basis, and may make a partial lifting of the admissions ban or reduction in bed quota consistent with the purposes of this

section. If the residents of the facility are in immediate jeopardy of their health, safety, welfare, or rights, the Inspector General may seek an order to transfer residents out of the nursing home as provided for in §16B-4-11(d) of this code. Any notice to a licensee of reduction in bed quota or a ban on new admissions shall include the terms of such order, the reasons therefor, and a date set for compliance.

(b) The director, in consultation with the Inspector General, may deny, limit, suspend, or revoke a license issued under this article or take other action as set forth in this section, if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of a license issued by the director, or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director, in consultation with the Inspector General, of the authority to institute or continue a disciplinary proceeding, or a proceeding for the denial of a license application, against the licensee or applicant upon any ground provided by law or to enter an order denying the license application, suspending, or revoking the license, or otherwise taking disciplinary action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the Inspector General, a circuit court in the county in which a facility is located, or in Kanawha County if emergency circumstances occur, may determine that a nursing home's deficiencies under this article, or under 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.,* if applicable, constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents, and issue an order to:

(1) Close the nursing home;

(2) Transfer residents in the nursing home to other nursing homes; or

(3) Appoint temporary management to oversee the operation of the facility and to assure the health, safety, welfare, and rights of the nursing home's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the facility; or

(B) Improvements are made in order to bring the nursing home into compliance with all the applicable requirements of this article and, if applicable, 42 U.S.C.A. §§ 1395 *et seq.* and 1396 *et seq.*

If the Inspector General petitions a circuit court for the closure of a nursing home, the transfer of residents, or the appointment of temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the Inspector General and the licensee or operator of the nursing home may participate and present evidence. The burden of proof is on the Inspector General.

A circuit court may divest the licensee or operator of possession and control of a nursing home in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare, and rights of the residents of the nursing home, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the nursing home, or to repair or improve the nursing home so as to return it to compliance with applicable requirements, and the power to receive, conserve, and expend funds, including Medicare, Medicaid, and other payments on behalf of the licensee or operator of the nursing home. Priority shall be given to expenditures for current direct resident care or the transfer of residents. Expenditures other than normal operating expenses totaling more than $20,000 shall be approved by the circuit court.

The person charged with temporary management shall be an officer of the court, is not liable for conditions at the nursing home which existed or originated prior to his or her appointment, and is

not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the nursing home during his or her temporary management. All compensation and per diem costs of the temporary manager shall be paid by the nursing home. The costs for the temporary manager for any 30-day period may not exceed the 75th percentile of the allowable administrator's salary as reported on the most recent cost report for the nursing home's peer group as determined by the director. The temporary manager shall bill the nursing home for compensation and per diem costs. Within 15 days of receipt of the bill, the nursing home shall pay the bill or contest the costs for which it was billed to the court. Such costs shall be recoverable through recoupment from future reimbursement from the state Medicaid agency in the same fashion as a benefits overpayment.

The temporary management shall promptly employ at least one person who is licensed as a nursing home administrator in West Virginia.

A temporary management established for the purpose of making improvements in order to bring a nursing home into compliance with applicable requirements may not be terminated until the court has determined that the nursing home has the management capability to ensure continued compliance with all applicable requirements, except if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the nursing home shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court, and after deducting from receipts the costs of the temporary management, expenditures, civil penalties, and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the nursing home.

(e) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per annum beginning 30 days after receipt of notice of such assessment or 30 days after receipt of the Board of Review's final order

following a hearing, whichever is later. All such assessments against a nursing home that are unpaid shall be added to the nursing home's licensure fee and may be filed as a lien against the property of the licensee or operator of the nursing home. Funds received from such assessments shall be deposited as funds received in §16B-4-10 of this code.

(f) The opportunity for a hearing on an action by the Inspector General taken under this section shall be as provided in §16B-4-12 of this code.

§16B-4-12. License denial, limitation, suspension, or revocation.

(a) The director, in consultation with the Inspector General, shall deny, limit, suspend, or revoke a license issued if the provisions of this article or if the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may revoke a nursing home's license and prohibit all physicians and licensed disciplines associated with that nursing home from practicing at the nursing home location based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any such license is denied, limited, suspended, or revoked, however, written notice shall be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation of a license under this article. If a formal hearing is requested, the applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(d) If a license is denied or revoked as herein provided, a new application for license shall be considered by the director if, when, and after the conditions upon which the denial or revocation was

based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(e) If the license of a nursing home is denied, limited, suspended, or revoked, the administrator or owner or lessor of the nursing home property shall cease to operate the facility as a nursing home as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the nursing home property is responsible for removing all signs and symbols identifying the premises as a nursing home within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(f) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the nursing home shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by a nursing home that is not licensed may be deemed adulterated.

(g) The period of suspension for the license of a nursing home shall be prescribed by the director but may not exceed one year.

§16B-4-12a. Independent informal dispute resolution.

(a) A facility or licensee adversely affected by an order or citation of a deficient practice issued pursuant to this article or by a citation issued for a deficient practice pursuant to federal law may request the independent informal dispute resolution process. A facility may contest a cited deficiency as contrary to law or unwarranted by the facts or both.

(b) The director shall contract with up to three independent review organizations to conduct an independent informal dispute resolution process for facilities. The independent review

organization shall be accredited by the Utilization Review Accreditation Commission.

(c) The independent informal dispute resolution process is not a formal evidentiary proceeding and utilizing the independent informal dispute resolution process does not waive the facility's right to a formal hearing.

(d) The independent informal dispute resolution process consists of the following:

(1) No later than 10 working days following the last day of the survey or inspection, or no later than 20 working days following the last day of a complaint investigation, the director shall transmit to the facility a statement of deficiencies committed by the facility. Notification of the availability of the independent informal dispute resolution process and an explanation of the independent informal dispute resolution process shall be included in the transmittal;

(2) When the facility returns its plan to correct the cited deficiencies to the director, the facility may request in writing the independent informal dispute resolution process to refute the cited deficiencies;

(3) Within five working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the director shall refer the request to an independent review organization from the list of certified independent review organizations approved by the state. The director shall vary the selection of the independent review organization on a rotating basis. The director shall acknowledge in writing to the facility that the request for independent review has been received and forwarded to an independent review organization for review. The notice shall include the name and address of the independent review organization.

(4) Within 10 working days of receipt of the written request for the independent informal dispute resolution process made by a facility, the independent review organization shall hold an independent informal dispute resolution conference unless

additional time is requested by the facility. Before the independent informal dispute resolution conference, the facility may submit additional information.

(5) The facility may not be accompanied by counsel during the independent informal dispute resolution conference. The manner in which the independent informal dispute resolution conference is held is at the discretion of the facility, but is limited to:

(A) A desk review of written information submitted by the facility;

(B) A telephonic conference; or

(C) A face-to-face conference held at the facility or a mutually agreed upon location.

(6) If the independent review organization determines the need for additional information, clarification, or discussion after conclusion of the independent informal dispute resolution conference, the director and the facility shall present the requested information.

(7) Within 10 calendar days of the independent informal dispute resolution conference, the independent review organization shall provide and make a determination, based upon the facts and findings presented, and shall transmit a written decision containing the rationale for its determination to the facility and the director.

(8) If the director disagrees with the determination, the director may reject the determination made by the independent review organization and shall issue an order setting forth the rationale for the reversal of the independent review organization's decision to the facility within 10 calendar days of receiving the independent review organization's determination.

(9) If the director accepts the determination, the director shall issue an order affirming the independent review organization's determination within 10 calendar days of receiving the independent review organization's determination.

(10) If the independent review organization determines that the original statement of deficiencies should be changed as a result of the independent informal dispute resolution process and the director accepts the determination, the director shall transmit a revised statement of deficiencies to the facility within 10 calendar days of the independent review organization's determination.

(11) Within 10 calendar days of receipt of the director's order and the revised statement of deficiencies, the facility shall submit a revised plan to correct any remaining deficiencies to the director.

(e) A facility has 10 calendar days after receipt of the director's order to request a formal hearing for any deficient practice cited under this article. If the facility requests a formal hearing, the director and the facility shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(f) Under the following circumstances, the facility is responsible for certain costs of the independent informal dispute resolution review, which shall be remitted to the director within 60 days of the informal hearing order:

(1) If the facility requests a face-to-face conference, the facility shall pay any costs incurred by the independent review organization that exceed the cost of a telephonic conference, regardless of which part ultimately prevails.

(2) If the independent review organization's decision supports the originally written contested deficiency or adverse action taken by the director, the facility shall reimburse the director for the cost charged by the independent review organization. If the independent review organization's decision supports some of the originally written contested deficiencies, but not all of them, the facility shall reimburse the director for the cost charged by the independent review organization on a pro rata basis.

§16B-4-13. Judicial review.

(a) Any applicant or licensee who is dissatisfied with the decision of the formal hearing as a result of the hearing provided for in §16B-4-12 of this code may, within 30 days after receiving

notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(b) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant, licensee, or Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

(c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 *et seq.* of this code.

§16B-4-14. Legal counsel and services of the Inspector General.

(a) Legal counsel and services for the Office of Health Facility Licensure and Certification in all administrative hearings may be provided by the Attorney General or a staff attorney and all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General, or his or her assistants, or an attorney employed by the Inspector General in proceedings in any circuit court, by the prosecuting attorney of the county as well, all without additional compensation.

(b) The Governor may appoint counsel for the Office of Health Facility Licensure and Certification, who shall perform such legal services in representing the interests of residents in nursing homes in matters under the jurisdiction of the Inspector General as the Governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the Governor.

§16B-4-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever establishes, maintains, or is engaged in establishing or maintaining a nursing home without a license granted under §16B-4-6 of this code, or who prevents, interferes with or impedes in any way the lawful enforcement of this article, is guilty of a misdemeanor and, upon conviction thereof, shall be

punished for the first offense by a fine of not more than $100, or by confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with confinement in jail for a period of not more than 90 days, or by both fine and confinement, at the discretion of the court. Each day of a continuing violation after conviction is considered a separate offense.

(b) The director, in consultation with the Inspector General, may in his or her discretion bring an action to enforce compliance with this article or any rule or order hereunder whenever it appears to the director, in consultation with the Inspector General, that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the director, in consultation with the Inspector General, that any person has aided, abetted or caused, or is aiding, abetting, or causing, such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or if emergency circumstances occur the Circuit Court of Kanawha County, has jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

Whenever the director, in consultation with the Inspector General, has refused to grant or renew a license, or has revoked a license required by law to operate or conduct a nursing home, or has ordered a person to refrain from conduct violating the rules of the Inspector General, and the person has appealed the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the nursing home or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the nursing home. Should a person who is refused a license or the renewal of a license to operate or conduct a nursing home or whose license to operate is revoked or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General fails to appeal or should the appeal be decided favorably to the Inspector General, then the court shall issue a permanent

injunction upon proof that the person is operating or conducting a nursing home without a license as required by law, or has continued to violate the rules of the Inspector General.

(c) Any nursing home that deprives a resident of any right or benefit created or established for the well-being of this resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation, shall be liable to the resident for injuries suffered as a result of such deprivation. Upon a finding that a resident has been deprived of such a right or benefit, and that the resident has been injured as a result of such deprivation, and unless there is a finding that the nursing home exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for such injury. In addition, where the deprivation of the right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies is not required prior to commencement of suit under this subsection.

(d) The amount of damages recovered by a resident, in an action brought pursuant to this section, is exempt for purposes of determining initial or continuing eligibility for medical assistance under §9-5-1 *et seq.* of this code, and may neither be taken into consideration, nor required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

(e) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is void as contrary to public policy.

(f) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.

(g) Nothing in this section or any other section of the code shall limit the protections afforded nursing homes or their health care providers under §55-7b-1 *et seq.* of this code. Nursing homes and their health care providers shall be treated in the same manner as any other health care facility or health care provider under §55-7b-1 *et seq.* of this code. The terms "health care facility" and "health care provider" as used in this subsection shall have the same meaning as set forth in §55-7b-2(f) and (g) of this code.

(h) The proper construction of this section and the limitations and provisions of §55-7b-1 *et seq.* of this code shall be determined by principles of statutory construction.

§16B-4-16. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each nursing home subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the nursing home.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any such nursing home unless consent for the use thereof has been obtained from the resident, or from a committee, or guardian, or relative.

(c) Each nursing home shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the nursing home, including the purpose and payee of each disbursement, and shall render a true account of such record to the resident or his or her representative upon demand and upon termination of the resident's stay in the nursing home.

(d) Any person or corporation who violates any subsection of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000, or imprisoned in jail not more than one year, or both fined and imprisoned.

(e) Reports provided to review organizations are confidential unless inaccessibility of information interferes with the director's ability to perform his or her oversight function as mandated by federal regulations and this section.

(f) Notwithstanding §16B-4-16(b) or any other provision of this code, upon the death of a resident, any funds remaining in his or her personal account shall be made payable to the person or probate jurisdiction administering the estate of said resident: *Provided*, That if after 30 days there has been no qualification over the decedent resident's estate, those funds are presumed abandoned and are reportable to the State Treasurer pursuant to the West Virginia Uniform Unclaimed Property Act, §36-8-1 *et seq.* of this code.

§16B-4-17. Federal law; legislative rules.

Notwithstanding any provision in this code to the contrary, the Inspector General shall promulgate legislative rules, in compliance with the provisions of §29A-3-1 *et seq.* of this code, pertaining to nursing homes, when those rules are required for compliance with federal law or regulations. The rules may be filed as emergency rules.

§16B-4-18. Hospice palliative care required to be offered.

(a) When the health status of a nursing home facility resident declines to the state of terminal illness or when the resident receives a physician's order for "comfort measures only", the facility shall notify the resident with information about the option of receiving hospice palliative care. If a nursing home resident is incapacitated, the facility shall also notify any person who has been given the authority of guardian, a medical power of attorney, or health care surrogate over the resident, information stating that the resident has the option of receiving hospice palliative care.

(b) The facility shall document that it has notified the resident, and any person who has been given a medical power of attorney or health care surrogate over the resident, information about the option of hospice palliative care and maintain the documentation so that the director may inspect the documentation, to verify the facility has complied with this section.

§16B-4-19. Employment restrictions.

All personnel of a nursing home by virtue of ownership, employment, engagement, or agreement with a provider or contractor shall be subject to the provisions of the West Virginia Clearance for Access: Registry and Employment Screening Act, §16B-15-1 *et seq.* of this code and the rules promulgated pursuant thereto.

§16B-4-20. Jury trial waiver to be a separate document.

(a) Every written agreement containing a waiver of a right to a trial by jury that is entered into between a nursing home and a person for the nursing care of a resident, must have as a separate and stand-alone document any waiver of a right to a trial by jury.

(b) Nothing in this section may be construed to require a court of competent jurisdiction to determine that the entire agreement or any portion thereof is enforceable, unenforceable, conscionable, or unconscionable.

ARTICLE 5. ASSISTED LIVING RESIDENCES.

§16B-5-1. Purpose.

(a) It is the policy of this state to encourage and promote the development and utilization of resources to ensure the effective care and treatment of persons who are dependent upon the services of others by reason of physical or mental impairment who may require limited and intermittent nursing care, including those individuals who qualify for and are receiving services coordinated by a licensed hospice. Such care and treatment requires a living environment for such persons which, to the extent practicable, will approximate a normal home environment. To this end, the guiding principle for administration of the laws of the state is that such persons shall be encouraged and assisted in securing necessary care and treatment in noninstitutional surroundings.

(b) In recognition that for many such persons effective care and treatment can only be secured from proprietary, voluntary and governmental assisted living residences, it is the policy of this state to encourage, promote and require the maintenance of assisted

living residences so as to ensure protection of the rights and dignity of those using the services of assisted living residences.

(c) The provisions of this article are hereby declared to be remedial and shall be liberally construed to effectuate its purposes and intents.

§16B-5-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

"Assisted living residence" means any living facility, residence, or place of accommodation, however named, available for four or more residents, in this state which is advertised, offered, maintained, or operated by the ownership or management, whether for a consideration or not, for the express or implied purpose of having personal assistance or supervision, or both, provided to any residents therein who are dependent upon the services of others by reason of physical or mental impairment and who may also require nursing care at a level that is not greater than limited and intermittent nursing care: *Provided,* That the care or treatment in a household, whether for compensation or not, of any person related by blood or marriage, within the degree of consanguinity of second cousin to the head of the household, or his or her spouse, may not be deemed to constitute an assisted living residence within the meaning of this article. Nothing contained in this article applies to hospitals, as defined under §16B-3-1 of this code; or state institutions, as defined under §27-1-6 of this code; or residential care homes operated by the federal government or the state; or institutions operated for the treatment and care of alcoholic patients; or offices of physicians; or hotels, boarding homes, or other similar places that furnish to their guests only room and board; or to homes or asylums operated by fraternal orders pursuant to §35-3-1 *et seq.* of this code;

"Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

"Director" means the Director of the Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Division" means the Office of Health Facility Licensure and Certification within the Office of the Inspector General;

"Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Limited and intermittent nursing care" means direct hands-on nursing care of an individual who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode: *Provided*, That such time limitations shall not apply to an individual who, after having established a residence in an assisted living residence, subsequently qualifies for and receives services coordinated by a licensed hospice and such time limitations shall not apply to home health services provided by a Medicare-certified home health agency. Limited and intermittent nursing care may only be provided by or under the supervision of a registered professional nurse and in accordance with rules proposed by the Inspector General for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code;

"Nursing care" means those procedures commonly employed in providing for the physical, emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical skills and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedures contributing to rehabilitation, and administration of medication by any method which involves a level of complexity and skill in administration not possessed by the untrained person;

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Person" means an individual and every form of organization, whether incorporated or unincorporated, including any partnership, corporation, trust, association, or political subdivision of the state;

"Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding, or getting in or out of bed, or supervision required because of the age or mental impairment of the resident;

"Resident" means an individual living in an assisted living residence for the purpose of receiving personal assistance or limited and intermittent nursing services;

"Substantial compliance" means a level of compliance with the rules such that identified deficiencies pose no greater risk to resident health or safety than the potential for causing minimal harm.

(b) The Inspector General may define in rules any term used herein which is not expressly defined.

§16B-5-3. Powers, duties, and rights of Inspector General.

In the administration of this article, the Inspector General has the following powers, duties, and rights:

(a) To enforce rules and standards for assisted living residences which are adopted, promulgated, amended, or modified by the Inspector General;

(b) To exercise as sole authority all powers relating to the issuance, suspension, and revocation of licenses of assisted living residences;

(c) To enforce rules adopted, promulgated, amended, or modified by the Inspector General governing the qualification of applicants for assisted living residences, including, but not limited to, educational requirements, financial requirements, personal, and ethical requirements;

(d) To receive and disburse federal funds and to take whatever action not contrary to law as may be proper and necessary to comply with the requirements and conditions for the receipt of federal funds;

(e) To receive and disburse for authorized purposes any moneys appropriated for the division by the Legislature;

(f) To receive and disburse for purposes authorized by this article, any funds that may come to the division by gift, grant, donation, bequest, or devise, according to the terms thereof, as well as funds derived from the division's operation or otherwise;

(g) To make contracts and to execute all instruments necessary or convenient in carrying out the director's functions and duties; and all such contracts, agreements, and instruments will be executed by the Inspector General;

(h) To appoint officers, agents, employees, and other personnel and fix their compensation;

(i) To offer and sponsor educational and training programs for assisted living residences' administrative, management, and operational personnel;

(j) To undertake survey, research and planning projects, and programs relating to administration and operation of assisted living residences and to the health, care, treatment, and service in general of residents of assisted living residences;

(k) To assess civil penalties for violations of assisted living residence standards in accordance with §16B-5-10 of this code;

(l) To inspect any assisted living residence and any records maintained therein subject to the provisions of §16B-5-9 and §16B-5-10 of this code;

(m) To establish and implement procedures, including informal conferences, investigations and hearings, subject to applicable provisions of §29A-3-1 *et seq.* of this code, and to enforce

compliance with the provisions of this article and with rules issued hereunder by the Inspector General;

(n) To subpoena witnesses and documents, administer oaths and affirmations, and to examine witnesses under oath for the conduct of any investigation or hearing. Upon failure of a person without lawful excuse to obey a subpoena to give testimony, and upon reasonable notice to all persons affected thereby, the director may apply to the circuit court of the county in which the hearing is to be held or to the Circuit Court of Kanawha County for an order compelling compliance;

(o) To make complaint or cause proceedings to be instituted against any person for the violation of the provisions of this article or of rules issued hereunder by the Inspector General. Such action may be taken by the Inspector General without the sanction of the prosecuting attorney of the county in which proceedings are instituted if the prosecuting attorney fails or refuses to discharge his or her duty. The Circuit Court of Kanawha County or the circuit court of the county in which the conduct has occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond. In no such case may the Inspector General or any person acting under the Inspector General's direction be required to give security for costs;

(p) To delegate authority to the Inspector General's employees and agents to perform all functions of the Inspector General; and

(q) To make available to the Governor, the Legislature, and the public at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information will describe the assisted living residence licensing and investigatory activities of the division. The online information will include a list of all assisted living residences in the state and such of the following information as the director determines to apply: Whether the assisted living residences are proprietary or nonproprietary; the classification of each assisted living residence; the name of the administrator or administrators; the total number of beds; license type; license number; license expiration date; health investigations information

and reports; life safety investigations information and reports; and whether or not those assisted living residences listed accept Medicare and Medicaid residents.

(r) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except there otherwise stated.

§16B-5-4. Administrative and inspection staff.

The director may, as he or she determines necessary, employ administrative employees, inspectors, or other persons as may be necessary to properly carry out the provisions of this article. All employees of the division will be members of the state civil service system. Inspectors and other employees as may be duly designated by the director will act as the director's representatives and, under the direction of the director, will enforce the provisions of this article and all duly promulgated rules of the director and, in the discharge of official duties, will have the right of entry into any place maintained as an assisted living residence at any time.

§16B-5-5. Rules; minimum standards for assisted living residences.

(a) The Inspector General will propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code to carry out the purposes and intent of this article and to enable the Inspector General to exercise the powers and perform the duties conferred upon the director by this article.

(b) The Inspector General will propose rules establishing minimum standards of operation of assisted living residences, including, but not limited to, the following:

(1) Administrative policies, including:

(A) An affirmative statement of the right of access to assisted living residences by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy;

(B) A statement of the rights and responsibilities of residents;

(C) The process to be followed by applicants seeking a license;

(D) The clinical, medical, resident, and business records to be kept by the assisted living residence;

(E) The procedures for inspections and for the review of utilization and quality of resident care; and

(F) The procedures for informal dispute resolution and administrative due process and when such remedies are available.

(2) Minimum numbers and qualifications of personnel, including management, medical and nursing, aides, orderlies, and support personnel, according to the size and classification of the assisted living residence;

(3) Safety requirements;

(4) Sanitation requirements;

(5) Protective and personal services to be provided;

(6) Dietary services to be provided;

(7) Maintenance of health records;

(8) Social and recreational activities to be made available;

(9) Physical facilities;

(10) Requirements related to provision of limited and intermittent nursing;

(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(12) Such other categories as the Inspector General determines to be appropriate to ensure resident's health, safety, and welfare.

(c) The Inspector General will include in rules detailed standards for each of the categories of standards established pursuant to §16B-5-5(b) and §16B-5-5(d) of this code and will classify such standards as follows:

(1) Class I standards are standards the violation of which, as the Inspector General determines, would present either an imminent danger to the health, safety, or welfare of any resident or a substantial probability that death or serious physical harm would result;

(2) Class II standards are standards which the Inspector General determines have a direct or immediate relationship to the health, safety, or welfare of any resident, but which do not create imminent danger;

(3) Class III standards are standards which the Inspector General determines have an indirect or a potential impact on the health, safety, or welfare of any resident.

(d) An assisted living residence shall attain substantial compliance with standards established pursuant to this section and such other requirements for a license as may be established by rule under this article.

§16B-5-6. License required; application; fees; duration; renewal.

(a) There shall be one assisted living residence license for each assisted living residence. No person may establish, operate, maintain, offer, or advertise an assisted living residence within this state unless and until he or she obtains a valid license therefor as provided in this article, which license remains unsuspended, unrevoked, and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in any assisted living residence, as defined in §16B-5-2 of this code, which is being operated without a valid license from the director. The licensee shall be responsible for, and shall have complete control of, the operation and premises of the assisted living residence and

the personal assistance and supervision provided to the residents: *Provided*, That the director may review any leases or any contracts, subcontracts, agreements, or arrangements for the provision of on-site services to the residents of an assisted living residence to ensure the proper care, safety, and welfare of current or potential residents. Nothing in this article shall be construed to prevent or prohibit the ability of a resident of an assisted living residence to contract or arrange for, and to receive, privately paid nursing care or personal assistance in addition to those services provided by the licensee, subject to the consent and cooperation of the licensee and consistent with the duties and responsibilities imposed by this section.

(b) Nothing in this article shall be construed to require the licensing of landlords or property owners who are not involved in the provision of supervision, personal assistance, limited and intermittent nursing care, or other on-site professional services for the residents of an assisted living residence or in the advertising, recruitment of residents, transportation of residents, or other substantial and ongoing services for the operation or maintenance of the assisted living residence.

(c) The procedure for obtaining a license shall be as follows:

The applicant shall submit an application to the director on a form to be prescribed by the director, containing such information as may be necessary to show that the applicant is in compliance with the standards for assisted living residences as established by this article and the rules lawfully promulgated by the Inspector General hereunder. The application and any exhibits thereto shall provide the following information:

(A) The name and address of the applicant;

(B) The name, address, and principal occupation:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of an applicant which is a trust; and

(iv) Where a corporation has a proprietary interest of 25 percent or more in an applicant, the name, address, and principal occupation of each officer and director of the corporation;

(C) The name and address of the owner of the premises of the assisted living residence or proposed assisted living residence, if he or she is a different person from the applicant, and in such case, the name and address:

(i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the owner;

(ii) Of each officer and director of a corporate applicant;

(iii) Of each trustee and beneficiary of the owner if it is a trust; and

(iv) Where a corporation has a proprietary interest of 25 percent or more in the owner, the name and address of each officer and director of the corporation;

(D) Where the applicant is the lessee or the assignee of the assisted living residence or the premises of the proposed assisted living residence, a signed copy of the lease and any assignment thereof;

(E) The name and address of the assisted living residence or the premises of the proposed assisted living residence;

(F) The proposed bed quota of the assisted living residence and the proposed bed quota of each unit thereof;

(G) An organizational plan for the assisted living residence indicating the number of persons employed or to be employed, the positions and duties of all employees;

(H) The name and address of the individual who is to serve as administrator;

(I) Such evidence of compliance with applicable laws and rules governing zoning, buildings, safety, fire prevention, and sanitation as the director may require; and

(J) Such additional information as the director may require.

(d) Upon receipt and review of an application for license made pursuant to §16B-5-6(a) of this code and inspection of the applicant assisted living residence pursuant to §16B-5-9 and §16B-5-10 of this code, the director will issue a license if he or she finds:

(1) That an individual applicant, and every partner, trustee, officer, director, and controlling person of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of an assisted living residence by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department, if any, and lack of revocation of a license during the previous five years;

(2) That the assisted living residence is under the supervision of an administrator who is qualified by training and experience; or

(3) That the assisted living residence is in substantial compliance with standards established pursuant to §16B-5-5 of this code and such other requirements for a license as the Inspector General may establish by rule under this article.

(e) The director, in consultation with the Inspector General, may deny an initial or renewal license if the information provided in an application or report is known by the applicant to be false or the applicant fails to report required information or for any other reason permitted by law or rules promulgated pursuant to this article.

(f) Any license granted by the director will state the maximum bed capacity for which it is granted, the date the license was issued, and the expiration date. Licenses will be issued for a period not to exceed one year for assisted living residences: *Provided*, That any such license in effect for which timely application for renewal, together with payment of the proper fee has been made to the

department in conformance with the provisions of this article and the rules issued thereunder and prior to the expiration date of the license, shall continue in effect until: (1) One year following the expiration date of the license; or (2) the date of the revocation or suspension of the license pursuant to the provisions of this article; or (3) the date of issuance of a new license, whichever date first occurs. Each license will be issued only for the premises and persons named in the application and is not transferable or assignable: *Provided, however*, That in the case of the transfer of ownership of an assisted living residence with an unexpired license, the application of the new owner for a license shall have the effect of a license for a period of three months when filed with the director. Every license shall be posted in a conspicuous place in the assisted living residence for which it is issued so as to be accessible to and in plain view of all residents and visitors of the assisted living residence.

(g) An original license shall be renewable, conditioned upon the licensee filing timely application for the extension of the term of the license accompanied by the fee and contingent upon evidence of compliance with the provisions of this article and rules promulgated by the Inspector General hereunder; the application shall be accompanied by:

(1) The information required in §16B-5-6(c)(A) through §16B-5-6(c)(C) of this code.

(2) A balance sheet of the assisted living residence as of the end of its fiscal year, setting forth assets and liabilities at such date, including all capital, surplus, reserve, depreciation, and similar accounts;

(3) A statement of operations of the assisted living residence as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items, and other credits or charges; and

(4) A statement of any changes in the name, address, management, or ownership information on file with the director.

(h) In the case of an application for a renewal license, if all requirements of §16B-5-5 and §16B-5-6 of this code are not met, the director may in his or her discretion issue a provisional license, provided that care given in the assisted living residence is adequate for resident needs and the assisted living residence has demonstrated improvement and evidences potential for substantial compliance within the term of the license: *Provided*, That a provisional renewal may not be issued for a period greater than one year, may not be renewed, and may not be issued to any assisted living residence with uncorrected violations of any Class I standard, as defined in §16B-5-5(c) of this code.

(i) A nonrefundable application fee in the amount of $65 for an original assisted living residence license shall be paid at the time application is made for the license. An average cost of all direct costs for the initial licensure for the preceding 10 facilities based on the size of the facility's licensed bed capacity shall be borne by the applicant and shall be received by the director prior to the issuance of an initial or amended license. The license fee for renewal of a license shall be at the rate of $6 per bed per year for assisted living residences except the annual rate per bed may be assessed for licenses issued for less than one year. The director may annually adjust the licensure fees for inflation based upon the consumer price index. The bed capacity for the holder of each license will be determined by the director. All license fees shall be due and payable to the director annually, and in the manner set forth in the rules promulgated by the Inspector General. The fee and application shall be submitted to the director who will retain both the application and fee pending final action on the application. All fees received by the director under the provisions of this article will be deposited in accordance with §16-1-13 of this code.

§16B-5-7. Cost disclosure; surety for residents' funds.

(a) Each assisted living residence shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them. Residents are not liable for any cost not so disclosed.

(b) If the assisted living residence handles any money for residents within the assisted living residence, the licensee or his or her authorized representative shall give a bond in an amount consistent with this subsection and with such surety as the director will approve. The bond shall be upon condition that the licensee shall hold separately and in trust all residents' funds deposited with the licensee, shall administer the funds on behalf of the resident in the manner directed by the depositor, shall render a true and complete account to the depositor and the director when requested, and at least quarterly to the resident, and upon termination of the deposit, shall account for all funds received, expended, and held on hand. The licensee shall file a bond in a sum to be fixed by the director based upon the magnitude of the operations of the applicant, but which sum may not be less than $2,500.

(c) Every person injured as a result of any improper or unlawful handling of the money of a resident of an assisted living residence may bring an action in a proper court on the bond required to be posted by the licensee pursuant to this subsection for the amount of damage suffered as a result thereof to the extent covered by the bond. Whenever the director determines that the amount of any bond which is filed pursuant to this subsection is insufficient to adequately protect the money of residents which is being handled, or whenever the amount of any bond is impaired by any recovery against the bond, the director may require the licensee to file an additional bond in such amount as necessary to adequately protect the money of residents being handled.

(d) The provisions of §16B-5-7(b) of this code do not apply if the licensee handles less than $25 per resident and less than $500 for all residents in any month.

§16B-5-8. Investigation of complaints.

(a) The Inspector General will establish, by rule, procedures for prompt investigation of all complaints of alleged violations by assisted living residences of applicable requirements of state law or rules, except for such complaints that the director determines are willfully intended to harass a licensee or are without any reasonable basis. Such procedures will include provisions for ensuring the

confidentiality of the complainant and of any other person so named in the complaint and for promptly informing the complainant and the assisted living residence involved of the results of the investigation.

(b) If, after its investigation, the director determines that the complaint has merit, the director will take appropriate disciplinary action and will advise any injured party of the possibility of a civil remedy under this article.

(c) No assisted living residence may discharge or in any manner discriminate against any resident or employee for the reason that the resident or employee has filed a complaint or participated in any proceeding specified in this article. Violation of this prohibition by any assisted living residence constitutes grounds for the suspension or revocation of the license of the assisted living residence as provided in §16B-5-11 and §16B-5-12 of this code. Any type of discriminatory treatment of a resident or employee by whom, or upon whose behalf, a complaint has been submitted to the director, or any proceeding instituted under this article, within 120 days of the filing of the complaint or the institution of the action, shall raise a rebuttable presumption that the action was taken by the assisted living residence in retaliation for the complaint or action.

§16B-5-9. Inspections.

(a) The director and any duly designated employee or agent thereof will have the right to enter upon and into the premises of any assisted living residence at any time for which a license has been issued, for which an application for license has been filed with the director, or which the director has reason to believe is being operated or maintained as an assisted living residence without a license. If entry is refused by the owner or person in charge of the assisted living residence, the director, in consultation with the Inspector General, will apply to the circuit court of the county in which the assisted living residence is located or the Circuit Court of Kanawha County for an administrative inspection warrant.

(b) The director, by the director's authorized employees or agents, will conduct at least one inspection prior to issuance of a license pursuant to §16B-5-6 of this code and will conduct periodic unannounced inspections thereafter to determine compliance by the assisted living residence with applicable statutes and rules promulgated thereunder. All assisted living residences shall comply with rules of the State Fire Commission. The State Fire Marshal, by his or her employees or authorized agents, shall make all fire, safety, and like inspections. The director may provide for such other inspections as the director may deem necessary to carry out the intent and purpose of this article. If after investigating a complaint the director determines that the complaint is substantiated and that an immediate and serious threat to a resident's health or safety exists, the director, in consultation with the Inspector General, may invoke any remedies available pursuant to §16B-5-11 and §16B-5-12 of this code. Any assisted living residence aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-5-12 of this code.

§16B-5-10. Reports of inspections; plans of correction; assessment of penalties and use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-5-9 of this code will be in writing and will list all deficiencies in the assisted living residence's compliance with the provisions of this article and the rules adopted by the Inspector General hereunder. The director will send a copy of the report to the assisted living residence by physical or electronic method with verifiable delivery, and will specify a time within which the assisted living residence shall submit a plan for correction of deficiencies, which plan will be approved, rejected, or modified by the director. The inspectors will allow audio taping of the exit conference for licensure inspections with all costs directly associated with the taping to be paid by the assisted living residence, provided that an original tape is provided to inspectors at the end of taping.

(b) Upon an assisted living residence's failure to submit a plan of correction which is approved by the director, or to correct any

deficiency within the time specified in an approved plan of correction, the director, in consultation with the Inspector General, may assess civil penalties as hereinafter provided or may initiate any other legal or disciplinary action as provided by this article.

(c) Nothing in this section may be construed to prohibit the Inspector General from enforcing a rule, administratively or in court, without first affording formal opportunity to make correction under this section, where, in the opinion of the director, in consultation with the Inspector General the violation of the rule jeopardizes the health or safety of residents or where the violation of the rule is the second or subsequent violation occurring during a period of 12 full months.

(d) Civil penalties assessed against assisted living residences will be classified according to the nature of the violation as defined in §16B-5-5(c) of this code and rules promulgated thereunder by the Inspector General, as follows: For each violation of a Class I standard, a civil penalty of not less than $50 nor more than $500 will be imposed; for each violation of a Class II standard, a civil penalty of not less than $25 nor more than $50 will be imposed; for each violation of a Class III standard, a civil penalty of not less than $10 nor more than $25 will be imposed. Each day a violation continues, after the date of citation, shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(e) The director, in consultation with the Inspector General, will assess a civil penalty not to exceed $2,000 against any individual who notifies, or causes to be notified, an assisted living residence of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director, in consultation with the Inspector General, assesses a penalty under this section, the director will cause delivery of notice of the penalty by personal service or by certified mail. The notice will state the amount of the penalty, the action or circumstance for which the penalty is assessed, the requirement that the action or circumstance violates, and the basis upon which

the director, in consultation with the Inspector General, assessed the penalty and selected the amount of the penalty.

(g) The Inspector General will, in a civil judicial proceeding, recover any unpaid assessment which has not been contested under §16B-5-12 of this code within 30 days of receipt of notice of the assessment or which has been affirmed under the provisions of that section and not appealed within 30 days of receipt of the Board of Review's final order or which has been affirmed on judicial review, as provided in §16B-5-13 of this code. All money collected by assessments of civil penalties or interest will be paid into a special resident benefit account and will be applied by the director only for the protection of the health or property of residents of assisted living residences operated within the state that the director finds to be deficient, including payment for the costs of relocation of residents to other facilities, operation of an assisted living residence pending correction of deficiencies, or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on an action taken under this section shall be as provided in §16B-5-12 of this code. In addition to any other rights of appeal conferred upon an assisted living residence pursuant to this section, an assisted living residence shall have the right to request a hearing and seek judicial review pursuant to §16B-5-12 and §16B-5-13 of this code to contest the citing by the director of a deficiency on an inspection report, irrespective of whether the deficiency results in the imposition of a civil penalty.

§16B-5-11. Enforcement actions; assessment of interest; collection of assessments; hearings.

(a) The director, in consultation with the Inspector General, will, by order, impose a ban on the admission of residents or reduce the bed quota of the assisted living residence, or any combination thereof, where he or she finds upon inspection of the assisted living residence that the licensee is not providing adequate care under the assisted living residence's existing bed quota and that reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee in a position to render adequate

care. Any notice to a licensee of reduction in quota or ban on new admissions will include the terms of the order, the reasons therefor, and the date set for compliance.

(b) The director, in consultation with the Inspector General, may suspend or revoke a license issued under this article or take other action as set forth in this section if he or she finds upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated pursuant hereto.

(c) The suspension, expiration, forfeiture, or cancellation by operation of law or order of the director, in consultation with the Inspector General, of a license issued by the director or the withdrawal of an application for a license after it has been filed with the director, may not deprive the director of the director's authority to institute or continue an enforcement action or a proceeding for the denial of a license application against the licensee or applicant upon any ground provided by law or to deny the license application or suspend or revoke the license or otherwise take enforcement action on any such ground.

(d) In addition to other remedies provided in this article, upon petition from the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring or the Circuit Court of Kanawha County may determine that an assisted living residence's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare, or rights of its residents and issue an order to:

(1) Close the assisted living residence;

(2) Transfer residents in the assisted living residence to other facilities; or

(3) Appoint temporary management to oversee the operation of the assisted living residence and to assure the health, safety, welfare, and rights of the assisted living residence’s residents where there is a need for temporary management while:

(A) There is an orderly closure of the assisted living residence; or

(B) Improvements are made to bring the assisted living residence into compliance with all the applicable requirements of this article.

(e) If the Inspector General petitions a circuit court for the closure of an assisted living residence, the transfer of residents, or the appointment of a temporary management, the circuit court shall hold a hearing no later than seven days thereafter, at which time the Inspector General and the licensee or operator of the assisted living residence may participate and present evidence.

(f) A circuit court may divest the licensee or operator of possession and control of an assisted living residence in favor of temporary management. The temporary management shall be responsible to the court and shall have such powers and duties as the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare, and rights of the residents of the assisted living residence, including, but not limited to, the replacement of management and staff, the hiring of consultants, the making of any necessary expenditures to close the assisted living residence, or to repair or improve the assisted living residence so as to return it to compliance with applicable requirements and the power to receive, conserve, and expend funds, including payments on behalf of the licensee or operator of the assisted living residence. Priority shall be given to expenditures for current direct resident care or the transfer of residents.

(g)The person charged with temporary management:

(1) Shall be an officer of the court;

(2) Shall be paid by the licensee;

(3) Is not liable for conditions at the assisted living residence which existed or originated prior to his or her appointment; and

(4) Is not personally liable, except for his or her own gross negligence and intentional acts which result in injuries to persons or damage to property at the assisted living residence during his or her temporary management.

(h) No person may impede the operation of temporary management. There shall be an automatic stay for a 90-day period subsequent to the establishment of temporary management of any action that would interfere with the functioning of the assisted living residence, including, but not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions, and repossessions of equipment used in the assisted living residence.

(i) A temporary management established for the purpose of making improvements to bring the assisted living residence into compliance with applicable requirements may not be terminated until the court has determined that the assisted living residence has the management capability to ensure continued compliance with all applicable requirements: *Provided*, That if the court has not made such determination within six months of the establishment of the temporary management, the temporary management terminates by operation of law at that time, and the assisted living residence shall be closed. After the termination of the temporary management, the person who was responsible for the temporary management shall make an accounting to the court and after deducting from receipts the costs of the temporary management, expenditures, and civil penalties and interest no longer subject to appeal, in that order, any excess shall be paid to the licensee or operator of the assisted living residence.

(j) The assessments for penalties and for costs of actions taken under this article shall have interest assessed at five percent per year beginning 30 days after receipt of notice of the assessment or 30 days after receipt of the Board of Review's final order following a hearing, whichever is later. All assessments against an assisted living residence that are unpaid shall be added to the assisted living residence's licensure fee and may be filed as a lien against the property of the licensee or operator of the assisted living residence.

Funds received from assessments shall be deposited as funds received as provided in §16B-5-10 of this code.

(k) The opportunity for a hearing on an action by the director taken under this section shall be as provided in §16B-5-12 of this code.

§16B-5-12. License denial; limitation, suspension, or revocation.

(a) The director, in consultation with the Inspector General, shall issue an order denying, limiting, suspending, or revoking a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may issue an order revoking a program's license and prohibit all licensed disciplines associated with the assisted living residence from practicing at the assisted living residence based upon an annual, periodic, complaint, verification, or other inspection and evaluation.

(b) Before any order is issued by the director, in consultation with the Inspector General, denying, limiting, suspending, or revoking a license, written notice will be given to the licensee, stating the grounds for such denial, limitation, suspension, or revocation.

(c) An applicant or licensee has 10 working days after receipt of the director's order denying, limiting, suspending, or revoking a license to request a formal hearing contesting the denial, limitation, suspension, or revocation under this article. If a formal hearing is requested, the applicant or licensee and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(d) If a license is denied or revoked as herein provided, a new application for license will be considered by the director if, when, and after the conditions upon which the denial was based have been corrected and evidence of this fact has been furnished. A new license will then be granted after proper inspection, if applicable,

has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(e) Any applicant or licensee who is dissatisfied with the decision as a result of the formal hearing provided in this section may, within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(f) If the license of an assisted living residence is denied, limited, suspended, or revoked, the administrator, any owner of the assisted living residence, or owner or lessor of the assisted living residence property shall cease to operate the facility as an assisted living residence as of the effective date of the denial, limitation, suspension, or revocation. The owner or lessor of the assisted living residence property is responsible for removing all signs and symbols identifying the premises as an assisted living residence within 30 days. Any administrative appeal of such denial, limitation, suspension, or revocation shall not stay the denial, limitation, suspension, or revocation.

(g) Upon the effective date of the denial, limitation, suspension, or revocation, the administrator of the assisted living residence shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by an assisted living residence that is not licensed may be deemed adulterated.

(h) If the license of an assisted living residence is suspended or revoked, any person named in the licensing documents of the assisted living residence, including persons owning or operating the assisted living residence, may not, as an individual or as part of a group, apply to operate another assisted living residence for up to five years after the date of suspension or revocation.

(i) The period of suspension for the license of an assisted living residence will be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

§16B-5-13. Judicial review.

(a) Any applicant or licensee or the Inspector General who is adversely affected by the decision as a result of the formal hearing provided for in §16-5D-12 of this code may, within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(b) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant, licensee, or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

(c) The judgment of the West Virginia Intermediate Court of Appeals shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 *et seq.* of this code.

§16B-5-14. Legal counsel and services for the Inspector General.

(a) Legal counsel and services for the Inspector General in all administrative hearings and all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General, his or her assistants, or an attorney employed by the Office of the Inspector General in proceedings in any circuit court by the prosecuting attorney of the county as well, all without additional compensation.

(b) The Governor may appoint counsel for the Inspector General who shall perform such legal services in representing the interests of residents in assisted living residences in matters under the jurisdiction of the Inspector General as the Governor shall direct. It shall be the duty of such counsel to appear for the residents in all cases where they are not represented by counsel. The compensation of such counsel shall be fixed by the Governor.

§16B-5-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes, or maintains or is engaged in establishing or maintaining an assisted living

residence without a license granted under §16B-5-6 of this code, or who prevents, interferes with, or impedes in any way the lawful enforcement of this article shall be guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100 or by imprisonment in jail for a period of not more than 90 days, or by both such fine and imprisonment, at the discretion of the court. For each subsequent offense, the fine may be increased to not more than $250, with imprisonment in jail for a period of not more than 90 days, or both such fine and imprisonment at the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

(b) The Inspector General may in his or her discretion bring an action to enforce compliance with this article or any rule, or order hereunder, whenever it appears to the Inspector General that any person has engaged in, or is engaging in, an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the Inspector General that any person has aided, abetted, or caused or is aiding, abetting, or causing such an act or practice. Upon application by the Inspector General, the circuit court of the county in which the conduct has occurred or is occurring, or the Circuit Court of Kanawha County shall have jurisdiction to grant without bond a permanent or temporary injunction, decree, or restraining order.

(c) Whenever the director, in consultation with the Inspector General, refuses to grant or renew a license or revokes a license required by law to operate or conduct an assisted living residence or orders a person to refrain from conduct violating the rules of the Inspector General, and the person deeming himself or herself aggrieved by the refusal, revocation, or order appeals the action of the director, the court may, during pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the assisted living residence or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the assisted living residence. Should a person who is refused a license or the renewal of a license to operate or conduct an assisted living residence or whose license to operate is revoked

or who has been ordered to refrain from conduct or activity which violates the rules of the Inspector General, fails to appeal or should such appeal be decided favorably to the director, then the court shall issue a permanent injunction upon proof that the person is operating or conducting an assisted living residence without a license as required by law or has continued to violate the rules of the Inspector General.

(d) Any assisted living residence that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, by any state statute or rule, or by any applicable federal statute or regulation shall be liable to the resident for injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of such a right or benefit and that the resident has been injured as a result of the deprivation and unless there is a finding that the assisted living residence exercised all care reasonably necessary to prevent and limit the deprivation and injury to the resident, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury. In addition, where the deprivation of any right or benefit is found to have been willful or in reckless disregard of the lawful rights of the resident, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of any available administrative remedies may not be required prior to commencement of suit hereunder.

(e) The amount of damages recovered by a resident, in an action brought pursuant to this section, are exempt for purposes of determining initial or continuing eligibility for medical assistance pursuant to §9-5-1 *et seq.* of this code and may neither be taken into consideration nor required to be applied toward the payment or part payment of the cost of medical care or services available pursuant to §9-5-1 *et seq.* of this code.

(f) Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, shall be null and void as contrary to public policy.

(g) The penalties and remedies provided in this section are cumulative and shall be in addition to all other penalties and remedies provided by law.

§16B-5-16. Separate accounts for residents' personal funds; consent for use; records; penalties.

(a) Each assisted living residence subject to the provisions of this article shall hold in a separate account and in trust each resident's personal funds deposited with the assisted living residence.

(b) No person may use or cause to be used for any purpose the personal funds of any resident admitted to any assisted living residence unless consent for the use thereof has been obtained from the resident or from a committee or guardian or relative.

(c) Each assisted living residence shall maintain a true and complete record of all receipts for any disbursements from the personal funds account of each resident in the assisted living residence, including the purpose and payee of each disbursement, and shall render a true account of the record to the resident or his or her representative upon demand and upon termination of the resident's stay in the assisted living residence.

(d) Any person or corporation who violates any provision of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or imprisoned in jail not more than one year, or both fined and imprisoned.

ARTICLE 6. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.

§16B-6-1. Purpose.

It is the policy of this state to encourage the availability of appropriate noninstitutional surroundings for the elderly and for the care of persons in need of limited and intermittent nursing care or personal assistance. The registration of providers of services to such residents in unlicensed homes will help to identify where the

services are available and to ensure that individuals in unlicensed homes are receiving care appropriate to their needs.

§16B-6-1a. Powers, rights, and duties of the Inspector General.

In the administration of this article, the Inspector General shall have the following powers, duties and rights:

(a) To promulgate and enforce rules governing complaint investigations within the homes of legally unlicensed health care providers registered under this article. Such rules shall include the minimum health, safety and welfare standards in the following areas:

(1) Physical environment;

(2) Nutrition;

(3) Requirements related to limited and intermittent nursing care;

(4) Medication administration;

(5) Protective and personal services to be provided;

(6) Treatment;

(7) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(8) Such other categories as the director determines to be appropriate to ensure residents' health, safety, and welfare.

(b) To exercise as sole authority all powers relating to issuance, suspension, and revocation of registration of legally unlicensed homes providing health care;

(c) To issue directed plans of correction for deficiencies identified during complaint investigations;

(d) To order closure of any home for failure to comply with a directed plan of corrections;

(e) To take all actions required under the provisions of sections §16B-6-3, §16B-6-4, §16B-6-5, and §16B-6-6 of this code; and

(f) To deny registration to any operator of a legally unlicensed home who is listed on the state abuse registry.

(g) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

§16B-6-2. Definitions.

As used in this article, unless a different meaning appears from the context:

"Director" means the director of the Office of Health Facility Licensure and Certification or his or her designee.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code or his or her designee.

"Limited and intermittent nursing care" means direct hands on nursing care of an individual who needs no more than two hours of nursing care per day for a period of no longer than 90 consecutive days per episode, which may only be provided when the need for such care meets the following factors: (1) The resident requests to remain in the home; (2) the resident is advised of the availability of other specialized health care facilities to treat his or her condition; and (3) the need for such care is the result of a medical pathology or a result of normal aging process. Limited and intermittent nursing care shall be provided under the supervision of a registered professional nurse and in accordance with rules promulgated by the director.

"Nursing care" means those procedures commonly employed in providing for the physical, emotional, and rehabilitational needs of the ill or otherwise incapacitated which require technical skills

and knowledge beyond that which the untrained person possesses, including, but not limited to, such procedures as: Irrigations, catheterization, special procedures contributing to rehabilitation, and administration of medication by any method prescribed by a physician which involves a level of complexity and skill in administration not possessed by the untrained person.

"Personal assistance" means personal services, including, but not limited to, the following: Help in walking, bathing, dressing, feeding or getting in or out of bed, or supervision required because of the age or physical or mental impairment of the resident.

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of Inspector General.

"Resident" means an individual who is provided services, whether or not for a fee, by a service provider, but resident does not include a person receiving services provided by another who is related to him or her or the spouse thereof by blood or marriage, within the degree of consanguinity of the second cousin. Residents, who are incapable of self-preservation, shall be housed only on a ground floor level of the home with direct egress to the outside. A registered unlicensed health care home shall: (1) Provide residents at the time of admission with the name, address, and telephone number of the Offices of Health Facility Licensure and Certification, the state long-term care ombudsman, and adult protective services; and (2) advise residents both orally and in writing of their right to file a complaint with the aforementioned entities.

"Self-preservation" means that a person is at least capable of removing him or herself from situations involving imminent danger, such as fire.

"Service provider" means the individual administratively responsible for providing to consumers for a period of more than 24 hours, whether for compensation or not, services of personal assistance for one to three residents and who may require limited and intermittent nursing care, including those individuals who

qualify for and are receiving services coordinated by a licensed hospice: *Provided,* That services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the home has a backup power generator.

§16B-6-3. Registration of service providers required; form of registration; information to be provided.

(a) Service providers shall register with the director. No fee may be charged for registration. Registration information shall be provided on a registration form or may be verbally communicated to the director for placement by the director on the form, but no provision of information may be deemed to meet the registration requirement until the signature of the service provider is recorded on the registration form.

(b) Information required for registration shall include the following:

(1) Name, address, and telephone number of the service provider;

(2) Address and telephone numbers where services are provided to residents and the number of residents provided service;

(3) The services, such as nursing care or personal assistance, provided to residents; and

(4) Other information required by rules promulgated by the director.

(c) The director may deny registration if the information provided in an application is known by the applicant to be false or the applicant fails to report required information.

(d) A legally unlicensed provider may operate no more than one legally unlicensed home.

§16B-6-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.

(a) The provisions of this article do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home, pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

(b) The West Virginia Department of Veterans Affairs shall report annually by December 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program for veterans in West Virginia.

§16B-6-4. Public availability of registry.

The director shall publish and make available to the public on an annual basis a list of service providers registered in accordance with §16B-6-3 of this code.

§16B-6-5. Inspections; right of entry.

The director may employ inspectors to enforce the provisions of this article. These inspectors shall have the right of entry into any place where services are provided by a service provider, to determine the number of residents therein, and the adequacy of services being provided to them. The director may obtain a search warrant to inspect those premises that the director has reason to believe are being used to provide services. The inspectors shall have access to all parts of the home and grounds, including, but not limited to, all areas of all buildings on the grounds of a home, food supplies, resident medications, and resident medical records. Inspectors shall also be permitted to conduct private interviews with all residents and staff of a home.

If after investigating a complaint, the director determines that the complaint is substantiated and that an immediate and serious threat to a resident's health or safety exists, the director may petition the circuit court for an injunction, order of abatement or other appropriate action or proceeding to: (1) Close the home; (2) transfer residents in the home to other facilities; or (3) appoint temporary management to oversee the operation of the home to assure the health, safety, welfare, and rights of the home's residents

where there is a need for temporary management to ensure compliance with the court's order. Any home aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-4-12 of this code.

§16B-6-6. Enforcement; criminal penalties.

(a) Any service provider who fails to register with the director shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or more than $2,500, or imprisoned in jail not less than 10 days, or more than 30 days after notice by certified mail by the director to such service provider of the requirements of this article.

(b) Any person who interferes with or impedes in any way the lawful enforcement of the provisions of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $500 or more than $2,500, or imprisoned in the jail not less than 10 days, or more than 30.

(c) If after investigating a complaint, the director determines that the home is housing more than three residents, the director, in consultation with the Inspector General, shall assess a civil penalty of $50 per day per the number of residents exceeding three. Each day the violation continues, after the date of citation shall constitute a separate violation. The date of citation is the date the facility receives the written statement of deficiencies.

(d) The Inspector General may in his or her discretion bring an action to enforce compliance with the provisions of this article.

(e) The Circuit Court of Kanawha County or the circuit court of the county in which the conduct occurred shall have jurisdiction in all civil enforcement actions brought under this article and may order equitable relief without bond.

ARTICLE 7. CHRONIC PAIN CLINIC LICENSING ACT.

§16B-7-1. Purpose and short title.

This article shall be known as the Chronic Pain Clinic Licensing Act. The purpose of this act is to establish licensing requirements for facilities that treat patients for chronic pain management in order to ensure that patients may be lawfully treated for chronic pain by physicians in facilities that comply with oversight requirements developed by the Office of the Inspector General.

§16B-7-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

(1) "Chronic pain" means pain that has persisted after reasonable medical efforts have been made to relieve the pain or cure its cause and that has continued, either continuously or episodically, for longer than three continuous months. For purposes of this article, "chronic pain" does not include pain directly associated with a terminal condition.

(2) "Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

(3) "Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

(4) "Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(5) "Owner" means any person, partnership, association, or corporation listed as the owner of a pain management clinic on the licensing forms required by this article.

(6) "Pain management clinic" means all privately-owned pain management clinics, facilities, or offices not otherwise exempted from this article and which meet both of the following criteria:

(A) Where in any month more than 50 percent of patients of the clinic are prescribed or dispensed Schedule II opioids or other

Schedule II controlled substances specified in rules promulgated pursuant to this article for chronic pain resulting from conditions that are not terminal; and

(B) The facility meets any other identifying criteria established by the Inspector General by rule.

(7) "Physician" means an individual authorized to practice medicine or surgery or osteopathic medicine or surgery in this state.

(8) "Prescriber" means an individual who is authorized by law to prescribe drugs or drug therapy related devices in the course of the individual's professional practice, including only a medical or osteopathic physician authorized to practice medicine or surgery; a physician assistant, or osteopathic physician assistant who holds a certificate to prescribe drugs; or an advanced nurse practitioner who holds a certificate to prescribe.

(b) The Inspector General may define in rules any term or phrase used in this article which is not expressly defined.

§16B-7-3. Pain management clinics to obtain license; application; fees and inspections.

(a) The Inspector General designates the Director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

(b) No person, partnership, association, or corporation may operate a pain management clinic without first obtaining a license from the director in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(c) Any person, partnership, association, or corporation desiring a license to operate a pain management clinic in this state shall file with the Office of Health Facility Licensure and Certification an application in such form as the director shall prescribe and furnish accompanied by a fee to be determined by the director.

(d) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect each facility prior to issuing a license and review all documentation submitted with the application. The director shall issue a license if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(e) A license shall expire one year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted on forms furnished by the director. A license shall be renewed if the director determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A license issued to one facility pursuant to this article is not transferable or assignable. A change of ownership of a licensed pain management clinic requires submission of a new application.

(f) The director or his or her designee shall inspect on a periodic basis all pain management clinics that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

§16B-7-4. Operational requirements.

(a) Any person, partnership, association, or corporation that desires to operate a pain management clinic in this state must submit to the director documentation that the facility meets all of the following requirements:

(1) The clinic shall be licensed in this state with the director, the Secretary of State, the State Tax Department, and all other applicable business or license entities.

(2) The application shall list all owners of the clinic. At least one owner shall be a physician actively licensed to practice medicine, surgery, or osteopathic medicine or surgery in this state. The clinic shall notify the director of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the director.

(3) Each pain management clinic shall designate a physician owner who shall practice at the clinic and who will be responsible for the operation of the clinic. Within 10 days after termination of a designated physician, the clinic shall notify the director of the identity of another designated physician for that clinic. Failing to have a licensed designated physician practicing at the location of the clinic may be the basis for a suspension or revocation of the clinic license. The designated physician shall:

(A) Have a full, active, and unencumbered license to practice medicine, surgery, or osteopathic medicine or surgery in this state:

(B) Meet one of the following training requirements:

(i) Complete a pain medicine fellowship that is accredited by the Accreditation Council for Graduate Medical Education or such other similar program as may be approved by the director; or

(ii) Hold current board certification by the American Board of Pain Medicine or current board certification by the American Board of Anesthesiology or such other board certification as may be approved by the director.

(C) Practice at the licensed clinic location for which the physician has assumed responsibility;

(D) Be responsible for complying with all requirements related to the licensing and operation of the clinic;

(E) Supervise, control, and direct the activities of each individual working or operating at the facility, including any employee, volunteer, or individual under contract, who provides treatment of chronic pain at the clinic or is associated with the provision of that treatment. The supervision, control, and direction shall be provided in accordance with rules promulgated by the Inspector General.

(4) All persons employed by the facility shall comply with the requirements for the operation of a pain management clinic established by this article or by any rule adopted pursuant to this article.

(5) No person may own or be employed by or associated with a pain management clinic who has previously been convicted of, or pleaded guilty to, any felony in this state or another state or territory of the United States. All owners, employees, volunteers, or associates of the clinic shall undergo a criminal records check prior to operation of the clinic or engaging in any work, paid or otherwise, pursuant to §16B-15-1 *et seq.* of this code.

(6) The clinic may not be owned by, nor may it employ or associate with, any physician or prescriber:

(A) Whose Drug Enforcement Administration number has ever been revoked;

(B) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by any jurisdiction; or

(C) Who, in any jurisdiction of this state or any other state or territory of the United States, has been convicted of or plead guilty or nolo contendere to an offense that constitutes a felony for receipt of illicit and diverted drugs, including controlled substances, as defined by §60A-1-101 of this code.

(7) A person may not dispense any medication, including a controlled substance, as defined by section §60A-1-101 of this code, on the premises of a licensed pain management clinic unless he or she is a physician or pharmacist licensed in this state. Prior to dispensing or prescribing controlled substances, as defined by §60A-1-101 of this code, at a pain management clinic, the treating physician must access the Controlled Substances Monitoring Program database maintained by the Board of Pharmacy to ensure the patient is not seeking controlled substances from multiple sources. If the patient receives ongoing treatment, the physician shall also review the Controlled Substances Monitoring Program database at each patient examination or at least every 90 days. The results obtained from the Controlled Substances Monitoring Program database shall be maintained with the patient's medical records.

(8) Each clinic location shall be licensed separately, regardless of whether the clinic is operated under the same business name or management as another clinic.

(9) A pain management clinic shall not dispense to any patient more than a 72-hour supply of a controlled substance, as defined by §60A-1-101 of this code.

(10) The pain management clinic shall develop patient protocols, treatment plans, and profiles, as prescribed by the Inspector General by rule, and which shall include, but not be limited by, the following guidelines:

(A) When a physician diagnoses an individual as having chronic pain, the physician may treat the pain by managing it with medications in amounts or combinations that may not be appropriate when treating other medical conditions. The physician's diagnosis shall be made after having the individual evaluated by one or more other physicians who specialize in the treatment of the area, system, or organ of the body perceived as the source of the pain unless the individual has been previously diagnosed as suffering from chronic pain and is referred to the pain management clinic by such diagnosing physician. The physician's diagnosis and treatment decisions shall be made according to accepted and prevailing standards for medical care.

(B) The physician shall maintain a record of all of the following:

(i) Medical history and physical examination of the individual;

(ii) The diagnosis of chronic pain, including signs, symptoms, and causes;

(iii) The plan of treatment proposed, the patient's response to the treatment, and any modification to the plan of treatment;

(iv) The dates on which any medications were prescribed, dispensed, or administered, the name and address of the individual to or for whom the medications were prescribed, dispensed, or

administered and the amounts and dosage forms for the drugs prescribed, dispensed, or administered; and

(v) A copy of the report made by the physician to whom referral for evaluation was made.

(C) A physician, physician assistant, certified registered nurse anesthetist, or advanced nurse practitioner shall perform a physical examination of a patient on the same day that the physician initially prescribes, dispenses or administers a controlled substance to a patient, and at least four times a year thereafter at a pain management clinic according to accepted and prevailing standards for medical care.

(D) A physician authorized to prescribe controlled substances who practices at a pain management clinic is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing controlled substance pain medication. The physician shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the physician shall notify the director in writing within 24 hours following any theft or loss of a prescription blank or breach of any other method for prescribing pain medication.

(c) Upon satisfaction that an applicant has met all of the requirements of this article, the director may issue a license to operate a pain management clinic. An entity that obtains this license may possess, have custody or control of, and dispense drugs designated as Schedule II or Schedule III in §60A-2-206 or §60A-2-208 of this code.

§16B-7-5. Exemptions.

(a) The following facilities are not pain management clinics subject to the requirements of this article:

(1) A facility that does not prescribe or dispense controlled substances for the treatment of chronic pain;

(2) A hospital licensed in this state, a facility located on the campus of a licensed hospital that is owned, operated, or controlled by that licensed hospital, and an ambulatory health care facility as defined by §16-2D-2 of this code that is owned, operated, or controlled by a licensed hospital;

(3) A physician practice owned or controlled, in whole or in part, by a licensed hospital or by an entity that owns or controls, in whole or in part, one or more licensed hospitals;

(4) A hospice program licensed in this state;

(5) A nursing home licensed in this state;

(6) An ambulatory surgical facility as defined by §16-2D-2 of this code; and

(7) A facility conducting clinical research that may use controlled substances in studies approved by a hospital-based institutional review board or an institutional review board accredited by the association for the accreditation of human research protection programs.

(b) Any facility that is not included in this section may petition to the director for an exemption from the requirements of this article. All such petitions are subject to the administrative procedures requirements of §29A-1-1 *et seq.* of this code.

§16B-7-6. Inspection.

(a) The Office of Health Facility Licensure and Certification shall inspect each pain management clinic annually, including a review of the patient records, to ensure that it complies with this article and the applicable rules.

(b) During an onsite inspection, the inspector shall make a reasonable attempt to discuss each violation with the designated physician or other owners of the pain management clinic before issuing a formal written notification.

(c) Any action taken to correct a violation shall be documented in writing by the designated physician or other owners of the pain management clinic and verified by follow-up visits by the Office of Health Facility Licensure and Certification.

§16B-7-7. Suspension; revocation.

(a) The director, in consultation with the Inspector General, may suspend or revoke a license issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may revoke a clinic's license and prohibit all physicians associated with that pain management clinic from practicing at the clinic location based upon an annual or periodic inspection and evaluation.

(b) Before any such license is suspended or revoked, however, written notice shall be given to the licensee, stating the grounds of the complaint and shall provide notice of the right to request a hearing. The notice shall be sent by certified mail to the licensee at the address where the pain management clinic concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked pursuant to this article, a new application for a license may be considered by the director if, when, and after the conditions upon which revocation was based have been corrected, and evidence of this fact has been furnished to the director. A new license may then be granted after proper inspection has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(d) All of the pertinent provisions of §29A-5-1 *et seq.* of this code shall apply and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection therewith.

(e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review as a result of the hearing provided in this section may, within 30 days after receiving notice of the

decision, appeal the decision to West Virginia Intermediate Court of Appeals for judicial review of the decision.

(f) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant or licensee or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

(g) If the license of a pain management clinic is revoked or suspended, the designated physician of the clinic, any other owner of the clinic or the owner or lessor of the clinic property shall cease to operate the facility as a pain management clinic as of the effective date of the suspension or revocation. The owner or lessor of the clinic property is responsible for removing all signs and symbols identifying the premises as a pain management clinic within 30 days.

(h) Upon the effective date of the suspension or revocation, the designated physician of the pain management clinic shall advise the director and the Board of Pharmacy of the disposition of all drugs located on the premises. The disposition is subject to the supervision and approval of the director. Drugs that are purchased or held by a pain management clinic that is not licensed may be deemed adulterated.

(i) If the license of a pain management clinic is suspended or revoked, any person named in the licensing documents of the clinic, including persons owning or operating the pain management clinic, may not, as an individual or as part of a group, apply to operate another pain management clinic for five years after the date of suspension or revocation.

(j) The period of suspension for the license of a pain management clinic shall be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

§16B-7-8. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation which establishes, conducts, manages, or operates a pain management

clinic without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule lawfully promulgated pursuant to this article, shall be assessed a civil penalty by the director, in consultation with the Inspector General, in accordance with this subsection. Each day of continuing violation after conviction shall be considered a separate violation:

(1) If a pain management clinic or any owner or designated physician is found to be in violation of any provision of this article, unless otherwise noted herein, the director, in consultation with the Inspector General, may suspend or revoke the clinic's license.

(2) If the clinic's designated physician knowingly and intentionally misrepresents actions taken to correct a violation, the director, in consultation with the Inspector General, may impose a civil penalty not to exceed $10,000, and, in the case of an owner-operated pain management clinic, revoke or deny a pain management clinic's license.

(3) If an owner or designated physician of a pain management clinic concurrently operates an unlicensed pain management clinic, the director, in consultation with the Inspector General, may impose a civil penalty upon the owner or physician, or both, not to exceed $5,000 per day.

(4) If the owner of a pain management clinic that requires a license under this article fails to apply for a new license for the clinic upon a change-of-ownership and operates the clinic under the new ownership, the director, in consultation with the Inspector General, may impose a civil penalty not to exceed $5,000.

(5) If a physician knowingly operates, owns, or manages an unlicensed pain management clinic that is required to be licensed pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or dispensed, controlled substances in an unlicensed pain management clinic that is required to be licensed; or licenses a pain management clinic through misrepresentation or fraud; procures or attempts to procure a license for a pain management clinic for any other person by making or causing to be made any false representation, the director, in consultation with

the Inspector General, may assess a civil penalty of not more than $20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the director, in consultation with the Inspector General, or any other board, court, or entity.

(b) Notwithstanding the existence or pursuit of any other remedy, the director, in consultation with the Inspector General, may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, or corporation to restrain or prevent the establishment, conduct, management, or operation of any pain management clinic or violation of any provisions of this article, or any rule lawfully promulgated thereunder without first obtaining a license therefor in the manner hereinbefore provided.

(c) In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the director, in consultation with the Inspector General, shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the pain management clinic's actions or the actions of the designated or practicing physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

(2) What actions, if any, the owner or designated physician took to correct the violations;

(3) Whether there were any previous violations at the pain management clinic; and

(4) The financial benefits that the pain management clinic derived from committing or continuing to commit the violation.

(d) Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the director, in consultation with the Inspector General, shall provide notice of the violation to the applicable licensing board.

§16B-7-9. Rules.

(a) The Inspector General, in collaboration with the West Virginia Board of Medicine and the West Virginia Board of Osteopathy, shall promulgate rules in accordance with the provisions of §29A-1-1 *et seq.* of this code for the licensure of pain management clinics to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a license;

(2) The qualifications and supervision of licensed and nonlicensed personnel at pain management clinics and training requirements for all facility health care practitioners who are not regulated by another board;

(3) The provision and coordination of patient care, including the development of a written plan of care;

(4) The management, operation, staffing, and equipping of the pain management clinic;

(5) The clinical, medical, patient, and business records kept by the pain management clinic;

(6) The procedures for inspections and for the review of utilization and quality of patient care;

(7) The standards and procedures for the general operation of a pain management clinic, including facility operations, physical operations, infection control requirements, health and safety requirements, and quality assurance;

(8) Identification of drugs that may be used to treat chronic pain that identify a facility as a pain management clinic, including, at a minimum, tramadol and carisoprodol;

(9) Any other criteria that identify a facility as a pain management clinic;

(10) The standards and procedures to be followed by an owner in providing supervision, direction, and control of individuals employed by or associated with a pain management clinic;

(11) Data collection and reporting requirements; and

(12) Such other standards or requirements as the Inspector General determines are appropriate.

(b) The rules authorized by this section may be filed as emergency rules if deemed necessary to promptly effectuate the purposes of this article. The Legislature finds that the changes made to this article during the 2024 regular session of the Legislature constitute an emergency for the purposes of filing any amendment to existing rules.

§16B-7-10. Advertisement disclosure.

Any advertisement made by or on behalf of a pain management clinic through public media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor advertising, radio, or television, or through written or recorded communication, concerning the treatment of chronic pain, as defined in §16B-7-2 of this code, shall include the name of, at a minimum, one physician owner responsible for the content of the advertisement.

ARTICLE 8. HOSPICE LICENSURE ACT.

§16B-8-1. Purpose and short title.

This article shall be known as the Hospice Licensure Act. The purpose of this Act is to establish licensing requirements for hospices. It is the intent of the Legislature to establish, promote and make available within this state a comprehensive hospice care program for the treatment of physical, emotional, and mental symptoms of terminal illness.

§16B-8-2. Definitions.

"Bereavement services" means support services designed to assist individuals to experience, respond emotionally to, and adjust to the death of another person.

"Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Hospice" means a coordinated program of home and inpatient care provided directly or through an agreement under the direction of an identifiable hospice administration which provides palliative and supportive medical and other health services to terminally ill individuals and their families. Hospice utilizes a medically directed interdisciplinary team. A hospice program of care provides care to meet the physical, psychological, social, spiritual, and other special needs which are experienced during the final stages of illness and during dying and bereavement.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Interdisciplinary team" means the hospice patient and the patient's family, the attending physician and the following hospice personnel: Physician, nurse, social worker, clergy and trained volunteer. Providers of supportive services such as mental health, pharmaceutical, and any other appropriate allied health services may also be included on the team as the needs of the individual dictate.

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

"Palliative services" means treatment directed at controlling pain, relieving other symptoms, and focusing on the special needs of the individual and family as they experience the stress of the dying process, rather than treatment designed for investigation and intervention for the purpose of cure or prolongation of life.

"Terminally ill" means that an individual has a medical prognosis that his or her life expectancy is six months or less or

another length of time determined by the centers for Medicare and Medicaid services and designated in federal hospice regulations.

The Inspector General may define in regulation any term or phrase used in this article which is not expressly defined.

§16B-8-3. Hospices to obtain license; application; fees and inspections.

(a) The Inspector General designates the Director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise state.

(b) No person, partnership, association, or corporation or any governmental unit or any division, department, board, or agency thereof may operate a hospice without first obtaining a license from the director in accordance with the provisions of this article and the rules lawfully promulgated hereunder.

(c) Any person, partnership, association, or corporation or any governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the director an application in such form as the director shall prescribe and furnish accompanied by a fee to be determined by the director, based upon the number of persons served by the hospice. The director shall inspect the hospice prior to issuing a license. Upon receipt and review of an application for license, the director shall issue a license if the hospice is in compliance with the provisions of this article and with the rules lawfully promulgated hereunder. The license is not transferable or assignable.

(d) A license shall expire one year from the date of issuance. Sixty days prior to the expiration date, an application for renewal shall be submitted on forms furnished by the director. A license shall be renewed if the director determines that the applicant is in compliance with this article and with all rules promulgated hereunder.

(e) The director or his or her designee shall inspect all hospices that are subject to rules adopted pursuant to this article periodically and at least as often as required by the Centers for Medicare and

Medicaid Services in order to determine compliance with the provisions of this article and with rules adopted hereunder, and regulations promulgated by the Centers for Medicare and Medicaid Services.

§16B-8-4. Suspension; revocation.

(a) The director, in consultation with the Inspector General, is authorized to suspend or revoke a license issued hereunder if the provisions of this article or of the rules are violated.

(b) Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time, and place set for the hearing on the complaint, which date shall not be less than 30 days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the hospice concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

(c) If a license is revoked as herein provided, a new application for a license shall be considered by the director, in consultation with the Inspector General, if, when and after the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all provisions of this article and rules promulgated hereunder have been satisfied.

(d) All of the pertinent provisions of §29A-5-1 *et seq.* of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

(e) Any applicant or licensee who is dissatisfied with the decision of the Board of Review as a result of the hearing provided in this section may, within 30 days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

(f) The court may affirm, modify, or reverse the decision of the Board of Review and either the applicant or licensee or the Inspector General may appeal from the court's decision to the Supreme Court of Appeals.

§16B-8-5. Inspector General to establish rules.

The Inspector General may promulgate rules in accordance with the provisions of §29A-1-1 *et seq.* of this code for the licensure of hospice programs to ensure adequate care, treatment, health, safety, welfare, and comfort of hospice patients. Such rules shall include, but not be limited to:

(a) The qualifications and supervision of licensed and nonlicensed personnel;

(b) The provision and coordination of inpatient care and in-home treatment services, including the development of a written plan of care;

(c) The management, operation, staffing, and equipping of the hospice program;

(d) The clinical and business records kept by the hospice;

(e) The procedures for the review of utilization and quality of patient care; and

(f) Such other requirements as the director determines to be appropriate.

§16B-8-6. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation, and any local governmental unit or any division, department, board, or agency thereof which establishes, conducts, manages, or operates a hospice without first obtaining a license therefor as herein provided, or which violates any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be assessed a civil penalty by the director, in consultation with the Inspector General, not to exceed $50 for each violation. Each day of

continuing violation after conviction shall be considered a separate violation.

(b) Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any governmental unit or any division, department, board, or agency thereof to restrain or prevent the establishment, conduct, management, or operation of any hospice or violation of any provisions of this article or any rule or regulation lawfully promulgated thereunder without first obtaining a license therefor in the manner hereinbefore provided.

ARTICLE 9. RESIDENTIAL CARE COMMUNITIES.

§16B-9-1. Purpose.

It is the policy of this state to encourage and promote the development and utilization of quality residential communities for persons who desire to live independently in an apartment, who are or may be dependent upon the services of others by reason of physical or mental impairment, and who may require limited and intermittent nursing care and who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. This care and treatment requires a living environment for these persons which, to the extent practicable, approximates a normal home environment. To this end, it is the policy of this state to encourage and promote the development and maintenance of residential care communities.

The provisions of this article are remedial and shall be liberally construed to effectuate its purposes and intents. This article is intended to apply only to residential communities in which apartments are rented on a month-to-month basis. All residential care community rental contracts shall specify in bold-faced type, under the conspicuous caption "NOTICE TO RESIDENT", that residents of the residential community must be capable of self-preservation, or substantially similar words clearly conveying the

same meaning. This article may not be construed to require that any person be required to vacate any property in which that person has an ownership or a leasehold interest, except for a month-to-month tenancy, because that person is disabled and incapable of self-preservation. Nothing in this article is intended to supersede the provisions of §5-11A-1 *et seq.* of this code.

§16B-9-2. Definitions.

(a) As used in this article, unless a different meaning appears from the context:

(1) "Capable of self-preservation" means that a person is, at a minimum, physically capable of removing himself or herself from situations involving imminent danger such as fire;

(2) "Deficiency" means a statement of the rule and the fact that compliance has not been established and the reasons therefor;

(3) "Director" means the director of the Office of Health Facility Licensure and Certification, or his or her designee;

(4) "Division" means the Office of Health Facility Licensure and Certification;

(5) "Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee;

(6) "Limited and intermittent nursing care" means direct hands-on nursing care of a resident who needs no more than two hours of nursing care per day for a period of time no longer than 90 consecutive days per episode, which care may be provided only when the need for it meets these requirements: The resident requests that he or she remain in the residential care community, the resident is advised of the availability of other specialized health care facilities to treat his or her condition, and the need for care results from a medical pathology or the normal aging process. Limited and intermittent nursing care may be provided only by or under the supervision of a registered professional nurse and in accordance with legislative rules.

(7) "Nursing care" means those procedures commonly employed in providing for the physical, emotional and rehabilitation needs of the ill or otherwise incapacitated and which require technical skills and knowledge beyond those that untrained persons possess, including, irrigations, catheterizations, and special procedures that contribute to rehabilitation and administration of medication by any method involving a level of complexity and skill not possessed by untrained persons;

(8) "Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(9) "Person" means a natural person and every form of organization, whether incorporated or unincorporated, including partnerships, corporations, trusts, associations, and political subdivisions of the state;

(10) "Personal assistance" means services of a personal nature, including help in walking, bathing, dressing, toileting, getting in or out of bed, and supervision that is required because of the age or mental impairment of a resident;

(11) "Resident" means an individual who lives in a residential care community for the purpose of receiving personal assistance or limited and intermittent nursing services from the community;

(12) "Residential care community" means any group of 17 or more residential apartments, however named, which are part of a larger independent living community and which are advertised, offered, maintained, or operated by an owner or manager, regardless of consideration or the absence thereof, for the express or implied purpose of providing residential accommodations, personal assistance, and supervision on a monthly basis to 17 or more persons who are or may be dependent upon the services of others by reason of physical or mental impairment or who may require limited and intermittent nursing care but who are capable of self-preservation and are not bedfast. Individuals may not be disqualified for residency solely because they qualify for or receive services coordinated by a licensed hospice. Each apartment in a

residential care community shall be at least 300 square feet in size, have doors capable of being locked and contain at least: One bedroom; one kitchenette that includes a sink and a refrigerator; and one full bathroom that includes a bathing area, toilet, and sink. Services utilizing equipment which requires auxiliary electrical power in the event of a power failure may not be used unless the residential care community has a backup power generator. Nothing contained in this article applies to hospitals, as defined under §16B-3-1 of this code, state institutions, as defined under §27-1-6, residential care communities operated as continuing care retirement communities or housing programs operated under rules of the federal department of housing and urban development and/or the office of rural economic development, residential care communities, operated by the federal government or the state government, institutions operated for the treatment and care of alcoholic patients, offices of physicians, hotels, boarding homes or other similar places that furnish only room and board, or to homes or asylums operated by fraternal orders pursuant to §35-3-1 of this code;

(13) "Substantial compliance" means a level of compliance with the rules promulgated hereunder that identified deficiencies pose a risk to resident health or safety no greater than a potential for causing minimal harm.

(b) The Inspector General may by rule define terms pertinent to this article which are not defined.

§16B-9-3. Powers, duties, and rights of Inspector General.

In the administration of this article, the Inspector General may:

(1) Enforce rules and standards for residential care communities as adopted, proposed, amended, or modified by the Inspector General;

(2) Exercise all powers granted herein relating to the issuance, suspension, and revocation of licenses of residential care communities;

(3) Enforce rules governing the qualification of applicants for residential care community licenses, including, but not limited to, educational, financial, personal, and ethical requirements, as adopted, proposed, amended, or modified by the Inspector General;

(4) Receive and disburse federal funds and to take any lawful action that is necessary or appropriate to comply with the requirements and conditions for the receipt or expenditure of federal funds;

(5) Receive and disburse funds appropriated by the Legislature to the division for any authorized purpose;

(6) Receive and disburse funds obtained by the division by way of gift, grant, donation, bequest, or devise, according to the terms thereof, funds derived from the division's operation, and funds from any other source, no matter how derived, for any authorized purpose;

(7) Negotiate and enter into contracts, and to execute all instruments necessary or convenient in carrying out the functions and duties of the position of Inspector Director, and all of these contracts, agreements, and instruments shall be executed by the Inspector Director;

(8) Appoint officers, agents, employees, and other personnel and establish the duties and fix the compensation thereof;

(9) Offer and sponsor education and training programs for residential care communities' administrative, managerial, and operations personnel;

(10) Undertake survey, research, and planning projects and programs relating to the administration and operation of residential care communities and to the health, care, treatment, and service in general of residents of these communities;

(11) Establish by legislative rule in accordance with §16B-9-10 of this code and to assess reasonable civil penalties for violations of residential care community standards;

(12) Inspect any residential care community and any of the records maintained therein, subject to the provisions of §16B-9-10 of this code;

(13) Establish legislative rules in accordance with §29A-3-1 *et seq.* of this code, setting forth procedures for implementing the provisions of this article, including informal conferences, investigations and hearings, and for enforcing compliance with the provisions of this article and the rules promulgated hereunder;

(14) Subpoena witnesses and documents, administer oaths and affirmations, and examine witnesses. Upon the failure of any person without lawful excuse to obey a subpoena to give testimony and upon reasonable notice to all persons affected thereby, the Inspector General may apply to the circuit court of the county in which the hearing is to be held or to the circuit court of Kanawha County for an order compelling compliance;

(15) Make a complaint or cause proceedings to be instituted against any person or persons for the violation of the provisions of this article or of the rules promulgated hereunder. An action may be taken by the Inspector General in the absence of concurrence or participation by the prosecuting attorney of the county in which the proceedings are instituted. The Circuit Court of Kanawha County or the circuit court of the county in which the violation has occurred has jurisdiction in any civil enforcement action brought pursuant to this article and may order equitable relief. In these cases, the court may not require that a bond be posted, nor may the Inspector General or any person acting under his or her authority be required to give security for costs;

(16) Delegate authority to his or her employees and agents in the performance of any power or duty granted in this article, except the issuance of final decisions in any adjudicatory matter; and

(17) Make available at all times online access through the Office of Health Facility Licensure and Certification website the following information. The online information shall describe the residential care community licensing and investigatory activities of the division. The online information shall include a list of all

residential care communities and the following information: Whether the residential care communities are proprietary or nonproprietary, the name of the administrator or administrators, the total number of beds; license type, license number, license expiration date, health investigations information and reports, life safety investigations information and reports, and whether those residential care communities listed accept Medicare or Medicaid residents.

(18) The Inspector General designates the Director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

§16B-9-4. Administrative and inspection staff.

The director may, at any time he or she considers necessary, employ administrative employees, inspectors, or other persons to properly implement the provisions of this article. Employees of the division shall be members of the state civil service system and shall enforce the provisions of this article and the rules promulgated hereunder. In discharging their official duties, employees of the division have the right of entry into any place maintained as a residential care community.

§16B-9-5. Rules; minimum standards for residential care communities.

(a) The Inspector General shall propose all rules that may be necessary or proper to implement or effectuate the purposes and intent of this article and to enable the director to exercise the powers and perform the duties conferred herein. All rules authorized or required pursuant to this article shall be proposed by the Inspector General and promulgated in accordance with the provisions governing legislative rules, contained in §29A-3-1 of this code.

(b) The Inspector General shall propose rules establishing minimum standards for the operation of residential care communities, including, but not limited to, the following:

(1) Administrative policies, including: (i) An affirmative statement of the right of access to residential care communities by members of recognized community organizations and community legal services programs whose purposes include rendering assistance without charge to residents, consistent with the right of residents to privacy; and (ii) a statement of the rights and responsibilities of residents;

(2) Minimum numbers and qualifications of residential care community personnel according to the size, classification and health care needs of the residential care community;

(3) Safety requirements, except for those fire and life safety requirements under the jurisdiction of the state Fire Marshal;

(4) Sanitation requirements;

(5) Protective and personal services required to be provided;

(6) Dietary services required to be provided;

(7) Maintenance of health records, including confidentiality;

(8) Social and recreational activities required to be made available;

(9) Physical facilities;

(10) Requirements related to limited and intermittent nursing care;

(11) Visitation privileges governing access to a resident by immediate family or other relatives of the resident and by other persons who are visiting with the consent of the resident; and

(12) Other items or considerations that the director considers appropriate to ensure the health, safety and welfare of residents of residential care communities.

(c) The Inspector General shall propose rules that include detailed specifications for each category of standards required

under subsections (b) and (d) of this section, and shall classify these standards as follows:

(1) Class I standards, the violation of which presents either an imminent danger to the health, safety, or welfare of a resident or a substantial probability that death or serious physical harm may result;

(2) Class II standards, the violation of which directly implicates the health, safety or welfare of a resident, but which does not present imminent danger thereto; and

(3) Class III standards, the violation of which has an indirect or potential impact on the health, safety, or welfare of any resident.

(d) A residential care community shall attain substantial compliance in every category of standard enumerated in this section in order to be considered as being in substantial compliance with the requirements of this article and the rules promulgated hereunder.

(e) Until such time as the Inspector General proposes rules governing residential care communities under this section, existing rules governing residential board and care homes shall apply to residential care communities and shall be construed so as to conform with the provisions of this article in their application to residential care communities: *Provided,* That to the extent any provisions of the rule governing residential board and care homes conflict with the provisions of this article, the provisions of this article shall govern.

§16B-9-6. License required; application; fees; duration; renewal.

No person may establish, operate, maintain, offer, or advertise a residential care community within this state unless he or she first obtains a license therefor as provided in this article, which license remains unsuspended, unrevoked, and unexpired. No public official or employee may place any person in, or recommend that any person be placed in, or directly or indirectly cause any person to be placed in, any residential care community which is being

operated without a valid license from the director. The procedure for obtaining a license is as follows:

(a) The applicant shall submit an application to the director on a form prescribed by the director, containing information as may be necessary to show that the applicant is in compliance with the standards for residential care communities as established by this article and the rules promulgated hereunder. The application and any exhibits thereto shall provide the following information:

(1) The name and address of the applicant;

(2) The name, address, and principal occupation: (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the applicant; (ii) of each officer and director of a corporate applicant; (iii) of each trustee and beneficiary of an applicant which is a trust; and (iv) where a corporation has a proprietary interest of 25 percent or more in an applicant, the name, address, and principal occupation of each officer and director of the corporation;

(3) The name and address of the owner of the premises of the residential care community or proposed residential care community, if different from the applicant, and if so, the name and address: (i) Of each person who, as a stockholder or otherwise, has a proprietary interest of 10 percent or more in the owner of the premises; (ii) of each officer and director of a corporate applicant; (iii) of each trustee and beneficiary of the owner if it is a trust; and (iv) where a corporation has a proprietary interest of 25 percent or more in the owner, the name and address of each officer and director of the corporation;

(4) Where the applicant is the lessee or the assignee of the residential care community or the premises of the proposed residential care community, a signed copy of the lease and any assignment thereof;

(5) The name and address of the residential care community or the premises of the proposed residential care community;

(6) The proposed number of apartments in the residential care community;

(7) (A) An organizational plan for the residential care community indicating the number of persons employed or to be employed, and the positions and duties of all employees; (B) the name and address of the individual who is to serve as administrator; and (C) evidence of compliance with applicable laws and rules governing zoning, building, safety, fire prevention, and sanitation, as the director may require; and

(8) Additional information as the director may require.

(b) Upon receipt and review of an application for license made pursuant to subdivision (a) of this section and inspection of the applicant pursuant to §16B-9-10 of this code, the director shall issue a license if he or she finds:

(1) That an applicant which is an individual and every partner, trustee, officer, director, and person with a controlling interest of an applicant which is not an individual, is a person responsible and suitable to operate or to direct or participate in the operation of a residential care community by virtue of financial capacity, appropriate business or professional experience, a record of compliance with lawful orders of the department (if any) and a history of nonrevocation of a license during the five years immediately preceding the application;

(2) That the residential care community is under the supervision of an administrator qualified for that position by training and experience;

(3) That the residential care community is in substantial compliance with standards established pursuant to section five of this article, and other requirements as the Inspector General may establish by rule under this article.

Any license granted by the director shall state the maximum number of apartments for which it is granted, the date of issuance and the date of expiration. Residential care community licenses shall be issued for a period not to exceed one year: *Provided,* That

any license which is unexpired, for which timely application for renewal has been made, together with payment of the proper fee, as required by the provisions of this article and the rules promulgated hereunder, continues in effect until: (i) One year after the original expiration date of the license; (ii) the date that the license is revoked or suspended pursuant to the provisions of this article; or (iii) the date of issuance of a new license, whichever date first occurs. Each license issued is only for the premises and applicant named in the application and may not be transferred or assigned: *Provided, however,* That if the ownership of a residential care community with an unexpired license is transferred, the filing of an application for a license with the director by the new owner shall have the effect of licensing the operation of the residential care community under the new owner for a period not to exceed three months. Every residential care community license shall be displayed in a conspicuous place at the facility for which it is issued so as to be accessible to and in plain view of residents and visitors.

(c) An original license may be renewed upon the timely filing of an application therefor, accompanied by the required fee and contingent upon the licensee's submission of evidence satisfactorily demonstrating compliance with the provisions of this article and the rules promulgated hereunder together with the following:

(1) A balance sheet as of the end of the residential care community's fiscal year, setting forth its assets and liabilities as of that date, including all capital, surplus, reserve, depreciation, and similar accounts;

(2) A statement of operations of the residential care community as of the end of its fiscal year, setting forth all revenues, expenses, taxes, extraordinary items and other credits or charges; and

(3) A statement of any changes in the name, address, management, or ownership information on file with the director.

(d) In the case of an application for license renewal, if all the requirements of section five of this article are not met, the director may issue a provisional license, provided that care given in the

residential care community is adequate for resident needs and the residential care community has demonstrated improvement and evidences potential for substantial compliance during the term of the provisional license: *Provided,* That a provisional license is effective for a period not to exceed one year, may not be renewed, and may not be issued to any residential care community with uncorrected violations of any Class I standard, as defined in subsection (c), section five of this article.

(e) A nonrefundable application fee in the amount of $75 for an original residential care community license shall be paid at the time an application for license is made. The average cost of all direct costs for initial licensure inspections of all residential care communities for the preceding year shall be assessed against and paid by the applicant to the director before an initial or amended license may be issued. The fee for license renewal shall be computed at the rate of $4 per apartment in the community per year: *Provided,* That the rate per apartment may be assessed against applicants for whom a license is issued for a period of less than one year. The director may annually adjust licensure fees for inflation, based upon the consumer price index. All license fees are due and payable to the director, annually, in the manner set forth in the rules promulgated hereunder. The director shall retain each application and licensure fee pending final action on the application. All fees received by the director under the provisions of this article shall be deposited in accordance with §16B-1-13 of this code.

§16B-9-7. Cost disclosure; residents' funds; nursing care; fire code.

(a) Each residential care community shall disclose in writing to all prospective residents a complete and accurate list of all costs which may be incurred by them as residents of the community. Residents may not be held liable for any cost that was not disclosed.

(b) Residential care communities may not manage the personal finances or funds of its residents.

(c) A residential care community may be required to have registered nurses on its staff to the extent that it provides limited and intermittent nursing care.

(d) Residential care communities shall comply with the applicable provisions of the current edition of the life safety code as promulgated by the national fire protection association and adopted by the state Fire Commission.

§16B-9-8. Investigation of complaints.

The director shall by rule establish procedures for the prompt investigation of all complaints of alleged violations of applicable requirements of state law or rules by residential care communities, except those complaints that the director determines are without any reasonable basis or are made with the sole intention to willfully harass a licensee. These procedures shall include provisions for ensuring the confidentiality of the complainant and of any other person named in the complaint, and for promptly informing the complainant and the residential care community involved of the results of the investigation.

If, after its investigation, the director determines that the complaint has merit, the director shall take appropriate disciplinary action and shall advise any injured party of the possibility of a civil remedy under this article.

No residential care community may discharge or in any manner discriminate or retaliate against any employee or resident for filing a complaint or participating in any proceeding provided for in this article. Violation of this prohibition by any residential care community constitutes grounds for the suspension or revocation of its license as provided in §16B-9-11 of this code. Any type of adverse action taken by a residential care community against a resident who has submitted a complaint to the director or upon whose behalf a complaint has been submitted or who has instituted any proceeding under this article, if taken within 120 days of the filing of the complaint or the institution of the proceeding, shall raise a rebuttable presumption that the adverse action was taken in retaliation for filing the complaint or instituting the proceeding.

§16B-9-9. Inspections.

The director and any duly designated employee or agent thereof is authorized to enter upon and into the premises of any residential care community for which a license has been issued, for which an application for license has been filed, or which the director has reason to believe is being operated or maintained as a residential care community without a license. If entry is refused by the owner or person in charge of the residential care community, the director shall apply to the circuit court of the county in which the residential care community is located or the Circuit Court of Kanawha County for an order authorizing inspection, and the court shall issue an appropriate order if it finds good cause for inspection.

The director, by and through his or her agents or employees, shall conduct at least one inspection of a residential care community before issuing a license to it and shall conduct periodic unannounced inspections thereafter to determine if it is in compliance with all applicable statutory requirements and rules. All residential care communities shall comply with applicable rules of the state Fire Commission. The State Fire Marshal, by and through his or her agents or employees, shall make all fire, safety, and similar inspections of residential care communities. The director may provide for other inspections he or she considers necessary to effectuate the intent and purpose of this article. If the director determines upon investigation that a complaint is substantiated and that an immediate and serious threat to health or safety exists at a residential care community, he or she may invoke any remedy available pursuant to §16B-9-11 of this code. Any residential care community aggrieved by a determination or assessment made pursuant to this section shall have the right to an administrative appeal as set forth in §16B-9-12 of this code.

§16B-9-10. Reports of inspections; plans of correction; assessment of penalties, fees, and costs; use of funds derived therefrom; hearings.

(a) Reports of all inspections made pursuant to §16B-9-9 of this code shall be in writing and filed with the director, and shall list all deficiencies in the residential care community's compliance with

the provisions of this article and the rules promulgated hereunder. The director shall send a copy of the report to the residential care community and shall specify a time within which the residential care community shall submit a plan for correction of any listed deficiencies, which plan shall be approved, rejected, or modified by the director. Inspectors shall allow audio taping of the exit conference that follows a licensure or certification inspection, with all costs incurred as a result of the taping to be paid by the residential care community. A copy of the audio tape shall be provided to the inspector.

(b) Upon the failure of a residential care community to submit a plan of correction as required or to correct any deficiency within the time specified, the director, in consultation with the Inspector General, may assess a civil penalty or initiate other appropriate legal or disciplinary action, as provided by this article.

(c) Nothing in this section may be construed to require the director to afford a formal opportunity for a residential care community to correct a deficiency before initiating an enforcement action in either an administrative or judicial forum, where, in the opinion of the director, in consultation with the Inspector General, the deficiency jeopardizes the health or safety of the community's residents or where the deficiency is the second or subsequent violation to occur within a 12-month period.

(d) Civil penalties assessed against residential care communities shall be classified according to the nature of the violation, as provided in §16B-9-5(c) and rules promulgated thereunder, consistent with the following: For each violation of a Class I standard, the civil penalty imposed shall be not less than $50 nor more than $500; for each violation of a Class II standard, the civil penalty imposed shall be not less than $25 nor more than $50; for each violation of a Class III standard, the civil penalty imposed shall be not less than $10 nor more than $25. Each day that a violation continues after the date of citation constitutes a separate violation. The date of the citation is the date the facility receives the written statement of deficiencies.

(e) The director, in consultation with the Inspector General, shall assess a civil penalty not to exceed $2,000 against any individual who notifies a residential care community, or causes it to be notified, in advance, of the time or date on which an inspection is scheduled to be conducted under this article.

(f) If the director, in consultation with the Inspector General, assesses a penalty under this section, he or she shall cause a notice of penalty to be delivered to the residential care community by personal service or by certified mail. This notice shall state the amount of the penalty, the action, deficiency or other circumstance for which the penalty is assessed, the statutory requirement or rule which has been violated and the basis upon which the director, in consultation with the Inspector General, determined the amount of the penalty.

(g) The Inspector General shall recover in a judicial proceeding any civil penalty which: (i) Remains uncontested and unpaid for 30 days after its receipt; or (ii) if contested, has been affirmed by the Board of Review and remains unappealed for 30 days after receipt of the Board of Review's final order; or (iii) if appealed, has been affirmed upon judicial review of the Board of Review's final order. All funds received in the form of civil penalties or interest thereon pursuant to this article shall be deposited in a special resident benefit account which is hereby established and applied by the director exclusively for the protection of the health or property of residents of residential care communities operated within this state that the director determines to be deficient, which may include payment of costs to relocate residents of a deficient residential care community to other facilities, operation costs of a residential care community pending correction of deficiencies or closure and reimbursement of residents for personal funds lost.

(h) The opportunity for a hearing on any action taken under this section is as provided in §16B-9-12 of this code. In addition to any other rights of appeal conferred upon a residential care community under this section, it may also request a hearing and seek judicial review pursuant to §16B-9-12 and §16B-9-13 of this code to contest the director's citing of a deficiency in an inspection report,

irrespective of whether the deficiency results in the imposition of a civil penalty.

§16B-9-11. License limitation, suspension, and revocation; ban on admissions; continuation of disciplinary proceedings; closure, transfer of residents, appointment of temporary management; assessment of interest; collection of assessments; hearing.

(a) The director, in consultation with the Inspector General, shall by order impose a ban on the admission of additional residents or reduce the number of apartments permitted in a residential care community, or any combination thereof, where it is determined upon inspection that a licensee is not providing adequate care to its residents under its existing quota and, further, that a reduction in the quota or the imposition of a ban on additional admissions, or a combination thereof, would enable the licensee to render adequate care to its residents. A notice to a licensee of a reduction in its quota or a ban on additional admissions shall include the terms of the order, the reasons therefor, and the date by which it must comply.

(b) The director, in consultation with the Inspector General, may suspend or revoke a license issued under this article if it is determined upon inspection that there has been a substantial failure to comply with the provisions of this article or the standards or rules promulgated hereunder.

(c) Whenever a license is limited, suspended, or revoked pursuant to this section, the director, in consultation with the Inspector General, shall file an administrative complaint stating facts constituting the grounds therefor. Upon the filing of this administrative complaint, the director, in consultation with the Inspector General, shall notify the licensee in writing, enclose a copy of the administrative complaint, and advise the licensee of its opportunity for a hearing pursuant to §16B-9-12 of this code. The notice and copy of the administrative complaint shall be served on the licensee by certified mail, return receipt requested.

(d) The suspension, revocation, or expiration of a license, or the withdrawal of an application for a license after it has been filed

with the director, in consultation with the Inspector General, may not deprive the director, in consultation with the Inspector General, of his or her authority to institute or continue a disciplinary proceeding or to deny an application for a license.

(e) In addition to other remedies provided in this article, upon petition from the Inspector General, a circuit court may determine that a residential care community's deficiencies under this article constitute an emergency immediately jeopardizing the health, safety, welfare or rights of its residents, and issue an order to:

(1) Close the residential care community;

(2) Transfer residents of the residential care community to other facilities; or

(3) Appoint a temporary manager to oversee the operation of the residential care community and to assure the health, safety, welfare and rights of the residential care community's residents, where there is a need for temporary management while:

(A) There is an orderly closure of the residential care community; or

(B) Corrections are made in order to bring the residential care community into compliance with all applicable requirements of this article and the rules promulgated hereunder.

If the Inspector General petitions a circuit court for the closure of a residential care community, for the transfer of residents, or for the appointment of a temporary manager, the circuit court shall hold a hearing no later than seven days thereafter, at which time the Inspector General and the licensee or operator of the residential care community may participate and present evidence.

A circuit court may divest the licensee or operator of possession and control of a residential care community in favor of temporary management. The temporary management is accountable to the court and has those powers and duties that the court may grant to direct all acts necessary or appropriate to conserve the property and promote the health, safety, welfare and

rights of the residents, including, but not limited to, replacing managerial and other staff, hiring consultants, making necessary expenditures to close the residential care community or to repair or improve the residential care community so as to return it to compliance with applicable requirements, and receiving, conserving and expending funds, including making payments on behalf of the licensee or operator. Priority in making payments shall be given to expenditures for current direct resident care and the transfer of residents, if necessary.

The person charged with temporary management shall be an officer of the court and paid by the residential care community if resources are available; he or she may not be held liable in any capacity for conditions at the residential care community that originated or existed before his or her appointment nor may he or she be held personally liable for any act or omission, except those constituting gross negligence or intentional acts that result in injuries to persons or damage to property during his or her tenure as temporary manager.

It is unlawful for any person to impede the operation of temporary management as appointed by the court. For 90 days after the appointment of temporary management at a residential care community, any legal action that would interfere with its functioning or operation shall be automatically stayed. These actions include, but are not limited to, cancellation of insurance policies, termination of utility services, attachments to working capital accounts, foreclosures, evictions and repossessions of equipment used in the residential care community.

Temporary management appointed by the court for purposes of making improvements to bring a residential care community into compliance with applicable requirements may not be terminated until the court has determined that the residential care community has the management capability to ensure continued compliance with all applicable requirements: *Provided,* That if the court does not make such a determination within six months of the appointment of the temporary management, the temporary management terminates by operation of law at that time, and the residential care community shall be closed. After the termination

of the temporary management, the person who was appointed as the temporary management shall make an accounting to the court, and after deducting the costs of the temporary management, expenditures and civil penalties and interest no longer subject to appeal, in that order, from receipts, the remainder, if any, shall be paid to the licensee or operator of the residential care community.

(f) Assessments for civil penalties and costs of actions taken under this article, including attorney fees, shall accrue interest at the rate of five percent per annum, beginning on the 30th day after receipt of notice of the assessment or the 30th day after receipt of the director's final order following a hearing, whichever later occurs. All assessments against a residential care community that remain unpaid shall be added to its licensure fee next due and may be filed as a lien against the property of the licensee or operator of the residential care community. Funds received from these assessments shall be deposited in the same manner as are funds received pursuant to §16B-9-10 of this code.

(g) The Inspector General is authorized to propose emergency rules, if necessary, to expand the powers of the Inspector General beyond those provided in this article, to the extent required to comply with federal requirements: *Provided,* That the Inspector General's powers may be expanded only to the extent required by federal requirements. Emergency rules proposed pursuant to this subsection are subject to the provisions governing legislative rules contained in §29A-3-1, *et seq.* of this code.

(h) The opportunity for a hearing on any action taken by the director under this section is as provided in §16B-9-12 of this code.

§16B-9-12. Administrative appeals from civil penalty assessment, license limitation, suspension, or revocation.

(a) Any licensee or applicant aggrieved by an order issued pursuant to §16B-9-5, §16B-9-6, §16B-9-10 or §16B-9-11 of this code shall, upon timely written request, be afforded an opportunity for a hearing by the Board of Review at which the order may be contested as contrary to law, unwarranted by the facts, or both. The provisions of §29A-5-1 *et seq.* of this code governing contested

cases apply to and govern hearings conducted pursuant to this section and the administrative procedures in connection therewith. A licensee or applicant may also request an informal meeting with the director before requesting a hearing.

(b) After a hearing conducted pursuant to this section, the Board of Review shall make and enter a written order either dismissing the complaint or taking whatever action is authorized and appropriate pursuant to this article. This written order shall be served upon the licensee and his or her attorney of record, if any, by certified mail, return receipt requested, accompanied by the director's findings of fact and conclusions of law as specified in §29A-5-3 of this code. If the director, in consultation with the Inspector General, suspends a residential care community's license, the order directing the suspension shall specify the grounds for the suspension and the time by which the conditions or circumstances giving rise to the suspension must be corrected in order for the licensee to be entitled to reinstatement of its license. If the director, in consultation with the Inspector General, revokes a license, he or she may stay the effective date of the revocation upon a showing that a delay is necessary to assure appropriate placement of the licensee's residents: *Provided,* That the effective date of revocation may not be stayed for more than 90 days. The Board of Review's order is final unless it is vacated, reversed or modified by the West Virginia Intermediate Court of Appeals upon judicial review in accordance with the provisions of §16B-9-13 of this code.

§16B-9-13. Judicial review.

Any licensee adversely affected by an order of the director rendered after a hearing held in accordance with the provisions of §16B-9-12 of this code is entitled to judicial review thereof. All of the pertinent provisions of section §29A-5-4 of this code apply to and govern these proceedings with like effect as if those provisions were set forth in extenso herein.

The judgment of the West Virginia Intermediate Court is final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals in accordance with the provisions of §29A-6-1 of this code.

§16B-9-14. Legal counsel and services for the Inspector General.

(a) Legal counsel and legal services for the Inspector General in all administrative hearings and all proceedings in any circuit court and the Supreme Court of Appeals shall be provided by the Attorney General or his or her assistants, an attorney employed by the Inspector General or, in proceedings in any circuit court, by the prosecuting attorney of the county wherein the action is instituted, all without additional compensation.

(b) The Governor may appoint counsel for the Inspector General, who shall perform legal services in representing the interests of residents in residential care communities in matters under the jurisdiction of the director, as the Governor shall direct. It is the duty of counsel so appointed to appear for the residents in all cases where they are not represented by counsel. The compensation of counsel so appointed shall be fixed by the Governor.

§16B-9-15. Unlawful acts; penalties; injunctions; private right of action.

(a) Whoever advertises, announces, establishes or maintains, or is engaged in establishing or maintaining a residential care community without a license granted under §16B-9-6 of this code, or who prevents, interferes with or impedes in any way the lawful enforcement of this article is guilty of a misdemeanor and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by confinement in the regional or county jail for a period of not more than 90 days, or both, at the discretion of the court. For a second or subsequent offense, the fine may be increased to not more than $250, with confinement in the regional or county jail for a period of not more than 90 days, or both, at the discretion of the court. Each day that a violation continues after conviction therefor constitutes a separate offense.

(b) The Inspector General may bring an action to enforce compliance with this article, any rule promulgated hereunder, or order issued hereunder, whenever it appears to the director in

consultation with the Inspector General, that a person has engaged in or is engaging in an act or practice in violation of this article or any rule or order hereunder, or whenever it appears to the director, in consultation with the Inspector General, that a person has aided, abetted or caused, or is aiding, abetting or causing such an act or practice. Upon application by the director, the circuit court of the county in which the conduct has occurred or is occurring has jurisdiction to grant without bond a permanent or temporary injunction, decree or restraining order.

Whenever the director, in consultation with the Inspector General, has refused to grant or renew a license, revoked a license that is required to operate a residential care community, or ordered a person to refrain from actions that violate the rules promulgated pursuant to this article, and the person has appealed the action of the director, the court may, during the pendency of the appeal, issue a restraining order or injunction upon proof that the operation of the residential care community or its failure to comply with the order of the director adversely affects the well-being or safety of the residents of the residential care community. Should a person who appeals an order of the director fail to appear or should the appeal be decided in favor of the director, the court shall issue a permanent injunction upon proof that the person is operating or conducting a residential care community without a license as required by law, or has continued to violate the rules promulgated pursuant to this article.

(c) Any residential care community that deprives a resident of any right or benefit created or established for the well-being of the resident by the terms of any contract, any state statute or rule, or by any applicable federal statute or regulation, is liable to that resident in a civil action for any injuries suffered as a result of the deprivation. Upon a finding that a resident has been deprived of a right or benefit and suffered an injury thereby, compensatory damages shall be assessed in an amount sufficient to compensate the resident for the injury, unless there is a finding that the residential care community exercised due care reasonably necessary to prevent and limit the deprivation and injury to the resident. In addition, if the deprivation by a residential care community of a right or benefit is found to have been willful or in

reckless disregard, punitive damages may be assessed. A resident may also maintain an action pursuant to this section for any other type of relief, including injunctive and declaratory relief, permitted by law. Exhaustion of available administrative remedies may not be required prior to commencing an action hereunder.

The amount of damages recovered by a resident in an action brought pursuant to this section is exempt for purposes of determining initial or continuing eligibility for medical assistance under §9-5-1 *et seq.* of this code, and may not be taken into consideration or required to be applied toward the payment or part payment of the cost of medical care or services available under that article.

Any waiver by a resident or his or her legal representative of the right to commence an action under this section, whether oral or in writing, is null and void as contrary to public policy.

(d) The penalties and remedies provided in this section are cumulative and are in addition to all other penalties and remedies provided by law.

§16B-9-16. Availability of reports and records.

The director shall make available for public inspection and provide copies at a nominal cost of all inspection reports and other reports of residential care communities filed with or issued by the director. Nothing contained in this section may be construed to allow the public disclosure of confidential medical, social, personal, or financial records of any resident. The Inspector General shall adopt rules that are reasonably necessary to effectuate the provisions of this section and preserve the confidentiality of medical, social, personal, or financial records of residents.

ARTICLE 10. MEDICATION ADMINISTRATION BY UNLICENSED PERSONNEL.

§16B-10-1. Short title.

This article may be cited as the "Ken Ervin Community Living Act."

§16B-10-2. Definitions.

As used in this article the following definitions apply:

(a) "Administration of medication" means:

(1) Assisting a person in the ingestion, application, or inhalation of medications, including prescription drugs, or in the use of universal precautions or rectal or vaginal insertion of medication, according to the legibly written or printed directions of the attending physician or the health care professional in accordance with §30-5-4 of this code, or as written on the prescription label; and

(2) Making a written record of such assistance with regard to each medication administered, including the time, route and amount taken. However, for purposes of this article, "administration" does not include judgment, evaluation, assessments, injections of medication (except for prefilled insulin or insulin pens), or monitoring of medication or self-administration of medications, such as prescription drugs and self-injection of medication by the resident.

(b) "Approved medication assistive personnel (AMAP)" means unlicensed facility staff member, who meets eligibility requirements, has successfully completed the required training and competency testing, and is considered competent by the authorized registered professional nurse to administer medications or perform health maintenance tasks, or both, to residents of the facility in accordance with this article.

(c) "Authorized practitioner" means a physician licensed under the provisions of §30-3-1 *et seq.* of this code or §30-14-1 *et seq.* of this code.

(d) "Authorized registered professional nurse" means a person who holds an unencumbered license pursuant to §30-7-1 *et seq.* of this code and meets the requirements to train and supervise approved medication assistive personnel pursuant to this article, and has completed and passed the facility trainer/instructor course developed by the authorizing agency.

(e) "Authorizing agency" means the Office of Health Facility Licensure and Certification.

(f) "Delegation" means transferring to a competent individual, as determined by the authorized registered professional nurse, the authority to perform a selected task in a selected situation.

(g) "Delegation decision model" means the process the authorized registered professional nurse must follow to determine whether or not to delegate a nursing task to an approved medication assistive personnel. The delegation decision model is approved by the West Virginia Board of Examiners for Registered Professional Nurses.

(h) "Director" means the director of the Office of Health Facility Licensure and Certification, or his or her designee.

(i) "Facility" means an intermediate care facility for individuals with an intellectual disability, assisted living, behavioral health group home, private residence in which health care services and health maintenance tasks are provided under the supervision of a registered professional nurse as defined in §30-7-1 *et seq.* of this code.

(j) "Facility staff member" means an individual employed by a facility but does not include a health care professional acting within his or her scope of practice.

(k) "Family" means biological parents, adoptive parents, foster parents, or other immediate family members living within the same household.

(l) "Health care professional" means a medical doctor or doctor of osteopathy, a podiatrist, registered professional nurse, practical nurse, advanced practice registered nurse, physician's assistant, dentist, optometrist or respiratory care professional licensed under chapter thirty of this code.

(m) "Health maintenance tasks" means performing the following tasks according to the legibly written or printed directions of a health care professional or as written on the

prescription label, and making a written record of that assistance with regard to each health maintenance task administered, including the time, route and amount taken:

(1) Administering glucometer tests;

(2) Administering gastrostomy tube feedings;

(3) Administering enemas;

(4) Performing ostomy care which includes skin care and changing appliances; and

(5) Performing tracheostomy and ventilator care for residents in a private residence who are living with family and/or natural supports.

(n) "Health maintenance tasks" do not include judgment, evaluation, assessments, injections of medication, except for prefilled insulin or insulin pens, or monitoring of medication or self-administration of medications, such as prescription drugs and self-injection of medication by the resident.

(o) "Immediate family" means mother, stepmother, father, stepfather, sister, stepsister, brother, stepbrother, spouse, child grandparent and grandchildren.

(p) "Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

(q) "Location of medication administration or location where health maintenance tasks are performed" means a facility or location where the resident requires administration of medication or assistance in taking medications or the performance of health maintenance tasks.

(r) "Medication" means a drug, as defined in §60A-1-101 of this code, which has been prescribed by a health care professional to be ingested through the mouth, inhaled through the nose or mouth, administered through a gastrostomy tube, applied to the

outer skin, eye or ear, or applied through nose drops, vaginal or rectal suppositories.

(s) "Natural supports" means family, friends, neighbors or anyone who provides assistance and support to a resident but is not reimbursed.

(t) "Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

(u) "Registered professional nurse" means a person who holds a valid license pursuant to §30-7-1, *et seq.* of this code.

(v) "Resident" means a resident of a facility who for purposes of this article, is in a stable condition.

(w) "Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of drugs ordered by an authorized practitioner, in opening and accessing prepackaged drug containers, accurately identifying and taking the correct dosage of the drugs as ordered by the health care professional, at the correct time and under the correct circumstances.

(x) "Self-administration of medication with assistance" means assisting residents who are otherwise able to self-administer their own medications except their physical disabilities prevent them from completing one or more steps in the process.

(y) "Stable" means the individual's health condition is predictable and consistent as determined by the registered professional nurse.

(z) "Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label on the container and reassuring residents that they have obtained and are taking the dosage as prescribed.

§16B-10-3. Administration of medications; performance of health maintenance tasks; maintenance of liability insurance in facilities.

(a) The Inspector General designates the director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise stated.

(b) The director shall continue a program for the administration of medications and performance of health maintenance tasks in locations covered by this article. The program shall be developed and conducted in cooperation with the appropriate agencies, advisory bodies and boards.

(c) Administration of medication or performance of health maintenance tasks shall be performed only by:

(1) Licensed health care professionals; or

(2) Facility staff members who have been trained and retrained every two years and who are subject to the supervision of and approval by an authorized registered professional nurse.

(d) After assessing the health status of an individual resident, a registered professional nurse, in collaboration with the resident's health care professional and the facility staff member, may recommend that the facility authorize a facility staff member to administer medication or perform health maintenance tasks if the staff member:

(1) Has been trained pursuant to the requirements of this article;

(2) Is considered by the authorized registered professional nurse to be competent;

(3) Consults with the authorized registered professional nurse on a regular basis; and

(4) Is monitored or supervised by the authorized registered professional nurse.

(e) An agency or facility employing personnel for the purposes of supervising the administration of medication or the performance of health maintenance tasks shall maintain liability insurance for the licensed health care provider, any facility staff member who has been trained and is employed to administer medication or perform health maintenance tasks and if applicable the health care provider's collaborative supervising physician.

(f) Nothing in this article may be construed to prohibit any facility staff member from administering medications or performing health maintenance tasks, or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

(g) Supervision of self-administration of medication by facility staff members who are not licensed health care professionals may be permitted in certain circumstances, when the substantial purpose of the setting is other than the provision of health care.

§16B-10-4. Exemption from licensure; statutory construction.

(a) Any individual who is not otherwise authorized by law to administer medication or perform health maintenance tasks may administer medication or perform health maintenance tasks in locations covered by this article if he or she meets the requirements of this article and is exempt from the licensing requirements of §30-1-1 of this code.

(b) Licensed health care professionals remain subject to their respective licensing laws.

(c) Notwithstanding any other provision of law to the contrary, this article shall not be construed to violate or be in conflict with §30-7-1 *et seq.* or §30-7A-1 *et seq.* of this code.

(d) Any parent or guardian may administer medication to, or perform health maintenance tasks for, his or her adult or minor child regardless of whether or not the parent or guardian receives compensation for caring for said child.

§16B-10-5. Instruction and training.

(a) The authorizing agency shall establish a council of nurses to represent the facilities and registered professional nurses affected by this article. The council shall prepare a procedural manual and recommendations regarding a training course to the director. The council shall meet every two years to review and make recommendations to the training curricula, competency evaluation procedures and rules implemented by the director.

(b) The Office of Health Facility Licensure and Certification shall develop and approve training curricula and competency evaluation procedures for facility staff members who administer medication or perform health maintenance tasks. The Office of Health Facility Licensure and Certification shall consider the recommendations of the council and shall consult with the West Virginia Board of Examiners for Registered Nurses in developing the training curricula and competency evaluation procedures.

(c) The authorizing agency shall coordinate and collaborate with the Board of Respiratory Care to develop the training and testing component for health maintenance tasks related to respiratory care, including but not limited to inhaled medications, tracheostomy care and ventilator care. This includes modifying and updating the existing curriculum for an authorized registered professional nurse and the approved medication assistive persons.

(1) The authorizing agency shall develop and approve training curricula and competency evaluation. The authorizing agency shall establish a council of nurses to assist with the development of the training and evaluation process.

(2) The curriculum, training competency and testing components related to respiratory care shall be approved by the Respiratory Care Board pursuant to §30-34-15(e).

(d) The program developed by the Office of Health Facility Licensure and Certification shall require that any person who applies to act as a facility staff member authorized to administer medications or perform health maintenance tasks shall:

(1) Hold a high school diploma or general education diploma;

(2) Be certified in cardiopulmonary resuscitation and first aid;

(3) Participate in the initial training program developed by the department;

(4) Pass a competency evaluation developed by the department; and

(5) Participate in a retraining program every two years.

(e) Any facility may offer the training and competency evaluation program developed by the Office of Health Facility Licensure and Certification to its facility staff members. The training and competency programs shall be provided by the facility through a registered professional nurse.

(f) A registered professional nurse who is authorized to train facility staff members to administer medications or perform health maintenance tasks in facilities shall:

(1) Possess a current active license as set forth in §30-7-1 *et seq.* of this code in good standing to practice as a registered nurse;

(2) Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications and the performance of health maintenance tasks for the immediate two years prior to being authorized to train facility staff members;

(3) Be familiar with the nursing care needs of residents of facilities as described in this article; and

(4) Have completed and passed the facility trainer/instructor course developed by the authorizing agency.

(g) After successfully completing the initial training and testing for the AMAP program, registered professional nurses and AMAPs shall have competencies for health maintenance tasks reassessed and documented annually by the employer of record to ensure continued competence.

§16B-10-6. Availability of records; eligibility requirements of facility staff.

(a) Any facility which authorizes unlicensed staff members to administer medications or perform health maintenance tasks shall make available to the authorizing agency a list of the individual facility staff members authorized to administer medications or perform health maintenance tasks.

(b) Any facility may permit a facility staff member to administer medications or perform health maintenance tasks in a single specific agency only after compliance with all of the following:

(1) The staff member has successfully completed a training program and received a satisfactory competency evaluation as required by this article;

(2) The facility determines there is no statement on the state administered nurse aide registry indicating that the staff member has been the subject of finding of abuse or neglect of a long-term care facility resident or convicted of the misappropriation of a resident's property;

(3) The facility staff member has had a criminal background check or if applicable, a check of the State Police Abuse Registry, establishing that the individual has not been convicted of crimes against persons or drug related crimes by utilizing and following the provisions of §16B-15-1 *et seq.* of this code;

(4) The medication to be administered is received and maintained by the facility staff member in the original container in which it was dispensed by a pharmacist or the physician; and

(5) The facility staff member has complied with all other applicable requirements of this article, the legislative rules adopted pursuant to this article and other criteria, including minimum competency requirements, as are specified by the authorizing agency.

§16B-10-7. Oversight of medication administration and performance of health maintenance tasks by the approved medication assistive personnel.

(a) Any facility in which medication is administered or health maintenance tasks performed by the approved medication assistive personnel shall establish an administrative monitoring system in administrative policy. The specific requirements of the administrative policy shall be established by the Inspector General, through legislative rules. These rules shall be developed in consultation with the West Virginia Board of Examiners for Registered Nurses, the West Virginia Nurses Association, the West Virginia Statewide Independent Living Council, and the West Virginia Board of Respiratory Care. These rules are required to include, at a minimum:

(1) Instructions on protocols for contacting an appropriate healthcare professional in situations where a condition arises which may create a risk to the resident's health and safety;

(2) The type and frequency of monitoring and training requirements for management of these occurrences; and

(3) Procedures to prevent drug diversion.

(b) Monitoring of facility staff members authorized pursuant to this article shall be performed by a registered professional nurse employed or contracted by the facility, who shall exercise judgment, evaluate and assess the patient, inject medicine, except prefilled insulin and insulin pens if this task is delegated to an approved medication assistive person, and monitor medications, self-administration of medications and self-injections by the resident in accordance with his or her scope of practice.

§16B-10-8. Withdrawal of authorization.

The registered professional nurse who monitors or supervises the facility staff members authorized to administer medication or perform health maintenance tasks may withdraw authorization for a facility staff member if the nurse determines that the facility staff member is not performing medication administration or health

maintenance tasks in accordance with the training and written instructions. The withdrawal of the authorization shall be documented and relayed to the facility and the Office of Health Facility Licensure and Certification in order to remove the facility staff member from the list of authorized individuals. The Office of Health Facility Licensure and Certification shall maintain a list of the names of persons whose authorization to administer medication or perform health maintenance tasks has been withdrawn, and the reasons for withdrawal of authorization. The list may be accessed by registered professional nurses or facilities.

§16B-10-9. Fees.

The Office of Health Facility Licensure and Certification may set and collect fees necessary for the implementation of the provisions of this article pursuant to rules authorized by §16B-10-11 of this code.

§16B-10-10. Limitations on medication administration or performance of health maintenance tasks.

The following limitations apply to the administration of medication or performance of health maintenance tasks by facility staff members:

(a) Injections or any parenteral medications may not be administered, except that prefilled insulin or insulin pens may be administered;

(b) Irrigations or debriding agents used in the treatment of a skin condition or minor abrasions may not be administered;

(c) No verbal medication orders may be accepted, no new medication orders shall be transcribed and no drug dosages may be converted and calculated;

(d) No medications ordered by the health care professional to be given "as needed" may be administered unless the order is written with specific parameters which preclude independent judgment; and,

(e) Health maintenance tasks for the performance of tracheostomy care and ventilator care is not permitted in an intermediate care facility for individuals with an intellectual disability, assisted living, behavioral health group home, private residence where the resident is not residing with family and/or natural supports.

§16B-10-11. Rules.

The director shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code as may be necessary to implement the provision of this article.

§16B-10-12. Advisory Committee.

(a) There is continued an advisory committee to assist with the development of polices and procedures regarding health maintenance care in order to safeguard the well-being and to preserve the dignity of persons who need assistance to live in their communities and avoid institutionalization.

(b)(1) The advisory committee shall consist of 11 voting members as follows:

(A) The Olmstead Coordinator within the Office of Inspector General;

(B) One physician with expertise in respiratory medicine to be chosen by the West Virginia Board of Respiratory Care.

(C) A representative chosen by AARP West Virginia;

(D) A representative chosen by the West Virginia Statewide Independent Living Council;

(E) A representative chosen by the West Virginia Developmental Disabilities Council;

(F) A representative chosen by the West Virginia Board of Respiratory Care;

(G) A representative chosen by the West Virginia Society for Respiratory Care.

(H) One representative of the West Virginia Board of Examiners for Registered Professional Nurses;

(I) One representative of the West Virginia Nurses Association;

(J) One representative of the Fair Shake Network; and

(K) The Director of the Office of Health Facility Licensure and Certification.

(c) A chairman shall be selected from the voting members of the advisory committee.

(d) The advisory committee shall meet at least four times annually, upon the call of the chairman, or at the request of the authorizing agency. A simple majority of the members shall constitute a quorum.

(e) All members of the committee shall be reimbursed reasonable expenses pursuant to the rules promulgated by the Department of Administration for the reimbursement of expenses of state officials and employees and shall receive no other compensation for their services.

ARTICLE 11. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16B-11-1. Name of act.

This act shall be known and may be cited as the "Alzheimer's Special Care Standards Act."

§16B-11-2. Findings and declarations.

The Legislature finds and declares that:

(a) Certain nursing homes and related facilities, adult congregate living facilities, adult day care centers, hospices and

adult foster homes claim to provide special care units and services for persons who have Alzheimer's disease;

(b) It is in the public interest to provide for the protection of consumers by ensuring the accuracy and authenticity of such claims; and

(c) The provisions of this article are intended to require the facilities to actually provide the care they claim to offer, require written disclosure of special services provided, require the appropriate state licensing agency to examine the performance of such facilities in providing special services for persons who have Alzheimer's disease, and provide penalties for failure to provide the services claimed as the agency considers appropriate.

§16B-11-3. Definition of Alzheimer's special care unit/program.

For the purposes of this article, the following definitions apply:

"Alzheimer's disease" means a diagnosis of presenile dementia or senile dementia-Alzheimer type (SDAT), characterized by confusion, memory failure, disorientation, restlessness, agnosia, speech disturbances, inability to carry out purposeful movements and hallucinosis.

"Alzheimer's Special Care Unit or Program," means any facility that secures, segregates or provides a special program or special unit for residents with a diagnosis of probable Alzheimer's disease or a related disorder and that advertises, markets or otherwise promotes the facility as providing specialized Alzheimer's or dementia care services.

"Director" means the director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Facility" means any nursing home or facility, residential board and care home, personal care home, assisted living facility, adult congregate living facility, home health agency, adult day care center, hospice or adult foster home situate or operating in this state.

"Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Office of Health Facility Licensure and Certification" means the West Virginia Office of the Health Facility Licensure and Certification within the Office of the Inspector General.

"Resident" means an individual living in a facility that offers an Alzheimer's special care unit or program.

§16B-11-4. Alzheimer's special care disclosure required.

(a) Any facility which offers to provide or provides care for a person with Alzheimer's disease through an Alzheimer's special care unit or special care program shall disclose in writing the form of care or treatment that distinguishes the unit or program as being especially applicable to or suitable for such persons. The disclosure shall be provided to the Office of Health Facility Licensure and Certification, to any person seeking placement within an Alzheimer's special care unit or program, and to any legal guardian or relative acting on behalf of a resident or person seeking placement.

(b) The Office of Health Facility Licensure and Certification shall examine all disclosures provided to it as part of the facility's license renewal procedure and verify the accuracy of the disclosures.

(c) The disclosure required by this section shall include the following information:

(1) A statement of the overall treatment philosophy and mission of the special care unit or program which reflects the needs of residents afflicted with Alzheimer's disease or dementia;

(2) A description of the facility's screening, admission and discharge procedures, assessment, care planning and implementation, staffing patterns and training ratios unique to the program or unit;

(3) A description of the physical environment and design features and an explanation of how they are appropriate to support the functioning of cognitively impaired adult residents;

(4) A description of activities available to residents, the frequency and types of resident activities, and how they are specialized for residents who suffer from Alzheimer's disease;

(5) A statement that describes the involvement of families in the care of residents and the availability of family support programs;

(6) The costs of care and any additional fees unique to the Alzheimer's special care unit or program.

§16B-11-5. Standards for care; rules.

(a) The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, setting minimum standards for the care and treatment of persons with Alzheimer's disease and other dementia in facilities offering Alzheimer's special care units or programs.

(b) The standards established pursuant to this section shall apply to all facilities offering Alzheimer's special care units or program and shall be in addition to any other statutory requirements, rules or standards that are applicable to the facility.

(c) The Inspector General shall enforce the rules and standards for Alzheimer's special care units or programs and shall exercise all powers necessary for such enforcement, including investigation and reporting of violation of the rules, issuance of notices or warnings to facilities found in violation of the standards, assessment of civil penalties in accordance with the applicable licensing provisions of the facility, and suspension or revocation of licenses.

(d) The Inspector General designates the Director of the Office of Health Facility Licensure and Certification to enforce the provisions of this article, except where otherwise indicated.

(e) If a facility advertising, marketing or otherwise promoting the facility as providing specialized Alzheimer or dementia care services does not meet the standards established by the director, the Office of Health Facility Licensure and Certification shall instruct the facility to cease such advertising, marketing, or promoting.

§16B-11-6. Alzheimer's and dementia care training; rules.

(a) For the purposes of this section, "resident" means an individual receiving care or services in an adult day care facility, nursing home, assisted living facility or residential care community.

(b) The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, setting minimum standards for Alzheimer's and dementia care training of all staff, employees and contractors that come in regular and direct contact with residents.

(c) The standards established in this section shall apply to adult day care facilities, nursing homes, assisted living facilities and residential care communities who provide services under the supervision of a licensed operator.

§16B-11-7. Establishment of a central registry.

(a) To the extent funds are available, the Governing Board of the West Virginia University shall establish an Alzheimer's Disease Registry to collect information concerning Alzheimer's disease and related disorders. The purpose of the registry shall be to provide a central database of information to assist in the development of public policy and planning. The information collected by the registry shall be analyzed to prepare reports and perform studies as necessary when such data identifies information useful in developing policy.

(b) All reporting sources, including hospitals, physicians, facilities, clinics, or other similar units diagnosing or providing treatment or care for Alzheimer's disease and related disorders, shall provide a report of each case to the Alzheimer's Disease Registry in the format specified.

(c) All information reported pursuant to this section is confidential and shall be used only for the purposes set forth herein. A report provided to the Alzheimer's Disease Registry that discloses the identity of the individual being treated shall only be released in accordance with the provisions of the Health Insurance Portability and Accountability Act of 1996. No liability of any kind or character for damages or other relief shall arise or be enforced against any reporting source by reason of having provided the information or material to the Alzheimer's Disease Registry.

(d) The governing board shall propose rules pursuant to the provisions of §29A-3-1 *et seq.* of this code to implement this section. The rules shall include, but not be limited to: (1) The content and design of all forms and reports required by this section; (2) the type of information to be collected and maintained; (3) the procedures for disclosure of nonidentifying data to other appropriate research entities; (4)the manner in which reporting entities or individuals, including families, may be contacted by the registry for additional relevant information; and (5) any other matter necessary to the administration of this section.

ARTICLE 12. REGULATION OF BEHAVIORAL HEALTH.

§16B-12-1. Reporting.

(a) The Office of the Inspector General shall send to county prosecutors any findings that may be subject to criminal prosecution in cases of abuse and neglect with Intellectual/Developmental Disability (IDD). The Office of the Inspector General shall send to the Protection and Advocacy (P&A) the findings of any cases involving instances of substantiated abuse or neglect involving a person with a developmental disability.

(b) An annual report shall be submitted to the Legislative Oversight Commission on Health and Human Resources Accountability including:

(1) All instances where abuse and neglect cases involving IDD at any location has been substantiated by the Office of the Inspector General.

(2) The county or region where the substantiated abuse or neglect occurred;

(3) The descriptive category of the abuse and neglect;

(4) The type of setting where the abuse and neglect occurred;

(5) Whether the abuse and neglect information was turned over to the county prosecutor and law enforcement;

(6) The name of the provider, if the provider is involved, who is charged with the care of the individual; and

(7) The age range and gender of the individual.

(c) In instances where abuse and/or neglect leads to the death of an individual, the department shall send a letter, within 30 days after the findings where substantiated, to the Senate President, the Speaker of the House, and the chairs of LOCHHRA outlining the information above about the case.

§16B-12-2. Independent Mental Health Ombudsman.

(a) (1) The Office of the Inspector General shall continue an independent mental health ombudsman;

(2) The duties of the mental health ombudsman shall include, but are not limited to, the following:

(A) Advocating for the well-being, treatment, safety, and rights of consumers of mental health care facilities or psychiatric hospital;

(B) Participating in any procedure to investigate, and resolve complaints filed on behalf of a consumer of a mental health care facility or psychiatric hospital, relating to action, inaction, or decisions of providers of mental and behavioral health, of public agencies, or social service agencies, which may adversely affect

the health, safety, welfare, and rights of a consumer of a mental health care facility or psychiatric hospital; and

(C) Monitoring the development and implementation of federal, state, and local legislation, regulations, and policies with respect to mental and behavioral health care and services;

(3) The mental health ombudsman shall participate in ongoing training programs related to his or her duties or responsibilities;

(4)(A) Information relating to any investigation of a complaint that contains the identity of the complainant or consumer shall remain confidential except:

(i) Where imminent risk of serious harm is communicated directly to the mental health ombudsman or his or her staff; or

(ii) 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) The mental health ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the mental health care ombudsman to carry out duties of the office or to support recommendations;

(C) All information, records, and reports received by or developed by the mental health ombudsman program which relate to a consumer of a mental health care facility or psychiatric hospital, including written material identifying a consumer are confidential, and are not subject to the provisions of §29-1-1, *et seq.* of this code, and may not be disclosed or released by the mental health ombudsman program, except under the circumstances enumerated in this section;

(D) Nothing in this section prohibits the preparation and submission by the mental health ombudsman of statistical data and

reports, as required to implement the provisions of this section or any applicable federal law, exclusive of any material that identifies any consumer or complainant; and

(E) The Inspector General shall have access to the records and files of the mental health ombudsman program to verify its effectiveness and quality.

§16B-12-3. Annual capitation rate review.

(a) The Bureau for Medical Services shall conduct an annual study reviewing the adequacy and appropriateness of the reimbursement rates to providers in the IDDW Program. The bureau shall also include a recommendation for any adjustment deemed appropriate, including, but not limited to, annual inflationary costs, costs arising from amendments to existing contracts, costs relating to recruiting and retaining personnel, and any other costs necessitating additional payments to IDDW providers. The bureau may require, and contracted providers shall provide financial data to the bureau to assist in the study. Without limiting the generality of the foregoing in conducting this study, the bureau shall review and compare equivalent programs both in and out of state in order to determine appropriate rates.

(b) Upon completion of the study, Bureau for Medical Services shall provide the report to the Joint Committee on Finance beginning July 1, 2024, and annually thereafter, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations.

ARTICLE 13. MEDICATION-ASSISTED TREATMENT PROGRAM LICENSING ACT.

§16B-13-1. Purpose.

The purpose of this act is to establish licensing and registration requirements for facilities and physicians that treat patients with substance use disorders to ensure that patients may be lawfully treated by the use of medication and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders and comply

with oversight requirements developed by the Inspector General. The Legislature recognizes the problem of substance use disorders in West Virginia and the need for quality, safe treatment of substance use disorders to adequately protect the people of West Virginia.

§16B-13-2. Definitions.

"Addiction" means a primary, chronic disease of brain reward, motivation, memory, and related circuitry. Dysfunction in these circuits leads to characteristic biological, psychological, social, and spiritual manifestations which is reflected in an individual pathologically pursuing reward or relief by substance use, or both, and other behaviors. Addiction is characterized by inability to consistently abstain; impairment in behavioral control; craving; diminished recognition of significant problems with one's behaviors; interpersonal problems with one's behaviors and interpersonal relationships; a dysfunctional emotional response; and as addiction is currently defined by the American Society of Addiction Medicine.

"Administrator" means an individual designated by the governing body to be responsible for the day-to-day operation of the opioid treatment programs.

"Advanced alcohol and drug abuse counselor" means an alcohol and drug abuse counselor who is certified by the West Virginia Certification Board for Addiction and Prevention Professionals who demonstrates a high degree of competence in the addiction counseling field.

"Alcohol and drug abuse counselor" means a counselor certified by the West Virginia Certification Board for Addiction and Prevention Professionals for specialized work with patients who have substance use problems.

"Biopsychosocial" means relating to, or concerned with, biological, psychological, and social aspects in contrast to the strictly biomedical aspects of disease.

"Center for Substance Abuse Treatment" means the center under the Substance Abuse and Mental Health Services Administration that promotes community-based substance abuse treatment and recovery services for individuals and families in the community and provides national leadership to improve access, reduce barriers, and promote high quality, effective treatment and recovery services.

"Controlled Substances Monitoring Program Database" means the database maintained by the West Virginia Board of Pharmacy pursuant to §60A-9-3 of this code that monitors and tracks certain prescriptions written or dispensed by dispensers and prescribers in West Virginia.

"Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Dispense" means the preparation and delivery of a medication-assisted treatment medication in an appropriately labeled and suitable container to a patient by a medication-assisted treatment program or pharmacist.

"Governing body" means the person or persons identified as being legally responsible for the operation of the opioid treatment program. A governing body may be a board, a single entity or owner, or a partnership. The governing body must comply with the requirements prescribed in rules promulgated pursuant to this article.

"Inspector General" means the Inspector General of the Office of Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Medical director" means a physician licensed within the State of West Virginia who assumes responsibility for administering all medical services performed by the medication-assisted treatment program, either by performing them directly or by delegating specific responsibility to authorized program physicians and health care professionals functioning under the medical director’s direct supervision and functioning within their scope of practice.

"Medication-assisted treatment" means the use of medications and drug screens, in combination with counseling and behavioral therapies, to provide a holistic approach to the treatment of substance use disorders.

"Medication-assisted treatment program" means all publicly and privately owned opioid treatment programs and office-based, medication-assisted treatment programs, which prescribe medication-assisted treatment medications and treat substance use disorders, as those terms are defined in this article.

"Medication-assisted treatment medication" means any medication that is approved by the United States Food and Drug Administration under Section 505 of the Federal Food, Drug and Cosmetic Act, 21 U. S. C. § 355, for use in the treatment of substance use disorders that is an opioid agonist or partial opioid agonist and is listed on the Schedule of Controlled Substances in §60A-2-2201 *et seq.* of this code.

"Office-based, medication-assisted treatment" means all publicly or privately owned clinics, facilities, offices, or programs that provide medication-assisted treatment to individuals with substance use disorders through the prescription, administration, or dispensing of a medication-assisted treatment medication in the form of a partial opioid agonist.

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of Inspector General.

"Opioid agonist" means substances that bind to and activate the opiate receptors resulting in analgesia and pain regulation, respiratory depression, and a wide variety of behavioral changes. As used in this article, the term "opioid agonist" does not include partial agonist medications used as an alternative to opioid agonists in the treatment of opioid addiction.

"Opioid treatment program" means all publicly- or privately-owned medication-assisted treatment programs in clinics, facilities, offices, or programs that provide medication-assisted

treatment to individuals with substance use disorders through on-site administration or dispensing of a medication-assisted treatment medication in the form of an opioid agonist or partial opioid agonist.

"Owner" means any person, partnership, association, or corporation listed as the owner of a medication-assisted treatment program on the licensing or registration forms required by this article.

"Partial opioid agonist" means a Federal Drug Administration approved medication that is used as an alternative to opioid agonists for the treatment of substance use disorders and that binds to and activates opiate receptors, but not to the same degree as full agonists.

"Physician" means an individual licensed in this state to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine and that meets the requirements of this article.

"Prescriber" means a person authorized in this state, working within their scope of practice, to give direction, either orally or in writing, for the preparation and administration of a remedy to be used in the treatment of substance use disorders.

"Program sponsor" means the person named in the application for the certification and licensure of an opioid treatment program who is responsible for the administrative operation of the opioid treatment program and who assumes responsibility for all of its employees, including any practitioners, agents, or other persons providing medical, rehabilitative, or counseling services at the program.

"State opioid treatment authority" means the agency or individual designated by the Governor to exercise the responsibility and authority of the state for governing the treatment of substance use disorders, including, but not limited to, the treatment of opiate addiction with opioid drugs.

"State oversight agency" means the agency or office of state government identified by the Inspector General to provide regulatory oversight of medication-assisted treatment programs on behalf of the State of West Virginia.

"Substance" means the following:

(1) Alcohol;

(2) Controlled substances defined by §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code; or

(3) Any chemical, gas, drug, or medication consumed which causes clinically and functionally significant impairment, such as health problems, disability, and failure to meet major responsibilities at work, school, or home.

"Substance Abuse and Mental Health Services Administration" means the agency under the United States Department of Health and Human Services responsible for the accreditation and certification of medication-assisted treatment programs and that provides leadership, resources, programs, policies, information, data, contracts, and grants for the purpose of reducing the impact of substance abuse and mental or behavioral illness.

"Substance use disorder" means patterns of symptoms resulting from use of a substance that the individual continues to take, despite experiencing problems as a result; or as defined in the most recent edition of the American Psychiatric Association's Diagnostic and Statistical Manual of Mental Disorders.

"Telehealth" means the mode of delivering health care services and public health via information and communication technologies to facilitate the diagnosis, consultation, treatment education, care management, and self-management of a patient's health care while the patient is at the originating site and the health care provider is at a distant site.

"Variance" means written permission granted by the Inspector General, or designee, to a medication-assisted treatment program that a requirement of this article or rules promulgated pursuant to

this article may be accomplished in a manner different from the manner set forth in this article or associated rules.

"Waiver" means a formal, time-limited agreement between the designated oversight agency and the medication-assisted treatment program that suspends a rule, policy, or standard for a specific situation so long as the health and safety of patients is better served in the situation by suspension of the rule, policy, or standard than by enforcement.

§16B-13-3. Opioid treatment programs to obtain license; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an opioid treatment program without first obtaining a license from the director in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a license to operate an opioid treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the director shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect each facility and review all documentation submitted with the application. The director shall then approve or deny the application for a license. The director shall issue a license if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A license shall be issued in one of three categories:

(1) An initial 12 month license shall be issued to an opioid treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional license shall be issued when an opioid treatment program seeks a renewal license, or is an existing program as of the effective date of this article and is seeking an initial license, and the opioid treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or

(3) A renewal license shall be issued when an opioid treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal license shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the license expiration date, an application for renewal shall be submitted by the opioid treatment program to the director on forms furnished by the director. A license shall be renewed if the director determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A license issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a licensed medication-assisted treatment program requires submission of a new application. The medication-assisted treatment program shall notify the director of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the director.

(f) Any person, partnership, association, or corporation that seeks to obtain or renew a license for an opioid treatment program in this state must submit to the director the following documentation:

(1) Full operating name of the program as advertised;

(2) Legal name of the program as registered with the West Virginia Secretary of State;

(3) Physical address of the program;

(4) Preferred mailing address for the program;

(5) Email address to be used as the primary contact for the program;

(6) Federal Employer Identification Number assigned to the program;

(7) All business licenses issued to the program by this state, the State Tax Department, the Secretary of State and all other applicable business entities;

(8) Brief description of all services provided by the program;

(9) Hours of operation;

(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;

(11) Medical director's full name, medical license number, Drug Enforcement Administration registration number, and a list of all current certifications;

(12) For each employee of the program, provide the following:

(A) Employee's role and occupation within the program;

(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and

(F) Number of hours per week worked at program;

(13) Name and location address of all programs owned or operated by the applicant;

(14) Notarized signature of applicant;

(15) Check or money order for licensing fee and inspection fee;

(16) Verification of education and training for all physicians, counselors and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications and other certifications;

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application; and

(18) If applicable, a copy of a valid Certificate of Need or a letter of exemption from the West Virginia Health Care Authority.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the director shall issue a license to operate an opioid treatment program. An entity that obtains this license may possess, have custody, or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The opioid treatment program shall display the current license in a prominent location where services are provided and in clear view of all patients.

(i) The director or his or her designee shall inspect on a periodic basis all opioid treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

§16B-13-4. Office-based, medication-assisted treatment programs to obtain registration; application; fees and inspections.

(a) No person, partnership, association, or corporation may operate an office-based, medication-assisted treatment program without first obtaining a registration from the director in accordance with the provisions of this article and the rules lawfully promulgated pursuant to this article.

(b) Any person, partnership, association, or corporation desiring a registration to operate an office-based, medication-assisted treatment program in this state shall file with the Office of Health Facility Licensure and Certification an application in such form and with such information as the director shall prescribe and furnish accompanied by an application fee.

(c) The Director of the Office of Health Facility Licensure and Certification or his or her designee shall inspect and review all documentation submitted with the application. The director shall approve or deny the application for registration. The director shall issue a registration if the facility is in compliance with the provisions of this article and with the rules lawfully promulgated pursuant to this article.

(d) A registration shall be issued in one of three categories:

(1) An initial 12-month registration shall be issued to an office-based, medication-assisted treatment program establishing a new program or service for which there is insufficient consumer participation to demonstrate substantial compliance with this article and with all rules promulgated pursuant to this article;

(2) A provisional registration shall be issued when an office-based, medication-assisted treatment program seeks a renewal registration, or is an existing program as of the effective date of this article and is seeking an initial registration, and the office-based, medication-assisted treatment program is not in substantial compliance with this article and with all rules promulgated pursuant to this article, but does not pose a significant risk to the rights, health, and safety of a consumer. It shall expire not more than six months from the date of issuance, and may not be consecutively reissued; or

(3) A renewal registration shall be issued when an office-based, medication-assisted treatment program is in substantial compliance with this article and with all rules promulgated pursuant to this article. A renewal registration shall expire not more than one year from the date of issuance.

(e) At least 60 days prior to the registration expiration date, an application for renewal shall be submitted by the office-based, medication-assisted treatment program to the director on forms furnished by the director. A registration shall be renewed if the director determines that the applicant is in compliance with this article and with all rules promulgated pursuant to this article. A registration issued to one program location pursuant to this article is not transferrable or assignable. Any change of ownership of a registered office-based, medication-assisted treatment program requires submission of a new application. The office-based, medication-assisted treatment program shall notify the director of any change in ownership within 10 days of the change and must submit a new application within the time frame prescribed by the director.

(f) Any person, partnership, association, or corporation seeking to obtain or renew a registration for an office-based, medication-assisted treatment program in this state must submit to the director the following documentation:

(1) Full operating name of the program as advertised;

(2) Legal name of the program as registered with the West Virginia Secretary of State;

(3) Physical address of the program;

(4) Preferred mailing address for the program;

(5) Email address to be used as the primary contact for the program;

(6) Federal Employer Identification Number assigned to the program;

(7) All business licenses issued to the program by this state, the state Tax Department, the Secretary of State, and all other applicable business entities;

(8) Brief description of all services provided by the program;

(9) Hours of operation;

(10) Legal Registered Owner Name – name of the person registered as the legal owner of the program. If more than one legal owner (i.e., partnership, corporation, etc.) list each legal owner separately, indicating the percentage of ownership;

(11) Medical director's full name, medical license number, Drug Enforcement Administration registration number, and a listing of all current certifications;

(12) For each physician, counselor, or social worker of the program, provide the following:

(A) Employee's role and occupation within the program;

(B) Full legal name;

(C) Medical license, if applicable;

(D) Drug Enforcement Administration registration number, if applicable;

(E) Drug Enforcement Administration identification number to prescribe buprenorphine for addiction, if applicable; and

(F) Number of hours worked at program per week;

(13) Name and location address of all programs owned or operated by the applicant;

(14) Notarized signature of applicant;

(15) Check or money order for registration fee;

(16) Verification of education and training for all physicians, counselors, and social workers practicing at or used by referral by the program such as fellowships, additional education, accreditations, board certifications, and other certifications; and

(17) Board of Pharmacy Controlled Substance Prescriber Report for each prescriber practicing at the program for the three months preceding the date of application.

(g) Upon satisfaction that an applicant has met all of the requirements of this article, the director shall issue a registration to operate an office-based, medication-assisted treatment program. An entity that obtains this registration may possess, have custody or control of, and dispense drugs indicated and approved by the United States Food and Drug Administration for the treatment of substance use disorders.

(h) The office-based, medication-assisted treatment program shall display the current registration in a prominent location where services are provided and in clear view of all patients.

(i) The director or his or her designee shall perform complaint and verification inspections on all office-based, medication-assisted treatment programs that are subject to this article and all rules adopted pursuant to this article to ensure continued compliance.

(j) Any person, partnership, association, or corporation operating an office-based, medication-assisted treatment program shall be permitted to continue operation until the effective date of the new rules promulgated pursuant to this article. At that time a person, partnership, association, or corporation shall file for registration within six months pursuant to the licensing procedures and requirements of this section and the new rules promulgated hereunder. The existing procedures of the person, partnership, association, or corporation shall remain effective until receipt of the registration.

(k) A person, partnership, association, or corporation providing office-based, medication-assisted treatment to no more than 30 patients of their practice or program is exempt from the registration requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

(1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed by the director that the person, partnership, association, or corporation requires counselling and drug screens, has implemented diversion control measures, has completed medical education training on addiction treatment encompassing all forms of medication-assisted treatment, will provide patient numbers upon request, and will provide any other information required by the director related to patient health and safety; and

(2) Is prohibited from establishing an office-based, medication-assisted treatment at any other location or facility after the submission of an attestation submitted pursuant to §16-5Y-4(k)(2) of this code. This subdivision includes any person, partnership, association, or corporation that has an ownership interest in a partnership, association, or corporation or other corporate entity providing office-based, medication-assisted treatment.

(l) A licensed behavioral health center, pursuant to Behavioral Health Center Licensure, 64 CSR 11, providing office-based medication-assisted treatment is exempt from the registration requirement contained in §16-5Y-4(a) of this code: *Provided*, That it:

(1) Attests to the Office of Health Facility Licensure and Certification on a form prescribed by the director that the person, partnership, association, or corporation requires counseling and drugs screens, has implemented diversion control measures, will provide patient numbers upon request, and will provide any other information required by the director related to patient health and safety; and

(2) Must notify the Office of Health Facility Licensure and Certification prior to establishing or terminating an office-based medication-assisted treatment program at any other licensed behavioral health center location after the submission of an attestation submitted pursuant to §16-5Y-4(l)(1) of this code.

§16B-13-5. Operational requirements.

(a) The medication-assisted treatment program shall be licensed and registered in this state with the director, the Secretary of State, the State Tax Department, and all other applicable business or licensing entities.

(b) The program sponsor need not be a licensed physician but shall employ a licensed physician for the position of medical director, when required by the rules promulgated pursuant to this article.

(c) Each medication-assisted treatment program shall designate a medical director. If the medication-assisted treatment program is accredited by a Substance Abuse and Mental Health Services Administration approved accrediting body that meets nationally accepted standards for providing medication-assisted treatment, including the Commission on Accreditation of Rehabilitation Facilities or the Joint Commission on Accreditation of Healthcare Organizations, then the program may designate a medical director to oversee all facilities associated with the accredited medication-assisted treatment program. The medical director shall be responsible for the operation of the medication-assisted treatment program, as further specified in the rules promulgated pursuant to this article. He or she may delegate the day-to-day operation of a medication-assisted treatment program as provided in rules promulgated pursuant to this article. Within 10 days after termination of a medical director, the medication-assisted treatment program shall notify the director of the identity of another medical director for that program. Failure to have a medical director practicing at the program may be the basis for a suspension or revocation of the program license. The medical director shall:

(1) Have a full, active, and unencumbered license to practice allopathic medicine or surgery from the West Virginia Board of Medicine or to practice osteopathic medicine or surgery from the West Virginia Board of Osteopathic Medicine in this state and be in good standing and not under any probationary restrictions;

(2) Meet both of the following training requirements:

(A) If the physician prescribes a partial opioid agonist, he or she shall complete the requirements for the Drug Addiction Treatment Act of 2000; and

(B) Complete other programs and continuing education requirements as further described in the rules promulgated pursuant to this article;

(3) Practice at the licensed or registered medication-assisted treatment program a sufficient number of hours, based upon the type of medication-assisted treatment license or registration issued pursuant to this article, to ensure regulatory compliance, and carry out those duties specifically assigned to the medical director as further described in the rules promulgated pursuant to this article;

(4) Be responsible for monitoring and ensuring compliance with all requirements related to the licensing and operation of the medication-assisted treatment program;

(5) Supervise, control, and direct the activities of each individual working or operating at the medication-assisted treatment program, including any employee, volunteer, or individual under contract, who provides medication-assisted treatment at the program or is associated with the provision of that treatment. The supervision, control, and direction shall be provided in accordance with rules promulgated by the Inspector General; and

(6) Complete other requirements prescribed by the Inspector General by rule.

(d) Each medication-assisted treatment program shall designate counseling staff, either employees, or those used on a referral-basis by the program, which meet the requirements of this article and the rules promulgated pursuant to this article. The individual members of the counseling staff shall have one or more of the following qualifications:

(1) Be a licensed psychiatrist;

(2) Certification as an alcohol and drug counselor;

(3) Certification as an advanced alcohol and drug counselor;

(4) Be a counselor, psychologist, marriage and family therapist, or social worker with a master's level education with a specialty or specific training in treatment for substance use disorders, as further described in the rules promulgated pursuant to this article;

(5) Under the direct supervision of an advanced alcohol and drug counselor, be a counselor with a bachelor's degree in social work or another relevant human services field: *Provided*, That the individual practicing with a bachelor's degree under supervision applies for certification as an alcohol and drug counselor within three years of the date of employment as a counselor;

(6) Be a counselor with a graduate degree actively working toward licensure or certification in the individual's chosen field under supervision of a licensed or certified professional in that field and/or advanced alcohol and drug counselor;

(7) Be a psych-mental health nurse practitioner or a psych-mental health clinical nurse specialist; or

(8) Be a psychiatry CAQ-certified physician assistant.

(e) The medication-assisted treatment program shall be eligible for, and not prohibited from, enrollment with West Virginia Medicaid and other private insurance. Prior to directly billing a patient for any medication-assisted treatment, a medication-assisted treatment program must receive either a rejection of prior authorization, rejection of a submitted claim, or a written denial from a patient's insurer or West Virginia Medicaid denying coverage for such treatment: *Provided*, That the director, in consultation with the Inspector General, may grant a variance from this requirement pursuant to §16B-13-6 of this code. The program shall also document whether a patient has no insurance. At the option of the medication-assisted treatment program, treatment may commence prior to billing.

(f) The medication-assisted treatment program shall apply for and receive approval as required from the United States Drug Enforcement Administration, Center for Substance Abuse

Treatment, or an organization designated by Substance Abuse and Mental Health and Mental Health Administration.

(g) All persons employed by the medication-assisted treatment program shall comply with the requirements for the operation of a medication-assisted treatment program established within this article or by any rule adopted pursuant to this article.

(h) All employees of an opioid treatment program shall furnish fingerprints for a state and federal criminal records check by the Criminal Identification Bureau of the West Virginia State Police and the Federal Bureau of Investigation. The fingerprints shall be accompanied by a signed authorization for the release of information and retention of the fingerprints by the Criminal Identification Bureau and the Federal Bureau of Investigation. The opioid treatment program shall be subject to the provisions of §16B-15-1 *et seq.* of this code and subsequent rules promulgated thereunder.

(i) The medication-assisted treatment program shall not be owned by, nor shall it employ or associate with, any physician or prescriber:

(1) Whose Drug Enforcement Administration number is not currently full, active, and unencumbered;

(2) Whose application for a license to prescribe, dispense, or administer a controlled substance has been denied by and is not full, active, and unencumbered in any jurisdiction; or

(3) Whose license is anything other than a full, active, and unencumbered license to practice allopathic medicine or surgery by the West Virginia Board of Medicine or osteopathic medicine or surgery by the West Virginia Board of Osteopathic Medicine in this state, and who is in good standing and not under any probationary restrictions.

(j) A person may not dispense any medication-assisted treatment medication, including a controlled substance as defined by §60A-1-101 of this code, on the premises of a licensed medication-assisted treatment program, unless he or she is a

physician or pharmacist licensed in this state and employed by the medication-assisted treatment program unless the medication-assisted treatment program is a federally certified narcotic treatment program. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician must access the Controlled Substances Monitoring Program Database to ensure the patient is not seeking medication-assisted treatment medications that are controlled substances from multiple sources and to assess potential adverse drug interactions, or both. Prior to dispensing or prescribing medication-assisted treatment medications, the treating physician shall also ensure that the medication-assisted treatment medication utilized is related to an appropriate diagnosis of a substance use disorder and approved for such usage. The physician shall also review the Controlled Substances Monitoring Program Database no less than quarterly and at each patient's physical examination. The results obtained from the Controlled Substances Monitoring Program Database shall be maintained with the patient's medical records.

(k) A medication-assisted treatment program responsible for medication administration shall comply with:

(1) The West Virginia Board of Pharmacy regulations;

(2) The West Virginia Board of Examiners for Registered Professional Nurses regulations;

(3) All applicable federal laws and regulations relating to controlled substances; and

(4) Any requirements as specified in the rules promulgated pursuant to this article.

(l) Each medication-assisted treatment program location shall be licensed separately, regardless of whether the program is operated under the same business name or management as another program.

(m) The medication-assisted treatment program shall develop and implement patient protocols, treatment plans, or treatment

strategies and profiles, which shall include, but not be limited by, the following guidelines:

(1) When a physician diagnoses an individual as having a substance use disorder, the physician may treat the substance use disorder by managing it with medication in doses not exceeding those approved by the United States Food and Drug Administration as indicated for the treatment of substance use disorders and not greater than those amounts described in the rules promulgated pursuant to this article. The treating physician and treating counselor's diagnoses and treatment decisions shall be made according to accepted and prevailing standards for medical care;

(2) The medication-assisted treatment program shall maintain a record of all of the following:

(A) Medical history and physical examination of the individual;

(B) The diagnosis of substance use disorder of the individual;

(C) The plan of treatment proposed, the patient's response to the treatment, and any modification to the plan of treatment;

(D) The dates on which any medications were prescribed, dispensed, or administered, the name and address of the individual for whom the medications were prescribed, dispensed, or administered, and the amounts and dosage forms for any medications prescribed, dispensed, or administered;

(E) A copy of the report made by the physician or counselor to whom referral for evaluation was made, if applicable; and

(F) A copy of the coordination of care agreement, which is to be signed by the patient, treating physician, and treating counselor. If a change of treating physician or treating counselor takes place, a new agreement must be signed. The coordination of care agreement must be updated or reviewed at least annually. If the coordination of care agreement is reviewed, but not updated, this review must be documented in the patient's record. The

coordination of care agreement will be provided in a form prescribed and made available by the director;

(3) Medication-assisted treatment programs shall report information, data, statistics, and other information as directed in this code, and the rules promulgated pursuant to this article to required agencies and other authorities;

(4) A prescriber authorized to prescribe a medication-assisted treatment medication who practices at a medication-assisted treatment program is responsible for maintaining the control and security of his or her prescription blanks and any other method used for prescribing a medication-assisted treatment medication. The prescriber shall comply with all state and federal requirements for tamper-resistant prescription paper. In addition to any other requirements imposed by statute or rule, the prescriber shall notify the director and appropriate law-enforcement agencies in writing within 24 hours following any theft or loss of a prescription blank or breach of any other method of prescribing a medication-assisted treatment medication; and

(5) The medication-assisted treatment program shall have a drug testing program to ensure a patient is in compliance with the treatment strategy.

(n) Medication-assisted treatment programs shall only prescribe, dispense, or administer liquid methadone to patients pursuant to the restrictions and requirements of the rules promulgated pursuant to this article.

(o) The medication-assisted treatment program shall immediately notify the director, or his or her designee, in writing of any changes to its operations that affect the medication-assisted treatment program's continued compliance with the certification and licensure requirements.

(p) If a physician treats a patient with more than 16 milligrams per day of buprenorphine then clear medical notes shall be placed in the patient's medical file indicating the clinical reason or reasons for the higher level of dosage.

(q) If a physician is not the patient's obstetrical or gynecological provider, the physician shall consult with the patient's obstetrical or gynecological provider to the extent possible to determine whether the prescription is appropriate for the patient.

(r) A practitioner providing medication-assisted treatment may perform certain aspects of telehealth if permitted under his or her scope of practice.

(s) The physician shall follow the recommended manufacturer's tapering schedule for the medication-assisted treatment medication. If the schedule is not followed, the physician shall document in the patient's medical record and the clinical reason why the schedule was not followed. The director may investigate a medication-assisted treatment program if a high percentage of its patients are not following the recommended tapering schedule.

§16B-13-6. Restrictions; variances and waivers.

(a) A medication-assisted treatment program shall not be located, operated, managed or owned at the same location where a chronic pain management clinic licensed and defined in §16B-7-1 *et seq.* of this code is located.

(b) Medication-assisted treatment programs shall not have procedures for offering a bounty, monetary, equipment, or merchandise reward, or free services for individuals in exchange for recruitment of new patients into the facility.

(c) Medication-assisted treatment programs shall not be located within one-half mile of a public or private licensed day care center or public or private K-12 school.

Existing medication-assisted treatment programs, including both opioid treatment programs and office based medication-assisted treatment programs that are located within one-half mile of a public or private licensed day care center or public or private K-12 school, shall be granted a variance, provided that the facility demonstrates adequate patient population controls and that it may

otherwise meet the requirements of this article and the rules promulgated pursuant to this article.

(d) The director, in consultation with the Inspector General, may grant a waiver or a variance from any licensure or registration standard, or portion thereof, for the period during which the license or registration is in effect.

(1) Requests for waivers or variances of licensure or registration standards shall be in writing to the director and shall include:

(A) The specific section of this article or rules promulgated pursuant to this article for which a waiver or variance is sought;

(B) The rationale for requesting the waiver or variance;

(C) Documentation by the medication-assisted treatment program's medical director to the director that describes how the program will maintain the quality of services and patient safety if the wavier or variance is granted; and

(D) The consequences of not receiving approval of the requested wavier or variance.

(2) The director, in consultation with the Inspector General, shall issue a written statement to the medication-assisted treatment program granting or denying a request for a waiver or variance of program licensure or registration standards.

(3) The medication-assisted treatment program shall maintain a file copy of all requests for waivers or variances and the approval or denial of the requests for the period during which the license or registration is in effect.

(4) The Office of Health Facility Licensure and Certification shall inspect each medication-assisted treatment program prior to a waiver or variance being granted, including a review of patient records, to ensure and verify that any waiver or variance request meets the spirit and purpose of this article and the rules promulgated pursuant to this article. The Office of Health Facility

Licensure and Certification may verify, by unannounced inspection, that the medication-assisted treatment program is in compliance with any waiver or variance granted by the director, in consultation with the Inspector General, for the duration of such waiver or variance.

§16B-13-7. Inspection; inspection warrant.

(a) The Office of Health Facility Licensure and Certification shall inspect each opioid treatment program annually, including a review of the patient records, to ensure that the program complies with this article and the applicable rules. A pharmacist, employed or contracted by the director, licensed in this state, and a law-enforcement officer may be present at each inspection.

(b) The Office of Health Facility Licensure and Certification shall perform unannounced complaint and verification inspections at office based medication-assisted treatment programs, including a review of the patient records, to ensure that the program complies with this article and the applicable rules. A pharmacist, employed or contracted by the Inspector General, licensed in this state and a law-enforcement officer may be present at each inspection.

(c) During an onsite inspection, the inspectors shall make a reasonable attempt to discuss each violation with the medical director or other owners of the medication-assisted treatment program before issuing a formal written notification.

(d) Any action taken to correct a violation shall be documented in writing by the medical director or other owners of the medication-assisted treatment program and may be verified by follow-up visits by the Office of Health Facility Licensure and Certification.

(e) Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an inspection warrant against any person, partnership, association, or corporation to allow any inspection or seizure of records in order to complete any inspection allowed by this article or the rules promulgated pursuant

to this article, or to meet any other purpose of this article or the rules promulgated pursuant to this article.

(f) When possible, inspections for annual certification and licensure by the medication-assisted treatment programs will be done consecutively or concurrently. However, this provision does not limit the ability to conduct unannounced inspections pursuant to a complaint.

§16B-13-8. License and registration limitation; denial; suspension; revocation.

(a) The director, in consultation with the Inspector General, may, by order, impose a ban on the admission of patients or reduce the patient capacity of the medication-assisted treatment program, or any combination thereof, when he or she finds upon inspection of the medication-assisted treatment program that the licensee or registrant is not providing adequate care under the medication-assisted treatment program's existing patient quota, and that a reduction in quota or imposition of a ban on admissions, or any combination thereof, would place the licensee or registrant in a position to render adequate care. Any notice to a licensee or registrant of reduction in quota or ban on new admissions shall include the terms of the order, the reasons therefor and the date set for compliance.

(b) The director, in consultation with the Inspector General, shall deny, suspend, or revoke a license or registration issued pursuant to this article if the provisions of this article or of the rules promulgated pursuant to this article are violated. The director, in consultation with the Inspector General, may revoke a program's license or registration and prohibit all physicians and licensed disciplines associated with that medication-assisted treatment program from practicing at the program location based upon an annual, periodic, complaint, verification or other inspection and evaluation.

(c) Before any such license or registration is denied, suspended, or revoked, however, written notice shall be given to the licensee

or registrant, stating the grounds for such denial, suspension, or revocation.

(d) An applicant, licensee or registrant has 10 working days after receipt of the director's order denying, suspending, or revoking a license or registration to request a formal hearing contesting such denial, suspension, or revocation of a license or registration under this article. If a formal hearing is requested, the applicant, licensee or registrant and the director shall proceed in accordance with the provisions of §29A-5-1 *et seq.* of this code.

(e) If a license or registration is denied or revoked as herein provided, a new application for license or registration shall be considered by the director, in consultation with the Inspector General, if, when and after the conditions upon which the denial or revocation was based have been corrected and evidence of this fact has been furnished. A new license or registration shall then be granted after proper inspection, if applicable, has been made and all provisions of this article and rules promulgated pursuant to this article have been satisfied.

(f) Any applicant, licensee or registrant who is dissatisfied with the decision of the director as a result of the hearing provided in this section may, within 30 days after receiving notice of the decision, petition the circuit court of Kanawha County, in term or in vacation, for judicial review of the decision.

(g) The West Virginia Intermediate Court of Appeals may affirm, modify or reverse the decision of the Board of Review and either the applicant, licensee or registrant, or the director may appeal from the court's decision to the Supreme Court of Appeals.

(h) If the license or registration of a medication-assisted treatment program is denied, suspended, or revoked, the medical director of the program, any owner of the program or owner or lessor of the medication-assisted treatment program property shall cease to operate the clinic, facility, office, or program as a medication-assisted treatment program as of the effective date of the denial, suspension, or revocation. The owner or lessor of the medication-assisted treatment program property is responsible for

removing all signs and symbols identifying the premises as a medication-assisted treatment program within 30 days. Any administrative appeal of such denial, suspension or revocation shall not stay the denial, suspension, or revocation.

(i) Upon the effective date of the denial, suspension or revocation, the medical director of the medication-assisted treatment program shall advise the director and the Board of Pharmacy of the disposition of all medications located on the premises. The disposition is subject to the supervision and approval of the director. Medications that are purchased or held by a medication-assisted treatment program that is not licensed may be deemed adulterated.

(j) If the license or registration of a medication-assisted treatment program is suspended or revoked, any person named in the licensing or registration documents of the program, including persons owning or operating the medication-assisted treatment program, may not, as an individual or as part of a group, apply to operate another medication-assisted treatment program for up to five years after the date of suspension or revocation. The director, in consultation with the Inspector General, may grant a variance pursuant to §16B-13-6 of this code to the prohibition of this subsection.

(k) The period of suspension for the license or registration of a medication-assisted treatment program shall be prescribed by the director, in consultation with the Inspector General, but may not exceed one year.

§16B-13-9. Violations; penalties; injunction.

(a) Any person, partnership, association, or corporation which establishes, conducts, manages, or operates a medication-assisted treatment program without first obtaining a license or registration as herein provided, or who violates any provisions of this article or any rule lawfully promulgated pursuant to this article, shall be assessed a civil penalty by the director, in consultation with the Inspector General, in accordance with this subsection. Each day of

continuing violation after conviction shall be considered a separate violation:

(1) If a medication-assisted treatment program or any owner or medical director is found to be in violation of any provision of this article, unless otherwise noted herein, the director, in consultation with the Inspector General, may limit, suspend or revoke the program's license or registration;

(2) If the program's medical director knowingly and intentionally misrepresents actions taken to correct a violation, the director, in consultation with the Inspector General, may impose a civil money penalty not to exceed $10,000 and, in the case of any owner-operator medication-assisted treatment program, limit or revoke a medication-assisted treatment program's license or registration;

(3) If any owner or medical director of a medication-assisted treatment program concurrently operates an unlicensed or unregistered medication-assisted treatment program, the director, in consultation with the Inspector General, may impose a civil money penalty upon the owner or medical director, or both, not to exceed $5,000 per day;

(4) If the owner of a medication-assisted treatment program that requires a license or registration under this article fails to apply for a new license or registration for the program upon a change of ownership and operates the program under new ownership, the director, in consultation with the Inspector General, may impose a civil money penalty upon the owner, not to exceed $5,000; or

(5) If a physician operates, owns or manages an unlicensed or unregistered medication-assisted treatment program that is required to be licensed or registered pursuant to this article; knowingly prescribes or dispenses or causes to be prescribed or dispensed, a medication-assisted treatment medication through misrepresentation or fraud; procures, or attempts to procure, a license or registration for a medication-assisted treatment program for any other person by making or causing to be made any false representation, the director, in consultation with the Inspector

General, may assess a civil money penalty of not more than $20,000. The penalty may be in addition to or in lieu of any other action that may be taken by the director, in consultation with the Inspector General, or any other board, court or entity.

(b) Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association or corporation to restrain or prevent the establishment, conduct, management or operation of any medication-assisted treatment program or violation of any provision of this article or any rule lawfully promulgated thereunder without first obtaining a license or registration in the manner herein provided.

(c) In determining whether a penalty is to be imposed and in fixing the amount of the penalty, the director, in consultation with the Inspector General, shall consider the following factors:

(1) The gravity of the violation, including the probability that death or serious physical or emotional harm to a patient has resulted, or could have resulted, from the medication-assisted treatment program's actions or the actions of the medical director or any practicing physician, the severity of the action or potential harm, and the extent to which the provisions of the applicable laws or rules were violated;

(2) What actions, if any, the owner or medical director took to correct the violations;

(3) Whether there were any previous violations at the medication-assisted treatment program; and

(4) The financial benefits that the medication-assisted treatment program derived from committing or continuing to commit the violation.

(d) Upon finding that a physician has violated the provisions of this article or rules adopted pursuant to this article, the director shall provide notice of the violation to the applicable licensing board.

§16B-13-10. Advertisement disclosure.

Any advertisement made by or on behalf of a medication-assisted treatment program through public media, such as a telephone directory, medical directory, newspaper or other periodical, outdoor advertising, radio or television, or through written or recorded communication, concerning the treatment of substance use disorders, as defined in section two of this article, shall include the name of, at a minimum, the medical director responsible for the content of the advertisement.

§16B-13-11. State Opioid Treatment Authority.

(a) Prior to establishing, operating, maintaining, or advertising a medication-assisted treatment program within this state, a medication-assisted treatment program shall be approved by the state opioid treatment authority for operation of a medication-assisted treatment program in this state.

(b) The state opioid treatment authority shall act as the state's coordinator for the development and monitoring of medication-assisted treatment programs and it shall serve as a liaison with the appropriate federal agencies.

(c) The designated state oversight agency is responsible for licensing, monitoring, and investigating complaints and grievances regarding medication-assisted treatment programs.

(d) The powers and duties of the state opioid treatment authority include, but are not limited to, the following:

(1) Facilitate the development and implementation of rules, regulations, standards and best practice guidelines to ensure the quality of services delivered by medication-assisted treatment programs;

(2) Act as a liaison between relevant state and federal agencies;

(3) Be available for consultation regarding medication-assisted treatment guidelines, rules, regulations and recovery models for

individualized treatment plans of care developed by the federal government and other nationally recognized authorities;

(4) Ensure delivery of technical assistance and informational materials to medication-assisted treatment programs as needed;

(5) Perform both scheduled and unscheduled site visits to medication-assisted treatment programs in cooperation with the identified state oversight agency when necessary and appropriate;

(6) Consult with the federal government regarding approval or disapproval of requests for exceptions to federal regulations, where appropriate;

(7) Review and approve exceptions to federal and state dosage policies and procedures;

(8) Receive and refer patient appeals and grievances to the designated state oversight agency when appropriate; and

(9) Work cooperatively with other relevant state agencies to determine the services needed and the location of a proposed medication-assisted treatment program.

§16B-13-12. Moratorium; certificate of need.

There is a moratorium on the licensure of new opioid treatment programs which do not have a certificate of need as of the effective date of the enactment of this section during the 2016 regular session of the Legislature which shall continue until the Legislature determines that there is a necessity for additional opioid treatment programs in West Virginia.

§16B-13-13. Rules; minimum standards for medication-assisted treatment programs.

(a) The Inspector General shall promulgate rules in accordance with the provisions of §29A-1-1 *et seq.* of this code for the licensure of medication-assisted treatment programs to ensure adequate care, treatment, health, safety, welfare, and comfort of patients at these facilities. These rules shall include, at a minimum:

(1) The process to be followed by applicants seeking a license;

(2) The qualifications and supervision of licensed and nonlicensed personnel at medication-assisted treatment programs and training requirements for all facility health care practitioners who are not regulated by another board;

(3) The provision and coordination of patient care, including the development of a written plan of care and patient contract;

(4) The management, operation, staffing and equipping of the medication-assisted treatment program;

(5) The clinical, medical, patient and business records kept by the medication-assisted treatment program;

(6) The procedures for inspections and for review of utilization and quality of patient care;

(7) The standards and procedures for the general operation of a medication-assisted treatment program, including facility operations, physical operations, infection control requirements, health and safety requirements and quality assurance;

(8) Identification of drugs that may be used to treat substance use disorders that identify a facility as a medication-assisted treatment program;

(9) Any other criteria that identify a facility as a medication-assisted treatment program;

(10) The standards and procedures to be followed by an owner in providing supervision, direction and control of individuals employed by or associated with a medication-assisted treatment program;

(11) Data collection and reporting requirements;

(12) Criteria and requirements related to specific medication-assisted treatment medications; and

(13) Such other standards or requirements as the Inspector General determines are appropriate.

(b) The Legislature finds that an emergency exists and, therefore, the Inspector General shall file an emergency rule to implement the provisions of this section pursuant to the provisions of §29A-3-15 of this code.

ARTICLE 14. MEDICATION ADMINISTERD BY UNLICENSED PERSONNEL IN NURSING HOMES.

§16B-14-1. Definitions.

For the purposes of this article:

"Administration of medication" means assisting a person in the ingestion, application, or inhalation of medications, or the supervision of or the providing of assistance with self-administered medication, both according to the legibly written or printed directions of the health care professional, or as written on the prescription label. "Administration" does not include judgment, evaluation, assessments, or injections of medication.

"Approved medication assistive personnel (AMAP)" means a staff member who meets eligibility requirements, has successfully completed a nationally recognized model curriculum for certified medication assistants, has passed a national medication aide certification examination approved by the National Council of State Boards of Nursing, and is considered competent by the authorized registered professional nurse to administer medications to residents of the nursing home in accordance with this article.

"Authorized practitioner" means a physician actively licensed under the provisions of §30-3-1 *et seq.* or §30-14-1 *et seq.* of this code, an advanced practice registered nurse with prescriptive authority actively licensed under the provisions of §30-7-1 *et seq.* of this code, a physician's assistant actively licensed under the provisions of §30-3E-1 *et seq.* of this code, an optometrist actively licensed under the provisions of §30-8-1 *et seq.* of this code, or a dentist actively licensed under the provisions of §30-4-1 *et seq.* of this code.

"Authorized registered professional nurse" means a person who is actively licensed pursuant to §30-7-1 *et seq.* of this code and meets the requirements to train and supervise approved medication assistive personnel pursuant to this article, and has completed and passed the facility trainer/instructor course developed by the authorizing agency.

"Authorizing agency" means the Office of Health Facility Licensure and Certification.

"Delegation" means transferring to a competent individual, as determined by the authorized registered professional nurse, the authority to administer medications or perform a health maintenance task.

"Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Health care professional" means an allopathic physician, osteopathic physician, registered professional nurse, advanced practice registered nurse, physician's assistant, dentist, optometrist, or respiratory therapist licensed pursuant to the provisions of chapter 30 of this code.

"Health maintenance tasks" means: Administering glucometer tests; administering gastrostomy tube feedings; administering enemas; and performing tracheostomy and ventilator care for residents.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Medication" means a drug, as defined in §60A-1-101 of this code, which has been prescribed by a health care professional to be ingested through the mouth, inhaled through the nose or mouth using an inhaler or nebulizer, applied to the outer skin, eye, or ear, or applied through nose drops, or applied through vaginal or rectal suppositories. Medication does not mean a controlled substance listed in Schedule I as provided in §60A-2-204 of this code,

Schedule II as provided in §60A-2-206 of this code, buprenorphine, or benzodiazepines.

"Medication reconciliation" means the process of creating an accurate list of all medications a resident is taking, including drug name, dosage, frequency, and route, so correct medications are being provided to the resident.

"Nursing home" means the same as it is defined in §16B-4-1 of this code.

"Office of Health Facility Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of Inspector General.

"Prescribing practitioner" means an individual who has prescriptive authority as provided in chapter 30 of this code.

"Registered professional nurse" means a person who is actively licensed pursuant to §30-7-1 *et seq.* of this code.

"Resident" means a person living in a nursing home who is in stable condition.

"Self-administration of medication" means the act of a resident, who is independently capable of reading and understanding the labels of medication ordered by an authorized practitioner, opening, and accessing prepackaged drug containers, and accurately identifying and taking the correct dosage of the drugs as ordered by the health care professional at the correct time and under the correct circumstances.

"Self-administration of medication with assistance" means assisting residents who are otherwise able to self-administer their own medications, except their physical disabilities prevent them from completing one or more steps in the process.

"Stable" means the resident’s health condition is predictable and consistent as determined by the registered professional nurse, and the resident’s medications have been reconciled.

"Staff member" means an individual employed by a nursing home but does not include a health care professional acting within his or her scope of practice.

"Supervision of self-administration of medication" means a personal service which includes reminding residents to take medications, opening medication containers for residents, reading the medication label to residents, observing residents while they take medication, checking the self-administered dosage against the label on the container, and reassuring residents that they have obtained and are taking the dosage as prescribed.

§16B-14-2. Administration of medications.

(a) The authorizing agency shall create a program for the administration of medications in nursing homes.

(b) Administration of medication shall be performed by an approved medication assistive personnel (AMAP) who has been trained and retrained every two years, passed a national medication aide certification examination, and who is subject to the supervision of, and approval by, an authorized registered professional nurse.

(c) After assessing the health status of a resident, a registered professional nurse, in collaboration with the resident's prescriber, may allow an AMAP to administer medication.

(d) Nothing in this article prohibits a staff member from administering medications or performing health maintenance tasks or providing any other prudent emergency assistance to aid any person who is in acute physical distress or requires emergency assistance.

§16B-14-3. Exemption from licensure; statutory construction.

(a) A staff member who is not authorized by law to administer medication may do so in a nursing home if he or she meets the requirements of this article.

(b) An approved medication assistive personnel is exempt from the licensing requirements of chapter 30 of this code.

(c) A health care professional remains subject to his or her respective licensing laws.

(d) This article shall not be construed to violate or conflict with chapter 30 of this code.

§16B-14-4. Instruction and training.

(a) The authorizing agency's training curricula shall be based on a nationally recognized model curriculum for certified medication assistants. The authorizing agency shall consult with the West Virginia Board of Respiratory Care Practitioners in developing the training curricula relating to the use of an inhaler or nebulizer. The certification examination must be a national Medication Aide Certification Examination.

(b) The program developed by the authorizing agency shall require that a person who applies to act as an approved medication assistive personnel shall:

(1) Hold a high school diploma or its equivalent;

(2) Be a nurse aide with at least one year of full-time experience;

(3) Be certified in cardiopulmonary resuscitation and first aid;

(4) Participate in the initial training program as set forth in §16B-14-1 of this code;

(5) Pass a national certification examination as set forth in §16B-14-1 of this code;

(6) Not have a statement on the stated administered nurse aide registry indicating that the staff member has been the subject of finding of abuse or neglect of a long-term care nursing home resident or convicted of the misappropriation of a resident's property; and

(7) Participate in a retraining program every two years.

(c) A nursing home may offer the training program developed by the authorizing agency to its staff members. The training shall be provided by the nursing home through a registered professional nurse.

(d) A registered professional nurse who is authorized to train staff members to administer medications in nursing homes shall:

(1) Possess a current active license as set forth in §30-7-1 *et seq.* of this code to practice as a registered professional nurse;

(2) Have practiced as a registered professional nurse in a position or capacity requiring knowledge of medications for the immediate two years prior to being authorized to train staff members;

(3) Be familiar with the nursing care needs of the residents as described in this article; and

(4) Have completed and passed the nursing home trainer/instructor course developed by the authorizing agency.

§16B-14-5. Eligibility requirements of nursing home staff.

In order to administer medication, an approved medication assistive personnel (AMAP) shall:

(1) Determine the medication to be administered is in its original container in which it was dispensed by a pharmacist or the physician;

(2) Make a written record of assistance of medication with regard to each medication administered, including the time, route, and amount taken;

(3) Display the title Approved Medication Assistive Personnel; and

(4) Comply with the legislative rules promulgated by the authorizing agency pursuant to §29A-3-1 *et seq.* of this code

relating to the provisions of this article, which shall address, at a minimum, the supervision provided by the registered professional nurse to the AMAP.

§16B-14-6. Oversight of approved medication assistive personnel.

A nursing home using an approved medication assistive personnel shall establish an administrative monitoring system and shall comply with the applicable provisions of the legislative rules promulgated pursuant to §16B-10-11 of this code.

§16B-14-7. Withdrawal of authorization.

(a) The registered professional nurse who supervises an approved medication assistive personnel (AMAP) may withdraw authorization for an AMAP to administer medications if the nurse determines that the AMAP is not performing the function in accordance with the training and written instructions.

(b) The withdrawal of the authorization shall be documented and relayed to the nursing home and the authorizing agency. The agency shall remove the AMAP from the list of authorized individuals. The Office of Health Facility Licensure and Certification shall maintain a list of the names of persons whose authorization has been withdrawn and the reasons for withdrawal of authorization. The list may be accessed by registered professional nurses and administrative personnel of nursing homes.

§16B-14-8. Fees.

The authorizing agency may set and collect any appropriate fees necessary for the implementation of the provisions of this article pursuant to the legislative rules authorized by this article.

§16B-14-9. Limitations on medication administration.

(a) An approved medication assistive personnel (AMAP) may not:

(1) Administer the first dose of a medication;

(2) Perform an injection;

(3) Administer irrigations or debriding agents to treat a skin condition or minor abrasions;

(4) Act upon verbal medication orders;

(5) Transcribe medication orders;

(6) Convert or calculate drug dosages;

(7) Administer medications to be given "as needed" as ordered by the health care professional, unless the supervising nurse has first performed and documented a bedside assessment, and then the AMAP may administer the medication based on the written order with specific parameters which preclude independent judgment; or

(8) Perform health maintenance tasks.

(b) An AMAP may not be assigned to both medication administration duty and typical nurse aide duties related to resident care and assistance with activities of daily living simultaneously. When assigned to medication administration, the AMAP's responsibility shall be to administer medication and tasks related to the administration of medication. An AMAP may be assigned to other resident care and assistance with activities of daily living during such times that the AMAP is not engaged in, or scheduled to be engaged in, the administration of medication.

§16B-14-10. Permissive participation.

The provisions of this article are not mandatory upon any nursing home or nursing home employee. A nursing home may not, as a condition of employment, require a nurse aide to become an approved medication assistive personnel (AMAP) or require its health care professionals to use AMAPs.

ARTICLE 15. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.

§16B-15-1. Definitions.

As used in this article:

"Applicant" means an individual who is being considered for employment or engagement with the department, a covered provider or covered contractor.

"Background check" means a prescreening of registries specified by the Inspector General by rule and a fingerprint-based search of state and federal criminal history record information.

"Bureau" means a division within the Department of Health, Department of Human Services and Department of Health Facilities.

"Covered contractor" means an individual or entity, including their employees and subcontractors, that contracts with a covered provider to perform services that include any direct access services.

"Covered provider" means the following facilities or providers:

(i) A skilled nursing facility;

(ii) A nursing facility;

(iii) A home health agency;

(iv) A provider of hospice care;

(v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility;

(ix) An intermediate care facility for individuals with intellectual disabilities;

(x) Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment

Screening program as determined by the Inspector General by legislative rule; and

(xi) Excludes medical foster home approved and annually reviewed by the United States Department of Veterans Affairs pursuant to 38 CFR §17.73.

"Department" means the Department of Health, Department of Human Services and Department of Health Facilities.

"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 director shall determine by legislative rule whether the position in question involves direct access.

"Director" means the Director of the West Virginia Clearance for Access: Registry and Employment Screening program.

"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 Inspector General 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 Inspector General'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 Inspector General 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.

"State Police" means the West Virginia State Police Criminal Identification Bureau.

§16B-15-2. Background check program for the department, covered providers, and covered contractors.

(a) The director 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 director 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.

§16B-15-3. 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 Inspector General of the results of the criminal history record information check.

(f) If the director’s review of the criminal history record information reveals that the applicant does not have a disqualifying offense, the director shall provide written notice to the department's

bureau, covered provider, or covered contractor that the individual may be engaged.

§16B-15-4. Notice of ineligibility; prohibited participation as direct access personnel or department employee.

(a) If the director's review of the applicant's criminal history record information reveals a disqualifying offense, the director shall provide written notice to the department's bureau, covered provider, or covered contractor advising that the applicant is ineligible for work. The director may not disseminate the criminal history record information.

(b) The director, 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 §16B-15-6 of this code, the employer shall terminate the provisional employment upon receipt of the notice.

§16B-15-5. Variance; appeals.

(a) If the director 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 director not later than 30 days after the date of the notice required by §16B-15-3 or §16B-15-4 of this code.

(b) The director may grant a variance if:

(1) Mitigating circumstances surrounding the negative finding or disqualifying offense is provided; and

(2) The director finds that the individual will not pose a danger or threat to residents, members and their property.

(c) The director shall establish in legislative rule factors that qualify as mitigating circumstances.

(d) The director shall mail to the applicant and the department's 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 Inspector General that the applicant has appealed the accuracy of the criminal history records and provide the Inspector General with the updated results of the criminal history record information check, which the Inspector General shall review de novo in accordance with the provisions of this article.

§16B-15-6. 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 director 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 Inspector General, 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.

§16B-15-7. 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 director 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 director shall provide notice of prior clearance for direct access status upon request by a subsequent bureau, covered provider, or covered contractor inquiries.

§16B-15-8. 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 director may assess a fee to applicants, the department, 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 Office of Inspector General Criminal Background Administration Account. Expenditures from the account shall be made by the director for purposes set forth in this article and are authorized from collections. The account shall be administered by the director and may not be deemed a part of the general revenue of the state.

§16B-15-9. Rules; penalties; confidentiality; immunity.

(a) The Inspector General shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the provisions of this article. The Inspector General may promulgate emergency rules, if justified, pursuant to §29A-3-15 of this code as may be required.

(b) Failure of a covered provider or covered contractor to ensure proper completion of the background check process for each individual employed as direct access personnel may result in the imposition of monetary civil penalties. In addition, engaging individuals knowing that they are ineligible to work may subject the employer to monetary civil penalties.

(c) The director shall treat and maintain any criminal background search information obtained under this article as confidential. The director shall limit the use of records solely to the purposes authorized in this article. The criminal history record information in the custody of the director is not subject to subpoena, other than one issued in a criminal action or investigation; is confidential by law and privileged; and is not subject to discovery or admissible in evidence in any private civil action.

(d) The Office of the Inspector General and its employees are immune from liability, civil or criminal, that might otherwise be incurred or imposed for good faith conduct in determining eligibility or granting variances permitted by this article.

ARTICLE 16. FOSTER CARE OMBUDSMAN PROGRAM.

§16B-16-1. 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. The independent Foster Care Ombudsman shall have experience as a current or former foster parent or experience in the area of child welfare.

(b) 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:

(A) Filed on behalf of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent;

(B) On the Foster Care Ombudsman's own initiative, of a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system; or

(C) 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) Participating in any procedure to investigate and resolve complaints filed on behalf of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent, relating to an action, inaction, or decision of providers of managed care services, or the representatives of such providers, of public agencies, or of social service agencies, which may adversely affect the health, safety, welfare, and rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who

has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(3) Review periodically and make appropriate recommendations for the policies and procedures established by any state agency providing services to the child welfare system;

(4) Pursuant to an investigation, provide assistance to an individual 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 child;

(5) Advocating for the rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or a kinship parent.

(6) 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 children in the child welfare system and the juvenile justice system;

(7) Monitoring the development and implementation of federal, state, and local legislation, regulations, and policies with respect to foster care services.

(8) Conduct programs of public education when necessary and appropriate;

(9) Participate in ongoing training programs related to his or her duties or responsibilities;

(10) Have input into the creation of, and thereafter make recommendations consistent with, the foster children, foster parents, and kinship parents bill of rights;

(11) Establishing and maintaining a statewide uniform reporting system to collect and analyze data relating to complaints for the purpose of identifying and resolving significant problems

faced by foster children, foster parents, children who are subject to a reported allegation of abuse and neglect, children who have died or sustained a critical incident, children in the juvenile justice system, and kinship parents as a class. The data shall be submitted to the Bureau of Social Services within the Department of Human Services and the Legislative Oversight Commission on Health and Human Resources Accountability on a quarterly basis.

(12) 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

(13) 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.

(c) (1) The Foster Care Ombudsman or his or her staff may not be compelled to testify or produce evidence in any judicial or administrative proceeding with respect to the identity of an individual providing information to the ombudsman as part of an official investigation, or the substance of that person's report to the ombudsman as part of an official investigation. All memoranda, work product, notes, or case files developed and maintained as part of an official investigation of the Foster Care Ombudsman Office are confidential and are not subject to discovery, subpoena, or other means of legal compulsion, and are not admissible as evidence in a judicial or administrative proceeding.

(2) The ombudsman may be compelled to provide testimony by a court or administrative body of competent jurisdiction related to any action carried out by the office that is unrelated to the substance of a specific official investigation, or reports submitted to the Legislative Oversight Commission on Health and Human Resources Accountability provided for in §9-5-27 and §49-9-102 of this code. Should the ombudsman be compelled to testify, provide evidence in discovery, respond to a subpoena, or otherwise divulge testimony or evidence in any judicial, administrative, or legislative proceeding, the ombudsman may not be compelled to provide testimony or evidence concerning the identity of any complainant or any individual providing information to the

ombudsman as part of an official investigation, or the substance of any complaint or report unless the ombudsman should decline to exercise that privilege. The purpose of this provision is to ensure a level of confidentiality between the ombudsman and a person reporting to, complaining to, or providing other evidence to the ombudsman as part of an official investigation carried out by the office.

(3) Any objection by the ombudsman to the disclosure of any testimony, documentary, or physical evidence shall be reviewed by the presiding official of such tribunal, in camera, upon the request of the ombudsman, and the presiding official shall prevent the disclosure of the identity of any complainant, witness, or reporter as well as the substance of their complaint, testimony, or report.

§16B-16-2. Investigation of complaints.

(a) Upon receipt of a complaint 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) of this code, any act, practice, policy, or procedure of any state agency, child-placing agency, juvenile facility, or residential care facility which affects the health, safety, welfare, or rights of a foster child, a foster parent, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, 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 status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The Foster Care Ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious, or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the Foster Care Ombudsman; or

(5) A real or apparent conflict of interest exists and no other person within the office is available to investigate the complaint in an impartial manner.

(d) The Office of the Inspector General and other appropriate state governmental agencies may establish and implement cooperative agreements for receiving, processing, responding to, and resolving complaints involving state governmental agencies under the provisions of this section.

(e) The Foster Care Ombudsman shall submit an annual written report to the Governor containing:

(1) The number of complaints;

(2) The types of complaints;

(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) The Foster Care Ombudsman shall summarize the reports and present that information to the Legislative Oversight Commission on Health and Human Resources Accountability. Nothing shall preclude the Foster Care Ombudsman office from submitting data, findings, or reports beyond this annual report.

(g) Another office, department, agency, or official may not prohibit the release of an ombudsman's recommendations to the Governor and the Legislature.

§16B-16-3. 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.

§16B-16-4. 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.

§16B-16-5. 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.

§16B-16-6. 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.

§16B-16-7. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint that contains the identity of the complainant, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, a foster child, foster parent, or kinship parent shall remain confidential except:

(1) Where imminent risk of serious harm is communicated directly to the Foster Care Ombudsman or his or her staff;

(2) Where disclosure is necessary to the bureau 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) The Foster Care Ombudsman shall maintain confidentiality with respect to all matters including the identities of complainants, witnesses, or others from whom information is acquired, except insofar as disclosures may be necessary to enable the Foster Care Ombudsman to carry out duties of the office or to support recommendations.

(c) 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 a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, 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.

(d) 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.

(e) 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, a child who is subject to a reported allegation of abuse and neglect, a child who has died or sustained a critical incident, a child in the juvenile justice system, or foster child, foster parent, or kinship parent is not disclosed.

§16B-16-8. 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.

§16B-16-9. 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.

§16B-16-10. 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.

ARTICLE 17. HUMAN RIGHTS COMMISSION.

§16B-17-1. Short title.

This article shall be known and may be cited and referred to as "The West Virginia Human Rights Act."

§16B-17-2. Declaration of policy.

It is the public policy of the State of West Virginia to provide all of its citizens equal opportunity for employment, equal access to places of public accommodations, and equal opportunity in the sale, purchase, lease, rental and financing of housing accommodations or real property. Equal opportunity in the areas of employment and public accommodations is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, age, blindness, or disability. Equal opportunity in housing accommodations or real property is hereby declared to be a human right or civil right of all persons without regard to race, religion, color, national origin, ancestry, sex, blindness, disability, or familial status.

The denial of these rights to properly qualified persons by reason of race, religion, color, national origin, ancestry, sex, age, blindness, disability, or familial status is contrary to the principles of freedom and equality of opportunity and is destructive to a free and democratic society.

§16B-17-3. Definitions.

When used in this article:

(a) The term "person" means one or more individuals, partnerships, associations, organizations, corporations, labor organizations, cooperatives, legal representatives, trustees, trustees in bankruptcy, receivers, and other organized groups of persons;

(b) The term "commission" means the West Virginia Human Rights Commission;

(c) The term "director" means the executive director of the commission who reports to the Inspector General;

(d) The term "employer" means the state, or any political subdivision thereof, and any person employing 12 or more persons within the state for 20 or more calendar weeks in the calendar year in which the act of discrimination allegedly took place or the preceding calendar year: *Provided,* That such terms shall not be taken, understood or construed to include a private club;

(e) The term "employee" shall not include any individual employed by his or her parents, spouse or child;

(f) The term "labor organization" includes any organization which exists for the purpose, in whole or in part, of collective bargaining or of dealing with employers concerning grievances, terms or conditions of employment or for other mutual aid or protection in relation to employment;

(g) The term "employment agency" includes any person undertaking, with or without compensation, to procure, recruit, refer or place employees. A newspaper engaged in the activity of advertising in the normal course of its business shall not be deemed to be an employment agency;

(h) The term "discriminate" or "discrimination" means to exclude from, or fail or refuse to extend to, a person equal opportunities because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status and includes to separate or segregate;

(i) The term "unlawful discriminatory practices" includes only those practices specified in §16B-17-9 of this code;

(j) The term "place of public accommodations" means any establishment or person, as defined herein, including the state, or any political or civil subdivision thereof, which offers its services, goods, facilities, or accommodations to the general public, but shall

not include any accommodations which are in their nature private. To the extent that any penitentiary, correctional facility, detention center, regional jail or county jail is a place of public accommodation, the rights, remedies and requirements provided by this article for any violation of subdivision (6), §16B-17-9 of this code shall not apply to any person other than: (1) Any person employed at a penitentiary, correctional facility, detention center, regional jail or county jail; (2) any person employed by a law-enforcement agency; or (3) any person visiting any such employee or visiting any person detained in custody at such facility;

(k) The term "age" means the age of 40 or above;

(l) For the purpose of this article, a person shall be considered to be blind only if his central visual acuity does not exceed 20/200 in the better eye with correcting lenses, or if his visual acuity is greater than 20/200 but is occasioned by a limitation in the fields of vision such that the widest diameter of the visual field subtends an angle no greater than twenty degrees; and

(m) The term "disability" means:

(1) A mental or physical impairment which substantially limits one or more of such person's major life activities. The term "major life activities" includes functions such as caring for one's self, performing manual tasks, walking, seeing, hearing, speaking, breathing, learning and working;

(2) A record of such impairment; or

(3) Being regarded as having such an impairment.

For the purposes of this article, this term does not include persons whose current use of or addiction to alcohol or drugs prevents such persons from performing the duties of the job in question or whose employment, by reason of such current alcohol or drug abuse, would constitute a direct threat to property or the safety of others.

§16B-17-4. Powers and objectives.

The commission shall have the power and authority and shall perform the functions and services as in this article prescribed and as otherwise provided by law. The commission shall encourage and endeavor to bring about mutual understanding and respect among all racial, religious and ethnic groups within the state and shall strive to eliminate all discrimination in employment and places of public accommodations by virtue of race, religion, color, national origin, ancestry, sex, age, blindness or handicap and shall strive to eliminate all discrimination in the sale, purchase, lease, rental or financing of housing and other real property by virtue of race, religion, color, national origin, ancestry, sex, blindness, handicap or familial status.

§16B-17-5. Composition; appointment, terms, and oath of members; compensation and expenses.

The commission shall be composed of nine members, all residents, and citizens of the State of West Virginia and broadly representative of the several racial, religious, and ethnic groups residing within the state, to be appointed by the Governor, by and with the advice and consent of the Senate. Not more than five members of the commission shall be members of the same political party and not more than five members shall be appointed from any one congressional district.

Members of the commission shall be appointed for terms of three years commencing on July 1 of the year of their appointments, except that the nine members first appointed hereunder shall be appointed for terms of from one to three years, respectively, so that the terms of three members of the commission will expire on June 30 of each succeeding year thereafter. Upon the expiration of the initial terms, all subsequent appointments shall be for terms of three years each, except that appointments to fill vacancies shall be for the unexpired term thereof. Members shall be eligible for reappointment. Before assuming and performing any duties as a member of the commission, each commission member shall take and subscribe to the official oath prescribed by section 5, article IV of the Constitution of West Virginia, which executed oath shall be filed in the office of the Secretary of State.

The members of the commission shall not receive a salary, but each appointed member shall be paid $50 per diem for actual time spent in the performance of duties under this article and shall be reimbursed for actual and necessary expenses incident to the performance of their duties, upon presentation of an itemized and sworn statement thereof. The foregoing per diem and reimbursement for actual and necessary expenses shall be paid from appropriations made by the Legislature to the commission.

§16B-17-6. Commission organization and personnel; executive director; offices; meetings; quorum; expenses of personnel.

As soon as practical after July 1, of each year, the Governor shall call a meeting of the commission to be convened at the State Capitol. The commission shall at such meeting organize by electing one of its members as chairperson of the commission and one as vice chairperson thereof for a term of one year or until their successors are elected and qualified. At such meeting the commission shall also elect from its membership such other officers as may be found necessary and proper for its effective organization.

The Governor shall, by and with the advice and consent of the Senate, appoint an executive director to serve at his or her will and pleasure. The executive director shall serve as secretary of the commission. The executive director shall have a college degree. He or she shall be selected with particular reference to his or her training, experience and qualifications for the position and shall be paid an annual salary, payable in monthly installments, from any appropriations made therefor. The commission, upon recommendation of the executive director and in accordance with the requirements of the civil service law, may employ such personnel as may be necessary for the effective and orderly performance of the functions and services of the commission. The commission shall employ an administrative law judge who shall be an attorney, duly licensed to practice law in the State of West Virginia, for the conduct of the public hearings authorized in §16B-17-8(d)(3) of this code.

The commission shall equip and maintain its offices at the State Capitol and shall hold its annual organizational meeting there. The commission may hold other meetings during the year at such times and places within the state as may be found necessary and may maintain one branch office within the state as determined by the commission to be necessary for the effective and orderly performance of the functions and services of the commission. Any five members of the commission shall constitute a quorum for the transaction of business. Minutes of its meetings shall be kept by its secretary.

The executive director and other commission personnel shall be reimbursed for necessary and reasonable travel and subsistence expenses actually incurred in the performance of commission services upon presentation of properly verified expense accounts as prescribed by law.

§16B-17-7. Assistance to commission; legal services.

The commission may call upon other officers, departments, and agencies of the state government to assist in its hearings, programs, and projects. The Attorney General of the state shall render legal services to the commission upon request made by the commission or by the chairman or the executive director thereof.

§16B-17-8. Commission powers; functions; services.

The commission is hereby authorized and empowered:

(a) To cooperate and work with federal, state and local government officers, units, activities and agencies in the promotion and attainment of more harmonious understanding and greater equality of rights between and among all racial, religious and ethnic groups in this state;

(b) To enlist the cooperation of racial, religious and ethnic units, community and civic organizations, industrial and labor organizations and other identifiable groups of the state in programs and campaigns devoted to the advancement of tolerance, understanding and the equal protection of the laws of all groups and peoples;

(c) To receive, investigate and pass upon complaints alleging discrimination in employment or places of public accommodations, because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, and complaints alleging discrimination in the sale, purchase, lease, rental and financing of housing accommodations or real property because of race, religion, color, national origin, ancestry, sex, blindness, disability or familial status, and to initiate its own consideration of any situations, circumstances or problems, including therein any racial, religious or ethnic group tensions, prejudice, disorder or discrimination reported or existing within the state relating to employment, places of public accommodations, housing accommodations and real property;

(d) To hold and conduct public and private hearings, in the county where the respondent resides or transacts business or where agreed to by the parties or where the acts complained of occurred, on complaints, matters and questions before the commission and, in connection therewith, relating to discrimination in employment or places of public accommodations, housing accommodations or real property and during the investigation of any formal complaint before the commission relating to employment, places of public accommodations, housing accommodations or real property to:

(1) Issue subpoenas and subpoenas duces tecum upon the approval of the executive director or the chairperson of the commission; administer oaths; take the testimony of any person under oath; and make reimbursement for travel and other reasonable and necessary expenses in connection with such attendance;

(2) Furnish copies of public hearing records to parties involved therein upon their payment of the reasonable costs thereof to the commission;

(3) Delegate to an administrative law judge who shall be an attorney, duly licensed to practice law in West Virginia, the power and authority to hold and conduct hearings, as herein provided, to determine all questions of fact and law presented during the hearing

and to render a final decision on the merits of the complaint, subject to the review of the commission as hereinafter set forth.

Any respondent or complainant who shall feel aggrieved at any final action of an administrative law judge shall file a written notice of appeal with the commission by serving such notice on the executive director and upon all other parties within 30 days after receipt of the administrative law judge's decision. The commission shall limit its review upon such appeals to whether the administrative law judge's decision is:

(A) In conformity with the Constitution and the laws of the state and the United States;

(B) Within the commission's statutory jurisdiction or authority;

(C) Made in accordance with procedures required by law or established by appropriate rules of the commission;

(D) Supported by substantial evidence on the whole record; or

(E) Not arbitrary, capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(4) To enter into conciliation agreements and consent orders.

Each conciliation agreement shall include provisions requiring the respondent to refrain from the commission of unlawful discriminatory practices in the future and shall contain such further provisions as may be agreed upon by the commission and the respondent.

If the respondent and the commission agree upon conciliation terms, the commission shall serve upon the complainant a copy of the proposed conciliation agreement. If the complainant agrees to the terms of the agreement or fails to object to such terms within 15 days after its service upon him or her, the commission shall issue an order embodying such conciliation agreement. If the complainant objects to the agreement, he or she shall serve a specification of his or her objections upon the commission within such period. Unless such objections are met or withdrawn within

10 days after service thereof, the commission shall notice the complaint for hearing.

Notwithstanding any other provisions of this section, the commission may, where it finds the terms of the conciliation agreement to be in the public interest, execute such agreement, and limit the hearing to the objections of the complainant.

If a conciliation agreement is entered into, the commission shall serve a copy of the order embodying such agreement upon all parties to the proceeding.

Not later than one year from the date of a conciliation agreement, the commission shall investigate whether the respondent is complying with the terms of such agreement. Upon a finding of noncompliance, the commission shall take appropriate action to assure compliance;

(5) To apply to the circuit court of the county where the respondent resides or transacts business for enforcement of any conciliation agreement or consent order by seeking specific performance of such agreement or consent order;

(6) To issue cease and desist orders against any person found, after a public hearing, to have violated the provisions of this article or the rules of the commission;

(7) To apply to the circuit court of the county where the respondent resides or transacts business for an order enforcing any lawful cease and desist order issued by the commission;

(e) To recommend to the Governor and Legislature policies, procedures, practices and legislation in matters and questions affecting human rights;

(f) To delegate to its executive director such powers, duties and functions as may be necessary and expedient in carrying out the objectives and purposes of this article who shall report to the Inspector General;

(g) To prepare a written report on its work, functions and services for each year ending on June 30 and to deliver copies thereof to the Governor on or before December 1, next thereafter;

(h) To do all other acts and deeds necessary and proper to carry out and accomplish effectively the objects, functions and services contemplated by the provisions of this article, including the promulgation of legislative rules in accordance with the provisions of §29A-3-1 *et seq.* of this code, implementing the powers and authority hereby vested in the commission;

(i) To create such advisory agencies and conciliation councils, local, regional or statewide, as in its judgment will aid in effectuating the purposes of this article, to study the problems of discrimination in all or specific fields or instances of discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness, disability or familial status; to foster, through community effort or otherwise, goodwill, cooperation and conciliation among the groups and elements of the population of this state, and to make recommendations to the commission for the development of policies and procedures, and for programs of formal and informal education, which the commission may recommend to the appropriate state agency. Such advisory agencies and conciliation councils shall be composed of representative citizens serving without pay. The commission may itself make the studies and perform the acts authorized by this subdivision. It may, by voluntary conferences with parties in interest, endeavor by conciliation and persuasion to eliminate discrimination in all the stated fields and to foster goodwill and cooperation among all elements of the population of the state;

(j) To accept contributions from any person to assist in the effectuation of the purposes of this section and to seek and enlist the cooperation of private, charitable, religious, labor, civic and benevolent organizations for the purposes of this section;

(k) To issue such publications and such results of investigation and research as in its judgment will tend to promote goodwill and minimize or eliminate discrimination: *Provided,* That the identity of the parties involved shall not be disclosed.

§16B-17-9. Unlawful discriminatory practices.

It shall be an unlawful discriminatory practice, unless based upon a bona fide occupational qualification, or except where based upon applicable security regulations established by the United States or the State of West Virginia or its agencies or political subdivisions:

(1) For any employer to discriminate against an individual with respect to compensation, hire, tenure, terms, conditions or privileges of employment if the individual is able and competent to perform the services required even if such individual is blind or disabled: *Provided,* That it shall not be an unlawful discriminatory practice for an employer to observe the provisions of any bona fide pension, retirement, group or employee insurance or welfare benefit plan or system not adopted as a subterfuge to evade the provisions of this subdivision: *Provided, however*, That an employer my grant preference in hiring to a veteran or a disabled veteran in accordance with the provisions of §16B-17-9a of this code without violating the provisions of this article.

(2) For any employer, employment agency or labor organization, prior to the employment or admission to membership, to: (A) Elicit any information or make or keep a record of or use any form of application or application blank containing questions or entries concerning the race, religion, color, national origin, ancestry, sex or age of any applicant for employment or membership; (B) print or publish or cause to be printed or published any notice or advertisement relating to employment or membership indicating any preference, limitation, specifications or discrimination based upon race, religion, color, national origin, ancestry, sex, disability or age; or (C) deny or limit, through a quota system, employment or membership because of race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(3) For any labor organization because of race, religion, color, national origin, ancestry, sex, age, blindness or disability of any individual to deny full and equal membership rights to any individual or otherwise to discriminate against such individual with

respect to hire, tenure, terms, conditions or privileges of employment or any other matter, directly or indirectly, related to employment;

(4) For an employer, labor organization, employment agency or any joint labor-management committee controlling apprentice training programs to:

(A) Select individuals for an apprentice training program registered with the State of West Virginia on any basis other than their qualifications as determined by objective criteria which permit review;

(B) Discriminate against any individual with respect to his or her right to be admitted to or participate in a guidance program, an apprenticeship training program, on-the-job training program or other occupational training or retraining program;

(C) Discriminate against any individual in his or her pursuit of such programs or to discriminate against such a person in the terms, conditions or privileges of such programs;

(D) Print or circulate or cause to be printed or circulated any statement, advertisement or publication, or to use any form of application for these programs or to make any inquiry in connection with a program which expresses, directly or indirectly, discrimination or any intent to discriminate unless based upon a bona fide occupational qualification;

(5) For any employment agency to fail or refuse to classify properly, refer for employment or otherwise to discriminate against any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability;

(6) For any person being the owner, lessee, proprietor, manager, superintendent, agent or employee of any place of public accommodations to:

(A) Refuse, withhold from or deny to any individual because of his or her race, religion, color, national origin, ancestry, sex, age, blindness or disability, either directly or indirectly, any of the

accommodations, advantages, facilities, privileges or services of the place of public accommodations;

(B) Publish, circulate, issue, display, post or mail, either directly or indirectly, any written or printed communication, notice or advertisement to the effect that any of the accommodations, advantages, facilities, privileges or services of any such place shall be refused, withheld from or denied to any individual on account of race, religion, color, national origin, ancestry, sex, age, blindness or disability, or that the patronage or custom thereat of any individual, belonging to or purporting to be of any particular race, religion, color, national origin, ancestry, sex or age, or who is blind or disabled, is unwelcome, objectionable, not acceptable, undesired or not solicited; or

(7) For any person, employer, employment agency, labor organization, owner, real estate broker, real estate salesman or financial institution to:

(A) Engage in any form of threats or reprisal, or to engage in, or hire, or conspire with others to commit acts or activities of any nature, the purpose of which is to harass, degrade, embarrass or cause physical harm or economic loss or to aid, abet, incite, compel or coerce any person to engage in any of the unlawful discriminatory practices defined in this section;

(B) Willfully obstruct or prevent any person from complying with the provisions of this article, or to resist, prevent, impede or interfere with the commission or any of its members or representatives in the performance of a duty under this article; or

(C) Engage in any form of reprisal or otherwise discriminate against any person because he or she has opposed any practices or acts forbidden under this article or because he or she has filed a complaint, testified, or assisted in any proceeding under this article.

§16B-17-9a. Veterans preference not a violation of equal employment opportunity under certain circumstances.

An employer may grant preference in hiring to a veteran or disabled veteran who has been honorably discharged from the

United States Armed Services: *Provided,* That the veteran or disabled veteran meets all of the knowledge, skills, and eligibility requirements of the job, and provided further that, granting the preference does not violate any state equal employment opportunity law. For purposes of this section, the term "veteran" means any person who has received an honorable discharge and: (a) Has provided more than one hundred eighty consecutive days of full-time, active-duty service in the United States Armed Services or Reserve components thereof, including the National Guard; or (b) has a service-connected disability rating fixed by the United States Department of Veterans Affairs.

§16B-17-10. Discriminatory practices; investigations, hearings, procedures and orders.

Any individual claiming to be aggrieved by an alleged unlawful discriminatory practice shall make, sign and file with the commission a verified complaint, which shall state the name and address of the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution alleged to have committed the unlawful discriminatory practice complained of, and which shall set forth the particulars thereof and contain such other information as may be required by the commission's rules and regulations. The commission upon its own initiative, or the Attorney General, shall, in like manner, make, sign and file such complaint. Any employer, whose employees, or some of them, hinder or threaten to hinder compliance with the provisions of this article, shall file with the commission a verified complaint, asking for assistance by conciliation or other remedial action and, during such period of conciliation or other remedial action, no hearings, orders or other actions shall be held, made or taken by the commission against such employer. Any complaint filed pursuant to this article must be filed within 365 days after the alleged act of discrimination.

After the filing of any complaint, or whenever there is reason to believe that an unlawful discriminatory practice has been committed, the commission shall make a prompt investigation in connection therewith.

If it shall be determined after such investigation that no probable cause exists for substantiating the allegations of the complaint, the commission shall, within 10 days from such determination, cause to be issued and served upon the complainant written notice of such determination, and the said complainant or his or her attorney may, within 10 days after such service, file with the commission a written request for a meeting with the commission to show probable cause for substantiating the allegations of the complaint. If it shall be determined after such investigation or meeting that probable cause exists for substantiating the allegations of the complaint, the commission shall immediately endeavor to eliminate the unlawful discriminatory practices complained of by conference, conciliation and persuasion. The members of the commission and its staff shall not disclose what has transpired in the course of such endeavors: *Provided,* That the commission may publish the facts in the case of any complaint which has been dismissed, and the terms of conciliation when the complaint has been adjusted, without disclosing the identity of the parties involved.

In case of failure so to eliminate such practice or in advance thereof, if in the judgment of the commission circumstances so warrant, the commission shall cause to be issued and served a written notice, together with a copy of such complaint as the same may have been amended, in the manner provided by law for the service of summons in civil actions, requiring the person, employer, labor organization, employment agency, owner, real estate broker, real estate salesman or financial institution named in such complaint, hereinafter referred to as respondent, to answer the charges of such complaint at a hearing before the commission in the county where the respondent resides or transacts business at a time and place to be specified in such notice: *Provided,* That said written notice be served at least 30 days prior to the time set for the hearing.

The case in support of the complaint shall be presented before the commission by one of its attorneys or agents. The respondent may file a written, verified answer to the complaint and appear at such hearing in person or otherwise, with or without counsel, and

submit testimony and evidence. Except as provided in this article, all of the pertinent provisions of §29A-5-1 *et seq.* of this code shall apply to and govern the hearing and the administrative procedures in connection with and following such hearing, with like effect as if the provisions of said article five were set forth in extensor in this section.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has engaged in or is engaging in any unlawful discriminatory practice as defined in this article, the commission shall issue and cause to be served on such respondent an order to cease and desist from such unlawful discriminatory practice and to take such affirmative action, including, but not limited to, hiring, reinstatement or upgrading of employees, with or without back pay, admission or restoration to membership in any respondent labor organization, or the admission to full and equal enjoyment of the services, goods, facilities, or accommodations offered by any respondent place of public accommodation, and the sale, purchase, lease, rental or financial assistance to any complainant otherwise qualified for the housing accommodation or real property, denied in violation of this article, as in the judgment of the commission, will effectuate the purposes of this article, and including a requirement for report of the manner of compliance. Such order shall be accompanied by findings of fact and conclusions of law as specified in §29A-5-3 of this code.

If, after such hearing and consideration of all of the testimony, evidence and record in the case, the commission shall find that a respondent has not engaged in such unlawful discriminatory practice, the commission shall state its findings of fact and conclusions of law as aforesaid and shall issue and cause to be served on the complainant an order dismissing the said complaint as to such respondent.

A copy of its order shall be delivered in all cases by the commission to the complainant, the respondent, the Attorney General and to such other public officers as the commission may deem proper. Any such order shall not be enforceable except as provided in §16B-17-11 of this code.

§16B-17-11. Appeal and enforcement of commission orders.

(a) From any final order of the commission, an application for review may be prosecuted by either party to the Supreme Court of Appeals within thirty days from the receipt thereof by the filing of a petition therefor to such court against the commission and the adverse party as respondents, and the clerk of such court shall notify each of the respondents and the commission of the filing of such petition. The commission shall, within ten days after receipt of such notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. And if granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before such order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her thereon. The commission may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review be granted or the certified question be docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the commission of the fact by mail. If a review be granted or the certified question docketed, the case shall be heard by the court in the manner provided for other cases: *Provided,* That in the following cases the appellant may prosecute the appeal in the circuit court of Kanawha County pursuant to section four, §29A-5-1 *et seq.* of this code: (1) Cases in which the commission awards damages other than back pay exceeding $5,000; (2) cases in which the commission awards back pay exceeding $30,000; and (3) cases in which the parties agree that the appeal should be prosecuted in circuit court. In such cases the appellee shall respond within thirty days of filing and the court shall make a determination within the following 30 days: *Provided, however,* That appeals filed erroneously in the circuit court after April 1, 1987, and prior to July 1, 1989, may be prosecuted in the Supreme Court of Appeals without regard to the time limits specified herein: *Provided further,* That any party adversely

affected by the final judgment of the circuit court of Kanawha County may seek review thereof by appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code filed within 30 days of entry of the final order of the circuit court.

The appeal procedure contained in this subsection shall be the exclusive means of review, notwithstanding the provisions of chapter twenty-nine-a of this code: *Provided,* That such exclusive means of review shall not apply to any case wherein an appeal or a petition for enforcement of a cease and desist order has been filed with a circuit court of this state prior to April 1, 1987.

(b) In the event that any person shall fail to obey a final order of the commission within thirty days after receipt of the same, or, if applicable, within thirty days after a final order of the circuit court or the Supreme Court of Appeals, a party or the commission may seek an order from the circuit court for its enforcement. Such proceedings shall be initiated by filing of a petition in said court, and served upon the respondent in the manner provided by law for the service of summons in civil actions; a hearing shall be held on such petition within 60 days of the date of service. The court may grant appropriate temporary relief, and shall make and enter upon the pleadings, testimony, and proceedings such order as is necessary to enforce the order of the commission or Supreme Court of Appeals.

§16B-17-12. Local human relations commissions.

(a) The legislative body of a political subdivision may, by ordinance or resolution, authorize the establishment or membership in and support of a local human relations commission. The number and qualifications of the members of any local commission and their terms and method of appointment or removal shall be such as may be determined and agreed upon by the legislative body, except that no such member shall hold office in any political party.

(b) The legislative body of any political subdivision shall have the authority to appropriate funds, in such amounts as may be

deemed necessary, for the purpose of contributing to the operation of a local commission.

(c) The local commission shall have the power to appoint such employees and staff, as it may deem necessary, to fulfill its purpose.

§16B-17-13. Exclusiveness of remedy; exceptions.

(a) Except as provided in subsection (b), nothing contained in this article shall be deemed to repeal or supersede any of the provisions of any existing or hereafter adopted municipal ordinance, municipal charter or of any law of this state relating to discrimination because of race, religion, color, national origin, ancestry, sex, age, blindness or disability, but as to acts declared unlawful by §16B-17-9 of this article the procedure herein provided shall, when invoked, be exclusive and the final determination therein shall exclude any other action, civil or criminal, based on the same grievance of the complainant concerned. If such complainant institutes any action based on such grievance without resorting to the procedure provided in this article, he or she may not subsequently resort to the procedure herein. In the event of a conflict between the interpretation of a provision of this article and the interpretation of a similar provision contained in any municipal ordinance authorized by charter, the interpretation of the provision in this article shall apply to such municipal ordinance.

(b) Notwithstanding the provisions of subsection (a) of this section, a complainant may institute an action against a respondent in the county wherein the respondent resides or transacts business at any time within 90 days after the complainant is given notice of a right to sue pursuant to this subsection or, if the statute of limitations on the claim has not expired at the end of such 90-day period, then at any time during which such statute of limitations has not expired. If a suit is filed under this section, the proceedings pending before the commission shall be deemed concluded.

The commission shall give a complainant who has filed a complaint a notice of a right to sue upon: (1) The dismissal of the

complaint for any reason other than an adjudication of the merits of the case; or (2) the request of a complainant at any time after the timely filing of the complaint in any case which has not been determined on its merits or has not resulted in a conciliation agreement to which the complainant is a party. Upon the issuance of a right to sue letter pursuant to subdivision (1) or (2), the commission may dismiss the complaint.

Notice of right to sue shall be given immediately upon complainant being entitled thereto, by personal service or certified mail, return receipt requested, which notice shall inform the complainant in plain terms of his or her right to institute a civil action as provided in this section within ninety days of the giving of such notice. Service of the notice shall be complete upon mailing.

(c) In any action filed under this section, if the court finds that the respondent has engaged in or is engaging in an unlawful discriminatory practice charged in the complaint, the court shall enjoin the respondent from engaging in such unlawful discriminatory practice and order affirmative action which may include, but is not limited to, reinstatement or hiring of employees, granting of back pay or any other legal or equitable relief as the court deems appropriate. In actions brought under this section, the court in its discretion may award all or a portion of the costs of litigation, including reasonable attorney fees and witness fees, to the complainant.

(d) The provisions of this section shall be available to all complainants whose active cases are pending before the Human Rights Commission as well as those complainants who file after the effective date of this section.

§16B-17-14. Penalty.

Any person who shall willfully resist, prevent, impede or interfere with the commission, its members, agents or agencies in the performance of duties pursuant to this article, or shall willfully violate a final order of the commission, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished by a

fine of not less than $100 nor more than $500, or by imprisonment not exceeding 30 days, or by both such fine and imprisonment, in the discretion of the court, but seeking judicial review of an order shall not be deemed to be such willful conduct.

§16B-17-15. Construction; severability.

The provisions of this article shall be liberally construed to accomplish its objectives and purposes. If any provision of this article be held invalid or unconstitutional by any court of competent jurisdiction, such invalidity or unconstitutionality shall not affect or invalidate the other provisions hereof, all of which are declared and shall be construed to be separate and severable.

§16B-17-16. Certain records exempt.

Notwithstanding any other provisions of this article, it shall not be an unlawful discriminatory practice for the Bureau of Employment Programs to ascertain and record the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual for the purpose of making such reports as may from time to time be required by agencies of the federal government or be necessary to show compliance with any rule or regulation issued by any such agency. Said records may be made and kept in the manner required by the federal government: *Provided,* That such recording of the age, sex, race, religion, color, national origin, ancestry, blindness or disability of any individual shall not be used to discriminate, within the meaning of this article, directly or indirectly, against any such individual as prohibited by all other sections of this article.

§16B-17-17. Posting of law and information.

Every employer, labor organization, employment agency and person operating a place of public accommodations, as defined herein, subject to this article, shall keep posted in a conspicuous place or places on his or her premises a notice or notices to be prepared or approved by the commission, which shall set forth excerpts of this article and such other relevant information which the commission shall deem necessary.

§16B-17-18. Injunctions in certain housing complaints.

When it appears that a housing unit or units described in a complaint may be sold, rented or otherwise disposed of before a determination of the complaint or case has been made by the commission or during judicial review of any final order of the commission, the circuit court of the county in which such housing unit or units are located may, upon the joint petition of the commission and the complainant, or if there be more than one complainant, all such complainants, issue a prohibitive injunction restraining the sale, rental or other disposition of such housing unit or units except in compliance with the order of the court. No such injunction shall be issued by the court until the complainant or complainants shall have posted bond, with good security therefor, in such penalty as the court or judge awarding it may direct. The court may include in any such injunction granted such other conditions as it deems proper and just. Such injunction, if granted, shall be of no more than 30 days duration. If at the end of such 30-day period the commission notifies the court that additional time is needed for the disposal or determination of the complaint or case or the conclusion of such judicial review, the court, for good cause shown, may extend the period of the injunction for such additional time as the court deems proper. No such extension shall be granted except upon the continuation or reposting of the bond required for the original injunction and any such extension of the injunction may be granted upon such additional terms and conditions as to the court seem proper and just.

§16B-17-19. Private club exemption.

Nothing in this article shall prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the rental or occupancy of such lodgings to its members or guests of members or from giving preference to its members or guests of members: *Provided,* That this exemption shall not apply to any private club not in fact open to the public which owns or operates residential subdivisions providing lodgings for rental, occupancy or sale, or which provides

real estate for sale for the construction of single or multiunit dwellings.

§16B-17-20. Violations of human rights; civil action by attorney general.

(a) A person has the right to engage in lawful activities without being subject to actual or threatened:

(1) Physical force or violence against him or her or any other person, or

(2) Damage to, destruction of or trespass on property, any of which is motivated by race, color, religion, sex, ancestry, national origin, political affiliation or disability.

(b) Whenever any person, whether or not acting under the color of law, intentionally interferes or attempts to interfere with another person's exercise or enjoyment of rights secured by this article or §16B-18-1 *et seq.* of this code, by actual or threatened physical force or violence against that person or any other person, or by actual or threatened damage to, destruction of or trespass on property, the Attorney General may bring a civil action:

(1) For injunctive or other appropriate equitable relief in order to protect the peaceable exercise or enjoyment of the rights secured, or

(2) For civil penalties as specified in subsection (c) of this section, or

(3) For both equitable relief and civil penalties.

This action must be brought in the name of the state and instituted in the circuit court for the county where the alleged violator resides or has a principal place of business or where the alleged violation occurred.

(c) A civil penalty of not more than $5,000 per violation may be assessed against any person violating this section.

(d) Each preliminary, temporary, or permanent injunction issued under this section must include a statement describing the penalties to be imposed for a knowing violation of the order or injunction as provided in subsection (e) of this section. The clerk of the circuit court shall transmit one certified copy of each order or injunction issued under this section to the appropriate law-enforcement agency or agencies having authority over locations where the defendant was alleged to have committed the act giving rise to the action, and service of the order or injunction must be accomplished pursuant to the West Virginia rules of civil procedure.

(e) A person who knowingly violates a preliminary, temporary or permanent injunction issued under this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $5,000, or imprisoned in the county or regional jail not more than one year, or both fined and imprisoned.

ARTICLE 18. WEST VIRGINIA FAIR HOUSING ACT.

§16B-18-1. Short title.

This article may be cited as the "West Virginia Fair Housing Act."

§16B-18-2. Declaration of policy.

It is the policy of the State of West Virginia to provide, within Constitutional limitations, for fair housing throughout the state.

§16B-18-3. Definitions.

As used in this article:

(a) "Commission" means the West Virginia Human Rights Commission;

(b) "Dwelling" means any building, structure or portion thereof which is occupied as, or designed or intended for occupancy as, a residence or sleeping place by one or more persons or families and any vacant land which is offered for sale or lease for the

construction or location thereon of any such building, structure or portion thereof;

(c) "Family" includes a single individual;

(d) "Person" includes one or more individuals, corporations, partnerships, associations, labor organizations, legal representatives, mutual companies, joint-stock companies, trusts, unincorporated organizations, trustees, trustees in cases under Title 11 of the United States Code, receivers and fiduciaries;

(e) "To rent" includes to lease, to sublease, to let and otherwise to grant for a consideration the right to occupy premises not owned by the occupant;

(f) "Discriminatory housing practice" means an act that is unlawful under §16B-18-5, §16B-18-6, §16B-18-7, or §16B-18-19 of this article;

(g) "Disability" means, with respect to a person:

(1) A physical or mental impairment which substantially limits one or more of the person's major life activities;

(2) A record of having such an impairment; or

(3) Being regarded as having such an impairment, but the term does not include current, illegal use of or addiction to a controlled substance, as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802;

(h) "Aggrieved person" includes any person who:

(1) Claims to have been injured by a discriminatory housing practice; or

(2) Believes that the person will be injured by a discriminatory housing practice that is about to occur;

(i) "Complainant" means the person, including the commission, who files a complaint under §16B-18-11;

(j) "Familial status" means:

(1) One or more individuals who have not attained the age of 18 years being domiciled with:

(A) A parent or another person having legal custody of the individual or individuals; or

(B) The designee of the parent or other person having custody of the individual with the written permission of the parent or other person; or

(2) Any person who is pregnant or is in the process of securing legal custody of any individual who has not attained the age of 18 years;

(k) "Conciliation" means the attempted resolution of issues raised by a complaint or by the investigation of the complaint through informal negotiations involving the aggrieved person, the respondent and the commission;

(l) "Conciliation agreement" means a written agreement setting forth the resolution of the issues in conciliation;

(m) "Respondent" means:

(1) The person or other entity accused in a complaint of an unfair housing practice; and

(2) Any other person or entity identified in the course of investigation and notified as required with respect to respondents identified under §16B-18-11(a);

(n) The term "rooming house" means a house or building where there are one or more bedrooms which the proprietor can spare for the purpose of giving lodgings to persons he or she chooses to receive; and

(o) The term "basic universal design" means the design of products and environments to be useable by all people, to the greatest extent possible, without the need for adaptation or specialization.

(p) "Assistance animal" means any service, therapy or support animal, weighing less than 150 pounds, with or without specific training or certification, that works, provides assistance, or performs tasks for the benefit of a person with a disability, or provides emotional support that alleviate one or more identified symptoms or effects of a person's disability.

§16B-18-3a. Volunteer services or materials to build or install basic universal design features; workers, contractors, engineers, and architects; immunity from civil liability.

Any person, including a worker, contractor, engineer or architect, who in good faith provides services or materials, without remuneration, to build or install basic universal design features as set forth in §30-42-10 of this code may not be liable for any civil damages as the result of any act or omission in providing such services or materials: *Provided*, That the basic universal design feature or features shall be built or constructed in accordance with applicable state and federal laws and applicable building codes.

§16B-18-4. Application of article.

(a) The prohibitions against discrimination in the sale or rental of housing set forth in §16B-18-5 of this code shall apply to all dwellings except as hereinafter exempted. Nothing in section five of this article, other than subsection (b) of this section, shall apply to the rental of a room or rooms in a rooming house occupied by the owner as a place of residence and containing no more than four rented rooms or rooms to be rented. Solely for the purposes of familial status, nothing in section five shall apply to:

(1) Any single-family house sold or rented by an owner: *Provided,* That such private individual owner does not own more than three such single-family houses at any one time: *Provided, however,* That in the case of the sale of any such single-family house by a private individual owner not residing in such house at the time of such sale or who was not the most recent resident of such house prior to such sale, the exemption granted by this subsection shall apply only with respect to one such sale within any 24 month period: *Provided further,* That such bona fide private

individual owner does not own any interest in, nor is there owned or reserved on his or her behalf under any express or voluntary agreement, title to or any right to all or a portion of the proceeds from the sale or rental of more than three such single-family houses at any one time: *And provided further,* That the sale or rental of any such single-family house shall be excepted from the application of this article only if such house is sold or rented:

(A) Without the use in any manner of the sales or rental facilities or the sales or rental services of any real estate broker, agent or salesman, or of such facilities or services of any person in the business of selling or renting dwellings, or of any employee or agent of any such broker, agent, salesman or person; and

(B) Without the publication, posting or mailing, after notice, of any advertisement or written notice in violation of subsection (c), §16B-18-5 of this code; but nothing in this proviso shall prohibit the use of attorneys, escrow agents, abstractors, title companies and other such professional assistance as necessary to perfect or transfer the title; or

(2) Rooms or units in dwellings containing living quarters occupied or intended to be occupied by no more than four families living independently of each other, if the owner actually maintains and occupies one of such living quarters as his residence.

(b) For the purposes of subsection (a) of this section, a person shall be deemed to be in the business of selling or renting dwellings if:

(1) The person has within the preceding 12 months participated as principal in three or more transactions involving the sale or rental of any dwelling or any interest therein;

(2) The person has within the preceding 12 months participated as agent, other than in the sale of his or her own personal residence, in providing sales or rental facilities or sales or rental services in two or more transactions involving the sale or rental of any dwelling or any interest therein; or

(3) The person is the owner of any dwelling designed or intended for occupancy by or occupied by five or more families.

§16B-18-5. Discrimination in sale or rental of housing and other prohibited practices.

As made applicable by section four of this article and except as exempted by §16B-18-4 and §16B-18-8 of this code, it is unlawful:

(a) To refuse to sell or rent after the making of a bona fide offer, or to refuse to negotiate for the sale or rental of, or otherwise make unavailable or deny, a dwelling to any person because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(b) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection therewith, because of race, color, religion, ancestry, sex, familial status, blindness, disability or national origin;

(c) To make, print or publish, or cause to be made, printed or published any notice, statement or advertisement, with respect to the sale or rental of a dwelling that indicates any preference, limitation or discrimination based on race, color, religion, sex, blindness, disability, familial status, ancestry or national origin, or an intention to make any such preference, limitation or discrimination;

(d) To represent to any person because of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin that any dwelling is not available for inspection, sale or rental when the dwelling is in fact available;

(e) For profit, to induce or attempt to induce any person to sell or rent any dwelling by representations regarding the entry or prospective entry into the neighborhood of a person or persons of a particular race, color, religion, sex, blindness, disability, familial status, ancestry or national origin; or

(f) (1) To discriminate in the sale or rental, or to otherwise make unavailable or deny, a dwelling to any buyer or renter because of a disability of: (A) That buyer or renter; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that buyer or renter.

(2) To discriminate against any person in the terms, conditions or privileges of sale or rental of a dwelling, or in the provision of services or facilities in connection with the dwelling, because of a disability of: (A) That person; (B) a person residing in or intending to reside in that dwelling after it is so sold, rented or made available; or (C) any person associated with that person.

(3) For purposes of this subdivision, discrimination includes:

(A) A refusal to permit, at the expense of the disabled person, reasonable modifications of existing premises occupied or to be occupied by the person if the modifications may be necessary to afford the person full enjoyment of the premises, except that, in the case of a rental, the landlord may where it is reasonable to do so condition permission for a modification on the renter agreeing to restore the interior of the premises to the condition that existed before the modification, reasonable wear and tear excepted;

(B) A refusal to make reasonable accommodations in rules, policies, practices or services when the accommodations may be necessary to afford the person equal opportunity to use and enjoy a dwelling; or

(C) In connection with the design and construction of covered multifamily dwellings for first occupancy after the date that is thirty months after the date of enactment of the West Virginia Fair Housing Act, a failure to design and construct those dwellings in a manner that:

(i) The public use and common use portions of the dwellings are readily accessible to and usable by disabled persons;

(ii) All the doors designed to allow passage into and within all premises within the dwellings are sufficiently wide to allow passage by disabled persons in wheelchairs; and

(iii) All premises within the dwellings contain the following features of adaptive design: (I) An accessible route into and through the dwelling; (II) light switches, electrical outlets, thermostats and other environmental controls in accessible locations; (III) reinforcements in bathroom walls to allow later installation of grab bars; and (IV) usable kitchens and bathrooms that an individual in a wheelchair can maneuver about the space.

(4) Compliance with the appropriate requirements of the *American National Standard for Buildings and Facilities Providing Accessibility and Usability for Physically Handicapped People*, commonly cited as ANSI A117.1, suffices to satisfy the requirements of subparagraph (3)(C)(iii) of this subdivision.

(5) (A) If a unit of general local government has incorporated into its laws the requirements set forth in subparagraph (3)(C) of this subdivision, compliance with those laws satisfy the requirements of that subparagraph.

(B) The commission or unit of general local government may review and approve newly constructed covered multifamily dwellings for the purpose of making determinations as to whether the design and construction requirements of subparagraph (3)(C) of this subdivision are met.

(C) The commission shall encourage, but may not require, units of local government to include in their existing procedures for the review and approval of newly constructed covered multifamily dwellings, determinations as to whether the design and construction of such dwellings are consistent with subparagraph (3)(C) of this subdivision, and may provide technical assistance to units of local government and other persons to implement the requirements of that subparagraph.

(D) Nothing in this article requires the commission to review or approve the plans, designs or construction of all covered

multifamily dwellings to determine whether the design and construction of the dwellings are consistent with the requirements of subparagraph (3)(C) of this subdivision.

(6) (A) Nothing in paragraph (5) of this subdivision affects the authority and responsibility of the commission or a local public agency to receive and process complaints or otherwise engage in enforcement activities under this article.

(B) Determinations by a unit of general local government under subparagraphs (5)(A) and (B) of this subdivision are not conclusive in enforcement proceedings under this article.

(7) As used in this section, the term "covered multifamily dwellings" means: (A) Buildings consisting of four or more units if the buildings have one or more elevators; and (B) ground floor units in other buildings consisting of four or more units.

(8) Nothing in this article invalidates or limits any law of this state or any political subdivision of this state that requires dwellings to be designed and constructed in a manner that affords disabled persons greater access than is required by this article.

(9) This section does not require that a dwelling be made available to an individual whose tenancy would constitute a direct threat to the health or safety of other individuals or whose tenancy would result in substantial physical damage to the property of others. The burden of proving such threat to health or safety or the likelihood of such damage is upon the respondent.

(10) For the purposes of this subdivision, rules, policies, practices, or services regarding animals are subject to the reasonable accommodation requirements of subparagaph (B), paragraph (3) of this subdivision and the following provisions:

(A) In connection with a request for reasonable accommodation to the rules, policies or services, a person with a disability may be required to submit documentation, from a professional treatment provider, of the disability related need for the assistance animal.

(i) Such documentation is sufficient if it establishes that the assistance animal will provide some type of disability-related assistance or emotional support.

(ii) A person with a disability may not be required to submit or provide access to medical records or medical providers, or to provide detailed or extensive information or documentation of a person's physical or mental impairments.

(B) A person with a disability may be denied the accommodation of an assistance animal if there is credible evidence that:

(i) The assistance animal poses a direct threat to the health or safety of others that cannot be eliminated by another reasonable accommodation; or

(ii) The assistance animal would cause substantial physical damage to the property of other that cannot be reduced or eliminated by another reasonable accommodation.

(C) A determination that an assistance animal poses a direct threat of harm to others or would cause substantial physical damage to the property of others must be based on an individualized assessment that relies on objective evidence about the specific animal's actual conduct.

(D) A request for a reasonable accommodation may not be unreasonably denied, conditioned on payment of a fee or deposit or other terms and conditions applied to applicants or residents with pets, and a response may not be unreasonably delayed.

§16B-18-6. Discrimination in residential real estate-related transactions.

(a) It is unlawful for any person or other entity whose business includes engaging in residential real estate-related transactions to discriminate against any person in making available such a transaction or in the terms or conditions of such a transaction because of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin.

(b) As used in this section, the term "residential real estate-related transaction" means any of the following:

(1) The making or purchasing of loans or providing other financial assistance: (A) For purchasing, constructing, improving, repairing or maintaining a dwelling; or (B) secured by residential real estate; or

(2) The selling, brokering or appraising of residential real property.

(c) Nothing in this article prohibits a person engaged in the business of furnishing appraisals of real property to take into consideration factors other than race, color, religion, national origin, ancestry, sex, blindness, disability, or familial status.

§16B-18-7. Discrimination in provision of brokerage services.

It is unlawful to deny any person access to or membership or participation in any multiple listing service, real estate broker's organization or other service, organization or facility relating to the business of selling or renting dwellings, or to discriminate against him or her in the terms or conditions of such access, membership, or participation on account of race, color, religion, sex, blindness, disability, familial status, ancestry or national origin.

§16B-18-8. Religious organization or private club exemption.

(a) Nothing in this article shall prohibit a religious organization, association or society, or any nonprofit institution or organization operated, supervised or controlled by or in conjunction with a religious organization, association or society, from limiting the sale, rental or occupancy of dwellings which it owns or operates for other than a commercial purpose to persons of the same religion, or from giving preference to such persons, unless membership in such religion is restricted on account of race, color or national origin. Nor shall anything in this article prohibit a private club not in fact open to the public, which as an incident to its primary purpose or purposes provides lodgings which it owns or operates for other than a commercial purpose, from limiting the

rental or occupancy of such lodgings to its members or from giving preference to its members.

(b) (1) Nothing in this article limits the applicability of any reasonable local, state or federal restrictions regarding the maximum number of occupants permitted to occupy a dwelling. Nor does any provision in this article regarding familial status apply with respect to housing for older persons.

(2) As used in this section, "housing for older persons" means housing:

(A) Provided under any state or federal program that the secretary of the United States Department of Housing and Urban Development determines is specifically designed and operated to assist elderly persons, as defined in the state or federal program; or

(B) Intended for, and solely occupied by, persons 62 years of age or older; or

(C) Intended and operated for occupancy by at least one person 55 years of age or older per unit. In determining whether housing qualifies as housing for older persons under this subsection, the commission shall develop regulations which require at least the following factors: (i) The existence of significant facilities and services specifically designed to meet the physical or social needs of older persons, or if the provision of such facilities and services is not practicable, that such housing is necessary to provide important housing opportunities for older persons; (ii) that at least 80 percent of the units are occupied by at least one person 55 years of age or older per unit; and (iii) the publication of, and adherence to, policies and procedures which demonstrate an intent by the owner or manager to provide housing for persons 55 years of age or older.

(3) Housing shall not fail to meet the requirements for housing for older persons by reason of: (A) Persons residing in such housing as of the date of enactment of this article who do not meet the age requirements of subdivision (2)(B) or (C) of this subsection: *Provided,* That new occupants of such housing meet

the age requirements of such subdivisions; or (B) unoccupied units: *Provided, however,* That such units are reserved for occupancy by persons who meet the age requirements of subdivision (2)(B) or (C) of this subsection.

(4) Nothing in this article prohibits conduct against a person because such person has been convicted by any court of competent jurisdiction of the illegal manufacture or distribution of a controlled substance as defined in Section 102 of the Controlled Substances Act, Title 21, United States Code, Section 802.

§16B-18-9. Administration; authority and responsibility; delegation of authority; appointment of administrative law judges; location of conciliation meetings; administrative review; cooperation of the commission and executive departments and agencies to further fair housing purposes; functions of the commission.

The authority and responsibility for administering this article shall be in the West Virginia Human Rights Commission.

The commission may delegate any of its functions, duties and powers to employees of the Human Rights Commission, including functions, duties and powers with respect to investigating, conciliating, hearing, determining, ordering, certifying, reporting or otherwise acting as to any work, business or matter under this article. The person to whom such delegations are made with respect to hearing functions, duties and powers shall be a licensed attorney. Insofar as possible, conciliation meetings shall be held in the county where the discriminatory housing practices allegedly occurred. The commission shall by rule prescribe such rights of appeal from the decisions of its administrative law judges to other administrative law judges or to other officers in the commission, to boards of officers or to itself, as shall be appropriate and in accordance with law.

All executive departments and agencies shall administer their programs and activities relating to housing, including any agency having regulatory or supervisory authority over financial institutions, in a manner affirmatively to further the purposes of

this article and shall cooperate with the commission to further such purposes.

The commission may:

(1) Make studies with respect to the nature and extent of discriminatory housing practices in representative communities, urban, suburban and rural, throughout the state;

(2) Publish and disseminate reports, recommendations and information derived from such studies, including reports to the Legislature specifying the nature and extent of progress made statewide in eliminating discriminatory housing practices and furthering the purposes of this article, obstacles remaining to achieving equal housing opportunity and recommendations for further legislative or executive action;

(3) Cooperate with and execute such cooperative agreements with federal agencies as are necessary to carry out the provisions of this article; and

(4) Administer the programs and activities relating to fair housing in a manner affirmatively to further the policies of this article.

§16B-18-10. Education and conciliation; conferences and consultations; reports.

Immediately upon the effective date of this article, the commission shall commence such educational and conciliatory activities as in its judgment will further the purposes of this article. It may call conferences of persons in the housing industry and other interested parties to acquaint them with the provisions of this article and its suggested means of implementing it, and may endeavor with their advice to work out programs of voluntary compliance and of enforcement. It may pay per diem, travel and transportation expenses for persons attending such conferences as permitted by law. It may consult with local officials and other interested parties to learn the extent, if any, to which housing discrimination exists in their locality, and whether and how local enforcement programs might be utilized to combat such discrimination in connection with

the commission's enforcement of this article. The commission shall issue reports on such conferences and consultations as it deems appropriate.

§16B-18-11. Administrative enforcement; preliminary matters; complaints and answers; service; conciliation; injunctions; reasonable cause determinations; issuance of charge.

(a) (1) (A) An aggrieved person may, not later than one year after an alleged discriminatory housing practice has occurred or terminated, file a complaint with the commission alleging a discriminatory housing practice. The commission, on the commission's own initiative, may also file such a complaint. Such complaint shall be in writing and shall contain such information and be in such form as the commission requires. The commission may also investigate housing practices to determine whether a complaint should be brought under this section.

(B) Upon the filing of such complaint: (i) The commission shall serve notice upon the aggrieved person acknowledging such filing and advising the aggrieved person of the time limits and choice of forums provided under this article; (ii) the commission shall, not later than 10 days after such filing or the identification of an additional respondent under paragraph (2) of this subsection, serve on the respondent a notice identifying the alleged discriminatory housing practice and advising such respondent of the procedural rights and obligations of respondents under this article, together with a copy of the original complaint; (iii) each respondent may file, not later than ten days after receipt of notice from the commission, an answer to such complaint; and (iv) unless it is impracticable to do so, the commission shall make an investigation of the alleged discriminatory housing practice and complete such investigation within 100 days after the filing of the complaint.

(C) If the commission is unable to complete the investigation within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(D) Complaints and answers shall be under oath or affirmation and may be reasonably and fairly amended at any time.

(2) (A) A person who is not named as a respondent in a complaint, but who is identified as a respondent in the course of investigation, may be joined as an additional or substitute respondent upon written notice, under paragraph (1) of this subsection, to such person, from the commission.

(B) Such notice, in addition to meeting the requirements of paragraph (1) of this subsection, shall explain the basis for the commission's belief that the person to whom the notice is addressed is properly joined as a respondent.

(b) (1) During the period beginning with the filing of such complaint and ending with the filing of a charge or a dismissal by the commission, the commission shall, to the extent feasible, engage in conciliation with respect to such complaint.

(2) A conciliation agreement arising out of such conciliation shall be an agreement between the respondent and the complainant and shall be subject to approval by the commission.

(3) A conciliation agreement may provide for binding arbitration of the dispute arising from the complaint. Any such arbitration that results from a conciliation agreement may award appropriate relief, including monetary relief.

(4) Each conciliation agreement shall be made public unless the complainant and respondent otherwise agree and the commission determines that disclosure is not required to further the purposes of this article.

(5) (A) At the end of each investigation under this section, the commission shall prepare a final investigative report containing: (i) The names and dates of contacts with witnesses; (ii) a summary and the dates of correspondence and other contacts with the aggrieved person and the respondent; (iii) a summary description of other pertinent records; (iv) a summary of witness statements; and (v) answers to interrogatories.

(B) A final report under this paragraph may be amended if additional evidence is later discovered.

(c) Whenever the commission has reasonable cause to believe that a respondent has breached a conciliation agreement, the commission shall refer the matter to the Attorney General with a recommendation that a civil action be filed under §16B-18-15 of this code for the enforcement of such agreement.

(d) Nothing said or done in the course of conciliation under this article may be made public or used as evidence in a subsequent proceeding under this article without the written consent of the persons concerned, except the commission shall make available to the aggrieved person and the respondent, at any time, upon request following completion of the commission's investigation, information derived from an investigation and any final investigative report relating to that investigation.

(e) (1) If the commission concludes at any time following the filing of a complaint that prompt judicial action is necessary to carry out the purposes of this article, the commission may authorize a civil action for appropriate temporary or preliminary relief pending final disposition of the complaint under this section. Upon receipt of such authorization, the Attorney General shall promptly commence and maintain such an action. Any temporary injunction or other order granting preliminary or temporary relief shall be issued in accordance with the West Virginia rules of civil procedure. The commencement of a civil action under this subsection does not affect the initiation or continuation of administrative proceedings under this section and §16B-18-13 of this code.

(2) Whenever the commission has reason to believe that a basis may exist for the commencement of proceedings against any respondent under subsections (a) and (b), §16B-18-15 of this code or for proceedings by any governmental licensing or supervisory authorities, the commission shall transmit the information upon which such belief is based to the Attorney General, or to such authorities, as the case may be.

(f) (1) The commission shall within 100 days after the filing of the complaint determine, based on the facts, whether reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, unless it is impracticable to do so, or unless the commission has approved a conciliation agreement with respect to the complaint. If the commission is unable to make the determination within 100 days after the filing of the complaint, the commission shall notify the complainant and respondent in writing of the reasons for not doing so.

(2) (A) If the commission determines that reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall, except as provided in subparagraph (C), immediately issue a charge on behalf of the aggrieved person, for further proceedings under section thirteen of this article.

(B) Such charge: (i) Shall consist of a short and plain statement of the facts upon which the commission has found reasonable cause to believe that a discriminatory housing practice has occurred or is about to occur; (ii) shall be based on the final investigative report; and (iii) need not be limited to the facts or grounds alleged in the complaint filed under subsection (a) of this section.

(C) If the commission determines that the matter involves the legality of any state or local zoning or other land use law or ordinance, the commission shall immediately refer the matter to the Attorney General for appropriate action under section fifteen of this article, instead of issuing such charge.

(3) If the commission determines that no reasonable cause exists to believe that a discriminatory housing practice has occurred or is about to occur, the commission shall promptly dismiss the complaint. The commission shall make public disclosure of each such dismissal.

(4) The commission may not issue a charge under this section regarding an alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved

party under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(g) After the commission issues a charge under this section, the commission shall cause a copy thereof, together with information as to how to make an election under subsection (a), §16B-18-13 of this code and the effect of such an election, to be served: (1) On each respondent named in such charge, together with a notice of opportunity for a hearing at a time and place specified in the notice, unless that election is made; and (2) on each aggrieved person on whose behalf the complaint was filed.

§16B-18-12. Subpoenas; giving of evidence; witness fees; enforcement of subpoenas.

The commission may, in accordance with this subsection, issue subpoenas and order discovery in aid of investigations and hearings under this article. Such subpoenas and discovery may be ordered to the same extent and subject to the same limitations as would apply if the subpoenas or discovery were ordered or served in aid of a civil action in the circuit courts of this state.

Witnesses summoned by a subpoena under this article shall be entitled to the same witness and mileage fees as witnesses in proceedings in the circuit courts of this state. Fees payable to a witness summoned by a subpoena shall be paid by the commission, the complainant or the respondent in accordance with §29A-5-1 *et seq.* of this code.

Enforcement of subpoenas may be had in the circuit courts of this state as set out in §29A-5-1 *et seq.* of this code.

§16B-18-13. Election of remedies; administrative hearings and discovery; exclusivity of remedies; final orders; review by commission; judicial review; remedies; attorney fees.

(a) When a charge is filed under §16B-18-11 of this code a complainant, a respondent or an aggrieved person on whose behalf the complaint was filed, may elect to have the claims asserted in that charge decided in a civil action under subsection (o) of this section in lieu of a hearing under subsection (b) of this section. The

election must be made not later than 20 days after the receipt by the electing person of service under section eleven of this article or, in the case of the commission, not later than 20 days after such service. The person making such election shall give notice of doing so to the commission and to all other complainants and respondents to whom the charge relates.

(b) If an election is not made under subsection (a) of this section with respect to a charge filed under section eleven of this article, the commission shall provide an opportunity for a hearing on the record with respect to a charge issued under said section. The commission shall delegate the conduct of a hearing under this section to an administrative law judge who shall be a licensed attorney. The administrative law judge shall conduct the hearing at a place in the county in which the discriminatory housing practice is alleged to have occurred or is about to occur.

(c) At a hearing under this section, each party may appear in person, be represented by counsel, present evidence, cross-examine witnesses and obtain the issuance of subpoenas under §16B-18-12 of this code. Any aggrieved person may intervene as a party in the proceeding. The rules of evidence apply to the presentation of evidence in such hearing as they would in a civil action in the circuit courts of this state. The case in support of the complaint shall be presented before the administrative law judge by the Attorney General.

(d) (1) Discovery in administrative proceedings under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the need of all parties to obtain relevant evidence.

(2) A hearing under this section shall be conducted as expeditiously and inexpensively as possible, consistent with the needs and rights of the parties to obtain a fair hearing and a complete record.

(3) The commission shall, not later than 180 days after the date of enactment of this subsection, issue rules to implement this subsection.

(e) Any resolution of a charge before a final order under this section shall require the consent of the aggrieved person on whose behalf the charge is issued.

(f) An administrative law judge may not continue administrative proceedings under this section regarding any alleged discriminatory housing practice after the beginning of the trial of a civil action commenced by the aggrieved party under an act of Congress or a state law seeking relief with respect to that discriminatory housing practice.

(g) (1) The administrative law judge shall commence the hearing under this section no later than 120 days following the issuance of the charge, unless it is impracticable to do so. If the administrative law judge is unable to commence the hearing within 120 days after the issuance of the charge, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(2) The administrative law judge shall make findings of fact and conclusions of law within 60 days after the end of the hearing under this section, unless it is impracticable to do so. If the administrative law judge is unable to make findings of fact and conclusions of law within such period, or any succeeding 60-day period thereafter, the administrative law judge shall notify the commission, the aggrieved person on whose behalf the charge was filed and the respondent in writing of the reasons for not doing so.

(3) If the administrative law judge finds that a respondent has engaged or is about to engage in a discriminatory housing practice, such administrative law judge shall promptly issue an order for such relief as may be appropriate, which may include actual damages suffered by the aggrieved person and injunctive or other equitable relief. Such order may, to vindicate the public interest, assess a civil penalty against the respondent: (A) In an amount not exceeding $10,000 if the respondent has not been adjudged to have committed any prior discriminatory housing practice; (B) in an amount not exceeding $25,000 if the respondent has been adjudged to have committed one other discriminatory housing practice

during the five-year period ending on the date of the filing of this charge; and (C) in an amount not exceeding $50,000 if the respondent has been adjudged to have committed two or more discriminatory housing practices during the seven-year period ending on the date of the filing of this charge; except that if the acts constituting the discriminatory housing practice that are the object of the charge are committed by the same natural person who has been previously adjudged to have committed acts constituting a discriminatory housing practice, then the civil penalties set forth in subparagraphs (B) and (C) may be imposed without regard to the period of time within which any subsequent discriminatory housing practice occurred.

(4) No such order shall affect any contract, sale, encumbrance or lease consummated before the issuance of such order and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the charge filed under this article.

(5) In the case of an order with respect to a discriminatory housing practice that occurred in the course of a business subject to licensing or regulation by a governmental agency, the commission shall, not later than thirty days after the date of the issuance of such order or, if such order is judicially reviewed, 30 days after such order is in substance affirmed upon such review: (A) Send copies of the findings of fact, conclusions of law and the order to that governmental agency; and (B) recommend to that governmental agency appropriate disciplinary action, including, where appropriate, the suspension or revocation of the license of the respondent.

(6) In the case of an order against a respondent against whom another order was issued within the preceding five years under this section, the commission shall send a copy of each such order to the Attorney General.

(7) If the administrative law judge finds that the respondent has not engaged or is not about to engage in a discriminatory housing practice, as the case may be, such administrative law judge shall enter an order dismissing the charge. The commission shall make public disclosure of each such dismissal.

(h) (1) The commission may review any finding, conclusion or order issued under subsection (g) of this section. Such review shall be completed not later than 30 days after the finding, conclusion or order is so issued; otherwise the finding, conclusion or order becomes final.

(2) The commission shall cause the findings of fact and conclusions of law made with respect to any final order for relief under this section, together with a copy of such order, to be served on each aggrieved person and each respondent in the proceeding.

(i) (1) Any party aggrieved by a final order for relief under this section granting or denying, in whole or in part, the relief sought may obtain a review of such order under §29A-5-4 of this code.

(2) Notwithstanding §29A-1-1 *et seq.* of this code, venue of the proceeding shall be in the judicial circuit in which the discriminatory housing practice is alleged to have occurred and filing of the petition for review shall be not later than 30 days after the order is entered.

(j) (1) The commission may petition the circuit court in the circuit in which the discriminatory housing practice is alleged to have occurred or in which any respondent resides or transacts business for the enforcement of the order of the administrative law judge and for appropriate temporary relief or injunctive relief by filing in such court a written petition praying that such order be enforced and for appropriate temporary relief or injunctive relief.

(2) The commission shall file in court with the petition the record in the proceeding. A copy of such petition shall be forthwith transmitted by the clerk of the court to the parties to the proceeding before the administrative law judge.

(k) (1) Upon the filing of a petition under subsection (i) or (j) of this section, the court may:

(A) Grant to the petitioner, or any other party, such temporary relief, injunction or other order as the court deems just and proper;

(B) Affirm the order or decision of the administrative law judge or remand the case for further proceedings. It shall reverse, vacate or modify the order or decision of the administrative law judge if the substantial rights of the parties have been prejudiced because the administrative findings, inferences, conclusions, decision or order are: (i) In violation of Constitutional or statutory provisions; or (ii) in excess of the statutory authority or jurisdiction of the commission; or (iii) made upon unlawful procedures; or (iv) affected by other error of law; or (v) clearly wrong in view of the reliable, probative and substantial evidence on the whole record; or (vi) arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion; and

(C) Enforce such order to the extent that such order is affirmed or modified.

(2) Any party to the proceeding before the administrative law judge may intervene in the circuit court.

(3) No objection not made before the administrative law judge shall be considered by the court, unless the failure or neglect to urge such objection is excused because of extraordinary circumstances.

(4) The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

(l) If no petition for review is filed under subsection (i) of this section before the expiration of 45 days after the date the administrative law judge's order is entered, the administrative law judge's findings of fact and order shall be conclusive in connection with any petition for enforcement: (1) Which is filed by the commission under subsection (j) of this section after the end of such day; or (2) under subsection (m) of this section.

(m) If before the expiration of 60 days after the date the administrative law judge's order is entered, no petition for review has been filed under subsection (i) of this section, and the

commission has not sought enforcement of the order under subsection (j) of this section, any person entitled to relief under the order may petition for a decree enforcing the order in the circuit court for the circuit in which the discriminatory housing practice is alleged to have occurred.

(n) The judge of the circuit court in which a petition for enforcement is filed under subsection (l) or (m) of this section shall forthwith enter a decree enforcing the order and shall transmit a copy of such decree to the commission, the respondent named in the petition and to any other parties to the proceeding before the administrative law judge. The judgment of the circuit court shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals pursuant to §29A-6-1 of this code.

(o) (1) If an election is made under subsection (a) of this section, the commission shall authorize, and not later than 30 days after the election is made the Attorney General shall commence and maintain, a civil action on behalf of the aggrieved person in the appropriate circuit court seeking relief under this subsection. Venue for such civil action shall be in the circuit court in the county in which the alleged discriminatory housing practice occurred.

(2) Any aggrieved person with respect to the issues to be determined in a civil action under this subsection may intervene as of right in that civil action.

(3) In a civil action under this subsection, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may grant as relief any relief which a court could grant with respect to such discriminatory housing practice in a civil action under §16B-18-12 of this code. Any relief so granted that would accrue to an aggrieved person in a civil action commenced by that aggrieved person under said section shall also accrue to that aggrieved person in a civil action under this subsection. If monetary relief is sought for the benefit of an aggrieved person who does not intervene in the civil action, the court shall not award such relief if that aggrieved person has not complied with discovery orders entered by the court.

(p) In any administrative proceeding brought under this section, or any court proceeding arising therefrom, or any civil action under section fourteen of this article, the administrative law judge or the court, as the case may be, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

§16B-18-14. Enforcement by private persons; civil actions; appointed attorneys; remedies; bona fide purchasers; intervention by Attorney General.

(a) (1) (A) An aggrieved person may commence a civil action in an appropriate circuit court not later than two years after the occurrence or the termination of an alleged discriminatory housing practice, or the breach of a conciliation agreement entered into under this article, whichever occurs last, to obtain appropriate relief with respect to such discriminatory housing practice or breach.

(B) The computation of such two-year period shall not include any time during which an administrative proceeding under this article was pending with respect to a complaint or charge under this article based upon such discriminatory housing practice. This subparagraph does not apply to actions arising from a breach of a conciliation agreement.

(2) An aggrieved person may commence a civil action under this subsection whether or not a complaint has been filed under subsection (a), §16B-18-11 of this code and without regard to the status of any such complaint, but if the commission has obtained a conciliation agreement with the consent of an aggrieved person, no action may be filed under this subsection by such aggrieved person with respect to the alleged discriminatory housing practice which forms the basis for such complaint except for the purpose of enforcing the terms of such an agreement.

(3) An aggrieved person may not commence a civil action under this subsection with respect to an alleged discriminatory housing practice which forms the basis of a charge issued by the commission if an administrative law judge has commenced a hearing on the record under this article with respect to such charge.

(b) Upon application by a person alleging a discriminatory housing practice, the court may: (1) Appoint an attorney for such person; or (2) authorize the commencement or continuation of a civil action under subsection (a) of this section without the payment of fees, costs or security, if in the opinion of the court such person is financially unable to bear the costs of such action.

(c) (1) In a civil action under subsection (a) of this section, if the court finds that a discriminatory housing practice has occurred or is about to occur, the court may award to the complainant actual and punitive damages, and subject to subsection (d) of this section, may grant as relief, as the court deems appropriate, any permanent or temporary injunction or other order, including an order enjoining the respondent from engaging in such practice or ordering such affirmative action as may be appropriate.

(2) In a civil action under subsection (a) of this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

(d) Relief granted under this section shall not affect any contract, sale, encumbrance or lease consummated before the granting of such relief and involving a bona fide purchaser, encumbrancer or tenant without actual notice of the filing of a complaint with the commission or civil action under this section.

(e) Upon timely application, the Attorney General may intervene in such civil action, if the Attorney General certifies that the case is of general public importance. Upon such intervention the Attorney General may obtain such relief as would be available to the Attorney General under subsection (d), §16B-18-15 of this code in a civil action to which such section applies.

16B-18-15. Enforcement by Attorney General; pattern or practice cases; subpoena enforcement; remedies; intervention.

(a) Whenever the Attorney General has reasonable cause to believe that any person or group of persons is engaged in a pattern or practice of resistance to the full enjoyment of any of the rights granted by this article, or that any group of persons has been denied

any of the rights granted by this article and such denial raises an issue of general public importance, the Attorney General may commence a civil action in any appropriate circuit court.

(b) (1) The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief with respect to a discriminatory housing practice referred to the Attorney General by the commission under subsection (f), §16B-18-11 of this code. A civil action under this paragraph may be commenced not later than the expiration of 18 months after the date of the occurrence or the termination of the alleged discriminatory housing practice.

(2) The Attorney General may commence a civil action in any appropriate circuit court for appropriate relief with respect to breach of a conciliation agreement referred to the Attorney General by the commission under subsection (c), §16B-18-12 of this code. A civil action may be commenced under this paragraph not later than the expiration of 90 days after the referral of the alleged breach under subsection (c), section eleven of this article.

(c) The Attorney General, on behalf of the commission or other party at whose request a subpoena is issued under this article, may enforce such subpoena in appropriate proceedings in the circuit court for the circuit in which the person to whom the subpoena was addressed resides, was served or transacts business.

(d) (1) In a civil action under subsection (a) or (b) of this section, the court:

(A) May award such preventive relief, including a permanent or temporary injunction or other order against the person responsible for a violation of this article as is necessary to assure the full enjoyment of the rights granted by this article;

(B) May award such other relief as the court deems appropriate, including monetary damages to persons aggrieved; and

(C) May, to vindicate the public interest, assess a civil penalty against the respondent: (i) In an amount not exceeding $50,000 for a first violation; and (ii) in an amount not exceeding $100,000 for any subsequent violation.

(2) In a civil action under this section, the court, in its discretion, may allow a prevailing complainant a reasonable attorney's fee and costs.

(e) Upon timely application, any person may intervene in a civil action commenced by the Attorney General under subsection (a) or (b) of this section which involves an alleged discriminatory housing practice with respect to which such person is an aggrieved person or a conciliation agreement to which such person is a party. The court may grant such appropriate relief to any such intervening party as is authorized to be granted to a complainant in a civil action under section fourteen of this article.

§16B-18-16. Interference, coercion, or intimidation; enforcement by civil action.

It shall be unlawful to coerce, intimidate, threaten or interfere with any person in the exercise or enjoyment of, or on account of his or her having exercised or enjoyed, or on account of his or her having aided or encouraged any other person in the exercise or enjoyment of, any right granted or protected by section §16B-18-4 of this code, §16B-18-5 of this code, §16B-18-6, of this code or §16B-18-7 of this code of this article.

§16B-18-17. Cooperation with local agencies administering fairhousing laws; utilization of services and personnel; reimbursement; written agreements; publication instate register.

The commission may cooperate with local agencies charged with the administration of local fair housing laws and, with the consent of such agencies, utilize the services of such agencies and their employees and, to the extent permitted by law, may reimburse such agencies and their employees for services rendered to assist it in carrying out this article. In furtherance of such cooperative efforts, the commission may enter into written agreements with such local agencies. All agreements and terminations thereof shall be published in the state register.

§16B-18-18. Effect on other laws.

Nothing in this article shall be construed to invalidate or limit any law of this state or of any political subdivision of this state, that grants, guarantees or protects the same rights as are granted by this article; but any law of this state or any political subdivision hereof that purports to require or permit any action that would be a discriminatory housing practice under this article shall to that extent be invalid.

§16B-18-19. Severability of provisions.

If any provision of this article or the application thereof to any person or circumstances is held invalid, the remainder of the article and the application of the provision to other persons not similarly situated or to other circumstances shall not be affected thereby.

§16B-18-20. Rules to implement article.

In consultation with other appropriate agencies, the commission shall, not later than the one hundred eightieth day after the date of the enactment of this article, issue rules to implement it. Such rules may include provision for the collection, maintenance, and analysis of appropriate data to carry out this article. The commission shall comply with §29A-3-1 *et seq.* of this code when promulgating rules.

ARTICLE 19. PREGNANCY WORKERS' FAIRNESS ACT.

§16B-19-1. Short title.

This article may be cited as the Pregnant Workers' Fairness Act.

§16B-19-2. Nondiscrimination with regard to reasonable accommodations related to pregnancy.

It shall be an unlawful employment practice for a covered entity to:

(1) Not make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical

conditions of a job applicant or employee, following delivery by the applicant or employee of written documentation from the applicant's or employee's health care provider that specifies the applicant's or employee's limitations and suggesting what accommodations would address those limitations, unless such covered entity can demonstrate that the accommodation would impose an undue hardship on the operation of the business of such covered entity;

(2) Deny employment opportunities to a job applicant or employee, if such denial is based on the refusal of the covered entity to make reasonable accommodations to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee or applicant;

(3) Require a job applicant or employee affected by pregnancy, childbirth, or related medical conditions to accept an accommodation that such applicant or employee chooses not to accept; or

(4) Require an employee to take leave under any leave law or policy of the covered entity if another reasonable accommodation can be provided to the known limitations related to the pregnancy, childbirth, or related medical conditions of an employee.

§16B-19-3. Remedies and enforcement.

(a) The powers, procedures, and remedies provided in §16B-19-11 of this code to the Commission, the Attorney General, or any person, alleging a violation of the West Virginia Human Rights Act shall be the powers, procedures, and remedies this article provides to the Commission, the Attorney General, or any person, respectively, alleging an unlawful employment practice in violation of this article against an employee or job applicant.

(b) No person shall discriminate against any individual because such individual has opposed any act or practice made unlawful by this article or because such individual made a charge, testified, assisted, or participated in any manner in an investigation, proceeding, or hearing under this article. The remedies and

procedures otherwise provided for under this section shall be available to aggrieved individuals with respect to violations of this subsection.

§16B-19-4. Rule-making.

Not later than two years after the date of enactment of this article, the Commission shall propose legislative rules in accordance with §29A-3-1 of this code, to carry out this article. Such rules shall identify some reasonable accommodations addressing known limitations related to pregnancy, childbirth, or related medical conditions that shall be provided to a job applicant or employee affected by such known limitations unless the covered entity can demonstrate that doing so would impose an undue hardship.

§16B-19-5. Definitions.

As used in this article:

(1) "Attorney General" means the West Virginia Attorney General;

(2) "Commission" means the West Virginia Human Rights Commission;

(3) "Covered entity" has the meaning given the word employer in §16B-17-3 of this code;

(4) "Person" has the meaning given the word in section three, article eleven of this chapter; and

(5) "Reasonable accommodation" and "undue hardship" have the meanings given those terms in section 101 of the Americans with Disabilities Act of 1990 (42 U.S.C. 12111) and shall be construed as such terms have been construed under such Act and as set forth in the rules required by this article.

§16B-19-6. Reports.

The Commission shall on October 1 of each year report to the Joint Committee on Government and Finance on the number of

complaints filed under this article during the previous year and their resolution. The report shall be transmitted to the members of the committee electronically. Further, the report shall be provided to the legislative librarian to be posted to the legislative website. No hard copy of the report shall be issued; however, a member shall be provided a hard copy upon request.

§16B-19-7. Relationship to other laws.

Nothing in this article shall be construed to invalidate or limit the remedies, rights, and procedures that provides greater or equal protection for workers affected by pregnancy, childbirth, or related medical conditions.

ARTICLE 20. BIRTHING CENTERS.

§16B-20-1. Definitions.

For the purpose of this article:

"Birthing center" means a type of facility which is a building, house or the equivalent organized to provide facilities and staff to support a birthing service for pregnant clients.

"Director" means the director of the Office of Health Facility Licensure and Certification or his or her designee.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code, or his or her designee.

"Office of Health Facilities Licensure and Certification" means the West Virginia Office of Health Facility Licensure and Certification within the Office of the Inspector General.

§16B-20-2. Birthing centers to obtain license, application, fees, suspension, or revocation.

The Inspector General designates the director of the Office of Health Facilities Licensure and Certification to enforce the provisions of this article, except as otherwise stated.

No person, partnership, association, or corporation, or any local governmental unit or any division, department, board or agency thereof may operate a birthing center unless such operation shall have been approved and licensed by the director in accordance with the provisions of this article and the rules and regulations lawfully promulgated hereunder provided that all birthing centers which are in operation or which have received a certificate of need valid as of the date of passage of this act shall be deemed to have been so approved and shall be issued a license within 30 days of passage of this act.

Any person, partnership, association or corporation, or any local governmental unit or any division, department, board, or agency thereof desiring a license hereunder shall file with the director an application in such form as the director shall prescribe and furnish accompanied by a fee of $10. Information received by the director under the provisions of this section shall be confidential. The director is authorized to issue licenses for the operation of birthing centers which are found to comply with the provisions of this article and with all rules and regulations promulgated by the Inspector General. The license issued shall not be transferred or assignable. The director, in consultation with the Inspector General, is authorized to suspend or revoke a license issued hereunder if the provisions of this article or of the rules and regulations are violated.

Before any such license is suspended or revoked, however, written notice shall be given the licensee, stating the grounds of the complaint, and the date, time and place set for the hearing on the complaint, which date shall not be less than 30 days from the time notice is given. Such notice shall be sent by registered mail to the licensee at the address where the institution concerned is located. The licensee shall be entitled to be represented by legal counsel at the hearing.

If a license is revoked as herein provided, a new application for a license shall be considered by the director if, when and after, the conditions upon which revocation was based have been corrected and evidence of this fact has been furnished. A new license shall then be granted after proper inspection has been made and all

provisions of this article and rules and regulations promulgated hereunder have been satisfied.

All of the pertinent provisions of §29A-5-1 of this code shall apply to and govern any hearing authorized and required by the provisions of this article and the administrative procedure in connection with and following any such hearing, with like effect as if the provisions of said article five were set forth in extenso in this section.

The West Virginia Intermediate Court of Appeals shall have the power to affirm, modify or reverse the decision of the Board of Review and either the applicant or licensee or the Office of Inspector General may appeal from the court's decision to the Supreme Court of Appeals. Pending the final disposition of the matter the status quo of the applicant or licensee shall be preserved.

Any applicant or licensee who is dissatisfied with the decision of the Board of Review as a result of the hearing provided in this section may, within 30 days after receiving notice of the decision, appeal to the West Virginia Intermediate Court of Appeals for judicial review of the decision.

§16B-20-3. Inspector General to establish rules and regulations; legislative findings; emergency filing.

The Inspector General shall promulgate rules and regulations not in conflict with any provision of this article, as he or she finds necessary in order to ensure adequate care and accommodations for consumers of birthing centers. In promulgating such regulations the Inspector General shall be limited to simple, necessary provisions which shall not have the effect of hampering the development and licensure of birthing centers. Such regulations shall not address acceptable site characteristics such as the number of minutes of travel time between a birthing center and a hospital, or physical environment, such as acceptable levels of temperature of any refrigerator found in a birthing center, or clinical equipment, such as the number and kind of clocks which a birthing center must have on the premises. Such regulations shall require that all birthing centers submit satisfactory evidence that the center has

implemented the paternity program created pursuant to §16B-3-13 of this code along with any application for licensure.

The Legislature hereby finds and declares that it is in the public interest to encourage the development of birthing centers for the purpose of providing an alternative method of birth and therefore, in order to provide for the licensing of such birthing centers to prevent substantial harm to the public interest because of preexisting delay, within 60 days of passage of this article, the Inspector General shall proceed to promulgate such rules and regulations under the provisions of §29A-3-15 of this code.

§16B-20-4. Insurance.

Not later than July 1, 1983, every policy or contract of individual accident and sickness insurance covered under the provision of §33-15-1 *et seq.* of this code, or policy or contract of group accident and sickness insurance covered under the provisions of §33-16-1 *et seq.* of this code, including, but not limited to, any subscriber contract issued by a corporation organized pursuant to §33-24-1 *et seq.* of this code , shall include benefits to all subscribers and members for birthing center service charges, and for care rendered therein by a licensed nurse midwife or midwife as this occupation is defined in §30-15-1 *et seq.* of this code, and which care is within the scope of duties for such licensed nurse midwife or midwife as permitted by the provisions of §30-15-7 of this code.

§16B-20-5. Violations; penalties; injunction.

Any person, partnership, association or corporation, and any local governmental unit or any division, department, board, or agency thereof establishing, conducting, managing or operating a birthing center without first obtaining a license therefor as herein provided, or violating any provisions of this article or any rule or regulation lawfully promulgated thereunder, shall be guilty of a misdemeanor, and, upon conviction thereof, shall be punished for the first offense by a fine of not more than $100, or by imprisonment in the county jail for a period of not more than 90 days, or by both such fine and imprisonment, in the discretion of

the court. For each subsequent offense the fine may be increased to not more than $500, with imprisonment in the county jail for a period of not more than 90 days, or both such fine and imprisonment, in the discretion of the court. Each day of a continuing violation after conviction shall be considered a separate offense.

Notwithstanding the existence or pursuit of any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, corporation, or any local governmental unit, or any division, department, board or agency thereof, to restrain or prevent the establishment, conduct, management or operation of any birthing center without first obtaining a license therefor in the manner hereinbefore provided.

ARTICLE 21. NEONATAL ABSTINENCE SYNDRONE CENTER.

§16B-21-1. Neonatal Abstinence Centers authorized; licensure required.

Neonatal abstinence centers are a distinct type of medical facility, providing unique medical services in the state. Neonatal abstinence centers may provide treatment for infants under one year of age suffering from Neonatal Abstinence Syndrome, including, but not limited to, the following services:

(1) Administration of medications;

(2) Pain management;

(3) Scoring, analysis and monitoring of symptoms;

(4) Nursing care;

(5) Plan of care;

(6) Therapeutic handling;

(7) Nutrition management;

(8) Doctor visits; and

(9) Parental training.

§16B-21-2. Rules; minimum standards for neonatal abstinence centers.

(a) The Inspector General shall promulgate emergency rules pursuant to the provisions of section §29A-3-15 of this code to carry out the purpose of this article. These rules shall include at a minimum:

(1) Licensing procedures for neonatal abstinence centers. These procedures shall be in place by July 1, 2015;

(2) The minimum standards of operation for neonatal abstinence facilities including the following:

(A) Minimum numbers of administrators, medical directors, nurses, aides and other personnel according to the occupancy of the facility;

(B) Qualifications of facility's administrators, medical directors, nurses, aides and other personnel;

(C) Safety requirements;

(D) Sanitation requirements;

(E) Therapeutic services to be provided;

(F) Medical records;

(G) Pharmacy services;

(H) Nursing services;

(I) Medical services;

(J) Physical facility;

(K) Visitation privileges; and

(L) Admission, transfer and discharge policies.

(b) The provisions of the rules promulgated pursuant to this section shall apply only to those facilities regulated pursuant to §16-2D-1 *et seq.* of this code and shall not apply to a hospital-based acute care unit.

§16B-21-3. Certificate of need; exemption from moratorium.

Notwithstanding any other provision of this code, the Health Care Authority shall consider neonatal abstinence services provided in neonatal abstinence care centers as a unique and distinct medical service in conducting a certificate of need review.

CHAPTER 25. DIVISION OF CORRECTIONS.

ARTICLE 1B. WEST VIRGINIA CORRECTIONAL CENTER NURSERY ACT.

§25-1B-7. Voluntary regulation.

Notwithstanding any other provision of this code to the contrary, neither the Correctional Center Nursery Program nor the division, with respect to the program, is subject to any regulation, licensing or oversight by the Office of Health Facility Licensure and Certification unless the division and the Office of Health Facility Licensure and Certification agree to voluntary regulation, licensing or oversight.

CHAPTER 27. MENTALLY ILL PERSONS.

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-9. Mental health facility.

"Mental health facility" means any inpatient, residential or outpatient facility for the care and treatment of the mentally ill, intellectually disabled or addicted which is operated, or licensed to operate, by the Office of Health Facility Licensure and Certification and includes state hospitals as defined in §27-1-6 of this code. The term also includes veterans administration hospitals, but does not include any regional jail, juvenile or adult correctional facility, or juvenile detention facility.

ARTICLE 1A. DEPARTMENT OF HEALTH.

*§27-1A-6. Division of professional services; powers and duties of supervisor; liaison with other state agencies.

There is a Division of Professional Services established in the Department of Health Facilities. The supervisor of this division shall assist the director in the operation of the programs or services of the department and shall be a qualified psychiatrist.

The supervisor of this division has the following powers and duties:

(1) To develop professional standards, provide supervision of state hospitals, analyze hospital programs and inspect individual hospitals.

(2) To assist in recruiting professional staff.

(3) To take primary responsibility for the education and training of professional and subprofessional personnel.

(4) To carry on or stimulate research activities related to medical and psychiatric facilities of the department, and render specialized assistance to hospital superintendents.

(5) To establish liaison with appropriate state agencies and with private groups interested in mental health, including the state Bureau for Public Health, Division of Corrections, the Department of Education, the Board of Governors of West Virginia University, and the West Virginia Association for Mental Health, Incorporated.

(6) To license, supervise and inspect any hospital, center or institution, or part of any hospital, center or institution, maintained and operated by any political subdivision or by any person, persons, association or corporation to provide inpatient care and treatment for the mentally ill, or individuals with an intellectual disability, or both.

To perform any other duties assigned to the division by the Secretary of the Department of Health Facilities.

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

§27-1A-7. Division of community services; powers and duties of supervisor.

There shall be a division of community services in the Department of Human Services. This division shall administer all funds made available to the State of West Virginia and any political subdivision thereof under the National Mental Health Act, and all other funds made available for use by this division. The director shall establish standards and criteria for reimbursing sponsoring groups for a portion of the cost of local mental health services which they may provide.

The supervisor of this division shall also have the following powers and duties:

(1) To establish standards for and supervise the operation of community mental health clinics for adults and children and to develop new community facilities and community service programs for the overall improvement of the regional mental health facilities.

(2) To develop a comprehensive and practical program of mental health education of the public, especially at the local level.

(3) To work with county mental hygiene commissions and circuit courts.

(4) To determine and approve schedules of reasonable cost for reimbursement by the patient or responsible relative for mental health services rendered.

(5) To perform any other duties assigned to the division by the director of the department.

ARTICLE 9. LICENSING OF HOSPITALS.

§27-9-1. License; regulations.

No behavioral health center shall provide behavioral health services unless a license is first obtained from the Secretary of the Office of Health Facility Licensure and Certification. The director

of the Office of Health Facility Licensure and Certification shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.*, in regard to the operation of behavioral health centers. The director, or any person authorized by the director, has authority to investigate and inspect any licensed behavioral health center. The director may impose a civil money penalty, suspend, or revoke the license of any center for good cause after reasonable notice, including due process rights as provided in legislative rule.

§27-9-2. Forensic group homes.

The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code to amend the Behavioral Health Centers Licensure Rule, W.Va. C.S.R. §64-11-1 *et seq.* (hereinafter the "rule"), to implement the requirements of this section after consultation with appropriate stakeholders.

(1) The Inspector General shall amend the rule to include that the forensic group home shall not be located within one mile of a residential area, a public or private licensed day care center, or a public or private k-12 school learning pods and micro-schools.

(2) The Inspector General may grant a variance to an existing forensic group home referenced in subdivision (1) of this section only if the facility demonstrates that it has adequate patient population controls and that it otherwise meets the requirements set forth in the amended rule.

ARTICLE 17. GROUP RESIDENTIAL FACILITIES.

§27-17-1. Definitions.

(a) "Developmental disability" means a chronic disability of a person which: (1) Is attributable to a mental or physical impairment or combination of mental and physical impairments; (2) is likely to continue indefinitely; (3) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency; and (4) reflects the person's need for a

combination and sequence of special, interdisciplinary or generic care, treatment or other services which are of lifelong or extended duration and are individually planned and coordinated.

(b) "Behavioral disability" means a disability of a person which: (1) Is attributable to severe or persistent mental illness, emotional disorder or chemical dependency; and (2) results in substantial functional limitations in self-direction, capacity for independent living or economic self-sufficiency.

(c) "Group residential facility" means a facility which is owned, leased or operated by a behavioral health service provider and which: (1) Provides residential services and supervision for individuals who are developmentally disabled or behaviorally disabled; (2) is occupied as a residence by not more than eight individuals who are developmentally disabled and not more than three supervisors or is occupied as a residence by not more than 12 individuals who are behaviorally disabled and not more than three supervisors; (3) is licensed by the Office of Health Facility Licensure and Certification; and (4) complies with the state Fire Commission for residential facilities.

(d) "Group residential home" means a building owned or leased by developmentally disabled or behaviorally disabled persons for purposes of establishing a personal residence. A behavioral health service provider may not lease a building to such persons if the provider is providing services to the persons without a license as provided for in this article.

§27-17-3. License from Office of Health Facility Licensure and Certification; regulations; and penalties.

(a) No group residential facility shall be established or operated unless a license is obtained from the Office of Health Facility Licensure and Certification. The Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.,* including the operation of the group residential facility; a statement of the rights of patients in group residential facilities to ensure the adequate care and supervision of patients; and shall have the authority to investigate and inspect a facility,

and may impose a civil money penalty, suspend or revoke the license for good cause after notice, hearing, and other due process rights as provided by legislative rule.

(b) A group residential home is not required to obtain a license from the Inspector General.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.

§49-1-203. Definitions related, but not limited to, licensing and approval of programs.

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

"Approval" means a finding by the Secretary of the Department of Human Services that a facility operated by the state has met the requirements of legislative rules promulgated for operation of that facility and that a certificate of approval or a certificate of operation has been issued.

"Certification of approval" or "certificate of operation" means a statement issued by the Secretary of the Department of Human Services that a facility meets all of the necessary requirements for operation.

"Certificate of license" means a statement issued by the Secretary of the Department of Human Services authorizing an individual, corporation, partnership, voluntary association, municipality, or county, or any agency thereof, to provide specified services for a limited period of time in accordance with the terms of the certificate.

"Certificate of registration" means a statement issued by the Secretary of the Department of Human Services to a family child care home, informal family child care home, or relative family

child care home to provide specified services for a limited period in accordance with the terms of the certificate.

"License" means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

"Registration" means the grant of official permission to a family child care home, informal family child care home, or a relative family child care home determined to be in compliance with the legislative rules promulgated pursuant to this chapter.

"Rule" means legislative rules promulgated by the Secretary of the Department of Human Services or a statement issued by the Secretary of the Department of Human Services of the standards to be applied in the various areas of child care.

"Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

"Waiver" means a declaration that a certain legislative rule is inapplicable in a particular circumstance.

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

[Repealed.]

§49-9-102. Investigation of complaints.

[Repealed.]

§49-9-103. Access to foster care children.

[Repealed.]

§49-9-104. Access to records.

[Repealed.]

§49-9-105. Subpoena powers.

[Repealed.]

§49-9-106. Cooperation among government departments or agencies.

[Repealed.]

§49-9-107. Confidentiality of investigations.

[Repealed.]

§49-9-108. Limitations on liability.

[Repealed.]

§49-9-109. Willful interference; retaliation; penalties.

[Repealed.]

§49-9-110. Funding for Foster Care Ombudsman Program.

[Repealed.]

CHAPTER 209

(S. B. 378 - By Senators Takubo, Grady, Woelfel, and Hamilton)

[Passed March 7, 2024; in effect 90 days from passage (June 5, 2024)]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-9A-11, relating to prohibiting smoking of tobacco products in a motor vehicle while an individual 16 years of age or younger is present; defining terms; making the violation a secondary misdemeanor offense; and providing a penalty.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-11. Smoking prohibited in motor vehicle while a person 16 years of age or less is present; penalty.

(a) As used in this section:

(1) "Lit tobacco product" means any lighted pipe, cigarette, cigar, or other lighted device or product containing a tobacco-based product manufactured or made for the purpose of smoking.

(2) "Motor vehicle" means a Class A, Class B, Class H, or Class J vehicle as those terms are defined in §17A-10-1 of this code.

(b) No person who is 18 years of age or older may smoke or possess a lit tobacco product in a motor vehicle if an individual 16 years of age or less is in the motor vehicle.

(c) Any person who violates this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than

$25. No court costs or other fees may be assessed for a violation of this section.

(d) Enforcement of this section may only be accomplished as a secondary action when a driver of a vehicle, as defined in this section, has been detained for probable cause of violating another section of this code.

(e) Each time a driver of a vehicle is detained for probable cause of violating another provision of this code and is cited for the offense created pursuant to this section, it shall be considered a single offense regardless of the number of individuals 16 years of age or less in the motor vehicle.

CHAPTER 210

(S. B. 439 - By Senators Nelson, Oliverio, Azinger, Barrett, Clements, Grady, Hamilton, Hunt, Phillips, Plymale, Queen, Chapman, Stuart, Woelfel, Takubo, and Deeds)

[Passed March 9, 2024, in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §16-5V-2, §16-5V-5, §16-5V-6, §16-5V-8, and §16-5V-14a of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto two new sections, designated §16-5V-6c and §16-5V-6d, all relating to the Emergency Medical Services Retirement System; defining terms; updating terms to comply with federal laws; authorizing certain 911 personnel to be members of the Emergency Medical Services Retirement System under certain circumstances; requiring costs of the vote to participate be borne by participating employers in relative proportion to members employed; providing for transfer of assets pertaining to 911 personnel; requiring certain computations to be made by the Consolidated Public Retirement Board; requiring administrative costs of the Consolidated Public Retirement Board for transfer of assets pertaining to 911 personnel be borne by participating employers in relative proportion to members transferred; terminating liability of the Public Employees Retirement System in certain circumstances; authorizing use of certain funds for purchase of service credit; and providing for purchase of service credit.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-2. Definitions.

As used in this article, unless a federal law or regulation or the context clearly requires a different meaning:

(a) "Accrued benefit" means on behalf of any member two and six-tenths percent per year of the member's final average salary for the first 20 years of credited service. Additionally, two percent per year for 21 through 25 years and one and one-half percent per year for each year over 25 years will be credited with a maximum benefit of 67 percent. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(1) The board may, upon the recommendation of the board's actuary, increase the employees' contribution rate to 10 and five-tenths percent should the funding of the plan not reach 70 percent funded by July 1, 2012. The board shall decrease the contribution rate to eight and one-half percent once the plan funding reaches the 70 percent support objective as of any later actuarial valuation date.

(2) Upon reaching the 75 percent actuarial funded level, as of an actuarial valuation date, the board shall increase the two and six-tenths percent to two and three-quarter percent for the first 20 years of credited service. The maximum benefit will also be increased from 67 percent to 90 percent.

(3) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did not elect to pay back higher past contributions with interest, "accrued benefit" means, on behalf of the member, two percent per year of the member's final average salary for all credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of new credited service earned from date of membership in this plan will be credited. Additionally, two percent per year for 21 through 25 years of new credited service earned from date of membership in this plan and one and one-half percent per year for each year over 25 years earned from date of membership in this plan will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A

member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(4) For 911 personnel with assets transferred pursuant to §16-5V-6d of this code who did elect to pay back higher past contributions, with interest, for eligible 911 service credit, "accrued benefit" means on behalf of the member two percent per year of the member's final average salary for all non-911 credited service that was credited as a result of transferred assets. Additionally, two and three-quarter percent for the first 20 years of 911 credited service will be credited. Additionally, two percent per year for 21 through 25 years of 911 credited service and one and one-half percent per year for each year over 25 years of 911 credited service will be credited. A maximum benefit of 90 percent of a member's final average salary may be paid. A member's accrued benefit may not exceed the limits of Section 415 of the Internal Revenue Code and is subject to the provisions of §16-5V-12 of this code.

(b) "Accumulated contributions" means the sum of all retirement contributions deducted from the compensation of a member, or paid on his or her behalf as a result of covered employment, together with regular interest on the deducted amounts.

(c) "Active military duty" means full-time active duty with any branch of the armed forces of the United States, including service with the National Guard or reserve military forces when the member has been called to active full-time duty and has received no compensation during the period of that duty from any board or employer other than the armed forces.

(d) "Actuarial equivalent" means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the board in accordance with the provisions of this article.

(e) "Annual compensation" means the wages paid to the member during covered employment within the meaning of Section 3401(a) of the Internal Revenue Code, but determined

without regard to any rules that limit the remuneration included in wages based upon the nature or location of employment or services performed during the plan year plus amounts excluded under Section 414(h)(2) of the Internal Revenue Code and less reimbursements or other expense allowances, cash or noncash fringe benefits or both, deferred compensation and welfare benefits. Annual compensation for determining benefits during any determination period may not exceed the maximum compensation allowed as adjusted for cost of living in accordance with §5-10D-7 of this code and Section 401(a)(17) of the Internal Revenue Code.

(f) "Annual leave service" means accrued annual leave.

(g) "Annuity starting date" means the first day of the month for which an annuity is payable after submission of a retirement application. For purposes of this subsection, if retirement income payments commence after the normal retirement age, "retirement" means the first day of the month following or coincident with the latter of the last day the member worked in covered employment or the member's normal retirement age and after completing proper written application for retirement on an application supplied by the board.

(h) "Board" means the Consolidated Public Retirement Board.

(i) "Contributing service" or "contributory service" means service rendered by a member while employed by a participating public employer for which the member made contributions to the plan. Contributory service that was transferred in full from the Public Employees Retirement System will qualify as contributory service in this plan.

(j) "County commission or political subdivision" has the meaning ascribed to it in this code.

(k) "County firefighter" means an individual employed in full-time employment as a firefighter with a county commission.

(l) "Covered employment" means: (1) Employment as a full-time emergency medical technician, emergency medical technician/paramedic, or emergency medical services/registered

nurse, and the active performance of the duties required of emergency medical services officers; or (2) employment as a full-time employee of a county 911 public safety answering point; or (3) employment as a full-time county firefighter; or (4) the period of time during which active duties are not performed but disability benefits are received under this article; or (5) concurrent employment by an emergency medical services officer, 911 personnel, or county firefighter in a job or jobs in addition to his or her employment as an emergency medical services officer, 911 personnel, or county firefighter where the secondary employment requires the emergency medical services officer, 911 personnel, or county firefighter to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to this code: *Provided,* That the emergency medical services officer, 911 personnel, or county firefighter contributes to the fund created in this article the amount specified as the member's contribution in §16-5V-8 of this code.

(m) "Credited service" means the sum of a member's years of service, active military duty, disability service, service transferred from the Public Employees Retirement System, and accrued annual and sick leave service.

(n) "Dependent child" means either:

(1) An unmarried person under age eighteen who is:

(A) A natural child of the member;

(B) A legally adopted child of the member;

(C) A child who at the time of the member's death was living with the member while the member was an adopting parent during any period of probation; or

(D) A stepchild of the member residing in the member's household at the time of the member's death; or

(2) Any unmarried child under age 23:

(A) Who is enrolled as a full-time student in an accredited college or university;

(B) Who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death; and

(C) Whose relationship with the member is described in paragraph (A), (B), or (C), subdivision (1) of this subsection.

(o) "Dependent parent" means the father or mother of the member who was claimed as a dependent by the member for federal income tax purposes at the time of the member's death.

(p) "Disability service" means service received by a member, expressed in whole years, fractions thereof or both, equal to one half of the whole years, fractions thereof, or both, during which time a member receives disability benefits under this article.

(q) "Early retirement age" means age 45 or over and completion of 20 years of contributory service.

(r) "Effective date" means January 1, 2008.

(s) "Emergency medical services officer" means an individual employed by the state, county or other political subdivision as a medical professional who is qualified to respond to medical emergencies, aids the sick and injured and arranges or transports to medical facilities, as defined by the West Virginia Office of Emergency Medical Services. This definition is construed to include employed ambulance providers and other services such as law enforcement, rescue, or fire department personnel who primarily perform these functions and are not provided any other credited service benefits or retirement plans. These persons may hold the rank of emergency medical technician/basic, emergency medical technician/paramedic, emergency medical services/registered nurse, or others as defined by the West Virginia Office of Emergency Medical Services and the Consolidated Public Retirement Board.

(t) "Employer error" means an omission, misrepresentation, or deliberate act in violation of relevant provisions of the West

Virginia Code, the West Virginia Code of State Rules, or the relevant provisions of both the West Virginia Code and of the West Virginia Code of State Rules by the participating public employer that has resulted in an underpayment or overpayment of contributions required.

(u) "Final average salary" means the average of the highest annual compensation received for covered employment by the member during any five consecutive plan years within the member's last 10 years of service while employed, prior to any disability payment. If the member did not have annual compensation for the five full plan years preceding the member's attainment of normal retirement age and during that period the member received disability benefits under this article, then "final average salary" means the average of the monthly salary determined paid to the member during that period as determined under §16-5V-19 of this code multiplied by 12. Final average salary does not include any lump sum payment for unused, accrued leave of any kind or character.

(v) "Full-time employment" means permanent employment of an employee by a participating public employer in a position which normally requires 12 months per year service and requires at least 1,040 hours per year service in that position.

(w) "Fund" means the West Virginia Emergency Medical Services Retirement Fund created by this article.

(x) "Hour of service" means:

(1) Each hour for which a member is paid or entitled to payment for covered employment during which time active duties are performed. These hours shall be credited to the member for the plan year in which the duties are performed; and

(2) Each hour for which a member is paid or entitled to payment for covered employment during a plan year, but where no duties are performed due to vacation, holiday, illness, incapacity including disability, layoff, jury duty, military duty, leave of absence, or any combination thereof and without regard to whether

the employment relationship has terminated. Hours under this subdivision shall be calculated and credited pursuant to West Virginia Division of Labor rules. A member will not be credited with any hours of service for any period of time he or she is receiving benefits under §16-5V-19 or §16-5V-20 of this code; and

(3) Each hour for which back pay is either awarded or agreed to be paid by the employing county commission or political subdivision, irrespective of mitigation of damages. The same hours of service shall not be credited both under subdivision (1) or subdivision (2) of this subsection and under this subdivision. Hours under this paragraph shall be credited to the member for the plan year or years to which the award or agreement pertains, rather than the plan year in which the award, agreement, or payment is made.

(y) "Medical examination" means an in-person or virtual examination of a member's physical or mental health, or both, by a physician or physicians selected or approved by the board; or, at the discretion of the board, a medical record review of the member's physical or mental health, or both, by a physician selected or approved by the board.

(z) "Member" means either: (1) A person first hired as an emergency medical services officer by an employer which is a participating public employer of the Emergency Medical Services Retirement System after the effective date of this article, as defined in subsection (r) of this section; or (2) an emergency medical services officer of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to the effective date and who elects to become a member pursuant to this article; or (3) a person first hired by a county 911 public safety answering center after the participating public employer elects to participate in the Emergency Medical Services Retirement System; or (4) a county firefighter hired on or after June 10, 2022; or (5) a county firefighter of an employer which is a participating public employer of the Public Employees Retirement System first hired prior to June 10, 2022, and who elects to become a member pursuant to §16-5V-6a of this code; or (6) a person first hired by a county 911 public safety answering center prior to July 1, 2022, and who elects to become a member pursuant to §16-5V-

6c of this code. A member shall remain a member until the benefits to which he or she is entitled under this article are paid or forfeited.

(aa) "Monthly salary" means the W-2 reportable compensation received by a member during the month.

(bb) "Normal form" means a monthly annuity which is one twelfth of the amount of the member's accrued benefit which is payable for the member's life. If the member dies before the sum of the payments he or she receives equals his or her accumulated contributions on the annuity starting date, the named beneficiary shall receive in one lump sum the difference between the accumulated contributions at the annuity starting date and the total of the retirement income payments made to the member.

(cc) "Normal retirement age" means the first to occur of the following:

(1) Attainment of age 50 years and the completion of 20 or more years of regular contributory service, excluding active military duty, disability service, and accrued annual and sick leave service;

(2) While still in covered employment, attainment of at least age 50 years and when the sum of current age plus regular contributory years of service equals or exceeds 70 years;

(3) While still in covered employment, attainment of at least age 60 years and completion of 10 years of regular contributory service; or

(4) Attainment of age 62 years and completion of five or more years of regular contributory service.

(dd) "Participating public employer" means: (1) Any county commission, political subdivision, or county 911 public safety answering point in the state which has elected to cover its emergency medical services officers or 911 personnel, as defined in this article, under the West Virginia Emergency Medical Services Retirement System; or (2) any county commission who employs county firefighters.

(ee) "Plan" means the West Virginia Emergency Medical Services Retirement System established by this article.

(ff) "Plan year" means the 12-month period commencing on January 1 of any designated year and ending the following December 31.

(gg) "Political subdivision" means a county, city, or town in the state; any separate corporation or instrumentality established by one or more counties, cities, or towns, as permitted by law; any corporation or instrumentality supported in most part by counties, cities, or towns; and any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities, or towns: *Provided*, That any public corporation established under §7-15-4 of this code is considered a political subdivision solely for the purposes of this article.

(hh) "Public Employees Retirement System" means the West Virginia Public Employees Retirement System created by West Virginia Code.

(ii) "Regular interest" means the rate or rates of interest per annum, compounded annually, as the board adopts in accordance with the provisions of this article.

(jj) "Required beginning date" means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70.5 (if born before July 1, 1949) or age 72 (if born after June 30, 1949); or (2) the calendar year in which he or she retires or otherwise separates from covered employment.

(kk) "Retirant" means any member who commences an annuity payable by the plan.

(ll) "Retire" or "retirement" means a member's withdrawal from the employ of a participating public employer and the commencement of an annuity by the plan.

(mm) "Retirement income payments" means the monthly retirement income payments payable under the plan.

(nn) "Spouse" means the person to whom the member is legally married on the annuity starting date.

(oo) "Surviving spouse" means the person to whom the member was legally married at the time of the member's death and who survived the member.

(pp) "Totally disabled" means a member's inability to engage in substantial gainful activity by reason of any medically determined physical or mental impairment that can be expected to result in death or that has lasted or can be expected to last for a continuous period of not less than 12 months.

For purposes of this subsection:

(1) A member is totally disabled only if his or her physical or mental impairment or impairments is so severe that he or she is not only unable to perform his or her previous work as an emergency medical services officer, 911 personnel, or county firefighter but also cannot, considering his or her age, education, and work experience, engage in any other kind of substantial gainful employment which exists in the state regardless of whether: (A) The work exists in the immediate area in which the member lives; (B) a specific job vacancy exists; or (C) the member would be hired if he or she applied for work. For purposes of this article, substantial gainful employment is the same definition as used by the United States Social Security Administration.

(2) "Physical or mental impairment" is an impairment that results from an anatomical, physiological, or psychological abnormality that is demonstrated by medically accepted clinical and laboratory diagnostic techniques. The board may require submission of a member's annual tax return for purposes of monitoring the earnings limitation.

(qq) "Year of service" means a member shall, except in his or her first and last years of covered employment, be credited with years of service credit based upon the hours of service performed as covered employment and credited to the member during the plan year based upon the following schedule:

Hours of Service	Years of Service Credited
Less than 500	0
500 to 999	1/3
1000 to 1499	2/3
1500 or more	1

During a member's first and last years of covered employment, the member shall be credited with one twelfth of a year of service for each month during the plan year in which the member is credited with an hour of service for which contributions were received by the fund. A member is not entitled to credit for years of service for any time period during which he or she received disability payments under §16-5V-19 or §16-5V-20 of this code. Except as specifically excluded, years of service include covered employment prior to the effective date.

Years of service which are credited to a member prior to his or her receipt of accumulated contributions upon termination of employment pursuant to §16-5V-18 of this code or §5-10-30 of this code shall be disregarded for all purposes under this plan unless the member repays the accumulated contributions with interest pursuant to section §16-5V-18 of this code or has, prior to the effective date, made the repayment pursuant to §5-10-18 of this code.

(rr) "911 personnel" means an individual employed in full-time employment with a county 911 public safety answering point.

§16-5V-5. Article to be liberally construed; supplements federal Social Security; federal qualification requirements.

(a) The provisions of this article shall be liberally construed so as to provide a general retirement system for emergency medical services officers, county firefighters, or 911 personnel eligible to retire under the provisions of this plan. Nothing in this article may be construed to permit a county to substitute this plan for federal Social Security now in force in West Virginia.

(b) The board shall administer the plan in accordance with its terms and may construe the terms and determine all questions arising in connection with the administration, interpretation and application of the plan. The board may sue and be sued, contract and be contracted with and conduct all the business of the system in the name of the plan. The board may employ those persons it considers necessary or desirable to administer the plan. The board shall administer the plan for the exclusive benefit of the members and their beneficiaries subject to the specific provisions of the plan.

(c) The plan is intended to meet the federal qualification requirements of Section 401(a) and related sections of the Internal Revenue Code as applicable to governmental plans. Notwithstanding any other provision of state law, the board shall administer the plan to fulfill this intent for the exclusive benefit of the members and their beneficiaries. Any provision of this article referencing or relating to these federal qualification requirements is effective as of the date required by federal law. The board may propose rules for promulgation and amend or repeal conflicting rules in accordance with the authority granted to the board pursuant to §5-10D-1 of this code to assure compliance with the requirements of this section.

(d) The board shall determine any costs incurred by the board attributable to the voluntary transfer of members of the Public Employees Retirement System to the plan pursuant to the provisions of §16-5V-6c and §16-5V-6d of this code. These costs include the cost to make necessary modifications to the existing line of business computer system, and any personnel costs, including employee benefits. The board shall determine the pro rata share of each participating public 911 employer liable for these costs pursuant to this article. Each participating 911 employer shall pay the board its pro rata share. The board is authorized to receive funds from the participating public 911 employers as required by this section for purposes of paying costs as set forth in this article.

§16-5V-6. Members.

(a) Any emergency medical services officer, county firefighter, or 911 personnel hired on or after the effective date the

participating public employer elected to become a participating public employer shall be a member of this retirement plan as a condition of employment and upon membership does not qualify for membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided,* That any emergency medical services officer, county firefighter, or 911 personnel who has concurrent employment in an additional job or jobs which would require the emergency medical services officer, county firefighter, or 911 personnel to be a member of the West Virginia Deputy Sheriffs Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police Officer Retirement System shall participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail.

(b) Any emergency medical services officer employed in covered employment by an employer which is currently a participating public employer of the Public Employees Retirement System shall notify in writing both the county commission in the county or officials in the political subdivision in which he or she is employed and the board of his or her desire to become a member of the plan by December 31, 2007. Any emergency medical services officer who elects to become a member of the plan ceases to be a member, or have any credit for covered employment in any other retirement system administered by the board, and shall continue to be ineligible for membership in any other retirement system administered by the board so long as the emergency medical services officer remains employed in covered employment by an employer which is currently a participating public employer of this plan: *Provided,* That any emergency medical services officer who does not affirmatively elect to become a member of the plan continues to be eligible for any other retirement system as is, from time to time, offered to other county employees but is ineligible for this plan regardless of any subsequent termination of employment and rehire.

(c) Any emergency medical services officer who was employed as an emergency medical services officer prior to the effective date, but was not employed on the effective date of this article, shall become a member upon rehire as an emergency medical services officer. For purposes of this section, the member's years of service and credited service prior to the effective date shall not be counted for any purposes under this plan unless the emergency medical services officer has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan. If the conditions of this subsection are met, all years of the emergency medical services officer's covered employment shall be counted as years of service for the purposes of this article.

(d) Any emergency medical services officer employed in covered employment on the effective date of this article who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the emergency medical services officer's service credit in the Public Employees Retirement System regardless of whether the credited service (as that term is defined in §5-10-2 of this code) was earned as an emergency medical services officer. All credited service standing to the transferring emergency medical services officer's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article and the transferring emergency medical services officer shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring emergency medical services officer would have received from the Public Employees Retirement System as if the transfer had not occurred. In connection with each transferring emergency medical services officer receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided,* That

any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (b) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as an emergency medical services officer and which service was withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(e) Once made, the election made under this section is irrevocable. All emergency medical services officers employed by an employer which is a participating public employer of the Public Employees Retirement System after the effective date and emergency medical services officers electing to become members as described in this section shall be members as a condition of employment and shall make the contributions required by this article.

(f) Notwithstanding any other provisions of this article, any individual who is a leased employee is not eligible to participate in the plan. For purposes of this plan, a "leased employee" means any individual who performs services as an independent contractor or pursuant to an agreement with an employee leasing organization or similar organization. If a question arises regarding the status of an individual as a leased employee, the board has final power to decide the question.

§16-5V-6c. 911 personnel.

(a) In accordance with the provisions of this article, the board shall administer the voluntary transfer of 911 personnel who are members of the Public Employees Retirement System to the Emergency Medical Services Retirement System.

(b) 911 personnel, employed by a participating public employer, who are actively contributing members of the Public Employees Retirement System shall be eligible to participate in a vote directly to the board pursuant to subsection (c) of this section: *Provided*, That the 911 personnel are employed with a participating

public employer in the month prior to the election and for the duration of the election and that their participating public employer does not choose to opt-out of this option to transfer existing employees. The board will notify all participating public employers with 911 personnel of their option to opt-out of transferring existing employees prior to the election. Participating public employers with 911 personnel have until June 28, 2024, to opt out. Participating public employers with 911 personnel who opt out and Public Employees Retirement System employers who are not participating public employers in this plan in the month prior to the election will be barred from future options to transfer existing 911 personnel into this plan for a period of no less than three years from the election and must pay any future transfer costs to the board. In addition, for any future transfers, the board will calculate the initial pro rata share of costs that would have been assessed at the initial transfer and those costs must be paid to the plan.

(c) The election period for the vote shall conclude on August 30, 2024. All election forms received by the board on or before August 30, 2024, shall be counted, and any members eligible to vote who do not submit an election form to the board prior to or on August 30, 2024, shall be counted as not electing to transfer to the plan. If at least 75 percent of members eligible to vote pursuant to subsection (b) of this section affirmatively elect to transfer to the plan within the period provided in this subsection, then the board shall notify the employers of all members who affirmatively elected to do so during that period, and contributions to the plan shall begin during October 2024 for those electing to transfer. If more than 25 percent of those members eligible to vote pursuant to subsection (b) of this section do not affirmatively elect to transfer to the plan within that period, the Public Employees Retirement System continues as the retirement system for all 911 members eligible to vote. The vote pursuant to this subsection shall be directly to the board and the results shall be unknown to all employers until the time period for voting ends: *Provided*, That any employee eligible to vote pursuant to subsection (b) of this section shall have access through his or her employer to educational materials regarding the vote provided by the board. All members who complete an election form and all participating public

employers with 911 personnel eligible to vote shall be notified in writing by the board by September 30, 2024, of the results of the election.

(d) Any costs incurred by the board attributable to this section shall be borne by all 911 personnel employers of persons eligible to transfer in proportion to the number of persons employed by that employer who are eligible to transfer. The board shall determine its costs incurred attributable to this election to transfer and shall determine the pro rata share of these costs to be borne by the 911 personnel participating employers.

(e) Notwithstanding any other provision of this article to the contrary, a person employed as 911 personnel may be a member of this retirement plan subject to the provisions of this section. Full-time employment as 911 personnel satisfies the definition of "covered employment" as defined in this article.

(f) Any 911 personnel who elects to become a member of the plan does not qualify for active membership in any other retirement system administered by the board, so long as he or she remains employed in covered employment: *Provided,* That any 911 personnel who has concurrent employment in an additional job or jobs which would require the 911 personnel to be an active member of the West Virginia Deputy Sheriffs Retirement System, the West Virginia Municipal Police Officers and Firefighters Retirement System, or the West Virginia Natural Resources Police Officer Retirement System shall actively participate in only one retirement system administered by the board, and the retirement system applicable to the concurrent employment for which the employee has the earliest date of hire shall prevail. Any 911 personnel shall continue to receive his or her accrued benefit of other retirement systems administered by the board, except in the case of Public Employees Retirement System, when credit and assets are transferred to the Emergency Services Retirement System.

(g) Any 911 personnel who was employed as 911 personnel prior to July 1, 2024, but was not employed on July 1, 2024, shall become a member upon rehire as 911 personnel. For purposes of this section, the member's years of service and credited service

prior to July 1, 2024, may be counted so long as the 911 personnel has not received the return of his or her accumulated contributions in the Public Employees Retirement System pursuant to §5-10-30 of this code. The member may request in writing to have his or her accumulated contributions and employer contributions from covered employment in the Public Employees Retirement System transferred to the plan and will receive two percent of the member's final average salary for each year transferred. If the conditions of this subsection are met, all years of the 911 personnel's covered employment shall be counted as years of service for the purposes of this article.

(h) Any 911 personnel employed in covered employment on July 1, 2024, who has timely elected to transfer into this plan as provided in subsection (b) of this section shall be given credited service at the time of transfer for all credited service then standing to the 911 personnel's service credit in the Public Employees Retirement System regardless of whether the credited service, as defined in §5-10-2 of this code, was earned as a 911 personnel. All credited service standing to the transferring 911 personnel's credit in the Public Employees Retirement System at the time of transfer into this plan shall be transferred into the plan created by this article, and the transferring 911 personnel shall be given the same credit for the purposes of this article for all service transferred from the Public Employees Retirement System as that transferring 911 personnel would have received from the Public Employees Retirement System as if the transfer had not occurred but with accrued benefit multipliers subject to the provisions of §16-5V-12 of this code. In connection with each transferring 911 personnel receiving credit for prior employment as provided in this subsection, a transfer from the Public Employees Retirement System to this plan shall be made pursuant to the procedures described in this article: *Provided,* That any member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to subsection (g) of this section may not, after having transferred into and becoming an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods in which the member was not in covered employment as a 911 personnel and which service was withdrawn

from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(i) Once made, the election made under this section is irrevocable. All 911 personnel electing to become members as described in this section, shall be members as a condition of employment and shall make the contributions required by this article.

§16-5V-6d. Transfer of 911 personnel assets from Public Employees Retirement System.

(a) If at least 75 percent of those actively contributing members of the Public Employees Retirement System currently employed as 911 personnel eligible to vote affirmatively elect to transfer to the Emergency Medical Services Retirement System within the period provided in §16-5V-6c of this code, then the board shall transfer to the Emergency Medical Services Retirement System all members who affirmatively elected to do so during that period. If more than 25 percent of actively contributing members of the Public Employees Retirement System currently employed as 911 personnel eligible to vote do not affirmatively elect to transfer to the Emergency Medical Services Retirement System within that period, the Public Employees Retirement System continues as the retirement system for all 911 members eligible to vote. Any costs incurred by the board attributable to this section shall be borne by all employers of persons transferring. The board shall determine its costs incurred attributable to this transfer and shall determine the pro rata share of these costs to be borne by the participating public 911 personnel employers.

(b) The Consolidated Public Retirement Board shall transfer assets from the Public Employees Retirement System Trust Fund into the West Virginia Emergency Medical Services Trust Fund no later than December 31, 2024.

(c) The amount of assets to be transferred for each transferring 911 personnel shall be computed using the July 1, 2023, actuarial valuation of the Public Employees Retirement System, and updated with 7.25 percent annual interest to the date of the actual asset

transfer. The market value of the assets of the transferring 911 personnel 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:

(1) Compute the market value of the Public Employees Retirement System assets as of July 1, 2023, actuarial valuation date under the actuarial valuation approved by the board;

(2) Compute the actuarial accrued liabilities for all Public Employees Retirement System retirees, beneficiaries, disabled retirees, and terminated inactive members as of July 1, 2023, actuarial valuation date;

(3) Compute the market value of active member assets in the Public Employees Retirement System as of July 1, 2023, by reducing the assets value under subdivision (1) of this subsection by the inactive liabilities under subdivision (2) of this subsection;

(4) Compute the actuarial accrued liability for all active Public Employees Retirement System members as of July 1, 2023, actuarial valuation date approved by the board;

(5) Compute the funded percentage of the active members' actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2023, by dividing the active members' market value of assets under subdivision (3) of this subsection by the active members' actuarial accrued liabilities under subdivision (4) of this subsection;

(6) Compute the actuarial accrued liabilities under the Public Employees Retirement System as of July 1, 2023, for active 911 personnel transferring to the Emergency Medical Services Retirement System;

(7) Determine the assets to be transferred from the Public Employees Retirement System to the Emergency Medical Services Retirement System by multiplying the active members' funded percentage determined under subdivision (5) of this subsection by the transferring active members' actuarial accrued liabilities under

the Public Employees Retirement System under subdivision (6) of this subsection and adjusting the asset transfer amount by interest at 7.25 percent for the period from the calculation date of July 1, 2023, through the first day of the month in which the asset transfer is to be completed.

(d) Once a 911 personnel has elected to transfer from the Public Employees Retirement System, transfer of that amount as calculated in accordance with the provisions of subsection (c) of this section by the Public Employees Retirement System shall operate as a complete bar to any further liability to the Public Employees Retirement System and constitutes an agreement whereby the transferring 911 personnel forever indemnifies and holds harmless the Public Employees Retirement System from providing him or her any form of retirement benefit whatsoever until that emergency medical services officer obtains other employment which would make him or her eligible to reenter the Public Employees Retirement System with no credit whatsoever for the amounts transferred to the Emergency Medical Services Retirement System.

(e) 911 personnel who timely elected to transfer into this plan may request in writing that the Consolidated Public Retirement Board compute a quote of the amount owed for the member's transferred 911 service to be eligible for the 2.75 percent multiplier. The quote shall be provided to the member within 60 days of the board's receipt of the written request and the employer's verification of 911 service. Other Public Employees Retirement System employment is eligible for transfer, but only at the 2 percent multiplier. To determine the computation of the quote provided, the board shall:

(1) Compute the contributions made by each 911 personnel for eligible 911 years under Public Employees Retirement System.

(2) Compute the contributions that would have been required under Emergency Medical Services Retirement System for eligible 911 years.

(3) Compute the difference with interest at 7.25 percent that each 911 personnel would have been required to pay had he or she originally participated in Emergency Medical Services Retirement System for eligible 911 years.

(4) Full reinstatement amount must be repaid no later than December 31, 2029, or prior to the member's effective retirement date, whichever occurs first.

(f) Commencement of retirement for transferring 911 personnel may occur on or after January 1, 2025.

(g) Any administrative costs to the board associated with this transfer shall be borne by the participating public 911 personnel employers of the transferring members, in relative proportion to the number of members employed.

§16-5V-8. Members' contributions; employer contributions.

(a) There shall be deducted from the monthly salary of each member and paid into the fund an amount equal to eight and one-half percent of his or her monthly salary. An additional amount shall be paid to the fund by the county commission or political subdivision in which the member is employed in covered employment in an amount determined by the board: *Provided*, That in no year may the total of the employer contributions provided in this section, to be paid by the county commission or political subdivision, exceed 10 and one-half percent of the total payroll for the members in the employ of the county commission or political subdivision.

(b) Any active member who has concurrent employment in an additional job or jobs and the additional employment requires the member to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code shall contribute to the fund the sum of eight and one-half percent of his or her monthly salary earned as an emergency medical services officer, county firefighter, or 911 personnel as well as the sum of eight and one-half percent of his or her monthly salary earned from any additional

employment which additional employment requires the emergency medical services officer, county firefighter, or 911 personnel to be a member of another retirement system which is administered by the Consolidated Public Retirement Board pursuant to §5-10D-1 *et seq.* of this code. An additional percent of the monthly salary of each member shall be paid to the fund by the concurrent employer by which the member is employed in an amount determined by the board: *Provided*, That in no year may the total of the employer contributions provided in this section, to be paid by the concurrent employer, exceed 10 and one-half percent of the payroll for the concurrent member employees.

(c) All required deposits shall be remitted to the board no later than 15 days following the end of the calendar month for which the deposits are required. If the board upon the recommendation of the board actuary finds that the benefits provided by this article can be actuarially funded with a lesser contribution, then the board shall reduce the required member and employer contributions proportionally. Any county commission or political subdivision which fails to make any payment due the Emergency Medical Services Retirement Fund by the fifteenth day following the end of each calendar month in which contributions are due may be required to pay the actuarial rate of interest lost on the total amount owed for each day the payment is delinquent. Accrual of the loss of earnings owed by the delinquent county commission or political subdivision commences after the fifteenth day following the end of the calendar month in which contributions are due and continues until receipt of the delinquent amount. Interest compounds daily and the minimum surcharge is $50.

§16-5V-14a. Rollovers and transfers to purchase service credit or repay withdrawn contributions.

(a) Notwithstanding any provision of this article to the contrary that would otherwise prohibit or limit rollovers and plan transfers to this system, the plan shall accept the following rollovers and plan transfers on behalf of a member solely for the purpose of purchasing permissive service credit, in whole or in part, as otherwise provided in this article or for the repayment of withdrawn or refunded contributions, in whole and in part, with

respect to a previous forfeiture of service credit as otherwise provided in this article or for the purpose of paying higher contributions with interest for credit towards eligible 911 service upon initial transfer into this plan: (A) One or more rollovers within the meaning of Section 408(d)(3) of the Internal Revenue Code from an individual retirement account described in Section 408(a) of the Internal Revenue Code or from an individual retirement annuity described in Section 408(b) of the Internal Revenue Code; (B) one or more rollovers described in Section 402(c) of the Internal Revenue Code from a retirement plan that is qualified under Section 401(a) of the Internal Revenue Code or from a plan described in Section 403(b) of the Internal Revenue Code; (C) one or more rollovers described in Section 457(e)(16) of the Internal Revenue Code from a governmental plan described in Section 457 of the Internal Revenue Code; or (D) direct trustee-to-trustee transfers or rollovers from a plan that is qualified under Section 401(a) of the Internal Revenue Code, from a plan described in Section 403(b) of the Internal Revenue Code or from a governmental plan described in Section 457 of the Internal Revenue Code: *Provided*, That any rollovers or transfers pursuant to this section shall be accepted by the system only if made in cash or other asset permitted by the board and only in accordance with such policies, practices and procedures established by the board from time to time. For purposes of this article, the following definitions and limitations apply:

(1) "Permissive service credit" means service credit which is permitted to be purchased under the terms of the retirement system by voluntary contributions in an amount which does not exceed the amount necessary to fund the benefit attributable to the period of service for which the service credit is being purchased, all as defined in Section 415(n)(3)(A) of the Internal Revenue Code: *Provided*, That no more than five years of "nonqualified service credit", as defined in Section 415(n)(3)(C) of the Internal Revenue Code, may be included in the permissive service credit allowed to be purchased (other than by means of a rollover or plan transfer), and no nonqualified service credit may be included in any such purchase (other than by means of a rollover or plan transfer) before the member has at least five years of participation in the retirement system.

(2) "Repayment of withdrawn or refunded contributions" means the payment into the retirement system of the funds required pursuant to this article for the reinstatement of service credit previously forfeited on account of any refund or withdrawal of contributions permitted in this article, as set forth in Section 415(k)(3) of the Internal Revenue Code.

(3) Any contribution (other than by means of a rollover or plan transfer) to purchase permissive service credit under any provision of this article must satisfy the special limitation rules described in Section 415(n) of the Internal Revenue Code, and shall be automatically reduced, limited, or required to be paid over multiple years if necessary to ensure such compliance. To the extent any such purchased permissive service credit is qualified military service within the meaning of Section 414(u) of the Internal Revenue Code, the limitations of Section 415 of the Internal Revenue Code shall be applied to such purchase as described in Section 414(u)(1)(B) of the Internal Revenue Code.

(4) For purposes of Section 415(b) of the Internal Revenue Code, the annual benefit attributable to any rollover contribution accepted pursuant to this section shall be determined in accordance with Treasury Regulation §1.415(b)-1(b)(2)(v), and the excess, if any, of the annuity payments attributable to any rollover contribution provided under the retirement system over the annual benefit so determined shall be taken into account when applying the accrued benefit limitations of Section 415(b) of the Internal Revenue Code and section twelve of this article.

(b) Nothing in this section may be construed as permitting rollovers or transfers into this system or any other system administered by the retirement board other than as specified in this section, and no rollover or transfer shall be accepted into the system in an amount greater than the amount required for the purchase of permissive service credit or repayment of withdrawn or refunded contributions.

(c) Nothing in this section shall be construed as permitting the purchase of service credit or repayment of withdrawn or refunded contributions except as otherwise permitted in this article.

CHAPTER 211

(Com. Sub. for S. B. 445 - By Senators Deeds, Grady, Rucker, Smith, Stover, Stuart, Woelfel, Roberts, and Oliverio)

[Passed March 8, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §16-4C-8 and §16-4C-9 of the Code of West Virginia, 1931, as amended, all relating to certification of emergency medical services personnel; establishing dates for mandatory rule-making; setting period of validity of certification for emergency medical services personnel at two years; and requiring Office of Emergency Medical Services to publish certain disciplinary actions taken against certified emergency medical services personnel on its website.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-8. Standards for emergency medical services personnel.

(a) Every ambulance operated by an emergency medical services agency shall carry at least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient compartment shall be certified as an emergency medical technician-basic, at a minimum, except that in the case of a specialized multi-patient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic. The requirements of this subsection will remain in effect until revised by the legislative rule to be promulgated pursuant to §16-4C-8(b) of this code.

(b) On or before May 28, 2024, the commissioner shall submit a proposed legislative rule to the Emergency Medical Services Advisory Council for review, and on or before June 30, 2024, shall file the proposed legislative rule with the Office of the Secretary of State, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to establish certification standards for emergency medical vehicle operators and to revise the requirements for emergency medical services personnel.

(c) As of the effective date of the legislative rule to be promulgated pursuant to §16-4C-8(b), emergency medical services personnel who operate ambulances shall meet the requirements set forth in the legislative rule.

(d) Any person desiring emergency medical services personnel certification shall apply to the commissioner using forms and procedures prescribed by the commissioner. Upon receipt of the application, the commissioner shall determine whether the applicant meets the certification requirements and may examine the applicant if necessary to make that determination.

(e) The applicant shall submit to a national criminal background check, the requirement of which is declared to be not against public policy.

(1) The applicant shall meet all requirements necessary to accomplish the national criminal background check, including submitting fingerprints, and authorizing the West Virginia Office of Emergency Medical Services, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for certification.

(2) The results of the national criminal background check may not be released to, or by, a private entity.

(3) The applicant shall submit a fee of $75 for initial certification and a fee of $25 for recertification. The fees set forth in this subsection remain in effect until modified by legislative rule.

(f) An application for an original, renewal, or temporary emergency medical services personnel certificate or emergency medical services agency license, shall be acted upon by the commissioner and the certificate or license delivered or mailed, or a copy of any order of the commissioner denying any such application delivered or mailed, to the applicant within 15 days after the date upon which the complete application, including test scores and background checks, if applicable, was received by the commissioner.

(g) Certification as an Emergency Medical Dispatcher, Emergency Medical Vehicle Operator, Emergency Medical Responder, Emergency Medical Technician, Advanced Emergency Medical Technician, Paramedic, Mobile Critical Care Paramedic, or Mobile Critical Care Nurse is valid for a period of two years with expiration dates determined by the commissioner.

(h) Any person may report to the commissioner, or the Director of the Office of Emergency Medical Services, information he or she may have that appears to show that a person certified by the commissioner may have violated the provisions of this article or legislative rules promulgated pursuant to this article. A person who is certified by the commissioner, who knows of or observes another person certified by the commissioner violating the provisions of this article or legislative rules promulgated pursuant to this article, has a duty to report the violation to the commissioner or director. Any person who reports or provides information in good faith is immune from civil liability.

(i) The commissioner may issue a temporary emergency medical services personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding 120 days and may not be renewed unless the commissioner finds the renewal to be in the public interest.

(j) For purposes of certification or recertification of emergency medical services personnel, the commissioner shall recognize and give full credit for all continuing education credits that have been

approved or recognized by any state or nationally recognized accrediting body.

(k) Notwithstanding any other provision of code or rule, the commissioner recognizes that military personnel, National Guardsmen, members of the United States Coast Guard, and members of the Reserve Components of the armed services have advanced skills and training necessary to meet the requirements of this section to be certified as an emergency medical technician-paramedic upon application. Any person may seek automatic certification as an emergency medical technician-paramedic in this state if he or she has:

(1) Been honorably discharged from any branch of the United States military;

(2) Received paramedic or similar life-saving medical training in positions including, but not limited to, United States Army Combat Medic, United States Air Force Pararescue, United States Air Force Combat Rescue Officer, United States Navy Hospital Corpsman – Advanced Technical Field, United States Coast Guard Health Services Technician, National Guard Health Care Specialist, the Reserve Components of any of the preceding positions, or can otherwise demonstrate that his or her occupation in the military received substantially similar training to be certified as required by the commissioner; and

(3) Received an honorable discharge within two years of the application date.

(l) Notwithstanding any other provision of code or rule, the commissioner recognizes that military personnel, National Guardsmen, members of the United States Coast Guard, and members of the Reserve Components of the armed services have advanced skills and training necessary to meet the requirements of this section to be certified as an emergency medical technician-basic upon application. Any person may seek automatic certification as an emergency medical technician-basic in this state if he or she has:

(1) Been honorably discharged from any branch in the United States military;

(2) Received emergency medical technician training or similar life-saving medical training in positions including, but not limited to, United States Army Infantryman, United States Air Force Security Forces, United States Navy Hospital Corpsman, United States Coast Guard Aviation Survival Technician, United States Marines Infantryman, National Guard Infantryman, and Reserve Components of any of the preceding positions, or can otherwise demonstrate that his or her occupation in the military received substantially similar training to be certified as required by the commissioner; and

(3) Received an honorable discharge within two years of the application date.

(m) Upon reviewing an application for certification pursuant to subsections (k) and subsection (l) of this section, the commissioner shall issue an appropriate certificate to the individual applying for certification as an emergency medical technician-paramedic or emergency medical technician-basic without further examination or education. If an individual certified pursuant to this section permits his or her certification to expire, the commissioner may require examination as a condition of recertification.

§16-4C-9. Complaints; investigations; due process procedure; grounds for disciplinary action; public notice of action.

(a) The commissioner may at any time, upon his or her own motion, and shall, upon the written complaint of any person, cause an investigation to be conducted to determine whether grounds exist for disciplinary action under this article or legislative rules promulgated pursuant to this article.

(b) An investigator or other person who, under the direction of the commissioner or the director, gathers or reports information in good faith to the commissioner or the director, is immune from civil liability.

(c) After reviewing any information obtained through an investigation, the commissioner or director shall determine if probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article.

(d) Upon a finding that probable cause exists that the licensee or certificate holder has violated any provision of this article or rules promulgated pursuant to this article, the commissioner or director shall provide a copy of the complaint and notice of hearing to the licensee or certificate holder. Upon a finding of probable cause that the conduct or continued service or practice of any individual certificate holder may create a danger to public health or safety, the commissioner may temporarily suspend the certification prior to a hearing or notice: *Provided,* That the commissioner may rely on information received from a physician who serves as a medical director in finding that probable cause exists to temporarily suspend the certification: *Provided, however,* That the commissioner shall simultaneously institute proceedings for a hearing in accordance with §16-4C-10 of this code.

(e) The commissioner or the director may enter into a consent decree or hold a hearing for the suspension or revocation of the license or certification or the imposition of sanctions against the licensee or certificate holder.

(f) The commissioner or the director may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person or agency regulated by this article.

(g) The commissioner or the director may sign a consent decree or other legal document related to the complaint.

(h) The commissioner shall suspend or revoke any certificate, temporary certificate, or license when he or she finds the holder has:

(1) Obtained a certificate, temporary certificate, or license by means of fraud or deceit; or

(2) Been grossly incompetent or grossly negligent as defined by the commissioner in accordance with rules or by prevailing standards of emergency medical services care; or

(3) Failed or refused to comply with the provisions of this article or any legislative rule promulgated by the commissioner or any order or final decision of the commissioner; or

(4) Engaged in any act during the course of duty which has endangered or is likely to endanger the health, welfare, or safety of the public.

(i) The commissioner or the director may, after notice and opportunity for hearing, deny or refuse to renew, suspend, or revoke the license or certification of, impose probationary conditions upon, or take disciplinary action against, any licensee or certificate holder for any violation of this article or any rule promulgated pursuant to this article, once a violation has been proven by a preponderance of the evidence.

(j) Disciplinary action may include:

(1) Reprimand;

(2) Probation;

(3) Administrative penalties and fines;

(4) Mandatory attendance at continuing education seminars or other training;

(5) Practicing under supervision or other restriction;

(6) Requiring the licensee or holder of a certificate to report to the commissioner or director for periodic interviews for a specified period of time;

(7) Other disciplinary action considered by the commissioner or director to be necessary to protect the public, including advising other parties whose legitimate interests may be at risk; or

(8) Other sanctions as set forth by legislative rule promulgated pursuant to this article.

(k) The commissioner shall suspend or revoke any certificate, temporary certificate, or license if he or she finds the existence of any grounds which would justify the denial of an application for the certificate, temporary certificate, or license if application were then being made for it.

(l) The Office of Emergency Medical Services shall, after notice and opportunity for hearing, make available to the public electronically via the board's website, information regarding any suspension or revocation of the certification of EMS personnel for any violation of this article or any rule promulgated pursuant to this article. The information published shall be limited to the individual's name, certification number, whether the certification was revoked or suspended, and the date of action. This section does not require the Office of Emergency Medical Services to publish any information otherwise protected under this code.

CHAPTER 212

(Com. Sub. for S. B. 475 - By Senators Tarr, Woelfel, Takubo, Deeds, Azinger, Plymale, and Jeffries)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §16-59-1, §16-59-2, and §16-59-3, of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-59-4; and to amend and reenact §16-62-1 and §16-62-2 of said code, all relating to recovery residences; defining terms; amending the accreditation program to include protecting residents from human trafficking and patient brokering; requiring the collection of data from recovery residences; requiring the data collected be uniform among recovery residences; requiring rulemaking regarding the data to be collected; requiring stakeholder engagement to develop the rules; setting forth minimum data content; providing that the data shall be shared; providing privacy restrictions on data; requiring documentation verifying initial and continued registration be submitted; permitting an immediate jeopardy notice to be served in person; prohibiting recovery residence that has received a suspension or revocation notice from taking new residents; providing procedure for immediate jeopardy; permitting immediate revocation of certification if immediate jeopardy is not corrected prior to certifying agency leaving the premises; requiring transfer of residents in event immediate jeopardy is not corrected and setting forth timeframe; prohibiting recovery residence without a certificate of compliance from receiving a referral from stated entities; providing for a penalty if the referral is received in violation of this article; deleting requirement that certifying agency maintain and publish a list of recovery residences; clarifying that referral shall not be made unless recovery residence has a

valid certificate of compliance; prohibiting all recovery residences from receiving funds from a resident that is in the form of a state benefit unless it holds a valid certificate of compliance; increasing penalties for violations; requiring all recovery residences to register with the Office of Health Facility Licensure and Certification; setting forth procedure for registration; permitting fee; setting term of registration as one year; providing for penalty for failure to register; providing due process; clarifying that recovery residences are subject to the Patient Brokering Act; requiring the Office of the Inspector General to review data to determine if violations of the Patient Brokering Act have occurred; requiring referral to state, or local law-enforcement authorities to coordinate, investigate, or prosecute violations; requiring state or local law enforcement to investigate referral; requiring the Office of the Inspector General to receive data regarding recovery residences; specifying document handling specifications; and creating criminal penalties.

Be it enacted by the Legislature of West Virginia:

ARTICLE 59. CERTIFICATION OF RECOVERY RESIDENCES AND REGISTRATION.

*§16-59-1. Definitions.

As used in this article, the term:

"Certificate of compliance" means a certificate that is issued to a recovery residence by the department's appointed certifying agency.

"Certified recovery residence" means a recovery residence that holds a valid certificate of compliance.

"Director" means the Director of the Office of Health Facility Licensure and Certification, or his or her designee.

"Department" means the Department of Human Services.

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

"Immediate jeopardy" means an issue of non-compliance that places the health and safety of residents of the recovery residence at risk for serious injury, serious harm, serious impairment, or death.

"Inspector General" means the Inspector General of the Office of the Inspector General as described in §16B-2-1 of this code.

"Recovery residence" means a single-family, drug-free, and alcohol-free residential dwelling unit, or other form of group housing, that is offered or advertised by any person or entity as a residence that provides a drug-free and alcohol-free living environment for the purposes of promoting sustained, long-term recovery from substance use disorder.

§16-59-2. Voluntary certification of recovery residences.

(a) The department shall contract with an entity to serve as the certifying agency for a voluntary certification program for drug-free and alcohol-free recovery residences based upon standards determined by the National Alliance for Recovery Residences (NARR) or a similar entity. The certifying agency shall establish and implement an accreditation program for drug-free and alcohol-free recovery residences that shall maintain nationally recognized standards that:

(1) Uphold industry best practices and support a safe, healthy, and effective recovery environment;

(2) Evaluate the residence's ability to assist persons in achieving long-term recovery goals;

(3) Protect residents of drug- and alcohol-free housing against unreasonable and unfair practices in setting and collecting fee payments.

(4) Protect residents from human trafficking that may occur in the recovery residence setting.

(5) Protect patients from predatory practices that lead to patient brokering.

(b) The department shall require the recovery residence to collect, retain, and submit the following:

(1) Documentation verifying certification as specified and administered by the certifying agency;

(2) If a municipality or county offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, documentation of verification by the municipality or county where the recovery residence is located stating that the recovery residence is in compliance.

(3) Data from each registered recovery residence at intervals determined by the department, but not less than annually. The data shall be uniform across all recovery residences. The department, in conjunction with applicable stakeholders to include, but not be limited to, the Office of the Inspector General, the Superintendent, or designee, of the West Virginia State Police, the West Virginia Sheriff's Association, and a representative of West Virginia National Alliance for Recovery Residences, shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* to specify the data to be collected. The data variables shall include, but not be limited to, variables to allow the department, certifying agency, the Office of the Inspector General, and the West Virginia Fusion Center-Human Trafficking Division to conduct an analysis of the performance of recovery residences and to determine if patient brokering or human trafficking is occurring. The data shall be shared in personally identifiable form with the Office of the Inspector General, the certifying agency, and the West Virginia Fusion Center-Human Trafficking Division, with the appropriate Health Insurance Portability and Accountability Act safeguards in place to protect the data in transmission and in storage.

(4) Documentation verifying initial and continued registration as required in §16-59-4 of this code.

(c) If a municipality or county offers or requires verification of compliance with local building, maximum occupancy, fire safety,

and sanitation codes applicable to single-family housing, the municipality or county must perform requested or required inspections within 30 days of receiving a request for verification. If a residence is located within a municipality or county that offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, and the municipality or county fails to perform requested or required inspections within 30 days of receiving a request for verification, the residence may apply for and be granted certification directly through the certifying agency without the aforementioned verification.

(d) Upon receiving a complete application, the certifying agency shall evaluate the residence to determine if the residence is in compliance with national best-practice standards, health, and safety requirements. Additionally, any application of the items specified in this section must comply with the Fair Housing Act, 42 U.S.C. §3601 *et seq.* and the Americans with Disabilities Act of 2008, 42 U.S.C. §12101 *et seq*.

(1) If it is determined that the residence is in compliance, the certification agency shall issue a certificate of compliance to the recovery residence operator for the specific recovery residence location set forth in the application.

(2) Each residence location, even if operated by the same person or entity, must maintain a certificate of compliance for the purposes of this article.

(e) The certifying agency may suspend or revoke a certificate of compliance if the recovery residence is not in compliance with any provision of this section or has failed to remedy any deficiency identified in writing and served by certified mail unless the deficiency is an immediate jeopardy in which case it may be served in person. Suspension or revocation may take place after a notice of deficiency is served and has existed for at least 30 days, except in cases of an immediate jeopardy. After receipt of a suspension or revocation notice, the recovery residence is prohibited from accepting new residents and may only work to transfer residents to another certified recovery residence. If the certifying agency

determines that an immediate jeopardy exists, then the operator will be provided a notice of deficiency, at the time of the certification visit, and the recovery residence shall immediately take actions to correct the listed deficiencies before the certification agency departs the premises. If the operator is unable to correct all of the listed deficiencies prior to the certifying agency departing the premises, then the certifying agency has the authority to revoke any applicable certification immediately and give the operator of the recovery residence up to five days to transfer existing residents to another certified recovery residence.

(f) Notwithstanding any other provision to the contrary, the certifying agency shall implement and maintain a process by which a residence whose certification has been suspended or revoked may apply for, and be granted, reinstatement. If a municipality or county offers or requires verification of compliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, and if the residence's certification suspended or revoked for noncompliance with local building, maximum occupancy, fire safety, and sanitation codes applicable to single-family housing, the municipality or county may charge a fee of up to $100 for any requested reinspection of a recovery residence by the residence seeking reinstatement.

(g) The department shall periodically evaluate the quality, integrity, and efficacy of the accreditation program developed. The department shall promulgate rules subject to legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this section that shall include a process for receiving complaints against drug-free and alcohol-free recovery residences and criteria by which such residences' certifications can be revoked.

(h) A person may not advertise to the public any recovery residence as a "certified recovery residence" unless the recovery residence has first secured a certificate of compliance under this section. A person who violates this subsection commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000 for each infraction.

(i) This article does not permit a structure that would not be normally classified as a single-family dwelling to be exempt from the state building code or fire code.

(j) Nothing herein shall be read to require any recovery residence to obtain certifications set forth herein in order to conduct operations: *Provided*, That a recovery residence without a valid certificate of compliance, as provided in §16-59-2 of this code, is prohibited from receiving a referral or receiving a person released from prison for the placement of any prisoner, parolee, probationer, or prospective, current, or discharged patient, or client from the Division of Corrections and Rehabilitation, the Parole Board, the county probation offices, day report center, municipal courts, or a medical or clinical treatment facility that receives funds for its operations from the State Treasury. A person who violates this subsection commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000 for each infraction.

§16-59-3. Referrals to recovery residences; prohibitions; receipt of state funds.

(a) The Division of Corrections and Rehabilitation, the Parole Board, county probation offices, day report centers, municipal courts, and a medical or clinical treatment facility that receives any funds for its operations from the State Treasury shall not make a referral of any prisoner, parolee, probationer, or prospective, current, or discharged patient, or client to a recovery residence unless the recovery residence holds a valid certificate of compliance as provided in §16-59-2 of this code.

(b) No recovery residence is eligible to receive funds from any source within the State Treasury unless it holds a valid certificate of compliance as provided in §16-59-2 of this code.

(c) No recovery residence is eligible to receive funds from a resident that is in the form of a state benefit, including, but not limited to, Medicaid, Temporary Assistance for Needy Families, or the Supplemental Nutrition Assistance Program, unless it holds a valid certificate of compliance from the certifying agency as provided in §16-59-2 of this code. The certifying agency may set

forth additional requirements for the appropriate use of such benefits within a recovery residence.

(d) A state agency and a medical or clinical treatment facility that receive funds for its operation from the State Treasury, that make referrals to recovery residences shall maintain records of referrals to or from recovery residences.

(e) Nothing in this section requires a state agency or a clinical or medical provider to make a referral of a person to a recovery residence.

(f) A person who violates this section commits a misdemeanor, punishable by a fine of not less than $1,000 nor more than $5,000, unless otherwise specified.

§16-59-4. Registration of recovery residences.

(a) Prior to conducting business in the State of West Virginia a recovery residence shall register with the Office of Health Facility Licensure and Certification. ‡ The director 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 director considers necessary and appropriate to establish a complete registration of an applicant.

(b) *Term and fee. —*

(1) The terms of registration shall be one year from the date of issuance;

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‡**NOTE:** The following sentence from the House amendment to Eng. Com. Sub. for S. B. 475, which should have been in the place noted by the ‡ above, was omitted from the enrolled bill: *"A recovery residence has until January 1, 2025 to register."* The bill above reflects the enrolled bill presented to the Governor.

(2) The fee shall be submitted by the applicant with an application for registration. An application fee for initial registration or renewal registration fee is nonrefundable;

(3) The amount of the initial registration fee and the renewal registration fee is $250: *Provided*, That the director may annually adjust the initial and renewal registration fee for inflation based upon the consumer price index.

(c) *Registration.* —

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

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

(3) A list of all recovery residences shall be made available on the director's publicly accessible internet website.

(d) *Penalties.* —

(1) A civil monetary penalty of up to $20,000 a day may be assessed against an owner who operates, owns, or manages an unregistered recovery residence. Each day of the continuing violation after the civil monetary penalty is assessed may be considered a separate violation. The initial notice of non-compliance shall be provided to the owner via certified mail, return receipt requested.

(B) If the recovery residence is not registered within 30 days from the date of receipt of the initial notice, the director shall notify the certifying agency to revoke the recovery residence's certificate of compliance, issued pursuant to §16-59-2 of this code, for non-compliance with this section.

(C) If the recovery residence is not registered within 30 days from the date of receipt of the initial notice, and if such recovery residence does not have a certificate of compliance, then the

director shall issue a closure notice to the recovery residence for non-compliance with this section.

(e) *Due process.* —

(1) Within 10 days of the date of receipt of a notice provided pursuant to subsection (d), the recovery residence's owner may submit a request for an administrative hearing before the Board of Review for an informal meeting to address the notice and the reason stated therefor.

(2) The recovery residence's owner or owners and the Office of Health Facility Licensure and Certification will be entitled to representation by legal counsel at the informal meeting and at the administrative hearing at their own expense, respectively.

(3) All of the pertinent provisions of §29A-5-1 *et seq.* of this code and applicable legislative rules governing administrative hearings for the Board of Review shall apply to and govern any formal hearing authorized by this article.

(4) If the recovery residence's owner fails to request a hearing within the time frame specified, he or she shall be subject to the full limitation, enforcement action, penalty, or any combination thereof, imposed pursuant to this section.

(5) The filing of a request for an administrative hearing or an informal meeting does not stay or supersede the enforcement of a limitation, enforcement action, penalty, or any combination thereof, imposed pursuant to this section.

(6) Any party who is dissatisfied with the decision of the Board of Review as a result of a formal hearing provided in this section, may within 30 days after receiving notice of the decision, petition the West Virginia Intermediate Court of Appeals, in term or vacation, for judicial review of the decision.

(7) The court may affirm, modify, or reverse, the decision of the Board of Review and either the applicant or the registrant, or the Inspector General may appeal the court's decision to the West Virginia Supreme Court of Appeals.

(8) Notwithstanding the existence of, or pursuant to any other remedy, the Inspector General may, in the manner provided by law, maintain an action in the name of the state for an injunction against any person, partnership, association, or corporation, to restrain or prevent the establishment, conduct, management, or operation of any recovery residence for violation of any provision of this section or any rule lawfully promulgated thereunder without first obtaining a registration in the manner herein provided.

ARTICLE 62. THE PATIENT BROKERING ACT.

§16-62-1. Definitions.

For the purposes of this article:

"Department" means the Department of Human Services.

"Health care provider or health care facility" means any person or entity licensed, certified, or authorized by law to provide professional health care service in this state to a patient during that patient's medical, remedial, or behavioral health care, treatment, or confinement.

"Health care provider network entity" means a corporation, partnership, or limited liability company owned or operated by two or more health care providers and organized for the purpose of entering into agreements with health insurers, health care purchasing groups, or the Medicare or Medicaid program.

"Health insurer" means any insurance company authorized to transact health insurance in the state, any insurance company authorized to transact health insurance or casualty insurance in the state that is offering a minimum premium plan or stop-loss coverage for any person or entity providing health care benefits, any self-insurance plan, any health maintenance organization, any prepaid health clinic, any prepaid limited health service organization, any multiple-employer welfare arrangement, or any fraternal benefit society providing health benefits to its members.

"Recovery residence" has the same meaning as set forth in §16-59-1 of this code.

§16-62-2. Patient brokering prohibited.

(a) It is unlawful for any person, including any health care provider, health care facility, or recovery residence to:

(1) Offer or pay a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, to induce the referral of a patient or patronage to or from a health care provider, health care facility or recovery residence;

(2) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for referring a patient or patronage to or from a health care provider, health care facility, or recovery residence;

(3) Solicit or receive a commission, benefit, bonus, rebate, kickback, or bribe, directly or indirectly, in cash or in kind, or engage in any split-fee arrangement, in any form whatsoever, in return for the acceptance or acknowledgment of treatment from a health care provider, health care facility, or recovery residence;

(4) Aid, abet, advise, or otherwise participate in the conduct prohibited under this subsection; or

(5) Engage in any of the unlawful acts provided for in this subsection in regard to a recovery residence as defined in §16-59-1 of this code;

(b) Penalties –

(1) Any person who violates the provisions of subsection (a) of this section is guilty of a felony and, upon conviction thereof, shall be fined not more than $50,000, or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(2) Notwithstanding the provisions of subdivision (1) of this section, any person who violates subsection (a) of this section, where the prohibited conduct involves 10 or more patients, is guilty

of a felony and, upon conviction thereof, shall be fined not more than $100,000, or imprisoned in a state correctional facility not less than two years nor more than five years, or both fined and imprisoned.

(c) The Office of the Inspector General shall develop a tool that facilitates the submission of complaints. The Office of the Inspector General shall investigate complaints, review data for violations of this article, and shall refer matters to state, or local law-enforcement authorities to coordinate, investigate, or prosecute violations of this article.

(d) Law enforcement shall investigate each referral upon receipt for violation this article.

(e) The Office of the Inspector General shall receive data from the department related to recovery residences based upon intervals determined by the department, but not less than annually. This data may contain personally identifiable health information. It shall be transmitted and stored in conformity with applicable Health Insurance and Portability and Accountability Act standards.

(f) The Office of the Inspector General and the certifying agency set forth in §16-59-2 *et seq.* of this code may coordinate investigations as further set forth in legislative rule.

CHAPTER 213

(Com. Sub. for S. B. 477 - By Senators Maroney, Takubo, Woelfel, and Deeds)

[Passed March 6, 2024; in effect 90 days from passage (June 4, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5A-8-25; and to amend said code by adding thereto a new section, designated §61-3C-14d, all relating to providing for removal of health care worker's personal information from records on the internet in certain circumstances; prohibiting public disclosure of health care worker's personal information on the internet in certain circumstances; defining terms; and providing penalties.

Be it enacted by the Legislature of West Virginia:

CHAPTER 5A. DEPARTMENT OF ADMINISTRATION.

ARTICLE 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-25. Health care worker personal information.

(a) For purposes of this section:

"Health care worker" means a person who is an employee of a health care entity, a subcontractor, or independent contractor for a health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, any other person who provides direct patient care, first responder, or any person serving in a governance capacity of a health care entity;

"Immediate family" means a health care worker's spouse, child, or parent or any other relative who lives in the same residence as the health care worker;

"Personal information" means the home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, or a personal photograph or video of a health care worker; directions to the home of a health care worker; or photographs or videos of the home or personal vehicle of a health care worker or the immediate family of a health care worker.

(b) A health care worker may submit a written request to a state or local government official to remove personal information from records maintained by that official that are available on the internet. If a state or local government official receives such a written request, then he or she shall not knowingly make available on the internet personal information about the health care worker or the health care worker's immediate family.

(c) A health care worker's written request to a state or local government official to remove personal information from records made available on the internet shall include:

(1) Evidence that the person submitting the request is a health care worker, as defined in this section; and

(2) A statement, notarized by a notary public duly licensed under §39-4-1 *et seq.* of this code, that the person submitting the request has reason to believe that the dissemination of the personal information contained in the records that the official makes available on the internet poses an imminent and serious threat to the person's safety or the safety of the person's immediate family.

(d) Falsification of the evidence proffered to satisfy the requirements of §5A-8-25(b)(1) or §5A-8-25(b)(2) constitutes false swearing and is punishable under §61-5-2 of this code.

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 3C. WEST VIRGINIA COMPUTER CRIME AND ABUSE ACT.

§61-3C-14d. Prohibiting public disclosure of personal information on the internet; penalties.

(a) For purposes of this section:

"Health care worker" means a person who is an employee of a health care entity, a subcontractor, or independent contractor for a health care entity, or an employee of the subcontractor or independent contractor. The term includes, but is not limited to, a nurse, nurse's aide, laboratory technician, physician, intern, resident, physician assistant, physical therapist, any other person who provides direct patient care, first responder, or any person serving in a governance capacity of a health care entity;

"Immediate family" means a health care worker's spouse, child, or parent or any other relative who lives in the same residence as the health care worker;

"Personal information" means the home address, home telephone number, personal mobile telephone number, pager number, personal e-mail address, or a personal photograph or video of a health care worker; directions to the home of a health care worker; or photographs or videos of the home or personal vehicle of a health care worker or the immediate family of a health care worker.

(b) A person who knowingly, willfully, and intentionally makes the personal information of a health care worker, or a health care worker's immediate family, publicly available on the internet:

(1) With the intent to threaten, intimidate, or incite the commission of a crime of violence against that person; or

(2) With the intent and knowledge that the personal information will be used to threaten, intimidate, or facilitate the commission of a crime of violence against that person is guilty of

a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not more than six months, or both fined and confined. For a second or subsequent offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail for not more than one year, or both fined and confined.

CHAPTER 214

(Com. Sub. for S. B. 533 - By Senators Deeds, Barrett, Hamilton, Hunt, Nelson, Phillips, Queen, Roberts, Swope, Takubo, Plymale, Maroney, and Woodrum)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §16-4C-3 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-4C-26; to amend said code by adding thereto a new section, designated §33-15-4x; to amend and reenact §33-15-21 of said code; to amend and reenact §33-16-3i of said code; to amend said code by adding thereto a new section, designated §33-16-3rr; to amend and reenact §33-24-7e of said code; to amend said code by adding thereto a new section, designated §33-24-7y; to amend and reenact §33-25-8d of said code; to amend said code by adding thereto a new section, designated §33-25-8v; to amend and reenact §33-25A-8d of said code; and to amend said code by adding thereto a new section, designated §33-25A-8y, all relating to emergency medical services; defining terms; providing that an emergency medical services agency may triage and transport a patient to an alternate destination in certain circumstances; mandating insurance coverage; providing that covered services include pre-hospital screening and stabilization of emergency conditions by an ambulance service; providing that air ambulance service is excluded from coverage; providing that coverage is subject to deductibles or copayment; providing that coverage be provided if the patient declines to be transported against medical advice; and providing effective date.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

*§16-4C-3. Definitions.

As used in this article, unless the context clearly requires a different meaning:

(a) "Ambulance" means any privately, publicly-owned vehicle, or aircraft which is designed, constructed, or modified; equipped or maintained; and operated for the transportation of patients, including, but not limited to, emergency medical services vehicles; rotary and fixed wing air ambulances; gsa kkk-A-1822 federal standard type I, type II, and type III vehicles; and specialized multipatient medical transport vehicles operated by an emergency medical services agency;

(b)(1) "Alternative destination" means a lower-acuity facility that provides medical services, including without limitation:

(A) A federally-qualified health center;

(B) An urgent care center;

(C) A rural health clinic;

(D) A physician office or medical clinic as selected by the patient; and

(E) A behavioral or mental health care facility including, without limitation, a crisis stabilization unit.

(2) "Alternative destination" does not include a:

(A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

(D) Private residence; or

(E) Skilled nursing facility.

(c) "Commissioner" means the Commissioner of the Bureau for Public Health;

(d) "Council" means the Emergency Medical Services Advisory Council created pursuant to this article;

(e) "Director" means the Director of the Office of Emergency Medical Services;

(f) "Emergency Medical Services" means all services set forth in Public Law 93-154 The Emergency Medical Services Systems Act of 1973 and those included in and made a part of the emergency medical services plan of the Department of Health inclusive of, but not limited to, responding to the medical needs of an individual to prevent the loss of life or aggravation of illness or injury;

(g) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services;

(h) "Emergency medical services personnel" means any person certified by the commissioner to provide emergency medical services as set forth by legislative rule;

(i) "Emergency medical services provider" means any authority, person, corporation, partnership, or other entity, public or private, which owns or operates a licensed emergency medical services agency providing emergency medical services in this state;

(j) "Governing body" has the meanings ascribed to it as applied to a municipality in §8-1-2(b)(1) of this code;

(k) "Line officer" means the emergency medical services personnel, present at the scene of an accident, injury, or illness, who has taken the responsibility for patient care;

(l) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient care;

(m) "Municipality" has the meaning ascribed to it in §8-1-2(a)(1) of this code;

(n) "Patient" means any person who is a recipient of the services provided by emergency medical services;

(o) "A rural health clinic" means an outpatient care facility that provides rural health services, such as primary care and routine laboratory services, to rural and often underserved communities;

(p) "Service reciprocity" means the provision of emergency medical services to citizens of this state by emergency medical services personnel certified to render those services by a neighboring state;

(q) "Small emergency medical services provider" means any emergency medical services provider which is made up of less than 20 emergency medical services personnel; and

(r) "Specialized multipatient medical transport" means a type of ambulance transport provided for patients with medical needs greater than those of the average population, which may require the presence of a trained emergency medical technician during the transport of the patient: *Provided,* That the requirement of "greater medical need" may not prohibit the transportation of a patient whose need is preventive in nature.

§16-4C-26. Triage, treat, and transport to alternative destination.

(a) An emergency medical services agency may triage and transport a patient to an alternative destination in this state or treat in place if the emergency medical services agency is coordinating the care of the patient through medical command or telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint. Emergency medical services agencies shall execute a

memorandum of understanding with alternative treatment destinations as permitted by the protocols to transport patients.

(b) On or before October 1, 2024, the director shall establish protocols for emergency medical services agencies to triage, treat, and transport to alternative destinations.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4x. Coverage of emergency medical services to triage and transport to alternative destination or treat in place.

(a) The following terms are defined:

(1) "911 call" means a communication indicating that an individual may need emergency medical services;

(2) "Alternative destination" means a lower-acuity facility that provides medical services, including without limitation:

(A) A federally-qualified health center;

(B) An urgent care center;

(C) A rural health clinic;

(D) A physician office or medical clinic as selected by the patient; and

(E) A behavioral or mental health care facility including, without limitation, a crisis stabilization unit.

"Alternative destination" does not include a:

(A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

(D) Private residence; or

(E) Skilled nursing facility;

(3) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services: *Provided*, That rotary and fixed wing air ambulances are specifically excluded from the definition of an emergency medical services agency;

(4) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient care; and

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls 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 e-mail messages or facsimile transmissions.

(b) An insurer which issues or renews a health insurance policy on or after January 1, 2025, shall provide coverage for:

(1) An emergency medical services agency to:

(A) Treat an enrollee in place if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint;

(B) Triage or triage and transport an enrollee to an alternative destination if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint; or

(C) An encounter between an ambulance service and enrollee that results in no transport of the enrollee if:

(i) The enrollee declines to be transported against medical advice; and

(ii) The emergency medical services agency is coordinating the care of the enrollee through telehealth services or medical command with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint.

(c) The coverage under this section:

(1) Only includes emergency medical services transportation to the treatment location;

(2) Is subject to the initiation of response, triage, and treatment as a result of a 911 call that is documented in the records of the emergency medical services agency;

(3) Is subject to deductibles or copayment requirements of the policy, contract, or plan;

(4) Does not diminish or limit benefits otherwise allowable under a health benefit plan, even if the billing claims for medical or behavioral health services overlap in time that is billed by the ambulance service also providing care; and

(5) Does not include rotary or fixed wing air ambulance services.

(d) The reimbursement rate for an emergency medical services agency that triages, treats, and transports a patient to an alternative destination, or triages, treats, and does not transport a patient, if the patient declines to be transported against medical advice, if the ambulance service is coordinating the care of the enrollee through medical command or telemedicine with a physician for a medical-based complaint, or with a behavioral health specialist for a behavioral-based complaint under this section, shall be reimbursed at the same rate as if the patient were transported to an emergency room of a facility provider.

§33-15-21. Coverage of emergency services.

From July 1, 1998:

(a) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(b) The coverage for prehospital screening and stabilization of an emergency medical condition shall include ambulance services provided under the provisions of §16-4C-1 *et seq.* of this code, excluding air ambulance services as defined in §16-4C-3(a) of this code. The insurer shall pay claims for prehospital screening and stabilization of emergency condition by ambulance service if the insured is transported to an emergency room of a facility provider or if the patient declines to be transported against medical advice. The coverage under this section is subject to deductibles or copayment requirements of the policy, contract, or plan.

(c) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services, or the covered person.

(d) Coverage of emergency services shall be subject to coinsurance, copayments, and deductibles applicable under the health benefit plan.

(e) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite post evaluation or post stabilization services in order to avoid material deterioration of the covered person's condition.

(f) As used in this section:

(1) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(2) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(3) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(4) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability, that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided,* That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(5) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(6) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily part or organ.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS COVERAGE.

§33-16-3i. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan, or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan, or agreement may apply to emergency services the same deductibles, coinsurance, and other limitations as apply to other covered services: *Provided,* That preauthorization or precertification shall not be required.

(b) From July 1, 1998, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) The coverage for prehospital screening and stabilization of an emergency medical condition shall include ambulance services provided under the provisions of §16-4C-1 *et seq.* of this code, excluding air ambulance services as defined in §16-4C-3(a) of this code. The insurer shall pay claims for prehospital screening and stabilization of emergency condition by ambulance service if the insured is transported to an emergency room of a facility provider or if the patient declines to be transported against medical advice. The coverage under this section is subject to deductibles or copayment requirements of the policy, contract, or plan.

(3) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the

authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services, or the covered person.

(4) Coverage of emergency services shall be subject to coinsurance, copayments, and deductibles applicable under the health benefit plan.

(5) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite post evaluation or post stabilization services in order to avoid material deterioration of the covered person's condition.

(6) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability, that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided,* That this provision may not be construed to prohibit, limit, or otherwise

delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

§33-16-3rr. Coverage of emergency medical services to triage and transport to alternative destination or treat in place.

(a) The following terms are defined:

(1) "911 call" means a communication indicating that an individual may need emergency medical services;

(2) "Alternative destination" means a lower-acuity facility that provides medical services, including without limitation:

(A) A federally-qualified health center;

(B) An urgent care center;

(C) A rural health clinic;

(D) A physician office or medical clinic as selected by the patient; and

(E) A behavioral or mental health care facility including, without limitation, a crisis stabilization unit.

"Alternative destination" does not include a:

(A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

(D) Private residence; or

(E) Skilled nursing facility;

(3) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services: *Provided*, That rotary and fixed wing air ambulances are specifically excluded from the definition of an emergency medical services agency;

(4) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient care; and

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls 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 e-mail messages or facsimile transmissions.

(b) An insurer which issues or renews a health insurance policy on or after January 1, 2025, shall provide coverage for:

(1) An emergency medical services agency to:

(A) Treat an enrollee in place if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint;

(B) Triage or triage and transport an enrollee to an alternative destination if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-

based complaint or with a behavioral health specialist for a behavioral-based complaint; or

(C) An encounter between an ambulance service and enrollee that results in no transport of the enrollee if:

(i) The enrollee declines to be transported against medical advice; and

(ii) The emergency medical services agency is coordinating the care of the enrollee through telehealth services or medical command with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint.

(c) The coverage under this section:

(1) Only includes emergency medical services transportation to the treatment location;

(2) Is subject to the initiation of response, triage, and treatment as a result of a 911 call that is documented in the records of the emergency medical services agency;

(3) Is subject to deductibles or copayment requirements of the policy, contract, or plan;

(4) Does not diminish or limit benefits otherwise allowable under a health benefit plan, even if the billing claims for medical or behavioral health services overlap in time that is billed by the ambulance service also providing care; and

(5) Does not include rotary or fixed wing air ambulance services.

(d) The reimbursement rate for an emergency medical services agency that triages, treats, and transports a patient to an alternative destination, or triages, treats, and does not transport a patient, if the patient declines to be transported against medical advice, if the ambulance service is coordinating the care of the enrollee through medical command or telemedicine with a physician for a medical-based complaint, or with a behavioral health specialist for a

behavioral-based complaint under this section, shall be reimbursed at the same rate as if the patient were transported to an emergency room of a facility provider.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS AND HEALTH SERVICE CORPORATIONS.

§33-24-7e. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan, or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan, or agreement may apply to emergency services the same deductibles, coinsurance, and other limitations as apply to other covered services: *Provided,* That preauthorization or precertification shall not be required.

(b) From July 1, 1998, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) The coverage for prehospital screening and stabilization of an emergency medical condition shall include ambulance services provided under the provisions of §16-4C-1 *et seq.* of this code, excluding air ambulance services as defined in §16-4C-3(a) of this code. The insurer shall pay claims for prehospital screening and stabilization of emergency condition by ambulance service if the insured is transported to an emergency room of a facility provider

or if the patient declines to be transported against medical advice. The coverage under this section is subject to deductibles or copayment requirements of the policy, contract, or plan.

(3) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services, or the covered person.

(4) Coverage of emergency services shall be subject to coinsurance, copayments, and deductibles applicable under the health benefit plan.

(5) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite post evaluation or post stabilization services in order to avoid material deterioration of the covered person's condition.

(6) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability, that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided,* That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions, or serious dysfunction of any bodily part or organ.

§33-24-7y. Coverage of emergency medical services to triage and transport to alternative destination or treat in place.

(a) The following terms are defined:

(1) "911 call" means a communication indicating that an individual may need emergency medical services;

(2) "Alternative destination" means a lower-acuity facility that provides medical services, including without limitation:

(A) A federally-qualified health center;

(B) An urgent care center;

(C) A rural health clinic;

(D) A physician office or medical clinic as selected by the patient; and

(E) A behavioral or mental health care facility including, without limitation, a crisis stabilization unit.

"Alternative destination" does not include a:

(A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

(D) Private residence; or

(E) Skilled nursing facility;

(3) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services: *Provided*, That rotary and fixed wing air ambulances are specifically excluded from the definition of an emergency medical services agency;

(4) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient care; and

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls 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 e-mail messages or facsimile transmissions.

(b) An insurer which issues or renews a health insurance policy on or after January 1, 2025, shall provide coverage for:

(1) An emergency medical services agency to:

(A) Treat an enrollee in place if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint;

(B) Triage or triage and transport an enrollee to an alternative destination if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint; or

(C) An encounter between an ambulance service and enrollee that results in no transport of the enrollee if:

(i) The enrollee declines to be transported against medical advice; and

(ii) The emergency medical services agency is coordinating the care of the enrollee through telehealth services or medical command with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint.

(c) The coverage under this section:

(1) Only includes emergency medical services transportation to the treatment location;

(2) Is subject to the initiation of response, triage, and treatment as a result of a 911 call that is documented in the records of the emergency medical services agency;

(3) Is subject to deductibles or copayment requirements of the policy, contract, or plan;

(4) Does not diminish or limit benefits otherwise allowable under a health benefit plan, even if the billing claims for medical or behavioral health services overlap in time that is billed by the ambulance service also providing care; and

(5) Does not include rotary or fixed wing air ambulance services.

(d) The reimbursement rate for an emergency medical services agency that triages, treats, and transports a patient to an alternative destination, or triages, treats, and does not transport a patient, if the patient declines to be transported against medical advice, if the ambulance service is coordinating the care of the enrollee through medical command or telemedicine with a physician for a medical-based complaint, or with a behavioral health specialist for a behavioral-based complaint under this section, shall be reimbursed at the same rate as if the patient were transported to an emergency room of a facility provider.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8d. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan, or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan, or agreement may apply to emergency services the same deductibles, coinsurance, and other limitations as apply to other covered services: *Provided,* That preauthorization or precertification shall not be required.

(b) From July 1, 1998, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) The coverage for prehospital screening and stabilization of an emergency medical condition shall include ambulance services provided under the provisions of §16-4C-1 *et seq.* of this code,

excluding air ambulance services as defined in §16-4C-3(a) of this code. The insurer shall pay claims for prehospital screening and stabilization of emergency condition by ambulance service if the insured is transported to an emergency room of a facility provider or if the patient declines to be transported against medical advice. The coverage under this section is subject to deductibles or copayment requirements of the policy, contract, or plan.

(3) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services, or the covered person.

(4) Coverage of emergency services shall be subject to coinsurance, copayments, and deductibles applicable under the health benefit plan.

(5) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite post evaluation or post stabilization services in order to avoid material deterioration of the covered person's condition.

(6) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect

to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability, that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided,* That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

§33-25-8v. Coverage of emergency medical services to triage and transport to alternative destination or treat in place.

(a) The following terms are defined:

(1) "911 call" means a communication indicating that an individual may need emergency medical services;

(2) "Alternative destination" means a lower-acuity facility that provides medical services, including without limitation:

(A) A federally-qualified health center;

(B) An urgent care center;

(C) A rural health clinic;

(D) A physician office or medical clinic as selected by the patient; and

(E) A behavioral or mental health care facility including, without limitation, a crisis stabilization unit.

"Alternative destination" does not include a:

(A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

(D) Private residence; or

(E) Skilled nursing facility;

(3) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services: *Provided*, That rotary and fixed wing air ambulances are specifically excluded from the definition of an emergency medical services agency;

(4) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient care; and

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls 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 e-mail messages or facsimile transmissions.

(b) An insurer which issues or renews a health insurance policy on or after January 1, 2025, shall provide coverage for:

(1) An emergency medical services agency to:

(A) Treat an enrollee in place if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint;

(B) Triage or triage and transport an enrollee to an alternative destination if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint; or

(C) An encounter between an ambulance service and enrollee that results in no transport of the enrollee if:

(i) The enrollee declines to be transported against medical advice; and

(ii) The emergency medical services agency is coordinating the care of the enrollee through telehealth services or medical command with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint.

(c) The coverage under this section:

(1) Only includes emergency medical services transportation to the treatment location;

(2) Is subject to the initiation of response, triage, and treatment as a result of a 911 call that is documented in the records of the emergency medical services agency;

(3) Is subject to deductibles or copayment requirements of the policy, contract, or plan;

(4) Does not diminish or limit benefits otherwise allowable under a health benefit plan, even if the billing claims for medical or behavioral health services overlap in time that is billed by the ambulance service also providing care; and

(5) Does not include rotary or fixed wing air ambulance services.

(d) The reimbursement rate for an emergency medical services agency that triages, treats, and transports a patient to an alternative destination, or triages, treats, and does not transport a patient, if the patient declines to be transported against medical advice, if the ambulance service is coordinating the care of the enrollee through medical command or telemedicine with a physician for a medical-based complaint, or with a behavioral health specialist for a behavioral-based complaint under this section, shall be reimbursed at the same rate as if the patient were transported to an emergency room of a facility provider.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8d. Coverage of emergency services.

(a) Notwithstanding any provision of any policy, provision, contract, plan, or agreement to which this article applies, any entity regulated by this article shall provide as benefits to all subscribers and members coverage for emergency services. A policy, provision, contract, plan, or agreement may apply to emergency services the same deductibles, coinsurance, and other limitations as apply to other covered services: *Provided,* That preauthorization or precertification shall not be required.

(b) From July 1, 1998, the following provisions apply:

(1) Every insurer shall provide coverage for emergency medical services, including prehospital services, to the extent necessary to screen and to stabilize an emergency medical condition. The insurer shall not require prior authorization of the screening services if a prudent layperson acting reasonably would have believed that an emergency medical condition existed. Prior authorization of coverage shall not be required for stabilization if an emergency medical condition exists. Payment of claims for emergency services shall be based on the retrospective review of the presenting history and symptoms of the covered person.

(2) The coverage for prehospital screening and stabilization of an emergency medical condition shall include ambulance services provided under the provisions of §16-4C-1 *et seq.* of this code, excluding air ambulance services as defined in §16-4C-3(a) of this code. The insurer shall pay claims for prehospital screening and stabilization of emergency condition by ambulance service if the insured is transported to an emergency room of a facility provider or if the patient declines to be transported against medical advice. The coverage under this section is subject to deductibles or copayment requirements of the policy, contract, or plan.

(3) An insurer that has given prior authorization for emergency services shall cover the services and shall not retract the authorization after the services have been provided unless the authorization was based on a material misrepresentation about the covered person's health condition made by the referring provider, the provider of the emergency services, or the covered person.

(4) Coverage of emergency services shall be subject to coinsurance, copayments, and deductibles applicable under the health benefit plan.

(5) The emergency department and the insurer shall make a good faith effort to communicate with each other in a timely fashion to expedite post evaluation or post stabilization services in order to avoid material deterioration of the covered person's condition.

(6) As used in this section:

(A) "Emergency medical services" means those services required to screen for or treat an emergency medical condition until the condition is stabilized, including prehospital care;

(B) "Prudent layperson" means a person who is without medical training and who draws on his or her practical experience when making a decision regarding whether an emergency medical condition exists for which emergency treatment should be sought;

(C) "Emergency medical condition for the prudent layperson" means one that manifests itself by acute symptoms of sufficient

severity, including severe pain, such that the person could reasonably expect the absence of immediate medical attention to result in serious jeopardy to the individual's health, or, with respect to a pregnant woman, the health of the unborn child; serious impairment to bodily functions; or serious dysfunction of any bodily organ or part;

(D) "Stabilize" means with respect to an emergency medical condition, to provide medical treatment of the condition necessary to assure, with reasonable medical probability, that no medical deterioration of the condition is likely to result from or occur during the transfer of the individual from a facility: *Provided,* That this provision may not be construed to prohibit, limit, or otherwise delay the transportation required for a higher level of care than that possible at the treating facility;

(E) "Medical screening examination" means an appropriate examination within the capability of the hospital's emergency department, including ancillary services routinely available to the emergency department, to determine whether or not an emergency medical condition exists; and

(F) "Emergency medical condition" means a condition that manifests itself by acute symptoms of sufficient severity, including severe pain, such that the absence of immediate medical attention could reasonably be expected to result in serious jeopardy to the individual's health or with respect to a pregnant woman, the health of the unborn child, serious impairment to bodily functions or serious dysfunction of any bodily part or organ.

(7) Each insurer shall provide the enrolled member with a description of procedures to be followed by the member for emergency services, including the following:

(A) The appropriate use of emergency facilities;

(B) The appropriate use of any prehospital services provided by the health maintenance organization;

(C) Any potential responsibility of the member for payment for nonemergency services rendered in an emergency facility;

(D) Any cost-sharing provisions for emergency services; and

(E) An explanation of the prudent layperson standard for emergency medical condition.

§33-25A-8y. Coverage of emergency medical services to triage and transport to alternative destination or treat in place.

(a) The following terms are defined:

(1) "911 call" means a communication indicating that an individual may need emergency medical services;

(2) "Alternative destination" means a lower-acuity facility that provides medical services, including without limitation:

(A) A federally-qualified health center;

(B) An urgent care center;

(C) A rural health clinic;

(D) A physician office or medical clinic as selected by the patient; and

(E) A behavioral or mental health care facility including, without limitation, a crisis stabilization unit.

"Alternative destination" does not include a:

(A) Critical access hospital;

(B) Dialysis center;

(C) Hospital;

(D) Private residence; or

(E) Skilled nursing facility;

(3) "Emergency medical services agency" means any agency licensed under §16-4C-6a of this code to provide emergency medical services: *Provided*, That rotary and fixed wing air

ambulances are specifically excluded from the definition of an emergency medical services agency;

(4) "Medical command" means the issuing of orders by a physician from a medical facility to emergency medical services personnel for the purpose of providing appropriate patient care; and

(5) "Telehealth services" means the use of synchronous or asynchronous telecommunications technology or audio-only telephone calls 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 e-mail messages or facsimile transmissions.

(b) An insurer which issues or renews a health insurance policy on or after January 1, 2025, shall provide coverage for:

(1) An emergency medical services agency to:

(A) Treat an enrollee in place if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint;

(B) Triage or triage and transport an enrollee to an alternative destination if the ambulance service is coordinating the care of the enrollee through telehealth services with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint; or

(C) An encounter between an ambulance service and enrollee that results in no transport of the enrollee if:

(i) The enrollee declines to be transported against medical advice; and

(ii) The emergency medical services agency is coordinating the care of the enrollee through telehealth services or medical

command with a physician for a medical-based complaint or with a behavioral health specialist for a behavioral-based complaint.

(c) The coverage under this section:

(1) Only includes emergency medical services transportation to the treatment location;

(2) Is subject to the initiation of response, triage, and treatment as a result of a 911 call that is documented in the records of the emergency medical services agency;

(3) Is subject to deductibles or copayment requirements of the policy, contract, or plan;

(4) Does not diminish or limit benefits otherwise allowable under a health benefit plan, even if the billing claims for medical or behavioral health services overlap in time that is billed by the ambulance service also providing care; and

(5) Does not include rotary or fixed wing air ambulance services.

(d) The reimbursement rate for an emergency medical services agency that triages, treats, and transports a patient to an alternative destination, or triages, treats, and does not transport a patient, if the patient declines to be transported against medical advice, if the ambulance service is coordinating the care of the enrollee through medical command or telemedicine with a physician for a medical-based complaint, or with a behavioral health specialist for a behavioral-based complaint under this section, shall be reimbursed at the same rate as if the patient were transported to an emergency room of a facility provider.

CHAPTER 215

(Com. Sub. for S. B. 631 - By Senators Barrett and Martin)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §16-13-16 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §16-13-16a; to amend and reenact §16-13A-9 of said code; and to amend and reenact §24-3-10 of said code, all relating to prohibiting utilities from shutting off a user's water service for nonpayment of stormwater fees without notice and compliance with certain conditions; creating board to hear appeals for assessment of estimated usage units; authorizing municipal utilities to discontinue water service to user delinquent in stormwater services fees and charges only after complying with certain requirements but imposing lien on premises served; allowing public service districts to discontinue water service to user delinquent in stormwater service fees and charges only after complying with certain requirements but imposing lien on premises served; and authorizing privately or publicly owned utilities from discontinuing water service, or contracting with other utilities to discontinue water service, for delinquency in stormwater services fees and charges only after complying with certain requirements but imposing lien on premises served.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 13. SEWAGE WORKS AND STORMWATER WORKS.

§16-13-16. Rates for service; deposit required for new customers; forfeiture of deposit; reconnecting deposit; tenant's deposit; change or readjustment; hearing; appeals board.

(a) A governing body has the power and duty, by ordinance, to establish and maintain just and equitable rates, fees, or charges for the use of and the service rendered by:

(1) Sewerage works, to be paid by the owner of each lot, parcel of real estate or building that is connected with and uses the works by or through any part of the sewerage system of the municipality or that in any way uses or is served by the works; and

(2) Stormwater works, to be paid by the owner of each lot, parcel of real estate or building that in any way uses or is served by the stormwater works or whose property is improved or protected by the stormwater works or any user of such stormwater works.

(b) The governing body may change and readjust the rates, fees, or charges from time to time. However, no rates, fees, or charges for stormwater services may be assessed against highways, road and drainage easements or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways.

(c) All new applicants for service shall indicate to the governing body whether they are an owner or tenant with respect to the service location. An entity providing stormwater service shall provide a new applicant for service a report of the stormwater fee charged for the entire property and, if the new applicant is a tenant, that portion of the fee to be assessed to the tenant. Any municipality that provides stormwater utilities shall form a municipal stormwater appeals board. The board shall consist of a member of the stormwater utility board, a municipal council member, and a rate payer. New applicants for service may appeal the estimated residential usage or equivalent dwelling usage to the board. Any such appeal must be brought within 60 days of receiving the report of the stormwater fee.

(d) The governing body may collect from all new applicants for service a deposit of $50 or two twelfths of the average annual usage of the applicant's specific customer class, whichever is greater, to secure the payment of service rates, fees, and charges in the event he or she becomes delinquent as provided in this section. In any case where a deposit is forfeited to pay service rates, fees, and charges which were delinquent at the time of disconnection or termination of service, service may not be reconnected or reinstated by the governing body until another deposit equal to $50 or a sum equal to two twelfths of the average usage for the applicant's specific customer class, whichever is greater, is remitted to the governing body. After 12 months of prompt payment history, the governing body shall return the deposit to the customer or credit the customer's account with interest at a rate as the Public Service Commission may prescribe: *Provided,* That where the customer is a tenant, the governing body is not required to return the deposit until the time the tenant discontinues service with the governing body.

(e) The rates, fees, or charges shall be sufficient in each year for the payment of the proper and reasonable expense of operation, repair, replacements and maintenance of the works and for the payment of the sums herein required to be paid into the sinking fund. Revenues collected pursuant to this section shall be considered the revenues of the works.

(f) No such rates, fees, or charges may be established until after a public hearing, at which all the users of the works and owners of property served or to be served thereby and others interested shall have an opportunity to be heard concerning the proposed rates, fees, or charges.

(g) After introduction of the ordinance fixing the rates, fees, or charges, and before the same is finally enacted, notice of the hearing, setting forth the proposed schedule of rates, fees, or charges, shall be given by publication as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code and the publication area for the publication shall be the municipality. The first publication shall be made at least five days before the date fixed in the notice for the hearing.

(h) After the hearing, which may be adjourned, from time to time, the ordinance establishing rates, fees, or charges, either as originally introduced or as modified and amended, shall be passed and put into effect. A copy of the schedule of the rates, fees, and charges shall be kept on file in the office of the board having charge of the operation of the works, and also in the office of the clerk of the municipality, and shall be open to inspection by all parties interested. The rates, fees, or charges established for any class of users or property served shall be extended to cover any additional premises thereafter served which fall within the same class, without the necessity of any hearing or notice.

(i) Any change or readjustment of the rates, fees, or charges may be made in the same manner as the rates, fees, or charges were originally established as hereinbefore provided: *Provided,* That if a change or readjustment be made substantially pro rata, as to all classes of service, no hearing or notice shall be required.

§16-13-16a. Discontinuance of services; lien and recovery.

(a) Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20 days after they become due, the user of the services and facilities provided is delinquent. The user is liable until all rates, fees, and charges are fully paid. When any payment for rates, rentals, fees or charges becomes delinquent, the governing body may use the security deposit collected in accordance with §16-13-16 of this code to satisfy the delinquent payment.

(b) The governing body may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water services to a delinquent user of sewer facilities 10 days after the sewer services become delinquent regardless of whether the governing body utilizes the security deposit to satisfy any delinquent payments: *Provided,* That nothing contained within the rules of the Public Service Commission may require agents or employees of the governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(c) The board collecting the rates, fees, or charges shall be obligated under reasonable rules to shut off and discontinue both water and sewer services to all delinquent users of water or sewer facilities and shall not restore either water facilities or sewer facilities to any delinquent user of any such facilities until all delinquent rates, fees, or charges for water and sewer facilities, including reasonable interest and penalty charges, have been paid in full, as long as the actions are not contrary to any rules or orders of the Public Service Commission: *Provided*, That nothing contained within the rules of the Public Service Commission may be considered to require any agents or employees of the municipality or governing body to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill.

(d) The governing body or the board collecting the rates, fees, or charges may shut off and discontinue water services to users with delinquent stormwater fees, provided that:

(1) The water service and stormwater fee are in the name of the same user;

(2) The rates, fees, or charges incurred by the user are at least 90 days past due;

(3) The provider has given the user written notice of termination of water service for nonpayment. Such notice must be given to the user at least 10 days before the termination of service and must notify the user of their right to enter into a deferred payment plan;

(4) The provider has attempted to make personal contact with the user at least two times in the 24 hours immediately before the termination of the service. If the provider makes personal contact with the user, the provider must inform the user of their right to enter into a deferred payment plan.

(5) The water service for a user who has entered into a deferred payment plan under this subsection may not be shut off or discontinued as long as the user is in conformance with the agreed

to payment plan. In the event the user falls out of compliance with the deferred payment plan, no sooner than five days after the missed payment, the provider may terminate service: *Provided,* That the provider must make one attempt to make personal contact with the user in the 24 hours immediately before the termination of the service.

(e) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the premises served by the works. If any service rate, fee, or charge is not paid within 20 days after it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the municipality. The lien may be foreclosed against the lot, parcel of land or building in accordance with the laws relating thereto. Where both water and sewer services are furnished by any municipality to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

ARTICLE 13A. PUBLIC SERVICE DISTRICTS.

§16-13A-9. Rules; service rates and charges; discontinuance of service; required water and sewer connections; lien for delinquent fees.

(a)(1) The board may make, enact, and enforce all needful rules in connection with the acquisition, construction, improvement, extension, management, maintenance, operation, care, protection, and the use of any public service properties owned or controlled by the district. The board shall establish, in accordance with this article, rates, fees, and charges for the services and facilities it furnishes, which shall be sufficient at all times, notwithstanding the provisions of any other law or laws, to pay the cost of maintenance, operation, and depreciation of the public service properties and principal of and interest on all bonds issued, other obligations incurred under the provisions of this article, and all reserve or other payments provided for in the proceedings which authorized the issuance of any bonds under this article. The schedule of the rates, fees, and charges may be based upon:

(A) The consumption of water or gas on premises connected with the facilities, taking into consideration domestic, commercial, industrial, and public use of water and gas;

(B) The number and kind of fixtures connected with the facilities located on the various premises;

(C) The number of persons served by the facilities;

(D) Any combination of paragraphs (A), (B), and (C) of this subdivision; or

(E) Any other basis or classification which the board may determine to be fair and reasonable, taking into consideration the location of the premises served and the nature and extent of the services and facilities furnished. However, no rates, fees, or charges for stormwater services may be assessed against highways, road, and drainage easements or stormwater facilities constructed, owned, or operated by the West Virginia Division of Highways.

(2) The board of a public service district with at least 4,500 customers and annual combined gross revenue of $3 million providing water or sewer service separately or in combination may make, enact, and enforce all needful rules in connection with the enactment or amendment of rates, fees, and charges of the district. At a minimum, these rules shall provide for:

(A) Adequate prior public notice of the contemplated rates, fees, and charges by causing a notice of intent to effect such a change to be provided to the customers of the district for the month immediately preceding the month in which the contemplated change is to be considered at a hearing by the board. The notice shall include a statement that a change in rates, fees, and charges is being considered, the time, date, and location of the hearing of the board at which the change will be considered, and that the proposed rates, fees, and charges are on file at the office of the district for review during regular business hours. The notice shall be printed on, or mailed with, the monthly billing statement, or provided in a separate mailing.

(B) Adequate prior public notice of the contemplated rates, fees, and charges by causing to be published, after the first reading and approval of a resolution of the board considering the revised rates, fees, and charges but not less than one week prior to the public hearing of the board on the resolution, as a Class I legal advertisement, of the proposed action, in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for publication shall be all territory served by the district. If the district provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the district provides service.

(C) The public notice of the proposed action shall summarize the current rates, fees, and charges and the proposed changes to said rates, fees, and charges; the date, time, and place of the public hearing on the resolution approving the revised rates, fees, and charges, and the place or places within the district where the proposed resolution approving the revised rates, fees, and charges may be inspected by the public. A reasonable number of copies of the proposed resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the board and be heard with respect to the proposed revised rates, fees, and charges.

(D) The resolution proposing the revised rates, fees, and charges shall be read at two meetings of the board with at least two weeks intervening between each meeting. The public hearing may be conducted by the board prior to, or at, the meeting at which the resolution is considered for adoption on the second reading.

(E) Rates, fees, and charges approved by resolution of the board shall be forwarded in writing to the county commission with the authority to appoint the members of the board. The county commission shall publish notice of the proposed revised rates, fees, and charges by a Class I legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. Within 45 days of receipt of the proposed rates, fees, and charges, the county commission shall take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45

days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees, and charges, as presented to the county commission, the proposed rates, fees, and charges shall be effective with no further action by the board or county commission. In any event, this 45-day period shall be mandatory unless extended by the official action of both the board proposing the rates, fees, and charges, and the appointing county commission.

(F) Enactment of the proposed or modified rates, fees, and charges shall follow an affirmative vote by the county commission and shall be effective no sooner than 45 days following action. The 45-day waiting period may be waived by public vote of the county commission only if the commission finds and declares the district to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the district to deliver continued and compliant public services.

(G) The public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by at least 750 customers or 25 percent of the customers served by the public service district, whichever is fewer, when dissatisfied by the approval, modification, or rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subdivision may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county commission to approve, modify, or reject the rates, fees, and charges, and the circuit court shall resolve the complaint: *Provided, however*, That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect, until set aside, altered, or amended by the circuit court in an order to be followed in the future.

(3) Where water, sewer, stormwater, or gas services, or any combination thereof, are all furnished to any premises, the schedule of charges may be billed as a single amount for the aggregate of the charges. The board shall require all users of services and facilities furnished by the district to designate on every application for service whether the applicant is a tenant or an owner of the premises to be served. If the applicant is a tenant, he or she shall state the name and address of the owner or owners of the premises to be served by the district. Notwithstanding the provisions of §24-3-8 of this code to the contrary, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage of the applicant's specific customer class or $50 with the district to secure the payment of service rates, fees, and charges in the event they become delinquent as provided in this section. If a district provides both water and sewer service, all new applicants for service shall deposit the greater of a sum equal to two twelfths of the average annual usage for water service or $50 and the greater of a sum equal to two twelfths of the average annual usage for wastewater service of the applicant's specific customer class or $50. In any case where a deposit is forfeited to pay service rates, fees, and charges which were delinquent at the time of disconnection or termination of service, no reconnection or reinstatement of service may be made by the district until another deposit equal to the greater of a sum equal to two twelfths of the average usage for the applicant's specific customer class or $50 has been remitted to the district. After 12 months of prompt payment history, the district shall return the deposit to the customer or credit the customer's account at a rate as the Public Service Commission may prescribe: *Provided*, That where the customer is a tenant, the district is not required to return the deposit until the time the tenant discontinues service with the district. Whenever any rates, fees, rentals, or charges for services or facilities furnished remain unpaid for a period of 20 days after the same become due and payable, the user of the services and facilities provided is delinquent and the user is liable at law until all rates, fees, and charges are fully paid. The board may, under reasonable rules promulgated by the Public Service Commission, shut off and discontinue water or gas services to all delinquent users of either water or gas facilities, or both, 10 days after the water or gas services become delinquent: *Provided,*

however, That nothing contained within the rules of the Public Service Commission may be considered to require any agents or employees of the board to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill: *Provided further,* That the water service for a user may not be shut off or discontinued for the nonpayment of a stormwater fee except as provided in subsections (i) and (j) of this section.

(b) If any publicly or privately owned utility, city, incorporated town, other municipal corporation or other public service district included within the district owns and operates separate water facilities, sewer facilities, or stormwater facilities, and the district owns and operates another kind of facility, either water or sewer, or both, as the case may be, then the district and the publicly or privately owned utility, city, incorporated town or other municipal corporation, or other public service district shall covenant and contract with each other to shut off and discontinue the supplying of water service for the nonpayment of sewer service fees and charges: *Provided*, That any contracts entered into by a public service district pursuant to this section shall be submitted to the Public Service Commission for approval. Any public service district which provides water and sewer service, water and stormwater service or water, sewer, and stormwater service has the right to terminate water service for delinquency in payment of water or sewer bills. Where one public service district is providing sewer service and another public service district or a municipality included within the boundaries of the sewer or stormwater district is providing water service and the district providing sewer or stormwater service experiences a delinquency in payment, the district or the municipality included within the boundaries of the sewer or stormwater district that is providing water service, upon the request of the district providing sewer or stormwater service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account: *Provided, however*, That any termination of water service must comply with all rules and orders of the Public Service Commission: *Provided further*, That nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the public service districts to accept payment at the customer's

premises in lieu of discontinuing service for a delinquent bill: *And provided further,* That the water service for a user may not be shut off or discontinued for the nonpayment of a stormwater fee except as provided in subsections (i) and (j) of this section.

(c) Any district furnishing sewer facilities within the district may require or may, by petition to the circuit court of the county in which the property is located, compel or may require the Bureau for Public Health to compel all owners, tenants, or occupants of any houses, dwellings, and buildings located near any sewer facilities where sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code, from the houses, dwellings, or buildings into the sewer facilities, to connect with and use the sewer facilities and to cease the use of all other means for the collection, treatment, and disposal of sewage and waste matters from the houses, dwellings, and buildings where there is gravity flow or transportation by any other methods approved by the Bureau for Public Health, including, but not limited to, vacuum and pressure systems, approved under the provisions of §16-1-9 of this code and the houses, dwellings, and buildings can be adequately served by the sewer facilities of the district and it is declared that the mandatory use of the sewer facilities provided for in this subsection is necessary and essential for the health and welfare of the inhabitants and residents of the districts and of the state. If the public service district requires the property owner to connect with the sewer facilities even when sewage from dwellings may not flow to the main line by gravity and the property owner incurs costs for any changes in the existing dwellings' exterior plumbing in order to connect to the main sewer line, the public service district board shall authorize the district to pay all reasonable costs for the changes in the exterior plumbing, including, but not limited to, installation, operation, maintenance, and purchase of a pump or any other method approved by the Bureau for Public Health. Maintenance and operation costs for the extra installation should be reflected in the users charge for approval of the Public Service Commission. The circuit court shall adjudicate the merits of the petition by summary hearing to be held

not later than 30 days after service of petition to the appropriate owners, tenants, or occupants.

(d) Whenever any district has made available sewer facilities to any owner, tenant, or occupant of any house, dwelling, or building located near the sewer facility and the engineer for the district has certified that the sewer facilities are available to and are adequate to serve the owner, tenant, or occupant and sewage will flow by gravity or be transported by other methods approved by the Bureau for Public Health from the house, dwelling, or building into the sewer facilities, the district may charge, and the owner, tenant, or occupant shall pay, the rates and charges for services established under this article only after 30 days' notice of the availability of the facilities has been received by the owner, tenant, or occupant. Rates and charges for sewage services shall be based upon actual water consumption or the average monthly water consumption based upon the owner's, tenant's, or occupant's specific customer class.

(e) The owner, tenant, or occupant of any real property may be determined and declared to be served by a stormwater system only after each of the following conditions is met: (1) The district has been designated by the Environmental Protection Agency as an entity to serve a West Virginia Separate Storm Sewer System community, as defined in 40 C. F. R. § 122.26; (2) the district's authority has been properly expanded to operate and maintain a stormwater system; (3) the district has made available a stormwater system where stormwater from the real property affects or drains into the stormwater system; and (4) the real property is located in the Municipal Separate Storm Sewer System's designated service area. It is further hereby found, determined, and declared that the mandatory use of the stormwater system is necessary and essential for the health and welfare of the inhabitants and residents of the district and of the state. The district may charge and the owner, tenant, or occupant shall pay the rates, fees, and charges for stormwater services established under this article only after 30 days' notice of the availability of the stormwater system has been received by the owner. An entity providing stormwater service shall provide a tenant a report of the stormwater fee charged for the

entire property and, if appropriate, that portion of the fee to be assessed to the tenant.

(f) All delinquent fees, rates, and charges of the district for either water facilities, sewer facilities, gas facilities, or stormwater systems or stormwater management programs are liens on the premises served of equal dignity, rank, and priority with the lien on the premises of state, county, school, and municipal taxes. Nothing contained within the rules of the Public Service Commission may require agents or employees of the public service districts to accept payment at the customer's premises in lieu of discontinuing service for a delinquent bill. In addition to the other remedies provided in this section, public service districts are granted a deferral of filing fees or other fees and costs incidental to the bringing and maintenance of an action in magistrate court for the collection of delinquent water, sewer, stormwater, or gas bills. If the district collects the delinquent account, plus reasonable costs, from its customer or other responsible party, the district shall pay to the magistrate the normal filing fee and reasonable costs which were previously deferred. In addition, each public service district may exchange with other public service districts a list of delinquent accounts: *Provided,* That an owner of real property may not be held liable for the delinquent rates or charges for services or facilities of a tenant, nor may any lien attach to real property for the reason of delinquent rates or charges for services or facilities of a tenant of the real property unless the owner has contracted directly with the public service district to purchase the services or facilities.

(g) Anything in this section to the contrary notwithstanding, any establishment, as defined in §22-11-3 of this code, now or hereafter operating its own sewage disposal system pursuant to a permit issued by the Department of Environmental Protection, as prescribed by §22-11-11 of this code, is exempt from the provisions of this section.

(h) Notwithstanding any code provision to the contrary, a public service district may accept payment for all fees and charges due, in the form of a payment by a credit or check card transaction or a direct withdrawal from a bank account. The public service district may set a fee to be added to each transaction equal to the

charge paid by the public service district for use of the credit or check card or direct withdrawal by the payor. The amount of the fee shall be disclosed to the payor prior to the transaction and no other fees for the use of a credit or check card or direct withdrawal may be imposed upon the payor and the whole of the charge or convenience fee shall be borne by the payor: *Provided*, That to the extent a public service district desires to accept payments in the forms described in this subsection and does not have access to the equipment or receive the services necessary to do so, the public service district shall first obtain three bids for services and equipment necessary to effect the forms of transactions described in this subsection and use the lowest qualified bid received. Acceptance of a credit or check card or direct withdrawal as a form of payment shall comport with the rules and requirements set forth by the credit or check card provider or banking institution.

(i) The board collecting the rates, fees, or charges may shut off and discontinue water services to users with delinquent stormwater fees, provided that:

(1) The water service and stormwater fee are in the name of the same user;

(2) The rates, fees, or charges incurred by the user are at least 90 days past due;

(3) The provider has given the user written notice of termination of water service for nonpayment. Such notice must be given to the user at least 10 days before the termination of service and must notify the user of the user's right to enter into a deferred payment plan;

(4) The provider has attempted to make personal contact with the user at least twice in the 24 hours immediately before the termination of the service. If the provider makes personal contact with the user, the provider must inform the user of the user's right to enter into a deferred payment plan.

(5) The water service for a user who has entered into a deferred payment plan under this subsection may not be shut off or

discontinued as long as the user is in conformance with the agreed-to payment plan. In the event the user falls out of compliance with the deferred payment plan, no sooner than five days after the missed payment, the provider may terminate service: *Provided,* That the provider must make one attempt to make personal contact with the user in the 24 hours immediately before the termination of the service.

(j) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the premises served by the works. If any service rate, fee, or charge is not paid within 20 days after it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's fee, may be recovered by the board in a civil action in the name of the public service district. The lien may be foreclosed against the lot, parcel of land, or building in accordance with the laws relating thereto. Where water, stormwater, and sewer services are furnished by any public service district to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

CHAPTER 24. PUBLIC SERVICE COMMISSION.

ARTICLE 3. DUTIES AND PRIVILEGES OF PUBLIC UTILITIES SUBJECT TO REGULATIONS OF COMMISSION.

§24-3-10. Termination of water service for delinquent sewer or stormwater bills.

(a) In the event that any publicly or privately owned utility, city, incorporated town, municipal corporation, or public service district owns and operates either water facilities or sewer facilities, and a privately owned public utility or a public utility that is owned and operated by a homeowners' association owns and operates the other kind of facilities, either water or sewer, then the privately owned public utility or the homeowners' association may contract with the publicly or privately owned utility, city, incorporated town, or public service district which provides the other services to shutoff and discontinue the supplying of water service for the nonpayment of sewer service fees and charges.

(b) Any contracts entered into by a privately owned public utility or by a public utility that is owned and operated by a homeowners' association pursuant to this section must be submitted to the Public Service Commission for approval.

(c) Any privately owned public utility or any public utility that is owned and operated by a homeowners' association which provides water and sewer service to its customers may terminate water service for delinquency in payment of either water or sewer bills.

(d) Where a privately owned public utility or a public utility that is owned and operated by a homeowners' association is providing sewer service and another utility is providing water service, and the privately owned public utility or the homeowners' association providing sewer service experiences a delinquency in payment, the utility providing water service, upon the request of the homeowners' association or the privately owned public utility providing sewer service to the delinquent account, shall terminate its water service to the customer having the delinquent sewer account.

(e) Any termination of water service must comply with all rules and orders of the Public Service Commission. Nothing contained within the rules of the Public Service Commission shall be deemed to require any agents or employees of the water or sewer utility to accept payment at the customer's premises in lieu of discontinuing water service for a delinquent water or sewer bill.

(f) A publicly or privately owned utility, city, incorporated town, municipal corporation, or public service district that owns or operates water facilities, or a public utility that is owned and operated by a homeowners' association that owns or operates water facilities may not discontinue or shut off water service to its customers for delinquency in payment of stormwater fees or charges, nor may it contract with any other utility, public or private, to which it provides water service to terminate water service to customers of the other utility for delinquency in the payment of stormwater services, fees, and charges except as provided in subsections (g) and (h) of this section.

(g) The governing body, board, or association collecting the rates, fees, or charges may shut off and discontinue water services to users with delinquent stormwater fees, provided that:

(1) The water service and stormwater fee are in the name of the same user;

(2) The rates, fees, or charges incurred by the user are 90 days past due;

(3) The provider has given the user written notice of termination of water service for nonpayment. Such notice must be given to the user at least 10 days before the termination of service and must notify the user of the user's right to enter into a deferred payment plan;

(4) The provider has attempted to make personal contact with the user at least two times in the 24 hours immediately before the termination of the service. If the provider makes personal contact with the user, the provider must inform the user of the user's right to enter into a deferred payment plan.

(5) The water service for a user who has entered into a deferred payment plan under this subsection may not be shut off or discontinued as long as the user is in conformance with the agreed-to payment plan. In the event the user falls out of compliance with the deferred payment plan, no sooner than five days after the missed payment, the provider may terminate service: *Provided,* That the provider must make one attempt to make personal contact with the user in the 24 hours immediately before the termination of the service.

(h) All rates, fees, or charges, if not paid when due, shall constitute a lien upon the premises served by the works. If any service rate, fee, or charge is not paid within 20 days after it is due, the amount thereof, together with a penalty of 10 percent and a reasonable attorney's fee, may be recovered by the provider in a civil action in the name of the provider. The lien may be foreclosed against the lot, parcel of land, or building in accordance with the laws relating thereto. Where water, stormwater, and sewer services are furnished by any provider to any premises, the schedule of charges may be billed as a single amount or individually itemized and billed for the aggregate thereof.

CHAPTER 216

(Com. Sub. for S. B. 755 - By Senators Barrett, Caputo, and Woelfel)

[Passed March 9, 2024; in effect 90 days from passage]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §16-9E-1, §16-9E-2, §16-9E-3, §16-9E-4, §16-9E-5, §16-9E-6, and §16-9E-7 of the Code of West Virginia, 1931, as amended, all relating to the delivery sales of tobacco products; expanding article to regulate all tobacco products; defining terms; clarifying that delivery sale may be via internet website or mobile application; prohibiting delivery sales of tobacco products to underage individuals; requiring delivery sales of tobacco products to comply with certain requirements; prohibiting persons from accepting a purchase order, selling, mailing, delivering, or causing to be delivered certain tobacco products without complying with certain applicable requirements for age verification, shipping, labeling, registration, and reporting; authorizing use of check box for confirming certain purchaser information to make purchase order for delivery sale of tobacco products via internet website or mobile application if certain criteria met; requiring collection and remission of applicable excise taxes; and establishing criminal penalties for violations of article.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9E. DELIVERY SALES OF TOBACCO PRODUCTS.

§16-9E-1. Definitions.

For purposes of this article:

(1) "Consumer" means an individual who does not hold a business registration certificate in this state for the business of selling tobacco products as a wholesale or retail dealer.

(2) "Delivery sale" means any sale of a tobacco product to a consumer in this state where either: (A) The consumer submits the order for the sale by means of a telephone or other method of voice transmission, the mail, or the internet or other online service, or the seller is otherwise not in the physical presence of the buyer when the request for purchase or order is made; or (B) the tobacco product is delivered to the buyer by common carrier, private delivery service, or other method of remote delivery, or the seller is not in the physical presence of the buyer when the buyer obtains possession of the cigarettes or smokeless tobacco: *Provided*, That a sale of a tobacco product not for personal consumption to a person who holds a business registration certificate as a wholesale dealer or a retail dealer is not a delivery sale.

(3) "Delivery service" means any person who is engaged in the commercial delivery of letters, packages, or other containers.

(4) "Department" means the State Tax Department.

(5) "Electronic smoking device" means any device that can be used to deliver any heated, aerosolized, or vaporized solution to the person inhaling from the device, including, but not limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component part, or accessory of the device, whether or not sold separately, and includes any solution intended to be heated, aerosolized, or vaporized during the use of the device, whether or not the solution contains nicotine. Electronic smoking device does not include drugs, devices, or combination products approved by the United States Food, Drug, and Cosmetic Act.

(6) "Legal minimum purchase age" state shall have the same meaning as provided in §16-9A-1 *et seq.* of this code.

(7) "Mails" or "mailing" means the shipment of any tobacco product through the United States Postal Service.

(8) "Tobacco product" means any product containing, made, or derived from tobacco or nicotine that is intended for human consumption, whether absorbed, inhaled, or ingested by any other means, including, but not limited to, cigarettes, cigarillos, little cigars, snuff, snus, chewing tobacco, or other common tobacco-containing products. A "tobacco product" also includes electronic smoking devices and any accessory of a tobacco product or electronic smoking device, whether or not any of these contain tobacco or nicotine, including, but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. A “tobacco product" does not include drugs, devices, or combination products that are regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act, nor does “tobacco product” include cigars as defined in Title 26 U.S.C. §5702.

§16-9E-2. Requirements for delivery sales.

(a) A person shall not, in connection with a delivery sale, accept a purchase order, sell, mail, deliver, or cause to be delivered any tobacco product to any individual who is under the legal minimum purchase age in this state.

(b) Each person accepting a purchase order for, selling, mailing, delivering, or cause to be delivered of any tobacco product in connection with a delivery sale shall comply with:

(1) The applicable age verification requirements set forth in §16-9E-3 of this code;

(2) The applicable shipping requirements set forth in §16-9E-4 of this code;

(3) The applicable registration and reporting requirements set forth in §16-9E-5 of this code;

(4) The tax collection requirements set forth in §16-9E-6 of this code; and

(5) All other laws of this state generally applicable to sales of tobacco products that occur entirely within this state, including, but not limited to, those laws imposing:

(A) Excise taxes;

(B) Sales taxes;

(C) License and revenue-stamping requirements; and

(D) Escrow or other payment obligations.

§16-9E-3. Age verification requirements.

(a) A person shall not, in connection with a delivery sale, accept a purchase order, sell, mail, deliver, or cause to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.* unless the delivery sale complies with all applicable age verification requirements of 15 U.S.C. §376a.

(b) A person may use a check box on an internet website or mobile application to confirm the full name, birth date, and registered address of a purchaser prior to accepting a delivery sale for a tobacco product via an internet website or mobile application if:

(1) The purchaser provided his or her full name, birth date, and registered address upon registering as a user of the internet website or mobile application; and

(2) The person has verified the full name, birth date, and registered address of the purchaser upon registration using a commercially available database or aggregate of databases, consisting primarily of data from government sources, that are regularly used by government and businesses for the purpose of age and identity verification and authentication, to ensure that the purchaser is of the legal minimum purchase age.

(c) A person who obtains a consumer's electronic signature upon delivery of a tobacco product shall be deemed to satisfy 15 U.S.C. § 376a.

§16-9E-4. Shipping and labeling requirements.

A person shall not, in connection with a delivery sale, accept a purchase order, sell, mail, deliver, or cause to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.* unless the delivery sale complies with all applicable shipping and labeling requirements of 15 U.S.C. §376a.

§16-9E-5. Registration and reporting requirements.

(a) A person shall not, in connection with a delivery sale, accept a purchase order, sell, mail, deliver, or cause to be delivered any tobacco product that is subject to 15 U.S.C. §375 *et seq.* unless the delivery sale complies with all applicable record-keeping requirements of 15 U.S.C. §376a.

(b) A person shall not, in connection with a delivery sale, accept a purchase order, sell, mail, deliver, or cause to be delivered from a location outside of this state to a consumer within this state any tobacco product that is subject to 15 U.S.C. §375 *et seq.* unless the person complies with all applicable requirements of 15 U.S.C. §376.

§16-9E-6. Collection of taxes.

Each person accepting a purchase order for a delivery sale of any tobacco product shall collect and remit to the department all applicable taxes under §11-17-1 *et seq.* imposed by this state with respect to such delivery sale, except that the collection and remission shall not be required to the extent the person has obtained proof, in the form of the presence of applicable tax stamps or otherwise, that the taxes already have been paid to this state.

§16-9E-7. Penalties.

(a) Except as otherwise provided in this section, a first violation of any provision of this article shall be a misdemeanor and punishable by a fine of $500 or five times the retail value of the tobacco products involved, whichever is greater.

(b) Any person who knowingly violates any provision of this article, or who knowingly and falsely submits a certification under §16-9E-3 of this code in another person's name, is guilty of a misdemeanor and, upon conviction thereof, shall be fined $1,000 or 10 times the retail value of the tobacco products involved, whichever is greater, or confined in jail not more than six months, or both.

(c) Any person failing to collect or remit to the department any tax required in connection with a delivery sale shall be assessed, in addition to any other penalty, a penalty of five times the retail value of the tobacco products involved.

(d) Any tobacco products sold or attempted to be sold in a delivery sale that does not meet the requirements of this article shall be forfeited to this state and destroyed. All fixtures, equipment, and all other materials and personal property on the premises of any person who, with the intent to defraud this state, violates any of the requirements of this article, shall be forfeited to this state.

CHAPTER 217

(Com. Sub. for H. B. 4233 - By Delegate C. Pritt)

[Passed February 29, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §16-5-10 of the Code of West Virginia, 1931, as amended, relating to listing of sex on birth certificates and prohibiting the use of "non-binary" as a sex description on birth certificates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. VITAL STATISTICS.

§16-5-10. Birth registration acknowledgment and rescission of paternity.

(a) A certificate of birth for each live birth which occurs in this state shall be filed with the section of vital statistics, or as otherwise directed by the state Registrar, within seven days after the birth and shall be registered if it has been completed and filed in accordance with this section.

(b) When a birth occurs in transit to or in an institution, the person in charge of the institution or his or her authorized designee shall obtain all data required by the certificate, prepare the certificate, certify either by signature or by an approved electronic process that the child was born alive at the place and time and on the date stated, and file the certificate as directed in subsection (a) of this section. The physician or other person in attendance, or any person providing prenatal care shall provide the medical information required by the certificate within seventy-two hours after the birth.

(c) When a birth occurs other than in transit to or in an institution, the certificate shall be prepared and filed by one of the following persons in the indicated order of priority in accordance with legislative rule:

(1) The physician in attendance at or immediately after the birth;

(2) Any other person in attendance at or immediately after the birth;

(3) The father or the mother, or, in the absence of the father and the inability of the mother, the person in charge of the premises where the birth occurred; or

(4) Any other person qualified by the department by rule to establish the facts of birth.

(d) When a birth occurs on a moving conveyance within the United States and the child is first removed from the conveyance in this state, the birth shall be registered in this state, and the place where it is first removed shall be considered the place of birth. When a birth occurs on a moving conveyance while in international waters or air space or in a foreign country or its air space and the child is first removed from the conveyance in this state, the birth shall be registered in this state, but the certificate shall show the actual place of birth insofar as can be determined.

(e) For the purposes of birth registration, the woman who gives birth to the child is presumed to be the mother, unless otherwise specifically provided by state law or determined by a court of competent jurisdiction prior to the filing of the certificate of birth.

(f) If the mother was married at the time of either conception or birth, or between conception and birth, the name of the most recent husband shall be entered on the certificate as the father of the child, unless:

(1) Paternity has been determined otherwise by a court of competent jurisdiction pursuant to §48-24-1 *et seq.* of this code or

other applicable law, in which case the name of the father as determined by the court shall be entered on the certificate; or

(2) Genetic testing shows that the alleged father is the biological father of the child pursuant to the following guidelines:

(A) The tests show that the inherited characteristics including, but not limited to, blood types, have been determined by appropriate testing procedures at a hospital, independent medical institution or independent medical laboratory duly licensed under the laws of this state, or any other state, and an expert qualified as an examiner of genetic markers has analyzed, interpreted and reported on the results; and

(B) The blood or tissue or other genetic test results show a statistical probability of paternity of more than 98 percent; or

(3) The mother, her husband, and an alleged father acknowledge that the husband is not the biological father and that the alleged father is the true biological father: *Provided,* That the conditions set forth in paragraphs (A) through (D) are met:

(A) The mother executes an affidavit of nonpaternity attesting that her husband is not the biological father of the child and that another man is the biological father; and

(B) The man named as the alleged biological father executes an affidavit of paternity attesting that he is the biological father; and

(C) The husband executes an affidavit of nonpaternity attesting that he is not the biological father; and

(D) Affidavits executed pursuant to the provisions of this subdivision may be joint or individual or a combination thereof, and each signature shall be individually notarized. If one of the parties is an unemancipated minor, his or her parent or legal guardian must also sign the respective affidavit.

(4) If the affidavits are executed as specified in subdivision (3) of this section, or genetic tests as specified in subdivision (2) of this

section verify that the alleged father is the biological father, the alleged father shall be shown as the father on the certificate of live birth. Paternity established pursuant to subdivision (2) or (3) of this section establishes the father for all legal purposes including, but not limited to, the establishment and enforcement of child support orders, and may be rescinded only by court order upon a showing of fraud, duress or material mistake of fact.

(5) Paternity may be established pursuant to subdivision (2) or (3) of this section only when the husband's name does not appear as the father of a child on a registered and filed certificate of live birth and the affidavits or genetic tests are completed and submitted to the section of vital statistics within one year of the date of birth of the child.

(g) If the mother was not married at the time of either conception or birth, or between conception and birth, the name of the father may not be entered on the certificate of birth without an affidavit of paternity signed by the mother and the person to be named as the father. The affidavit may be joint or individual and each signature shall be individually notarized.

(h) A notarized affidavit of paternity, signed by the mother and the man to be named as the father, acknowledging that the man is the father of the child, legally establishes the man as the father of the child for all purposes, and child support may be established pursuant to chapter 48 of this code.

(1) The notarized affidavit of paternity shall include filing instructions, the parties' social security number and addresses and a statement that parties were given notice of the alternatives to, the legal consequences of, and the rights and obligations of acknowledging paternity, including, but not limited to, the duty to support a child. If either of the parents is a minor, the statement shall include an explanation of any rights that may be afforded due to the minority status.

(2) The failure or refusal to include all information required by subdivision (1) of this subsection does not affect the validity of the affidavit of paternity, in the absence of a finding by a court of

competent jurisdiction that it was obtained by fraud, duress or material mistake of fact, as provided in subdivision (4) of this subsection.

(3) The original notarized affidavit of paternity shall be filed with the state Registrar. If a certificate of birth for the child has been previously issued which is incorrect or incomplete, a new certificate of birth will be created and placed on file. The new certificate of birth will not be marked "Amended".

(4) Upon receipt of any notarized affidavit of paternity executed pursuant to this section, the state Registrar shall forward a copy to the Bureau for Child Support Enforcement.

(5) An acknowledgment executed under the provisions of this subsection may be rescinded as follows:

(A) The parent wishing to rescind the acknowledgment shall file with the clerk of the circuit court of the county in which the child resides a verified complaint stating the name of the child, the name of the other parent, the date of the birth of the child, the date of the signing of the affidavit of paternity, and a statement that he or she wishes to rescind the acknowledgment of the paternity. If the complaint is filed more than 60 days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the complaint shall include specific allegations concerning the elements of fraud, duress or material mistake of fact.

(B) The complaint shall be served upon the other parent as provided in Rule 4 of the West Virginia Rules of Civil Procedure.

(C) The family court judge shall hold a hearing within 60 days of the service of process upon the other parent.

(D) If the complaint was filed within 60 days of the date the affidavit of paternity was executed, the court shall order the acknowledgment to be rescinded without any requirement of a showing of fraud, duress, or material mistake of fact.

(E) If the complaint was filed more than 60 days from the date of execution of the affidavit of paternity or the date of an administrative or judicial proceeding relating to the child in which the signatory of the affidavit of paternity is a party, the court may set aside the acknowledgment only upon a finding, by clear and convincing evidence, that the affidavit of paternity was executed under circumstances of fraud, duress or material mistake of fact.

(F) The circuit clerk shall forward a copy of any order entered pursuant to this proceeding to the state Registrar by certified mail. The order shall state all changes to be made, if any, to the certificate of birth. The certificate of birth may not be marked "Amended."

(i) In any case in which paternity of a child is determined by a court of competent jurisdiction pursuant to §48-24-1 *et seq.* of this code or other applicable law, the name of the father and surname of the child shall be entered on the certificate of birth in accordance with the finding and order of the court.

(j) If the father is not named on the certificate of birth, no other information about the father may be entered on the certificate.

(k) In order to permit the filing of the certificate of birth within the seven days prescribed in subsection (a) of this section, one of the parents of the child must verify the accuracy of the personal data to be entered on the certificate. Certificates of birth filed after seven days, but within one year from the date of birth, will be registered on the standard form of the certificate of birth and will not be marked "Delayed." The State Registrar may require additional evidence in support of the facts of birth for certificates filed after seven days from the date of birth.

(l) In addition to the personal data furnished for the certificate of birth issued for a live birth in accordance with the provisions of this section, a person whose name is to appear on the certificate of birth as a parent shall contemporaneously furnish to the person preparing and filing the certificate of birth the social security number or numbers issued to the parent. A record of the social security number or numbers shall be filed with the local registrar of the district in which the birth occurs within seven days after the

birth, and the local registrar shall transmit the number or numbers to the state Registrar in the same manner as other personal data is transmitted to the state Registrar.

(m) The local registrar shall transmit by mail or an approved electronic process each month to the county clerk of each county the copies of the certificates of all births occurring in the county or the data extracted therefrom, from which copies the clerk shall compile records of the births and shall create an index to the birth records that shall be a matter of public record. The State Registrar shall prescribe the form of the index of births.

(n) The birth certificate shall list the child's sex at birth as male or female and may not use the term "non-binary."

CHAPTER 218

(Com. Sub. for H. B. 4376 - By Delegates Mallow and Tully)

[Passed March 4, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16B-3-21, relating to requirements for smoke evacuation systems for health care facilities; defining terms; providing rule-making authority; and creating penalties for violation of requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. HOSPITALS AND SIMILAR INSTITUTIONS.

§16B-3-21. Smoke evacuation system required for certain surgical procedures.

(a) As used in this section:

(1) "Energy generating device" means any tool that performs a surgical function using heat, laser, electricity, or another form of energy;

(2) "Smoke evacuation system" means smoke evacuators, laser plume evacuators, or local exhaust ventilators that effectively capture and neutralize surgical smoke at the site of origin and before the smoke can make ocular contact or contact with the respiratory tract of the occupants of the room; and

(3) "Surgical smoke" means the by-product, including surgical plume, smoke plume, bio-aerosols, laser-generated airborne contaminants, and other lung-damaging dust, that results from contact with tissue by an energy generating device.

(b) On or before January 1, 2025, in order to protect operating room nurses, operating room personnel, and patients from the hazards of surgical smoke, the Office of the Inspector General shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code requiring a health care facility licensed under this chapter that utilizes energy generating devices to use a smoke evacuation system during any surgical procedure that is likely to produce surgical smoke.

(c) Any health facility acting by or through its agents or employees that violates subsection (b) of this section shall be punished by a fine of not less than $1,000 nor more than $5,000 for each violation.

CHAPTER 219

(Com. Sub. for H. B. 4431 - By Delegates Summers, Tully, Rohrbach, and Griffith)

[Passed March 4, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §61-12-15 of the Code of West Virginia, 1931, as amended, relating to the Office of the Chief Medical Examiner; and permitting the cremation of unidentified remains.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. POSTMORTEM EXAMINATIONS.

§61-12-15. Disposition of unidentified and unclaimed remains.

(a) The Office of the Chief Medical Examiner shall cremate unclaimed and unidentified human remains from its facilities.

(b) The Office of the Chief Medical Examiner, with the assistance of the city of Charleston, shall locate an appropriate cemetery.

(c) Unidentified remains shall be cremated after 30 days and after efforts to identify the person and his or her next of kin have been exhausted as determined by the Office of Chief Medical Examiner. Any data or biological sample helpful toward possible future identification of the unidentified remains including but not limited to teeth, bone, tissue, or blood samples shall be preserved within the database. In the event the death is determined to be the result of a crime, physical evidence shall be collected from the decedent's body prior to any disposition.

(d) Identified but unclaimed remains shall be cremated after 30 days and after efforts to contact the decedent's next of kin have been exhausted, as determined by the Office of the Chief Medical Examiner, and placed in a cemetery in a manner that the remains may be easily retrieved by the Office of the Chief Medical Examiner in the event the decedent's next of kin wishes to claim the remains.

(e) The chief medical examiner, or his or her designee, may enter onto the premises of the cemetery and cause to be removed from the cemetery any decedent who has been identified and claimed by his or her next of kin upon the next of kin providing proper documentation.

(f) A person may not file any cause of action against the Office of the Medical Examiner or against any medical examiner acting in his or her capacity as a medical examiner for any liability or damages relating to cremation or other disposition of a decedent's remains, consistent with the provisions of this section, prior to a person claiming a decedent.

CHAPTER 220

(Com. Sub. for H. B. 4667 - By Delegate Chiarelli)

[Passed March 4, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend and reenact §16-64-3 of the Code of West Virginia, 1931, as amended, relating to syringe services programs; and prohibiting syringe services programs from distributing listed smoking devices.

Be it enacted by the Legislature of West Virginia:

ARTICLE 64. SYRINGE SERVICES PROGRAMS.

§16-64-3. Program requirements.

(a) To be approved for a license, a syringe services program shall be part of a harm reduction program which offers or refers an individual to the following services which shall be documented in the application:

(1) HIV, hepatitis, and sexually transmitted diseases screening;

(2) Vaccinations;

(3) Birth control and long-term birth control;

(4) Behavioral health services;

(5) Overdose prevention supplies and education;

(6) Syringe collection and sharps disposal;

(7) Educational services related to disease transmission;

(8) Assist or refer an individual to a substance use treatment program;

(9) Refer to a health care practitioner or treat medical conditions; and

(10) Programmatic guidelines including a sharps disposal plan, a staff training plan, a data collection and program evaluation plan, and a community relations plan.

(b) A syringe services program:

(1) Shall offer services, at every visit, from a qualified licensed health care provider;

(2) Shall exclude minors from participation in the syringe exchange, but may provide minors with harm reduction services;

(3) Shall ensure a syringe is unique to the syringe services program;

(4) Shall distribute syringes with a goal of a 1:1 model;

(5) May substitute weighing the volume of syringes returned versus dispensed as specified. This substitution is only permissible if it can be done accurately and in the following manner:

(A) The syringes shall be contained in a see-through container; and

(B) A visual inspection of the container shall take place prior to the syringes being weighed;

(6) Shall distribute the syringe directly to the program recipient;

(7) Proof of West Virginia identification upon dispensing of the needles;

(8) Shall train staff on:

(A) The services and eligibility requirements of the program;

(B) The services provided by the program;

(C) The applicant's policies and procedures concerning syringe exchange transactions;

(D) Disposing of infectious waste;

(E) Sharps waste disposal education that ensures familiarity with the state law regulating proper disposal of home-generated sharps waste;

(F) Procedures for obtaining or making referrals;

(G) Opioid antagonist administration;

(H) Cultural diversity and sensitivity to protected classes under state and federal law; and

(I) Completion of attendance logs for participation in mandatory training;

(9) Shall maintain a program for the public to report syringe litter and shall endeavor to collect all syringe litter in the community;

(10) Shall not distribute any smoking devices, including, but not limited to, hand pipes, bubblers, bongs, dab rigs, hookahs, crack pipes, or disposable smoking devices.

(c) Each syringe services program shall have a syringe dispensing plan which includes, but is not limited to the following:

(1) Maintaining records of returned syringes by participants for two years;

(2) Preventing syringe stick injuries;

(3) Tracking the number of syringes dispensed;

(4) Tracking the number of syringes collected;

(5) Tracking the number of syringes collected as a result of community reports of syringe litter;

(6) Eliminating direct handling of sharps waste;

(7) Following a syringe stick protocol and plan;

(8) A budget for sharps waste disposal or an explanation if no cost is associated with sharps waste disposal; and

(9) A plan to coordinate with the continuum of care, including the requirements set forth in this section.

(d) If an applicant does not submit all of the documentation required in §16-63-2 of this code, the application shall be denied and returned to the applicant for completion.

(e) If an applicant fails to comply with the program requirements, the application shall be denied and returned to the applicant for completion.

(f) A license is effective for one year.

CHAPTER 221

(Com. Sub. for H. B. 4756 - By Delegates Winzenreid, Tully, Summers, and Hall)

[Passed March 4, 2024; in effect from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-5R-8, relating to the creation of a state Alzheimer's plan task force; providing membership; providing authority; requiring completion of certain tasks; requiring reports; providing a termination date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5R. THE ALZHEIMER'S SPECIAL CARE STANDARDS ACT.

§16-5R-8. State Alzheimer's Plan Task Force.

(a) There is created the Alzheimer's Disease and Other Dementia Advisory Council.

(b) (1) The Alzheimer's Disease and Other Dementia Advisory Council consists of the following voting members:

(A) One individual living with Alzheimer's disease or another dementia or a family member of such an individual;

(B) One individual who is the family caregiver of an individual living with Alzheimer's disease or another dementia;

(C) One individual who represents nursing homes;

(D) One individual who represents assisted living facilities;

(E) One individual who represents providers of adult day care services;

(F) One individual who represents the home care providers;

(G) One physician who has experience diagnosing and treating Alzheimer's;

(H) One individual who conducts research regarding Alzheimer's disease or other dementias at West Virginia University;

(I) One individual who conducts research regarding Alzheimer's disease or other dementias at Marshall University;

(J) At least one individual who represents the Alzheimer's Association West Virginia Chapter;

(K) One individual who represents the Area Agencies on Aging;

(L) One individual who represents an organization that advocates for older adults;

(M) One individual who represents veterans' nursing home.

(2) The following five members shall be considered nonvoting members:

(A) The Secretary of the Department of Health or the Secretary's designee;

(B) The Commissioner of the Bureau for Public Health or the Commissioner's designee;

(C) The Commissioner of the Bureau of Senior Services or the Commissioner's designee;

(D) The Commissioner of the Bureau for Medical Services or the Commissioner's designee; and

(E) The State Long-term Care Ombudsman or the Ombudsman's designee.

(c) A voting member shall be appointed by the Secretary of the Department of Health. Appointments shall be made not later than 30 days after the effective date of this act. Vacancies shall be filled in the same manner as original appointments.

(d) Non-governmental members of the council shall not be compensated. The Department of Health shall finance any costs of the council with existing funds.

(e) The members of the council shall select the chairperson and vice chairperson who are not be employees of the state. The council shall hold its first meeting not later than 30 days after the appointment of its members. For purposes of the first meeting, the Secretary of Health or the Secretary's designee shall call and preside over the first meeting until a chair is selected. Thereafter, the council shall meet at the call of the chairperson or at least once per quarter.

(f) A majority of the voting members shall constitute a quorum for the conduct of meetings.

(g) The Department of Health may provide staff support to the council as necessary to assist the council in the performance of its duties.

(h) The Alzheimer's Disease and Other Dementias Advisory Council shall have the following responsibilities:

(1) Examine the needs of individuals living with Alzheimer's disease or other dementias;

(2) Review the services available in the state for those individuals and their family caregivers; and

(3) Assess the ability of health care providers and facilities to meet the individuals' current and future needs.

(i) The advisory council shall consider and make findings and recommendations on all of the following topics:

(1) Trends in the state's Alzheimer's disease and other dementias populations and service needs, including:

(A) The state's role in providing or facilitating long-term care, family caregiver support, and assistance to those with Alzheimer's disease or other dementias;

(B) The state's policies regarding individuals with Alzheimer's disease or other dementias;

(C) The fiscal impact of Alzheimer's disease and other dementias on publicly funded health care programs;

(D) The state's policies on access to treatment for Alzheimer's disease and other dementias;

(E) The state's role in facilitating risk reduction to the general public; and

(F) Updates to the surveillance system to better determine the number of individuals diagnosed with Alzheimer's disease or other dementias and to monitor changes to such numbers.

(2) Existing resources, services, and capacity relating to the diagnosis and care of individuals living with Alzheimer's disease or other dementias, including;

(A) The type, cost, availability, and accessibility of dementia care services;

(B) The availability of health care workers who can serve people with dementia including, but not limited to, neurologists, geriatricians, and direct care workers;

(C) Dementia-specific training requirements for public and private employees who interact with people living with Alzheimer’s or other dementias, which shall include but not be limited to long-term care workers, case managers, adult protective services, law enforcement, and first responders;

(D) Home and community-based services, including respite care, for individuals diagnosed with Alzheimer's disease or other dementias and their families;

(E) Quality care measures for home and community-based services and residential care facilities; and

(F) State-supported Alzheimer's and other dementias research conducted at universities located in this state.

(3) Policies and strategies that address the following:

(A) Educating providers to increase early detection and diagnosis of Alzheimer's disease and other dementias;

(B) Improving the health care received by individuals diagnosed with Alzheimer's disease or other dementias;

(C) Evaluating the capacity of the health care system in meeting the growing number and needs of those with Alzheimer's disease and other dementias;

(D) Increasing the number of health care professionals necessary to treat the growing aging and Alzheimer's disease and dementia populations;

(E) Improving services and access to the services provided in the home and community to delay and decrease the need for institutionalized care for individuals with Alzheimer's disease or other dementias;

(F) Improving long-term care, including assisted living, for those with Alzheimer's disease or other dementias;

(G) Assisting unpaid Alzheimer's disease or dementia caregivers;

(H) Increasing public awareness of Alzheimer's disease and other dementias;

(I) Increasing and improving research on Alzheimer's disease and other dementias;

(J) Promoting activities to maintain and improve brain health;

(K) Improving access to treatments for Alzheimer's disease and other dementias'

(L) Improving the collection of data and information related to Alzheimer's disease and other dementias and their public health burdens;

(M) Improving public safety and addressing the safety-related needs of those with Alzheimer's disease or other dementias;

(N) Addressing legal protections for, and legal issues faced by, individuals with Alzheimer's disease or other dementias; and

(O) Improving the ways in which the government evaluates and adopts policies to assist individuals diagnosed with Alzheimer's disease or other dementias and their families.

(j) No later than 24 months, the council shall submit a State Alzheimer's Plan to the Joint Committee on Health and to the Governor. The Alzheimer's Disease and Other Dementia Advisory Council terminates on July 31, 2026.

CHAPTER 222

(Com. Sub. for H. B. 5017 - By Delegates Dittman, Tully, Petitto, Young, Kump, and Hornbuckle)

[Passed March 7, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §16-2-18 of the Code of West Virginia, 1931, as amended, relating to statewide permits for mobile food service establishment.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2. LOCAL BOARDS OF HEALTH.

§16-2-18. In-state food service statewide permit.

(a) A local or county health department shall issue a mobile food establishment statewide permit to a mobile food service establishment that is operating within the State of West Virginia. The permit will be issued from the vendor's county of residence local or county health department. The mobile food establishment statewide permit shall be valid for the fiscal year in which the permit is issued and regardless of the number of days for which the vendor requires the mobile food establishment.

(b) No local or county health department within the state may charge an additional fee to any in-state vendor that has received a mobile food establishment statewide permit but may place conditions upon an issued permit to assure compliance with that health department's rules and standards for the type of permit being issued. Each vendor must provide notice to the local health department with jurisdiction at least 72 hours prior to operating

within the jurisdiction. A mobile food establishment, in compliance with rules of the issuing local or county health department, is deemed in compliance in all other counties. The permit shall be visibly posted while the mobile food establishment is operational.

CHAPTER 223

(Com. Sub. for H. B. 5084 - By Delegates Tully, Summers, Mallow, Heckert, Marple, Westfall, Brooks, Barnhart, Willis, Burkhammer, and W. Clark)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §16-9A-1, §16-9A-2, §16-9A-3, §16-9A-4, §16-9A-7, and §16-9A-8 of the Code of West Virginia, 1931, as amended, all relating to tobacco products; amending legislative intent; defining terms; prohibiting sale or gift of tobacco products to persons younger than 21 years of age; requiring that a valid driver's license, state identification card, or any valid and unexpired federally issued identification card be presented to verify the minimum age of 21 for the purchase or acceptance of tobacco products; setting forth fines and criminal penalties; increasing fines for selling tobacco products to persons younger than 21 years of age; removing penalties for possession of a tobacco product by a person younger than the age of 18; providing that an employee who sells a tobacco product to a person younger than 21 years of age is subject to noncriminal, nonmonetary penalties; allowing an employee who sells a tobacco product to a person younger than 21 years of age to be fired under certain circumstances; permitting persons younger than 21 years of age to be used in inspections of retail outlets where tobacco products are sold; providing a defense for a person charged with selling tobacco products to a person younger than 21 years of age; replacing the West Virginia Alcohol Beverage Control Administration with the Bureau for Behavioral Health as an agency with authority to conduct inspections; removing the requirement for the West Virginia Alcohol Beverage Control Administration to submit a report and instead requiring the Commissioner of the Bureau for Behavioral Health to submit the report; and

amending language regarding vending machines to conform to the increased age requirement.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9A. TOBACCO USAGE RESTRICTIONS.

§16-9A-1. Legislative findings and intent.

Intent. - The Legislature hereby declares it to be the policy and intent of this state to discourage and ban the use of tobacco products by minors. As basis for this policy, the Legislature hereby finds and accepts the medical evidence that tobacco products may cause lung cancer, lung or heart disease, emphysema, and other serious health problems while the use of smokeless tobacco may cause gum disease and oral cancer. It is the further intent of the Legislature to reduce tobacco use by keeping tobacco products out of the hands of youth and young adults by banning the sale of tobacco products to persons younger than 21 years of age to ease the personal tragedy and eradicate the severe economic loss associated with the use of tobacco and to provide the state with a citizenry free from the use of tobacco.

§16-9A-2. Definitions.

For purposes of this article, the term:

"Electronic smoking device" means any device that can be used to deliver any heated, aerosolized or vaporized substance to the person inhaling from the device, including, but not limited to, any e-cigarette, e-cigar, e-pipe, vape pen, or e-hookah. Electronic smoking device includes any component part, or accessory of the device, whether or not sold separately, and includes any substance intended to be heated, aerosolized, or vaporized during the use of the device, whether or not the substance contains nicotine. Electronic smoking device does not include drugs, devices, or combination products approved by the United States Food, Drug, and Cosmetic Act.

"Tobacco product" means any product containing, made, or derived from tobacco, or nicotine, that is intended for human

consumption, whether absorbed, inhaled or ingested by any other means, including but not limited, to cigarettes, cigars, cigarillos, little cigars, pipe tobacco, snuff, snus, chewing tobacco, or other common tobacco-containing products. A tobacco product also includes electronic smoking devices and any accessory of a tobacco product or electronic smoking device, whether or not any of these contain tobacco or nicotine, including but not limited to, filters, rolling papers, blunt or hemp wraps, and pipes. Tobacco product does not include drugs, devices, or combination products that are regulated by the United States Food and Drug Administration under Chapter V of the Food, Drug and Cosmetic Act.

§16-9A-3. Sale or gift of tobacco products to persons younger than 21 years of age; penalties for first and subsequent offenses; provision of non-criminal, non-monetary penalties; consideration of prohibited act as grounds for dismissal.

(a) A person, firm, corporation, or business entity may not sell, give, or furnish, or cause to be sold, given, or furnished, any tobacco product, in any form, to any person younger than 21 years of age, which shall be verified by a valid driver's license, state identification card, or any valid and unexpired federally issued identification card such as a passport or military identification card:

(b) Any firm, corporation, or business entity that violates the provisions of subsection (a) of this section and any individual who violates the provisions of subsection (a) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250 for the first offense. Upon any subsequent violation at the same location or operating unit, the firm, corporation, or business entity or the individual shall be fined as follows: At least $500, but not more than $750 for the second offense, if it occurs within two years of the first conviction; at least $750, but not more than $1,000 for the third offense, if it occurs within two years of the first conviction; and at least $2,000, but not more than $5,000 for any subsequent offenses, if the subsequent offense occurs within five years of the first conviction.

(c) Any person who violates subsection (a) of this section while acting as a non-management agent or employee of a retail outlet where tobacco products are sold is subject to non-criminal, non-monetary penalties, including, but not limited to, education classes, diversion programs, and community service. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to establish standards for education classes, diversion programs, and community service.

(d) Any employer who discovers that his or her employee has sold or furnished tobacco products to any person younger than 21 years of age may dismiss the employee for cause, if the employer has provided the employee with prior written notice in the workplace that such act or acts may result in his or her termination from employment.

§16-9A-4. Use of tobacco products, in certain areas of certain public schools prohibited; penalty.

Any person who uses any tobacco product in any building or part thereof used for instructional purposes, in any public school of this state, as defined in this code, or on any lot or grounds actually used for instructional purposes of any public school of this state while the public school is used or occupied for school purposes, is guilty of a misdemeanor, and, upon conviction thereof, shall be punished for each offense by a fine of not less than one nor more than $5: *Provided*, That this prohibition shall not be construed to prevent the use of any tobacco product, in any faculty lounge, staff lounge, faculty office or other area of the public school not used for instructional purposes: *Provided, however*, That students do not have access to the area: *Provided further*, That nothing contained in this section shall be construed to prevent any county board of education from promulgating rules and regulations that further restrict the use of tobacco products, in any form, from any other part or section of any public school building under its jurisdiction.

***§16-9A-7. Enforcement of youth smoking laws and youth nicotine restrictions; inspection of retail outlets where tobacco products are sold; use of minors in inspections; annual reports; penalties; defenses.**

(a) The Bureau for Behavioral Health of the Department of Human Services, the Superintendent of the West Virginia State Police, the sheriffs of the counties of this state, and the chiefs of police of municipalities of this state, may periodically conduct unannounced inspections at locations where tobacco products are sold or distributed to ensure compliance with the provisions of §16-9A-3 of this code and in such manner as to conform with applicable federal and state laws, rules, and regulations. Persons younger than 21 years of age may be enlisted by the commissioner, superintendent, sheriffs or chiefs of police or employees or agents thereof, to test compliance with these sections: *Provided*, That a person younger than 18 years of age may be used to test compliance only if the testing is conducted under the direct supervision of the commissioner, superintendent, sheriffs, or chiefs of police or employees or agents thereof, and written consent of his or her parent or guardian. It is unlawful for any person to use persons younger than the age of 21 to test compliance in any manner not set forth in this subsection and the person using a minor is guilty of a misdemeanor and, upon conviction thereof, shall be fined the same amounts as set forth in §16-9A-3 of this code.

(b) A person charged with a violation of §16-9A-3 of this code, as the result of an inspection under subsection (a) of this section has a complete defense if, at the time the tobacco product was sold, delivered, bartered, furnished, or given, the person carefully checked a driver's license or an identification card issued by this state or another state of the United States, a passport, or a United States armed services identification card presented by the buyer or recipient and acted in good faith and in reliance upon the representation and appearance of the buyer or recipient in the belief that the buyer or recipient was 21 years of age or older.

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

(c) Any fine collected after a conviction of violating §16-9A-3 of this code, shall be paid to the clerk of the court in which the conviction was obtained: *Provided,* That the clerk of the court, upon receiving the fine, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the conviction and the collection of the fine: *Provided, however,* That any non-criminal, non-monetary penalty imposed on an employee of a retail outlet where tobacco products are sold who violated §16-9A-3 of this code shall be recorded by the clerk of the court in which the violation occurred: *Provided further*, That the clerk of the court, upon being advised that non-criminal, non-monetary obligations have been fulfilled, shall promptly notify the Commissioner of the West Virginia Alcohol Beverage Control Administration of the violation and the satisfaction of imposed non-criminal, non-monetary penalty.

(d) The Commissioner of the Bureau for Behavioral Health or his or her designee shall prepare and submit to the Governor on the last day of September of each year, a report of the enforcement and compliance activities undertaken pursuant to this section and the results of the activities. The report shall be in the form and substance that the Governor shall submit to the applicable state and federal programs.

§16-9A-8. Selling of tobacco products in vending machines prohibited except in certain places.

A person or business entity may not offer for sale any tobacco product in a vending machine. Any person or business entity which violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined $250: *Provided*, That an establishment is exempt from this prohibition if individuals younger than 21 years of age are not permitted to be in the establishment or if the establishment is licensed by the alcohol beverage control commissioner as a Class A licensee. The alcohol beverage control commissioner shall promulgate rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code, to establish standards for the location and control of the vending machines in Class A licensed establishments for the purpose of restricting access by persons younger than 21 years of age.

CHAPTER 224

(Com. Sub. for H. B. 5273 - By Delegates Gearheart, C. Pritt, Anderson, Griffith, Kump, Marple, and Williams)

[By Request of the Consolidated Public Retirement Board]

[Passed February 19, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 6, 2024.]

AN ACT to amend and reenact §16-5V-18, §16-5V-23, §16-5V-24 and §16-5V-35 of the Code of West Virginia, 1931, as amended, all relating to the Emergency Medical Services Retirement System; providing payment upon death of member with less than 10 years of contributory service; providing surviving spouse benefits when member dies from duty or non-duty related cause; and providing age calculation for a member who elected early retirement who then returned to work.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5V. EMERGENCY MEDICAL SERVICES RETIREMENT SYSTEM ACT.

§16-5V-18. Refunds to certain members upon discharge or resignation; deferred retirement; preretirement death; forfeitures.

(a) Any member who terminates covered employment and is not immediately eligible to receive disability or retirement income benefits under this article is, by written request filed with the board, entitled to receive from the fund the member's accumulated contributions. Except as provided in subsection (b) of this section, upon withdrawal, the member shall forfeit his or her accrued benefit and cease to be a member.

(b) Any member who ceases employment in covered employment and active participation in this plan and who thereafter becomes reemployed in covered employment may not receive any credited service for any prior withdrawn accumulated contributions from either this plan or the Public Employees Retirement System unless following his or her return to covered employment and active participation in this plan, the member redeposits in the fund the amount of the accumulated contributions withdrawn from previous covered employment, together with interest on the accumulated contributions at the rate determined by the board from the date of withdrawal to the date of redeposit. Upon repayment he or she shall receive the same credit on account of his or her former covered employment as if no refund had been made.

The repayment authorized by this subsection shall be made in a lump sum within 60 months of the emergency medical services officer's reemployment in covered employment or, if later, within 60 months of the effective date of this article.

(c) A member of this plan who has elected to transfer from the Public Employees Retirement System into this plan pursuant to §16-5V-6(b) of this code, may not, after having transferred into and become an active member of this plan, reinstate to his or her credit in this plan any service credit relating to periods of nonemergency medical services officer service withdrawn from the Public Employees Retirement System prior to his or her elective transfer into this plan.

(d) Every member who completes 60 months of covered employment is eligible, upon cessation of covered employment, to either withdraw his or her accumulated contributions in accordance with this section or to choose not to withdraw his or her accumulated contribution and to receive retirement income payments upon attaining early or normal retirement age.

(e) In the event a member dies from any cause other than those specified in §16-5V-23 of this code and does not have 10 or more years of contributory service, the member's accumulated contributions may be paid to a named beneficiary or beneficiaries.

If no beneficiary is named, then the accumulated contributions shall be paid to the estate of the deceased member.

(f) Notwithstanding any other provision of this article, forfeitures under the plan may not be applied to increase the benefits any member would otherwise receive under the plan.

§16-5V-23. Awards and benefits to surviving spouse – When member dies in performance of duty, etc.

(a) The surviving spouse of any member who dies by reason of injury, illness or disease resulting from an occupational risk or hazard inherent in or peculiar to the service required of members, while the member was or is engaged in the performance of his or her duties as an emergency medical services officer, or the survivor spouse of a member who dies from any cause while receiving benefits pursuant to §16-5V-19 of this code, is entitled to receive and shall be paid from the fund benefits as follows: To the surviving spouse annually, in equal monthly installments during his or her lifetime an amount equal to the greater of: (1) Two thirds of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) Benefits for a surviving spouse received under this section, §16-5V-25 and §16-5V-26 of this code are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.

§16-5V-24. Awards and benefits to surviving spouse – When member dies from nonservice-connected causes.

(a) If a member who has been a contributing member for at least 10 years dies prior to retirement from any cause other than

those specified in §16-5V-23 of this code and not due to vicious habits, intemperance or willful misconduct on his or her part, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime, a sum equal to the greater of: (1) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) if the member dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a one hundred percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(b) In any case where a retirant who had been a contributing member for at least 10 years, had not obtained the age of 60 and was receiving benefits pursuant to §16-5V-20 of this code and leaves a surviving spouse, the fund shall pay annually in equal monthly installments to the surviving spouse during his or her lifetime a sum equal to the greater of: (1) One half of the annual compensation received by the deceased member during the last 12 full months of contributory service; or (2) If the retirant dies after meeting early or normal retirement age requirements, the monthly amount which the spouse would have received had the member retired the day before his or her death, elected a 100 percent joint and survivor annuity with the spouse as the joint annuitant, and then died.

(c) Benefits for a surviving spouse received under this section, or other sections of this article are in lieu of receipt of any other benefits under this article for the spouse or any other person or under the provisions of any other state retirement system based upon the member's covered employment.

§16-5V-35. Return to covered employment by retirant.

(a) The annuity of any member who retires under the provisions of this article and who resumes service in covered employment shall be suspended while the member continues in covered employment. The monthly annuity payment for the month in which the service resumes shall be pro-rated to the date of commencement of service, and the member shall again become a contributing

member during resumption of service. At the conclusion of resumed service in covered employment the member shall have his or her annuity recalculated to take into account the entirety of service in covered employment.

(b) Any retirant who retired under the early retirement provisions of §16-5V-16 of this code, and is subsequently reemployed in covered employment pursuant to this section, and who again retires shall have his or her retirement annuity recalculated as if he or she were retiring at an age calculated by adding his or her original early retirement age to the number of years and months during which he or she was reemployed and contributing to the plan. In the event the artificially determined age, as determined in accordance with the preceding sentence, exceeds 60, the board shall not make any reduction for early retirement.

CHAPTER 225

(Com. Sub. for H. B. 5347 - By Delegates Jennings, Statler, Tully, Mallow, and Shamblin)

[Passed March 4, 2024; in effect July 1, 2024.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §16-4C-6, §16-4C-10, and §16-4C-24 of the Code of West Virginia, 1931, as amended, all relating to emergency medical services; establishing a program for emergency medical technicians to become certified paramedics; revising procedures for hearing; and providing for funding of the program for emergency medical technicians to become certified technicians.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-6. Powers and duties of secretary.

The secretary has the following powers and duties:

(a) To propose rules for legislative approval, in consultation with the state health officer, in accordance with the provisions of §29A-3-1 *et seq.* of this code: *Provided*, That the rules have been submitted at least 30 days in advance for review by the Emergency Medical Services Advisory Council, who may act only in the presence of a quorum. The rules may include:

(1) Standards and requirements for certification and recertification of emergency medical service personnel, including, but not limited to:

(A) Age, training, testing, and continuing education;

(B) Procedures for certification and recertification, and for denying, suspending, revoking, reinstating, and limiting a certification or recertification;

(C) Levels of certification and the scopes of practice for each level;

(D) Standards of conduct; and

(E) Causes for disciplinary action and sanctions which may be imposed.

(2) Standards and requirements for licensure and licensure renewals of emergency medical service agencies, including:

(A) Operational standards, levels of service, personnel qualifications and training, communications, public access, records management, reporting requirements, medical direction, quality assurance and review, and other requirements necessary for safe and efficient operation;

(B) Inspection standards and establishment of improvement periods to ensure maintenance of the standards;

(C) Fee schedules for licensure, renewal of licensure, and other necessary costs;

(D) Procedures for denying, suspending, revoking, reinstating, or limiting an agency licensure;

(E) Causes for disciplinary action against agencies; and

(F) Administrative penalties, fines, and other disciplinary sanctions which may be imposed on agencies;

(3) Standards and requirements for emergency medical services vehicles, including classifications and specifications;

(4) Standards and requirements for training institutions, including approval or accreditation of sponsors of continuing education, course curricula, and personnel;

(5) Standards and requirements for a State Medical Direction System, including qualifications for a state emergency medical services medical director and regional medical directors, the establishment of a State Medical Policy and Care Committee, and the designation of regional medical command centers;

(6) Provision of services by emergency medical services personnel in hospital emergency rooms;

(7) Authorization to temporarily suspend the certification of an individual emergency medical services provider prior to a hearing or notice if the secretary finds there is probable cause that the conduct or continued service or practice of any individual certificate holder has or may create a danger to public health or safety: *Provided*, That the secretary may rely on information received from a physician that serves as a medical director in finding that probable cause exists to temporarily suspend the certification; and

(8) Any other rules necessary to carry out the provisions of this article;

(b) To apply for, receive, and expend advances, grants, contributions, and other forms of assistance from the state or federal government or from any private or public agencies or foundations to carry out the provisions of this article;

(c) To design, develop, and review, in consultation with the state health officer, a Statewide Emergency Medical Services Implementation Plan. The plan shall recommend aid and assistance and all other acts necessary to carry out the purposes of this article:

(1) To encourage local participation by area, county, and community officials, and regional emergency medical services boards of directors; and

(2) To develop a system for monitoring and evaluating emergency medical services programs throughout the state;

(d) To provide professional and technical assistance and to make information available to regional emergency medical

services boards of directors and other potential applicants or program sponsors of emergency medical services for purposes of developing and maintaining a statewide system of services;

(e) To assist local government agencies, regional emergency medical services boards of directors, and other public or private entities in obtaining federal, state, or other available funds and services;

(f) To cooperate and work with federal, state, and local governmental agencies, private organizations, and other entities as may be necessary to carry out the purposes of this article;

(g) To acquire in the name of the state by grant, purchase, gift, devise, or any other methods appropriate, real and personal property as may be reasonable and necessary to carry out the purposes of this article;

(h) To make grants and allocations of funds and property so acquired or which may have been appropriated to the agency to other agencies of state and local government as may be appropriate to carry out the purposes of this article;

(i) To expend and distribute by grant or bailment funds and property to all state and local agencies for the purpose of performing the duties and responsibilities of the agency all funds which it may have so acquired or which may have been appropriated by the Legislature of this state;

(j) To develop, in consultation with the state health officer, a program to inform the public concerning emergency medical services;

(k) To review and disseminate information regarding federal grant assistance relating to emergency medical services;

(l) To prepare and submit to the Governor and Legislature recommendations for legislation in the area of emergency medical services;

(m) To review, make recommendations for, and assist, in consultation with the state health officer, in all projects and programs that provide for emergency medical services whether or not the projects or programs are funded through the Office of Emergency Medical Services. A review and approval shall be required for all emergency medical services projects, programs, or services for which application is made to receive state or federal funds for their operation after the effective date of this act;

(n) To cooperate with the Department of Administration, Purchasing Division to establish one or more statewide contracts for equipment and supplies utilized by emergency medical services agencies in accordance with §5A-3-1 *et seq.* of this code:

(1) Any statewide contract established hereunder shall be made available to any emergency medical services agency licensed under §16-4C-6a of this code that is designated to provide emergency response by one or more county emergency dispatch centers.

(2) The office may develop uniform standards for equipment and supplies used by emergency medical services agencies in accordance with §5A-3-1 *et seq.* of this code.

(3) The office shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to effectuate the provisions of this subsection;

(o) To take all necessary and appropriate action to encourage and foster the cooperation of all emergency medical service providers and facilities within this state; and

(p) To establish a program for emergency medical technicians, who, after three years of serving as an emergency medical technician, are eligible for state assistance through the fund established in §16-4C-24 of this code to become a certified paramedic.

§16-4C-10. Procedures for hearing.

Hearings are governed by the provisions of §29A-5-1 *et seq.* of this code.

***§16-4C-24. Emergency Medical Services Equipment and Training Fund; establishment of a grant program for equipment and training of emergency medical service providers and personnel.**

(a) There is continued in the State Treasury a special revenue fund to be known as the Emergency Medical Services Equipment and Training Fund. Expenditures from the fund by the Office of Emergency Medical Services and Bureau for Public Health, are authorized from collections. The fund may only be used for the purpose of providing grants to equip emergency medical services providers and train emergency medical services personnel, as defined in §16-4C-3 of this code, and for the program established in §16-4C-6(p). Any balance remaining in the fund at the end of any fiscal year does not revert to the General Revenue Fund but remains in the special revenue fund.

(b) The secretary shall establish a grant program for equipment, training of emergency medical services providers and personnel, and for the program established in §16-4C-6(p). Such grant program shall be open to all emergency medical services personnel and providers, but priority shall be given to rural and volunteer emergency medical services providers.

(c) The secretary shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the grant program established pursuant to this section and for the program established in §16-4C-6(p).

***NOTE:** This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

CHAPTER 226

(Com. Sub. for S. B. 331 - By Senators Clements, Deeds, Grady, Woodrum, Roberts, and Azinger)

[Passed March 4, 2024; in effect from passage]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §7-6-5a of the Code of West Virginia, 1931, as amended; and to amend and reenact §7-21-3 of said code, all relating to eliminating the cap on the maximum amount of money a county may keep in its financial stabilization fund and allowing moneys in the fund to be invested with the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments; striking language imposing a cap of 50 percent of the most recent county general fund budget; and establishing that a county commission may, subject to certain conditions, make moneys available for investment by the Board of Treasury Investments or the Investment Management Board, provided that if the amount of money in the fund exceeds 50 percent of the county's most recent general fund budget, the county shall consider tax reduction measures.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-5a. County treasurer authorized to make funds available to state investments; allocation of income.

Notwithstanding any other provision of this code, when it appears to any of the various fiscal bodies of the county that funds on deposit in its demand deposit account exceed the current requirements or demands, and it further be determined by the county treasurer that the available interest rate offered by an

acceptable depository in such treasurer's county be less than the interest rate, net of any administrative fees, offered it through state investments, the county treasurer may, with the approval in writing of each fiscal body whose funds are involved, make such funds available for investment by the West Virginia Investment Management Board in accordance with the provisions of §12-6-1 *et seq.* of this code or the West Virginia Board of Treasury Investments in accordance with the provisions of §12-6C-1 *et seq.* of this code.

Any income earned on such investment shall be allocated by such treasurer to the fiscal body whose funds were made available, such allocation to be made in accordance with the accounting and allocation principles established by the West Virginia Investment Management Board or the West Virginia Board of Treasury Investments, as applicable.

ARTICLE 21. COUNTY FINANCIAL STABILIZATION FUND ACT.

§7-21-3. Budget stabilization fund; creation; appropriation investments.

(a) A county commission may create a financial stabilization fund by a majority vote of the members. The fund may receive appropriations, gifts, grants, and any other funds made available.

(b) The county commission may appropriate a sum to the fund from any surplus in the General Fund at the end of each fiscal year or from any other money available.

(c) The county commission may, in the exercise of its discretion, make the moneys in the fund available for investment by the Board of Treasury Investments or the Investment Management Board in accordance with the provisions of §7-6-5a of this code: *Provided,* That if the amount of money in the fund exceeds 50 percent of the county's most recent General Fund budget, the county shall consider tax reduction measures.

CHAPTER 227

(Com. Sub. for S. B. 826 - By Senator Nelson)

[Passed March 7, 2024; in effect 90 days from passage (June 5, 2024)]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §7-6-2 of the Code of West Virginia, 1931, as amended, relating to creating an exemption from the bond or security requirement of banking institutions holding funds for a county commission in excess of the amount insured by an agency of the federal government by allowing for the redeposit of the funds through a deposit placement program that meets certain conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6. COUNTY DEPOSITORIES.

§7-6-2. Bond of depositories.

(a) No designation is binding on any county, nor shall any public money be deposited thereunder in excess of the amount insured by an agency of the federal government, until the banking institution designated executes a bond with good and sufficient sureties, to be accepted and approved by the county commission, payable to the State of West Virginia, in a sum as the county commission shall direct, and which may not be less than the amount of the deposit that exceeds the amount insured by an agency of the federal government in the depository at any one time. The bond shall be executed by at least four resident freeholders as sureties owning in the aggregate unencumbered real estate having an assessed valuation thereon equal to the penalty of the bond, or by a fidelity or indemnity company authorized to do business within the state, satisfactory to, and acceptable by the county commission, and having not less than $600,000 capital; and the

bond shall be conditioned for the receipt, safekeeping, and payment over of all money which may be deposited in or come under the custody of the banking institution designated a county depository under the provisions hereof, together with the interest thereon at the rate specified by this article; and the bond shall be further conditioned for the faithful performance, by the banking institution so designated, of all the duties imposed by this article upon a depository of public moneys: *Provided*, That the clerk of the county commission shall keep a record of each surety on all personal bonds given as hereinbefore provided and the clerk shall notify the county commission of every recorded conveyance of real estate made by any surety on said personal bond.

(b) An action shall lie on the bond at the instance of the county commission, or the sheriff, for the recovery of any money deposited in the depository, upon failure or default of the depository to fully and faithfully account for and pay over any and all public moneys deposited by the sheriff and of all interests earned and accrued thereon as required by this article. A bond may not be accepted by the county commission until it has been submitted to the prosecuting attorney, and certified by him or her to be in due and legal form, and conformable to the provisions of this article, which certificate shall be endorsed thereon.

(c) The county commission may, in lieu of the bond required pursuant to this section, accept as security for money deposited as aforesaid, interest-bearing securities of the United States, or of a state, county, district or municipal corporation, or of the federal land banks, or endorsed county and district warrants of the county in which the depository is located, or letters of credit of the federal land banks, or federal home loan banks, or any other letters of credit approved by the treasurer; the face value of which securities may not be less than the sum hereinbefore specified as the amount to be named in the bond in lieu of which the securities are accepted; or the county commission may accept the securities as partial security to the extent of their face value for the money so deposited, and require bond for the remainder of the full amount hereinbefore specified, to be named in the bond, and in the bond so required, the

acceptance of securities as partial security, and the extent thereof, shall be set forth.

(d) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section if the public deposits accepted are placed in certificates of deposit meeting the following requirements:

(1) The funds are invested through a designated state depository selected by the county;

(2) The selected depository arranges for the deposit of the funds in certificates of deposit in one or more banks or savings and loan associations wherever located in the United States, for the account of the county;

(3) The full amount of principal and accrued interest of each certificate of deposit is insured by the Federal Deposit Insurance Corporation;

(4) The selected depository acts as custodian for the county with respect to such certificates of deposit issued for the county's account; and

(5) On the same date the public moneys are redeposited by the public depository, the public depository may, in its sole discretion, choose whether to receive deposits, in any amount, from other banks, savings banks, or savings and loan associations.

(e) A banking institution is not required to provide a bond or security in lieu of bond pursuant to this section for deposits with any duly designated state depository that is selected and authorized by the county commission to arrange for the redeposit of the funds through a deposit placement program that meets the following conditions:

(1) On or after the date that the county commission funds are received, the selected depository:

(A) Arranges for the redeposit of the funds into deposit accounts in one or more federally insured banks or savings and loan associations that are located in the United States; and

(B) Serves as custodian for the county commission with respect to the funds deposited into such accounts;

(2) The county commission funds deposited in a selected depository in accordance with this subsection and held at the close of business in the selected depository in excess of the amount insured by the Federal Deposit Insurance Corporation shall be secured in accordance with subsection (a) or (c) of this section;

(3) The full amount of the funds of the county commission redeposited by the selected depository into deposit accounts in banks or savings and loan associations pursuant to this subsection, plus accrued interest, if any, shall be insured by the Federal Deposit Insurance Corporation; and

(4) On the same date that the funds of the county commission are redeposited pursuant to this subsection, the selected depository receives an amount of deposits from customers of other financial institutions through the direct placement program that are equal to the amount of the county commission's funds redeposited by the selected depository.

(f) The hypothecation of the securities shall be by proper legal transfer as collateral security to protect and indemnify by trust any and all loss in case of any default on the part of the banking institution in its capacity as depository as aforesaid. All the securities shall be delivered to or deposited for the account of the county commission, and withdrawal or substitution thereof may be permitted from time to time upon approval by the county commission by order of record, but the collateral security shall be released only by order of record of the county commission when satisfied that full and faithful accounting and payment of all the moneys has been made under the provisions hereof. In the event actual possession of the hypothecated securities are delivered to the county commission, it shall make ample provision for the safekeeping thereof and the interest thereon when paid shall be

turned over to the banking institution, so long as it is not in default as aforesaid. The county commission may permit the deposit under proper receipt of the securities with one or more banking institutions within or without the State of West Virginia and may contract with any institution for safekeeping and exchange of any hypothecated securities and may prescribe the rules for handling and protecting the same.

CHAPTER 228

(S. B. 864 - By Senator Weld)

[Passed March 9, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §12-4-14 of the Code of West Virginia, 1931, as amended, all related to the Grant Transparency and Accountability Act; clarifying what grants are subject to reporting requirements; defining terms; and making technical clarifications.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ACCOUNTS, REPORTS AND GENERAL PROVISIONS.

§12-4-14. West Virginia Grant Transparency and Accountability Act; Accountability of grantees receiving state funds or grants, procedures, reporting, auditing, investigations, and recovery; sworn statements by volunteer fire departments; rule making, criminal penalties.

(a) This section may be cited as the West Virginia Grant Transparency and Accountability Act. The West Virginia Grant Transparency and Accountability Act is intended to develop a coordinated, nonredundant process for the effective oversight and monitoring of state grant recipients, thereby ensuring quality programs and limiting fraud, waste, and abuse.

(b) For the purposes of this section:

(1) "Grantor" means a state spending unit awarding a state grant.

(2) "Grantee" means any entity receiving a state grant, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity.

(3) "Subgrantee" means an entity, including a state spending unit, local government, corporation, partnership, association, individual, or other legal entity, that receives grant money from a grantee that was awarded a state grant.

(4) "Report" means an engagement, such as an agreed-upon procedures engagement or other attestation engagement, performed and prepared by a certified public accountant to test whether state grants were spent as intended. The term "report" does not mean a full-scope audit or review of the entity receiving the state grant.

(5) "State grant" means funding provided by a grantor, regardless of the original source of the funds, to a grantee upon application for a specific purpose. The term "state grant" does not include: (A) Payments for goods and services purchased by a state spending unit; (B) compensation to state employees and public officials; (C) reimbursements to state employees and public officials for travel or incidental expenses; (D) grants of student aid; (E) government transfer payments; (F) direct benefits provided under state insurance and welfare programs; (G) funds reimbursed to a person for expenditures made for qualified purposes when receipts for the expenditures are required prior to receiving the funds; (H) retirement benefits; (I) federal pass-through funds that are subject to the federal Single Audit Act Amendments of 1996, 31 U.S.C. § 7501 *et seq*., and the funds required to match the federal funds; (J) distributions to volunteer and part-volunteer fire departments and fire companies made pursuant to §33-3-14d, §33-3-33, §33-12C-7 of this code; (K) money received from the Fire Service Equipment and Training Fund as provided in §29-3-5f of this code; and (L) grants made by the West Virginia Water Development Authority.

(6) "West Virginia debarred list" means the list maintained by the State Auditor that contains the names of individuals and entities

that are ineligible, either temporarily or permanently, from receiving an award of state grant funds.

(7) "State Auditor" means the State Auditor of West Virginia, by himself or herself, or by any person appointed, designated, or approved by the State Auditor to perform the service.

(8) "Stop payment order" means a communication from the grantor to the State Auditor and the State Treasurer, following procedures established by the State Auditor, causing the cessation of payments to a grantee or subgrantee as a result of the grantee or subgrantee's failure to comply with one or more terms of the state grant or subgrant, violations of law, or the initiation of an audit or investigation.

(9) "Stop payment procedure" means the procedure created by the State Auditor which effects a stop payment order or the lifting of a stop payment order.

(c)(1) Any grantee who receives one or more state grants in the amount of $50,000 or more in the aggregate in a state's fiscal year shall file with the grantor and the State Auditor a report of the disbursement of the state grant funds. When the grantor causes an audit, by an independent certified public accountant, to be conducted of the state grant funds, the audit is performed using generally accepted government auditing standards, and a copy of the audit is available for public inspection, no report is required to be filed under this section. An audit performed that complies with Office of Management and Budget circular A-133, and submitted within the period provided in this section, may be substituted for the report.

(2) Any grantee who receives a state grant in an amount less than $50,000, or who is not required to file a report because an audit has been conducted or substituted as provided by subdivision (1) of this subsection, shall file with the grantor and State Auditor a sworn statement of expenditures made under the state grant.

(3) *Subgrant of state grant funds* – If any grantee obtains state grant funds and grants any part, or all of those funds, to a

subgrantee for a specific purpose or purposes, the granted funds shall be treated as a state grant.

(4) Reports and sworn statements of expenditures required by this section shall be filed within two years of the end of the grantee's fiscal year in which the disbursement of state grant funds by the grantor was made. The report shall be made by an independent certified public accountant at the cost of the grantee. State grant funds may be used to pay for the report if the applicable grant provisions allow. The scope of the report is limited to showing that the state grant funds were spent for the purposes intended when the state grant was made.

(5) In the event the State Auditor determines that applicable reporting or record-keeping provisions for state grants are delinquent or not in compliance with this code, the State Auditor shall notify the State Treasurer and no further state grant funds appropriated to the grantor under the specific state grant shall be encumbered or expended until such time as the State Auditor determines that all applicable reporting or record-keeping provisions are brought into compliance: *Provided*, That such suspension of funding does not violate federal law or regulations, or unreasonably prevent or detrimentally impact, the ability of the agency grantor to receive federal support or funding.

(6) Each grantor shall designate a Chief Accountability Officer, to the extent possible from within its existing staff, who shall serve as a liaison to the State Auditor, and shall be responsible for the grantor's implementation of, and compliance with, the law, rules, and terms of state grants. Such position may be held concurrently with any other designated position.

(d)(1) Grantors or the State Auditor shall issue stop payment orders for failure to file required reports. Any grantee failing to file a required report or sworn statement of expenditures within the two-year period as provided in this section for state grant funds, is barred from subsequently receiving state grants until the grantee has filed the report or sworn statement of expenditures and is otherwise in compliance with the provisions of this section.

(2) Any grantor shall report any grantee failing to file a required report or sworn statement of expenditures within the required period provided in this section to the State Auditor for purposes of debarment from receiving state grants.

(3) The State Auditor shall maintain a searchable and publicly accessible database listing all awarded state grants. All grantors shall provide a list of grantees and subgrantees to the State Auditor and all other information regarding state grant funds and grantees as required by law or rule.

(e)(1) The grantor administering the state grant shall notify the grantee of the reporting requirements set forth in this section.

(2) All grantors shall, prior to awarding a state grant, verify that the grantee is not barred from receiving state grants pursuant to this section. The verification process shall, at a minimum, include:

(A) A requirement that the grantee seeking the state grant provide a sworn statement from an authorized representative that the grantee has filed all reports and sworn statements of expenditures for state grants received as required under this section; and

(B) Confirmation from the State Auditor by the grantor that the grantee has not been identified as one who has failed to file a report or sworn statement of expenditures under this section. Confirmation may be accomplished by accessing the computerized database provided for in this section.

(3) If any report or sworn statement of expenditures submitted pursuant to the requirements of this section provides evidence of a reportable condition or violation, the grantor shall provide a copy of the report or sworn statement of expenditures to the State Auditor within 30 days of receipt by the grantor.

(4) The grantor and State Auditor shall maintain copies of reports and sworn statements of expenditures required by this section and make the reports or sworn statements of expenditures available for public inspection, as well as for use in audits and performance reviews of the grantor.

(5) *Stop payment procedures* – The State Auditor, in cooperation with grantors, shall promulgate legislative, procedural, and interpretive rules in accordance with the provisions of §29A-3-1 *et seq.* of this code in implementing the provisions of this section which shall include, but not be limited to:

(A) Procedures concerning issuing and lifting stop payments and other corrective actions;

(B) Factors to be considered in determining whether to issue a stop payment order including whether or not a stop payment order is in the best interest of the state;

(C) Factors to be considered in determining whether a stop payment order should be lifted; and

(D) Procedures for notification to the grantee or subgrantee of the issuance of a stop payment order, the lifting of a stop payment order, and any other related information.

(6) *Informal Conference* – Whenever a grantor reasonably believes that state grant funds are subject to recovery, the grantor shall provide the grantee the opportunity for at least one informal conference to determine the facts and issues and to resolve any conflicts before taking any formal recovery actions.

(7) *Formal Procedures for Recovery* –

(A) If a grantor determines that certain state grant funds are to be recovered, then, prior to taking any action to recover the state grant funds, the grantor shall provide the grantee of the funds a written notice of the intended recovery. This notice shall identify the funds and the amount to be recovered and the specific facts which permit recovery.

(B) A grantee shall have 35 days from the receipt of the notice required in paragraph (A) of this subdivision to return the state grant funds or request a hearing in writing to show why recovery is not justified or proper.

(C) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then:

(i) The hearing shall be conducted under §29A-5-1 *et seq.* of this code, and be presided over by the grantor director or their designee;

(ii) The grantor shall hold the hearing at which, the grantee or designated representative may present evidence and witnesses to show why recovery should not be permitted; and

(iii) After the conclusion of the hearing, the grantor shall make a final decision and issue a written final recovery order in compliance with §29A-5-3 of this code and send a copy of the order to the grantee and the State Auditor.

(D)(i) If a grantee requests a hearing pursuant to paragraph (B) of this subdivision, then the grantor may not take any action of recovery until at least 35 days after the grantor has issued a final recovery order pursuant to the requirements of paragraph (C) of this subdivision.

(ii) If a grantee does not return the state grant funds or request a hearing as permitted in paragraph (B) of this subdivision, then the grantor may proceed with recovery of the state grant funds identified in the notice issued pursuant to the requirements of paragraph (A) of this subdivision, at any time after the expiration of the 35 day request period established in paragraph (B) of this subdivision.

(8) *Recovery of State Grant Funds by Grantor Agency* – Any state grant funds which have been misspent or are being improperly held are subject to recovery by the grantor. The grantor shall take affirmative and timely action to recover all misspent or improperly held state grant funds. In order to effectuate the recovery of such state grant funds, the grantor may use any one, or a combination of, the following:

(A) Offset the amounts against existing state grants or future state grants to be made by the grantor making the recovery;

(B) Request offsets of the amounts from existing state grants or future state grants to be made by other grantors;

(C) Initiate any debt collection method authorized by law against any private person, business, or entity;

(D) Remove the grantee from the grantor programs and debar the grantee's participation in future state grant programs for a period not to exceed three years, or until removed from the West Virginia debarred list; or

(E) Request further action under subdivision (9) of this subsection to recover state grant funds and otherwise enforce all applicable laws.

(9) *Recovery of State Grant Funds* – The Attorney General, independently or on behalf of the State Auditor, may take any action within his or her authority to recover any state grant funds which have been misapplied or are being improperly held and have all the powers of collection established in this act in addition to any other powers authorized by law, including, without limitation, to file lawsuits to recover state grant funds.

(10) All state grant funds, whose use is not restricted by law or otherwise appropriated, which are recovered by the grantor, or State Auditor, and expired or unexpended state grant funds remaining at state grant completion or termination, shall be deposited in a special revenue fund, which is hereby created and established in the State Treasury to be known as the Grant Recovery Fund. The moneys in the fund, with all interest or other earnings thereon, shall be expended only upon appropriation by the Legislature.

(11) The State Auditor has authority to promulgate procedural and interpretive rules and propose legislative rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code to assist in implementing the provisions of this section. The rules shall set forth uniform administrative requirements and reporting procedures for state grants and subgrants to ensure

compliance. Grantors shall not impose additional or inconsistent requirements unless specifically required by state or federal law.

(12) *Conflicts of interest* – The State Auditor shall adopt rules regarding conflict of interest policies for state grants. Grantors, grantees, and subgrantees must disclose, in writing, any potential conflicts of interest to the grant applicant prior to awarding the state grant.

(f)(1) Any grantor administering a state grant shall, in the manner designated by the State Auditor, notify the State Auditor of the maximum amount of funds to be disbursed, the identity of the grantee authorized to receive the funds, the grantee's fiscal year and federal employer identification number, and the purpose and nature of the state grant within 30 days of making the state grant or authorizing the disbursement of the funds, whichever is later.

(2) The State Treasurer shall provide the Legislative Auditor the information concerning formula distributions to volunteer and part-volunteer fire departments, made pursuant to §33-3-14d, §33-3-33, and §33-12C-7 of this code, the Legislative Auditor requests, and in the manner designated by the Legislative Auditor.

(3) The State Auditor shall maintain the West Virginia debarred list identifying grantees who have failed to file reports and sworn statements required by this section. The list shall be in the form of a computerized database that shall be accessible by grantors and the public over the Internet, unless public disclosure would violate federal law or regulations.

(g) An audit of state grant funds may be authorized at any time by the Joint Committee on Government and Finance to be conducted by the State Auditor in cooperation with the Legislative Auditor at no cost to the grantee.

(h) Any report submitted pursuant to the provisions of this section may be filed electronically in accordance with the provisions of §39A-1-1 *et seq.* of this code.

(i) Any grantee who files a fraudulent sworn statement of expenditures under subsection (b) of the section, a fraudulent

sworn statement under subsection (d) of this section, or a fraudulent report under this section, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(j) *Prohibition on use of state grant funds for prohibited political activity –*

(1) For the purpose of this section, "prohibited political activity" means activity directed toward the success or failure of a political party, candidate for political office, or ballot issue, and includes, without limitation, express advocacy for the election or defeat of a political party, candidate, or ballot issue.

(2) Grantors, grantees, subgrantees, and personnel thereof shall not knowingly use state grant funds, or goods or services purchased with state grant funds, to engage, either directly or indirectly, in a prohibited political activity.

(3) Grantors, grantees, subgrantees and personnel thereof shall not be knowingly compensated from state grant funds for time spent engaging in a prohibited political activity.

(4) Nothing in this section shall prohibit any organization described in 26 U.S.C. § 501(c)(3) or 26 U.S.C. § 501(c)(4) receiving a state grant from engaging in any federally permissible activity regarding advocacy, indirect and direct lobbying, and political activity, provided that the specific funds acquired by a state grant or grantor shall not be used for those activities that are permitted by federal law but prohibited by this section.

(5) A grantor, grantee, subgrantee, or personnel thereof who knowingly uses state grant funds for prohibited political activity in violation of this section, is guilty of a felony and, upon conviction thereof, shall be fined not less than $1,000 nor more than $5,000 or imprisoned in a state correctional facility for not less than one year nor more than five years, or both fined and imprisoned.

(k) Reporting – Effective on or before December 31, 2022, and every three years thereafter, the State Auditor shall submit to the Joint Legislative Committee on Government and Finance a report that demonstrates the efficiencies, cost savings, and reductions in fraud, waste, and abuse. The report shall include, but not be limited to, facts describing:

(1) The number and names of entities placed on the West Virginia Debarred List;

(2) The number of stop payment orders issued to grantees;

(3) Any savings realized as a result of the implementation of this act;

(4) A statement of funds recovered and funds in the recovery process;

(5) Any reductions in the number of duplicative audit report reviews; and

(6) The overall number of state grants awarded that given year and the total amount of dollars awarded by each grantor.

CHAPTER 229

(S. B. 866 - By Senator Nelson)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §12-6-4 of the Code of West Virginia, 1931, as amended, relating generally to West Virginia Investment Management Board governance; designating the State Treasurer as chairman of the board; requiring the chairman to appoint the chief executive officer of the board subject to board approval; providing that the chief executive officer will serve until appointment of a successor, resignation, or board removal; authorizing the chairman to appoint a temporary chief executive officer without board approval to fill a vacancy for a period of time; deleting obsolete provisions; and providing an internal effective date

Be it enacted by the Legislature of West Virginia:

§12-6-4. Management and control of fund; officers; staff; fiduciary or surety bonds for trustees; liability of trustees.

(a) The management and control of the board shall be vested solely in the trustees in accordance with the provisions of this article.

(b) The State Treasurer shall be the chairman of the board and the trustees shall elect a vice chairman who may not be a constitutional officer or his or her designee to serve for a term of two years. Effective with any vacancy in the vice chairmanship, the board shall elect a vice chairman to a new two-year term. The vice chairman shall preside at all meetings in the absence of the chairman. Annually, the trustees shall elect a secretary, who need

not be a member of the board, to keep a record of the proceedings of the board.

(c) (1) The chairman of the board shall appoint a chief executive officer of the board, subject to board approval. The chief executive officer shall serve in his or her position until one of the following occur:

(A) A new chief executive officer of the board is appointed and approved by the board;

(B) The chief executive officer resigns from his or her position; or

(C) The chief executive officer is removed from his or her position by the board.

(2) The chairman of the board may appoint a temporary chief executive officer of the board, without board approval, to fill a vacancy in the position of chief executive officer for a period of time not to exceed six months.

(3) The chief executive officer shall have five years' experience in investment management with public or private funds within the 10 years next preceding the date of appointment. The chief executive officer additionally shall have academic degrees, professional designations, and other investment management or investment oversight or institutional investment experience in a combination the trustees consider necessary to carry out the responsibilities of the chief executive officer position as defined by the trustees. The trustees shall fix the duties and compensation of the chief executive officer.

(d) The trustees shall retain an internal auditor to report directly to the trustees and shall fix his or her compensation. The internal auditor shall be a certified public accountant with at least three years' experience as an auditor. The internal auditor shall develop an internal audit plan, with board approval, for the testing of procedures and the security of transactions.

(e) The board shall procure and maintain in effect commercially customary property, liability, crime, and other insurance to cover risks of loss from its operations. The types and amounts of the insurance coverages shall be determined by the board, 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 board: *Provided,* That the board shall purchase a blanket bond for the faithful performance of its duties in the amount of at least $10 million. The board 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 board and the amount of the fiduciary or surety bond shall be fixed by the board. The premiums payable on any insurance or fiduciary or surety bonds that the board may require, from time to time, shall be an expense of the board. In connection with the duties of the board under this subsection, the board may establish, fund, and maintain a self-insurance account. If established, the board shall deposit and maintain moneys in the self-insurance account in amounts as may be determined by the board in consultation with one or more qualified insurance or actuarial consultants, and all moneys in any self-insurance account may be used only for the purpose of providing self-insurance, establishing reserves in connection with insurance deductibles, self-insured retentions, or self-insurance, or helping to defray the costs of insurance procured under this subsection, and for no other purpose. The board may procure any and all insurance coverages and bonds deemed appropriate by the board or required by the provisions of this article, either through the state Board of Risk and Insurance Management or in the commercial markets, in the discretion of the board.

(f) The trustees and employees of the board are not liable personally, either jointly or severally, for any debt or obligation created by the board: *Provided,* That the trustees and employees of the board are liable for acts of misfeasance or gross negligence.

(g) The board is exempt from the provisions of §12-3-7, §12-3-11, and §5A-3-1 *et seq.* of this code: *Provided,* That the trustees and employees of the board are subject to purchasing policies and procedures which shall be promulgated by the board. The purchasing policies and procedures may be promulgated as emergency rules pursuant to §29A-3-15 of this code.

(h) The amendments to this section adopted during the 2024 regular session of the Legislature are effective July 1, 2025.

CHAPTER 230

(Com. Sub. for H. B. 4801 - By Delegates Criss, Barnhart, Westfall, Hott and Espinosa)

[Passed February 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on February 23, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §12-1-1b; to amend and reenact §12-1-5 of said code; and to amend and reenact §12-1B-5 and §12-1B-7 of said code, all relating generally to the banking and contractual authority of the State Treasurer's Office; setting forth prohibited terms and conditions in State Treasurer contracts consistent with general restrictions on other state contracts; authorizing rulemaking by the State Treasurer; and requiring advance announcement by the State Treasurer of the West Virginia Security for Public Deposits Program commencement date by publication in the State Register.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1. STATE DEPOSITORIES.

§12-1-1b. Prohibited clauses in State Treasurer contracts.

(a) Any term or condition in any contract entered into by the State Treasurer shall be void ab initio to the extent that it requires the State Treasurer to agree to or abide by a term and condition prohibited in §5A-3-62 of this code.

(b) No official, employee, agent, or representative of the State Treasurer may contravene this section, and no oral or written expression of consent to any term or condition declared void ab initio by this section, or signature on a contract, may be deemed as such. Any contract that contains a term or condition declared void

ab initio by this section shall otherwise be enforceable as if it did not contain such term or condition. All contracts entered into by the State Treasurer, except for contracts with another government, shall be governed by West Virginia law notwithstanding any term or condition to the contrary.

§12-1-5. Limitation on amount on deposit; dedicated method; rules.

(a) The amount of state funds on deposit in any depository in excess of the amount insured by an agency of the federal government shall be secured by a deposit guaranty bond issued by a valid bankers' surety company or by other securities acceptable to the State Treasurer, pursuant to the dedicated method, in an amount of at least 102 percent of the amount on deposit. The value of the collateral shall be determined by the State Treasurer.

(b) The State Treasurer may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this section.

(c) For the purposes of this section, the term "dedicated method" means the securing of public deposits without accepting the contingent liability for the losses of public deposits of other designated state depositories as provided in this section.

ARTICLE 1B. WEST VIRGINIA SECURITY FOR PUBLIC DEPOSITS ACT.

§12-1B-5. West Virginia Security for Public Deposits Program authorized.

The West Virginia Security for Public Deposits Program is hereby authorized. The State Treasurer shall announce the commencement of the West Virginia Security for Public Deposits Program, at which time the requirements of this article become effective, by publishing a notice in the State Register at least 30 days prior to commencement of the program. The Treasurer shall implement and administer the West Virginia Security for Public

Deposits Program under the terms and conditions required by this article.

§12-1B-7. Powers and duties of the State Treasurer; rules; charges; contracts.

In order to implement and administer the Public Deposits Program, the State Treasurer may:

(1) Propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code and may promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code as are necessary to effectuate the provisions of this article, including, but not limited to, the following:

(A) The terms and conditions under which public deposits must be secured;

(B) The method for determining the pooled collateral requirements based on the balance of public funds held in the designated state depository in excess of funds insured by an agency of the federal government and the evaluation of the overall financial condition of the designated state depository;

(C) The collateral requirements and collateral pledging level for each designated state depository as determined to be prudent under the circumstances and based on nationally recognized financial rating services information and established financial performance guidelines;

(D) The securities or instruments that constitute eligible collateral under this article and the percentage of face value or market value of such securities or instruments that can be used to secure public deposits;

(E) Reporting requirements for designated state depositories;

(F) The process for a designated state depository to withdraw from the pooled method of securing public deposits and instead be governed by the procedures for securing such deposits by the

dedicated method or other approved method permitted in this code, consistent with the primary purpose of protecting public deposits;

(G) The process for determining when a default or insolvency has occurred, or is likely to occur, and the actions necessary for the protection, collection, compromise, or settlement of any claim arising in case of default or insolvency;

(H) Requirements for the payment of losses by pooled or dedicated methods; and

(I) Any and all guidelines necessary and proper for the full and complete administration of this article;

(2) Charge and collect any necessary administrative fees, fines, penalties, and service charges in connection with the Public Deposits Program or any agreement, contract, or transaction pursuant to this article;

(3) Execute contracts, agreements, or other instruments for goods and services necessary to effectuate this article, including agreements with designated state depositories or any other entity. Selection of these services is not subject to §5A-3-1 *et seq.* of this code; and

(4) Perform all other lawful actions necessary to effectuate the provisions of this article, subject to applicable state and federal law.

CHAPTER 231

(H. B. 5128 - By Delegates Criss, Heckert, Mallow, Statler, Fehrenbacher, Hott, Linville, Rohrbach, Riley, Holstein, and Hillenbrand)

[Passed March 5, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §29-22-18g, relating to transferring, after the end of each fiscal year from any remaining and available net profits in the State Lottery Fund, the sum of $6 million to the Fire Protection Fund for state distribution to volunteer fire departments, the sum of $3 million to the All County Fire Protection Fund for county distribution to fire departments in each county that has in place a countywide excess levy, or a countywide fee dedicated to fire or emergency services, and the sum of $3 million to the County Fire Protection Fund for county distribution to fire departments in each county; and providing reduced pro rata distribution in the event of insufficient remaining and available net profits.

Be it enacted by the Legislature of West Virginia:

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18g. Additional allocation of net profits from the State Lottery Fund to Fire Protection Fund, County Fire Protection Fund and All County Fire Protection Fund.

(a) Notwithstanding any other provision of this code to the contrary, following the end of each fiscal year, after the Lottery Commission has met the requirements for the allocation of net profits from the State Lottery Fund as required under §29-22-18 of this code and any other provisions of this code, and after satisfying

the requirements for funds dedicated to pay debt service in accordance with bonds payable from the State Lottery Fund and for other purposes as required by §29-22-18 and §29-22-18f of this code, the Lottery Commission shall annually allocate and transfer from any remaining and available net profits for the fiscal year in the State Lottery Fund the following:

(1) The sum of $6 million, or the sum of the remaining and available net profits, whichever is less, to the Fire Protection Fund created in §33-3-33 of this code, which sum transferred shall be distributed in accordance with the provisions of that section;

(2) The sum of $3 million, or the sum of the remaining and available net profits, whichever is less, to the County Fire Protection Fund created in §7-5B-1 of this code, which sum transferred shall be distributed in accordance with the provisions of that section; and

(3) The sum of $3 million, or the sum of the remaining and available net profits, whichever is less, to the All County Fire Protection Fund created in §7-5B-2 of this code, which sum transferred shall be distributed in accordance with the provisions of that section.

(b) In the event that remaining and available net profits for the fiscal year in the State Lottery Fund are not sufficient to meet the allocation and transfer of net profits as directed under subsection (a) of this section, then the amounts allocated and transferred under subsection (a) of this section from any remaining and available net profits for the fiscal year shall be reduced on a pro rata basis.

CHAPTER 232

(Com. Sub. for S. B. 539 - By Senators Takubo, Deeds, Oliverio, Weld, Trump, Maroney, and Woelfel)

[Passed March 4, 2024; in effect 90 days from passage (June 2, 2024)]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15A-12-9, relating to requiring the West Virginia Fusion Center to create the cold case database; defining terms; allowing law-enforcement agencies to provide information; explaining the types of cases to be included in the cold case database; explaining the state agency developing the cold case database; delineating the information that must be provided for inclusion in the cold case database for each investigation; and delineating the information that may be provided for inclusion in the cold case database for each investigation if applicable to either the victim of the crime or the suspect in the crime.

Be it enacted by the Legislature of West Virginia:

ARTICLE 12. WEST VIRGINIA FUSION CENTER.

§15A-12-9. Cold case database.

(a) As used in this section:

"CODIS" means the Combined DNA Index System;

"Cold case" means any investigation into a qualifying crime, a missing person, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved;

"Database" means the cold case database;

"NAMUS" means the National Missing and Unidentified Persons System;

"NCIC" means the National Crime Information Center;

"NCMEC" means the National Center for Missing and Exploited Children;

"Qualifying crime" means felony offenses set forth in §61-2-1 *et seq*., §61-3-1, §61-3-2, §61-3-7, §61-3C-14b, §61-3E-1 *et seq*., §61-8-1 *et seq*., §61-8A-1 *et seq*., §61-8B-1 *et seq*., §61-8C-1 *et seq*., and §61-8D-1 *et seq.* of this code; and

"ViCAP" means the Violent Crime Apprehension Program.

(b) The West Virginia Fusion Center shall develop a secure database that contains all information related to each cold case in any jurisdiction in the state.

(c) The West Virginia Fusion Center shall adopt policies and procedures to collect information for the database and for its maintenance.

(d) Each law-enforcement agency in the state and the State Fire Marshal's Fire Investigation Division may provide the information required by the West Virginia Fusion Center for inclusion in the database for each cold case. Each law-enforcement agency and the office of the State Fire Marshal may maintain its physical evidence and investigation files for each cold case until the investigation is resolved.

(e) *Information to be collected and maintained in the cold case database*. – Each law-enforcement agency in the state and the Fire Marshal's Fire Investigation Division may provide a written report or other information to the West Virginia Fusion Center for inclusion in the database containing the following:

(1) The victim's:

(A) Name;

(B) Gender;

(C) Race;

(D) Ethnicity; and

(E) Date of birth;

(2) The ViCAP number if the case has been entered into the ViCAP system;

(3) The NCMEC number if the case has been entered into the NCMEC system;

(4) Whether the case was entered into the NAMUS system;

(5) The NCIC number if entered into the NCIC system;

(6) The Medical Examiner case number;

(7) Whether a probative, unanalyzed suspect referenced DNA is available;

(8) Whether a probative crime scene DNA profile from the putative perpetrator has been uploaded to CODIS;

(9) Whether reference DNA from the victim is available;

(10) The West Virginia State Police Forensic Lab case number;

(11) The name of the agency investigating the case;

(12) The investigating agency's phone number;

(13) The agency case number;

(14) Whether the victim was a juvenile or adult victim at the time the crime occurred;

(15) The date the crime was reported to the investigating agency;

(16) The date or approximate date the victim was last seen;

(17) The date or approximate date of death;

(18) The cause or manner of death;

(19) The location where the body was found;

(20) Whether a weapon was used, and the type of weapon used;

(21) Whether the following evidence is available:

(A) Fingerprints;

(B) Palm prints;

(C) Latent prints;

(D) Dental records;

(E) Shell casings; or

(F) Other physical evidence;

(22) Whether a suspect or person of interest has been identified;

(23) Scars, marks, tattoos, and any other unique distinguishing features of any suspects or persons of interest;

(24) A case narrative; and

(25) Any other additional information that is pertinent to the case.

(f) The following information may be entered if applicable to either the victim or the suspect, but the law-enforcement agency shall specify which individual is being referenced:

(1) Vehicle information;

(2) Aliases;

(3) Associated case addresses;

(4) Associated phone numbers;

(5) Associated names;

(6) Case photos or composite drawings at the discretion of the investigating agency; and

(7) Any other additional information that is pertinent to the case.

(g) The West Virginia Fusion Center shall maintain the information contained within the database indefinitely.

CHAPTER 233

(Com. Sub. for S. B. 557 - By Senators Oliverio, Caputo, Hamilton, Grady, Maroney, Queen, and Deeds)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §8-15-10a of the Code of West Virginia, 1931, as amended, relating to compensation for firefighters who are required to work holidays; establishing that firefighters who are required to work during a legal holiday are entitled to compensation for their entire shift even if the shift spans two calendar days.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. FIRE FIGHTING; FIRE COMPANIES AND DEPARTMENTS; CIVIL SERVICE FOR PAID FIRE DEPARTMENTS.

§8-15-10a. Holiday compensation for firefighters.

(a) From the effective date of this section, if any member of a paid fire department is required to work during a legal holiday as is specified in §2-2-1(a) of this code, or if a legal holiday falls on the member's regular scheduled day off, he or she shall be allowed equal time off, at such time as may be approved by the chief executive officer of the department under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay: *Provided,* That if a special election of a political subdivision other than a municipality falls on a Saturday or Sunday, the municipality may choose not to recognize the day of the election as a holiday if a majority of municipality's city council votes not to recognize the day of the election as a holiday.

(b) Effective July 1, 2024, unless otherwise provided by contract, collective bargaining agreement, or settlement agreement, if any member of a paid fire department is required to work during a legal holiday as is specified in §2-2-1(a) of this code, or if a legal holiday falls on the member's regular scheduled day off, he or she shall be allowed time off equal to his or her shift even if the shift spans two calendar days, at such time as may be approved by the chief executive officer of the department under whom he or she serves or, in the alternative, shall be paid at a rate not less than one and one-half times his or her regular rate of pay, equal to his or her shift, even if the shift spans two calendar days: *Provided*, That if a special election of a political subdivision other than a municipality falls on a Saturday or Sunday, the municipality may choose not to recognize the day of the election as a holiday if a majority of the municipality's city council votes not to recognize the day of the election as a holiday.

CHAPTER 234

(Com. Sub. for S. B. 587 - By Senators Trump, Deeds, and Maroney)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §15A-11-8 of the Code of West Virginia, 1931, as amended, relating to enabling the State Fire Commission to propose legislative rules and promulgate interpretive and procedural rules for legislative approval.

Be it enacted by the Legislature of West Virginia:

ARTICLE 11. FIRE COMMISSION.

§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. Beginning on the effective date of the amendment to this section, all trainings approved by the State Fire Commission for Fire Officer 2, shall contain a section on the current laws, rules, and regulations governing the fire service. All trainings approved by the State Fire Commission for Firefighter 1, shall contain a section on the Fire Commission, and the Fire Marshal's Office, and the operations of both.

(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 certify the chief, or acting chief, of every department. The Fire Commission shall propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the program established pursuant to this subsection.

(e) 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.

(f) 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.

(g) 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, may make expenditures of,

or use of any tangible property, in order to effectuate the purposes of this article.

(h) 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 §15A-11-9 of this code; and

(5) The creation, operation, and responsibilities of fire departments throughout the state.

(i) 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.

(j) The State Fire Commission may deny, suspend, or revoke certification of any fire department, or any chief, or acting chief in the State of West Virginia if a fire department is not in compliance with all applicable laws, rules, and regulations, or the chief, or acting chief, does not operate the department in compliance with all applicable laws, rules, and regulations, or allows the department, or members of the department, to act or operate in a manner that is not in compliance with all applicable laws, rules, and regulations.

(k) 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.

(l) The State Fire Commission shall develop procedures to authorize persons with specialized training, but who are not certified as firefighters, to be members of a volunteer fire department to only perform specialized functions, none of which shall be, or include, firefighting. These specialized functions can include, but are not limited to, swift water rescue, search and rescue, trench rescue, and confined space rescue. The State Fire Commission shall propose legislative rules, and may propose emergency legislative rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this program, and to set minimum training standards for these types of specialized members.

(m) The State Fire Commission shall, in compliance with §21-6-11 of this code, propose emergency legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to specify what activities junior firefighters may and may not participate in.

(n) The State Fire Commission shall, by legislative rules proposed for promulgation in accordance with §29A-3-1 *et seq.* of this code, establish minimum probationary volunteer firefighter standards:

(1) For the purpose of this subsection, a probationary firefighter means an active member of a volunteer fire department who is 18 years old or older and is not a certified firefighter;

(2) A person may serve as a probationary firefighter, at the discretion of the fire chief, for a period not to exceed five years; and

(3) The Legislature finds that an emergency exists, and therefore, the Fire Commission shall propose an emergency rule to implement the provisions of this subsection in accordance with §29A-3-15 of this code by October 1, 2022.

(o) The State Fire Commission may propose legislative rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code. The State Fire Commission may promulgate interpretive and procedural rules in accordance with the provisions of §29A-3-1 *et seq.* of this code.

CHAPTER 235

(S. B. 600 - By Senators Weld and Deeds)

[Passed February 26, 2024; in effect 90 days from passage (May 26, 2024)]
[Approved by the Governor on March 7, 2024.]

AN ACT to amend and reenact §15-1B-25 of the Code of West Virginia, 1931, as amended, relating generally to readiness enhancement and commission bonuses.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1B. NATIONAL GUARD.

§15-1B-25. Readiness Enhancement and Commissioning Bonus.

(a) The Adjutant General may establish, within the limitations of this section, a program to provide enlistment bonuses to eligible prospects who become members of the West Virginia National Guard.

(1) Eligibility for the bonus is limited to a candidate who: (A) Joins the National Guard as an enlisted member; (B) Serves satisfactorily during the period of, and completes, the person's initial entry training, if applicable; and (C) Has expertise, qualifications, or potential for military service deemed by the Adjutant General as sufficiently important to the readiness of the National Guard or a unit of the National Guard. The Adjutant General may, within the limitations of this subsection and other applicable laws, determine additional eligibility criteria for the bonus.

(2) The enlistment bonus payments are to be in an amount to generally encourage the candidate's enlistment in the National

Guard, subject to available appropriations, and on a schedule that is determined and published in department regulations by the Adjutant General.

(3) If a member fails to complete a term of enlistment for which a bonus was paid, the Adjutant General may seek to recoup a prorated amount of the bonus as determined by the Adjutant General.

(b) The Adjutant General may establish a program to provide a reenlistment or commissioning bonus to eligible members of the West Virginia National Guard who extend their term of service in the National Guard within the limitations of this subsection. Eligibility for the bonus is limited to a member of the National Guard who: (1) Is serving satisfactorily as determined by the Adjutant General and (2) has military training and expertise deemed by the Adjutant General as sufficiently important to the readiness of the National Guard or a unit of the National Guard, or has accepted a commission as an officer in the National Guard. The Adjutant General may, within the limitations of this subsection and other applicable laws, determine additional eligibility criteria for the bonus.

(1) The enlistment bonus payments are to be in an amount to generally encourage the member's reenlistment or commissioning in the National Guard, subject to available appropriations, and on a schedule that is determined and published in department regulations by the Adjutant General.

(2) If a member fails to complete a term of reenlistment or an obligated term of commissioned service for which a bonus was paid, the Adjutant General may seek to recoup a prorated amount of the bonus as determined by the Adjutant General.

(c) Upon graduation from the officer candidate school conducted at the regional training institute, Camp Dawson, each member of the West Virginia Army National Guard who accepts a commission shall be entitled to a commissioning bonus of $2,000.

CHAPTER 236

(S. B. 712 - By Senators Deeds, Trump, Hamilton, Phillips, Maroney, and Stuart)

[Passed March 1, 2024; in effect from passage]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §15-2-7 of the Code of West Virginia, 1931, as amended, relating to revising the statute to reduce the minimum age for a cadet for the West Virginia State Police from the age of 21 to the age of 18.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. WEST VIRGINIA STATE POLICE.

§15-2-7. Cadet selection board; qualifications for and appointment to membership in State Police; civilian employees; forensic laboratory employees; salaries.

(a) The superintendent shall establish within the West Virginia State Police a cadet selection board which shall be representative of commissioned and noncommissioned officers within the State Police.

(b) The superintendent shall appoint a member to the position of trooper from among the top three names on the current list of eligible applicants established by the cadet selection board.

(c) Preference in making appointments shall be given whenever possible to honorably discharged members of the armed forces of the United States and to residents of West Virginia. Each applicant for appointment shall be a person not less than 18 years of age nor more than 39 years of age, of sound constitution and good moral character, and is required to pass any mental and

physical examination and meet other requirements as provided in rules promulgated by the cadet selection board: *Provided*, That a former member may, at the discretion of the superintendent, be reenlisted.

(d) No person may be barred from becoming a member of the State Police because of his or her religious or political convictions.

(e) The superintendent shall adhere to the principles of equal employment opportunity set forth in §5-11-1 *et seq.* of this code and shall take positive steps to encourage applications for State Police membership from females and minority groups within the state. An annual report shall be filed with the Legislature on or before January 1 of each year by the superintendent which includes a summary of the efforts and the effectiveness of those efforts intended to recruit females, African-Americans, and other minorities into the ranks of the State Police.

(f) Except for the superintendent, no person may be appointed or enlisted to membership in the State Police at a grade or rank above the grade of trooper.

(g) The superintendent shall appoint civilian employees as are necessary and all employees may be included in the classified service of the civil service system except those in positions exempt under the provisions of §29-6-1 *et seq.* of this code.

(h) Effective June 30, 2014, West Virginia State Police civilian employees with a minimum of one year service shall receive an annual longevity salary increase equal to $500. The increases in salary provided by this subsection are in addition to any other increases to which the civilian employees might otherwise be entitled.

(i) Effective July 1, 2014, all current West Virginia State Police Forensic Laboratory analysts, directors, and evidence technicians shall receive a one-time, across-the-board salary increase equal to 20 percent of their current salary.

(j) On or before January 1, 2018, the Director of the West Virginia State Police Forensic Laboratory shall submit a report to

the Joint Committee on Government and Finance detailing the West Virginia State Police Forensic Laboratory's ability to retain employees.

(k) Effective July 1, 2021, the salaries of West Virginia State Police Forensic Laboratory evidence custodians, forensic technicians, forensic scientists, and forensic scientist supervisors shall be as set forth in the provisions of §15-2-5(d) of this code.

CHAPTER 237

(S. B. 732 - By Senators Weld and Deeds)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §15-10-7 of the Code of West Virginia, 1931, as amended, relating to cooperation between law-enforcement agencies and military authorities; providing prosecuting attorneys may assign an assistant prosecutor to provide assistance to the National Guard or other military authority within the state; providing that law enforcement shall share certain information with military authorities regarding military members; and establishing purpose of the amendments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 10. COOPERATION BETWEEN LAW-ENFORCEMENT AGENCIES.

§15-10-7. Cooperation with military authorities.

(a) The head of a law-enforcement agency or head of a campus police department, as those positions are defined in §15-10-3 of this code, may assign law-enforcement personnel under his or her command, or a prosecuting attorney of any county within the state, may assign an assistant prosecutor within their office to provide assistance, cooperation, and information to the National Guard of this state or any service component of the armed forces of the United States Department of Defense located in this state upon the written request of the Adjutant General or commanding officer of the unit or facility.

(b) A law-enforcement agency, campus police department, or prosecuting attorney shall, within a reasonable time after receiving a written request made by the Adjutant General or commanding officer of a National Guard unit located within the state, disclose all records and information pertaining to the following in which an alleged offender or victim is a member of the National Guard of this state or any service component of the armed forces of the United States located in this state:

(1) Alleged violations of the federal and state Codes of Military Justice;

(2) Alleged violations of the criminal laws of the United States and the State of West Virginia;

(3) Investigations and other actions related to reports of sexual assault or sexual harassment, to include any cases of reprisal or retaliation;

(4) Violations of military directives, regulations, or instruction; and

(5) Notwithstanding the provisions of §61-8B-19 of this code, alleged violations of the offenses enumerated in §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, or §61-14-1 *et seq.* of this code, or for the offenses included in §61-8D-3a, §61-8D-5, and §61-8D-6 of this code.

(c) The purpose of this section is to support the military by providing it objective, qualified law-enforcement services.

(d) The purpose of the amendments made to this section during the regular session of the Legislature, 2024, are to ensure force readiness of the National Guard and the armed forces by providing objective, relevant, and timely information related to military personnel; protecting members who may be the victims of a crime; and ensuring command awareness of members who may be subject to a criminal investigation.

CHAPTER 238

(Com. Sub. for H. B. 4190 - By Delegates Linville, Heckert, and Kump)

[Passed March 8, 2024; in effect July 1, 2024.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §15-3A-7 of the Code of West Virginia, 1931, as amended, to amend and reenact §15-3B-2, §15-3B-3, §15-3B-4, and §15-3B-6 of said code; and to amend said code by adding thereto a new article, designated §15-3F-1, §15-3F-2, §15-3F-3, §15-3F-4, §15-3F-5, §15-3F-6, and §15-3F-7, all relating to establishing a "Purple Alert" program; providing for inclusion of the "Purple Alert" program in the "Guardian Angel Video Monitoring" Program; providing a date for implementation for addition of the "Silver Alert" and "Purple Alert" programs in the "Guardian Angel Video Monitoring" Program; removing persons with cognitive impairment from the "Silver Alert"; providing legislative findings relating to the "Purple Alert" program; defining cognitive impairment; providing for the establishment of a "Purple Alert" Plan; providing criteria for the activation of a "Purple Alert"; providing for termination of a "Purple Alert"; providing for date of implementation of the "Purple Alert"; providing for notice and broadcasting of a "Purple Alert"; providing for the Secretary to develop and undertake a campaign to inform law enforcement agencies about the "Purple Alert"; and providing immunity for individuals providing information pursuant to a "Purple Alert" in good faith.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3A. AMBER ALERT PLAN.

§15-3A-7. Providing for the use of video image recording devices for search purposes during an Amber Alert, Silver Alert, or Purple Alert Activation.

(a) The State Police and the Division of Highways shall coordinate a process to utilize all available video recording and monitoring devices for the purpose of monitoring Amber Alert, Silver Alert, or Purple Alert suspect vehicles. This program shall be called the "Guardian Angel Video Monitoring" Program.

(b) The Secretary of the Department of Homeland Security shall also develop a plan to provide for the State Police to monitor and use video recording and monitoring devices during an Amber Alert, Silver Alert, or Purple Alert. This "Guardian Angel Video Monitoring" implementation plan shall include at a minimum, the following:

(1) Use of any state or local video recording and monitoring devices upon agreement with the department, agency, or political subdivision in control of the video recording device; and,

(2) Development of policies and initiatives relating to facilitating sharing of information with neighboring states in which suspect vehicles in Amber Alerts, Silver Alerts, or Purple Alerts may be crossing state lines.

(c) The Secretary shall develop a plan for implementation no later than July 1, 2025. The plan shall include an analysis of all related costs for equipping and using a statewide video recording and monitoring system during the duration of an Amber Alert, Silver Alert, or Purple Alert, and recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Guardian Angel Video Monitoring" program.

ARTICLE 3B. SILVER ALERT PLAN.

§15-3B-2. Findings and declarations relative to “Silver Alert Plan”.

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating senior citizens;

(2) Law-enforcement officers and other professionals specializing in the field of missing persons agree that the most critical moments in the search for a missing person are the first few hours immediately following the discovery that the individual is missing, asserting that if he or she is not found within 24 hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing senior citizen, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing senior citizen;

(4) The most effective method of immediately notifying the public of a missing senior citizen is through the broadcast media; and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our senior citizenry. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the senior citizen.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing persons, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

§15-3B-3. Establishment of "Silver Alert" program.

(a) The Secretary of the Department of Homeland Security shall establish a "Silver Alert" program authorizing the broadcast

media, upon notice from the State Police, to broadcast an alert to inform the public of a missing senior citizen, subject to the criteria established in section four of this article. The program shall be a voluntary, cooperative effort between state law-enforcement and the broadcast media.

(b) As used in this article:

"Senior citizen" means a person over 65 years of age.

(c) The Secretary shall notify the broadcast media serving the State of West Virginia of the establishment of "Silver Alert" program and invite their voluntary participation.

§15-3B-4. Activation of Silver Alert.

The following criteria shall be met before the State Police activate the Silver Alert:

(1) The person is a senior citizen;

(2) The person is believed to be missing, regardless of circumstance;

(3) A person who has knowledge that the person is missing has submitted a missing person's report to the State Police or other appropriate law-enforcement agency;

(4) The missing person may be in danger of death or serious bodily injury;

(5) The missing person is domiciled or believed to be located in the State of West Virginia;

(6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to the missing person's residence without assistance; and

(7) There is sufficient information available to indicate that a Silver Alert would assist in locating the missing person.

§15-3B-6. Aid to missing senior citizen; immunity from civil or criminal liability.

A person or entity who in good faith follows and abides by the provisions of this article is not liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

ARTICLE 3F. PURPLE ALERT PLAN.

§15-3F-1. Short Title.

This article shall be known and may be cited as the "Purple Alert Plan".

§15-3F-2. Findings and declarations relative to "Purple Alert Plan".

(a) The Legislature finds that:

(1) Public alerts can be one of the most effective tools in locating a missing person who has a cognitive impairment;

(2) Law-enforcement officers and other professionals, specializing in the field of missing persons, agree that the most critical moments in the search for a missing person are the first few hours immediately following the discovery that the individual is missing, asserting that if he or she is not found within 24 hours, it is unlikely that he or she will be found alive or without serious injury. The rapid dissemination of information, including a description of the missing cognitively impaired person, details of how he or she became missing, and of any vehicle involved, to the citizens of the affected community and region is, therefore, critical;

(3) Alerted to the situation, the citizenry become an extensive network of eyes and ears serving to assist law enforcement in quickly locating and safely recovering a missing person who has a cognitive impairment;

(4) The most effective method of immediately notifying the public of a missing person who has a cognitive impairment is through the broadcast media: and

(5) All forms of developing technologies are required to assist law enforcement in rapidly responding to these alerts and are an additional tool for assuring the well-being and safety of our cognitively impaired citizenry. Thus, the use of traffic video recording and monitoring devices for the purpose of surveillance of a suspect vehicle adds yet another set of eyes to assist law enforcement and aid in the safe recovery of the cognitively impaired person.

(b) The Legislature declares that given the successes other states and regions have experienced in using broadcast media alerts to quickly locate and safely recover missing persons, and, with the recent development of highway video recording and monitoring systems, it is altogether fitting and proper, and within the public interest, to establish these programs for West Virginia.

§15-3F-3. Definition of Cognitive Impairment.

For the purposes of this article, “cognitive impairment” means a substantial disorder of thought, mood, perception, orientation, or memory that grossly impairs judgement, behavior, or the ability to live independently or provide self-care, and includes but is not limited to:

(1) Alzheimer’s disease or other related dementias;

(2) An intellectual or developmental disability;

(3) A brain injury; or

(4) Another mental disability not related to substance abuse.

§15-3F-4. Establishment of “Purple Alert” program.

(a) The Secretary of the Department of Homeland Security shall establish a "Purple Alert" program authorizing the broadcast media, upon notice from the State Police, to broadcast an alert to

inform the public of a missing person who has a cognitive impairment;

(b) The Secretary shall notify the broadcast media serving the State of West Virginia of the establishment of the "Purple Alert" program and invite their voluntary participation.

(c) The Secretary shall develop a plan for implementation no later than July 1, 2025. The plan shall include "Purple Alert" activation protocols, evaluation of first responder training requirements and needs as related to a cognitively impaired person, coordination and use of established programs, and analysis of any costs. The Secretary shall also make recommendations for any additional legislation or actions necessary to further facilitate the implementation of the "Purple Alert" program.

§15-3F-5. Activation of Purple Alert.

The following criteria shall be met before the State Police activate the Purple Alert:

(1) The person is believed to have a cognitive impairment;

(2) The person is believed to be missing, regardless of circumstance;

(3) An individual who has knowledge that the person is missing has submitted a missing person's report to the State Police or other appropriate law-enforcement agency;

(4) The missing person may be in danger of death or serious bodily injury;

(5) The missing person is domiciled or believed to be located in the State of West Virginia;

(6) The missing person is, or is believed to be, at a location that cannot be determined by an individual familiar with the missing person, and the missing person is incapable of returning to his or her residence without assistance;

(7) There is sufficient information available to indicate that a Purple Alert would assist in locating the missing person; and

(8) The missing cognitively impaired person does not qualify for a Silver Alert or a Missing Endangered Child Alert.

§15-3F-6. Notice to participating media; broadcast of alert.

(a) To participate, the media may agree, upon notice from the State Police via email or facsimile, to transmit information to the public about a missing cognitively impaired person that has occurred within their broadcast service region.

(b) The alerts shall include a description of the missing person, any known details of the circumstances surrounding the person becoming missing, and any other information as the State Police may consider pertinent and appropriate. The State Police shall in a timely manner update the broadcast media with new information when appropriate concerning the missing cognitively impaired person.

(c) The alerts also shall provide information concerning how those members of the public who have information relating to the missing cognitively impaired person may contact the State Police or other appropriate law-enforcement agency.

(d) Concurrent with the notice provided to the broadcast media, the State Police shall also notify the Department of Transportation, the Division of Highways, and the West Virginia Turnpike Commission of the "Purple Alert" so that the department and the affected authorities may, if possible, through the use of their variable message signs, inform the motoring public that a "Purple Alert" is in progress. The department and the affected authorities may provide information relating to the missing cognitively impaired person and information on how motorists may report any information they have to the State Police or other appropriate law-enforcement agency.

(e) The alerts shall terminate upon notice from the State Police.

(f) The Secretary shall develop and undertake a campaign to inform law-enforcement agencies about the "Purple Alert" program established under this article.

§15-3F-7. Immunity from civil or criminal liability.

A person or entity who in good faith follows and abides by the provisions of this article is not liable for any civil or criminal penalty as the result of any act or omission in the furtherance thereof, unless it is alleged and proven that the information disclosed was false and disclosed with the knowledge that the information was false.

CHAPTER 239

(Com. Sub. for S. B. 400 - By Senators Jeffries, Deeds, Queen, Phillips, and Plymale)

[Passed February 22, 2024; in effect from passage]
[Approved by the Governor on March 4, 2024.]

AN ACT to amend and reenact §24-2-11 of the Code of West Virginia, 1931, as amended, relating to creating limited waiver from certificate of public convenience and necessity requirement for certain water or sewer services projects.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF PUBLIC SERVICE COMMISSION.

§24-2-11. Requirements for certificate of public convenience and necessity.

(a) A public utility, person, or corporation other than a political subdivision of the state providing water or sewer services and having at least 4,500 customers and annual gross combined revenues of $3 million or more may not begin the construction of any plant, equipment, property, or facility for furnishing to the public any of the services enumerated in §24-2-1 of this code, nor apply for, nor obtain any franchise, license, or permit from any municipality or other governmental agency, except ordinary extensions of existing systems in the usual course of business, unless and until it shall obtain from the Public Service Commission a certificate of public convenience and necessity authorizing the construction franchise, license, or permit: *Provided*, That the requirement to obtain a certificate of public convenience and necessity shall be waived for projects that:

(1) Are funded, in whole or in part, by American Rescue Plan Act of 2021 (ARPA) or Coronavirus State Fiscal Recovery Fund (SFR) moneys and have been reviewed and determined to be technically feasible and approved by the Infrastructure and Jobs Development Council; or

(2) Are funded, in whole or in part, by ARPA or SFR moneys through Economic Enhancement Grant funding and have been reviewed and determined to be technically feasible by the Infrastructure and Jobs Development Council and approved by the Water Development Authority: *Provided*, That this waiver shall expire on April 30, 2025.

(b) Upon the filing of any application for the certificate, and after hearing, the commission may, in its discretion, issue or refuse to issue, or issue in part and refuse in part, the certificate of convenience and necessity: *Provided,* That the commission, after it gives proper notice and if no substantial protest is received within 30 days after the notice is given, may waive formal hearing on the application. Notice shall be given by publication which shall state that a formal hearing may be waived in the absence of substantial protest, made within 30 days, to the application. The notice shall be published as a Class I legal advertisement in compliance with §59-3-1 *et seq.* of this code. The publication area shall be the proposed area of operation.

(c) Any public utility, person, or corporation subject to the provisions of this section other than a political subdivision of the state providing water and/or sewer services having at least 4,500 customers and combined annual gross revenue of $3 million dollars or more shall give the commission at least 30 days' notice of the filing of any application for a certificate of public convenience and necessity under this section: *Provided,* That the commission may modify or waive the 30-day notice requirement and shall waive the 30-day notice requirement for projects approved by the Infrastructure and Jobs Development Council.

(d) The commission shall render its final decision on any application filed under the provisions of this section or §24-2-11a of this code within 270 days of the filing of the application and

within 90 days after final submission of any such application for decision following a hearing: *Provided,* That if the application is for authority to construct a water and sewer project and the projected total cost is less than $10 million, the commission shall render its final decision within 225 days of the filing of the application.

(e) The commission shall render its final decision on any application filed under the provisions of this section that has received the approval of the Infrastructure and Jobs Development Council pursuant to §31-15A-1 *et seq.* of this code within 180 days after filing of the application: *Provided,* That if a substantial protest is received within 30 days after the notice is provided pursuant to subsection (b) of this section, the commission shall render its final decision within 270 days or 225 days of the filing of the application, whichever is applicable as determined in subsection (d) of this section.

(f) If the projected total cost of a project which is the subject of an application filed pursuant to this section or §24-2-11a of this code is greater than $50 million, the commission shall render its final decision on any such application filed under the provisions of this section or §24-2-11a of this code within 400 days of the filing of the application and within 90 days after final submission of any such application for decision after a hearing.

(g) If a decision is not rendered within the time frames established in this section, the commission shall issue a certificate of convenience and necessity as applied for in the application.

(h) The commission shall prescribe rules it considers proper for the enforcement of the provisions of this section; and, in establishing that public convenience and necessity do exist, the burden of proof shall be upon the applicant.

(i) Pursuant to the requirements of this section, the commission may issue a certificate of public convenience and necessity to any intrastate pipeline, interstate pipeline, or local distribution company for the transportation in intrastate commerce of natural

gas used by any person for one or more uses, as defined by rule, by the commission in the case of:

(1) Natural gas sold by a producer, pipeline, or other seller to the person; or

(2) Natural gas produced by the person.

(j) A public utility, including a public service district, which has received a certificate of public convenience and necessity after July 8, 2005, from the commission and has been approved by the Infrastructure and Jobs Development Council is not required to, and cannot be compelled to, reopen the proceeding if the cost of the project changes but the change does not affect the rates established for the project.

(k) Any public utility, person, or corporation proposing any electric power project that requires a certificate under this section is not required to obtain the certificate before applying for or obtaining any franchise, license, or permit from any municipality or other governmental agency.

(l) Water or sewer utilities that are political subdivisions of the state and having at least 4,500 customers and combined gross revenues of $3 million dollars or more desiring to pursue construction projects that are not in the ordinary course of business shall provide adequate prior public notice of the contemplated construction and proposed changes to rates, fees, and charges, if any, as a result of the construction to both current customers and those persons who will be affected by the proposed construction as follows:

(1) Adequate prior public notice of the contemplated construction by causing a notice of intent to pursue a project that is not in the ordinary course of business to be specified on the monthly billing statement of the customers of the utility for the month immediately preceding the month in which an ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, is to be before the governing body for the public hearing on the ordinance or

resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any.

(2) Adequate prior public notice of the contemplated construction by causing to be published as a Class I legal advertisement of the proposed public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, in compliance with §59-3-1 *et seq.* of this code. The publication area for publication shall be all territory served by the political subdivision. If the political subdivision provides service in more than one county, publication shall be made in a newspaper of general circulation in each county that the political subdivision provides service.

(3) The public notice of the proposed construction shall state the scope of the proposed construction; a summary of the current rates, fees, and charges, and proposed changes to said rates, fees, and charges, if any; the date, time, and place of the public hearing on the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any; and the place or places within the political subdivision where the ordinance or resolution approving the proposed construction and proposed changes to rates, fees, and charges, if any, may be inspected by the public. A reasonable number of copies of the ordinance or resolution shall be kept at the place or places and be made available for public inspection. The notice shall also advise that interested parties may appear at the public hearing before the political subdivision and be heard with respect to the proposed construction and the proposed rates, fees, and charges, if any.

(4) The ordinance or resolution on the proposed construction and the proposed rates, fees, and charges shall be read at two meetings of the governing body with at least two weeks intervening between each meeting. The public hearing may be conducted prior to, or at, the meeting of the governing body at which the ordinance or resolution approving the proposed construction is considered on second reading.

(5) Enactment or adoption of the ordinance or resolution approving the proposed construction and the proposed rates, fees,

and charges shall follow an affirmative vote of the governing body and the approved rates shall go into effect no sooner than 45 days following the action of the governing body. If the political subdivision proposes rates that will go into effect prior to the completion of construction of the proposed project, the 45-day waiting period may be waived by public vote of the governing body only if the political subdivision finds and declares the political subdivision to be in financial distress such that the 45-day waiting period would be detrimental to the ability of the political subdivision to deliver continued and compliant public services: *Provided,* That, if the political subdivision is a public service district, in no event may the rate become effective prior to the date that the county commission has entered an order approving or modifying the action of the public service district board.

(6) Rates, fees, and charges approved by an affirmative vote of the public service district board shall be forwarded in writing to the county commission with the authority to appoint the members of the public service board of the public service district. The county commission shall, within 45 days of receipt of the proposed rates, fees, and charges, take action to approve, modify, or reject the proposed rates, fees, and charges, in its sole discretion. If, after 45 days, the county commission has not taken final action to approve, modify, or reject the proposed rates, fees, and charges, the proposed rates, fees, and charges, as presented to the county commission, shall be effective with no further action by the board or county commission. In any event this 45-day period may be extended by official action of both the board proposing the rates, fees, and charges and the appointing county commission.

(7) The county commission shall provide notice to the public by a Class I legal advertisement of the proposed action, in compliance with §59-3-1 *et seq.* of this code, of the meeting where it shall consider the proposed increases in rates, fees, and charges no later than one week prior to the meeting date.

(8) A public service district, or a customer aggrieved by the changed rates or charges who presents to the circuit court a petition signed by 25 percent of the customers served by the public service district when dissatisfied by the approval, modification, or

rejection by the county commission of the proposed rates, fees, and charges under the provisions of this subsection may file a complaint regarding the rates, fees, and charges resulting from the action of, or failure to act by, the county commission in the circuit court of the county in which the county commission sits: *Provided*, That any complaint or petition filed hereunder shall be filed within 30 days of the county commission's final action approving, modifying, or rejecting the rates, fees, and charges, or the expiration of the 45-day period from the receipt by the county commission, in writing, of the rates, fees, and charges approved by resolution of the board, without final action by the county commission to approve, modify, or reject the rates, fees, and charges, and the circuit court shall resolve said complaint: *Provided, however*, That the rates, fees, and charges so fixed by the county commission, or those adopted by the district upon which the county commission failed to act, shall remain in full force and effect until set aside, altered, or amended by the circuit court in an order to be followed in the future.

CHAPTER 240

(Com. Sub. for H. B. 5617 - By Delegate Linville)

[By Request of the Public Service Commission]

[Passed March 6, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 20, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section designated §24-2-1r, relating to authorizing the Public Service Commission to promulgate rules for maintenance, flushing, flow testing, and marking of fire hydrants owned by water utilities; providing for resolution by Public Service Commission whenever portions of standards may conflict; providing a public water utility may use its cash working capital reserve for inspection, testing, maintenance, or replacement of fire hydrants to comply with the standards and rules adopted in this section.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. POWERS AND DUTIES OF THE PUBLIC SERVICE COMMISSION.

§24-2-1r. Authority of commission to adopt and enforce water hydrant practices.

The Legislature finds that it is in the public interest of the citizens of West Virginia for public water utilities to follow the National Fire Protection Association's Recommended Practice for Fire Flow Testing and Marking of Hydrants (Standard 291) and the American Water Works Association's Fire Hydrants, Installation, Field Testing and Maintenance (Manual M17) to ensure that all installed fire hydrants are working properly and to follow the provisions of 64 WV CSR 77, Public Water Systems Design

Standards, to ensure proper design and placement of water systems generally, including hydrants. Therefore, those standards are hereby adopted, and the Public Service Commission may promulgate rules in accordance with the provisions of §29A-1-3 *et seq.* of this code on the inspection, flushing, flow testing, and marking of fire hydrants owned by public water utilities as set forth in those standards. In instances where the Public Service Commission determines that any provision of Standard 291, Manual M17, or 64 WV CSR 77 are in conflict or where, to promote the proper functioning of fire hydrants and the operation of the utilities, the adoption of either Standard 291, Manual M17, or 64 WV CSR 77 in preference to another is in the public interest, the Public Service Commission may do so.

All public water utilities shall comply with these standards and any rules the commission may promulgate. A public water utility may use its cash working capital reserve for inspection, testing, maintenance, or replacement of fire hydrants to comply with the standards and rules adopted in this section.

CHAPTER 241

(H. B. 5332 - By Delegates Toney and Young)

[Passed February 2, 2024; in effect from passage.]
[Approved by the Governor on February 7, 2024.]

AN ACT to amend and reenact §39-4-20 of the Code of West Virginia, 1931, as amended, relating to exempting persons previously commissioned as a notary public from the requirement that notary publics have a high school diploma or its equivalent in order to be recommissioned as a notary public.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. REVISED UNIFORM LAW ON NOTARIAL ACTS.

§39-4-20. Commission as notary public; qualifications; no immunity or benefit; disposition of fees.

(a) An individual qualified under subsection (b) of this section may apply to the Secretary of State for a commission as a notary public through the Secretary of State's online notary system. The applicant shall comply with and provide the information required by rules promulgated by the Secretary of State and pay any application fee.

(b) An applicant for a commission as a notary public must:

(1) Be at least 18 years of age;

(2) Be a citizen or permanent legal resident of the United States;

(3) Be a resident of or have a place of employment or practice in this state;

(4) Be able to read and write English;

(5) For any applicant that has not been commissioned as a notary prior to January 1, 2018, have a high school diploma or its equivalent; and

(6) Not be disqualified to receive a commission under §39-4-23 of this code.

(c) Before issuance of a commission as a notary public, an applicant shall provide a statement on the notary application that they solemnly swear or affirm, under penalty of perjury, that the answers to all questions in this application are true, complete, and correct; that he or she has carefully read the notaries public law of West Virginia; and, if appointed and commissioned as a notary public, he or she will perform faithfully, to the best of his or her ability all notarial acts in accordance with the law.

(d) On compliance with this section, the Secretary of State shall issue a commission as a notary public to an applicant for a term of five years.

(e) A commission to act as a notary public authorizes the notary public to perform notarial acts. The commission does not provide the notary public any immunity or benefit conferred by law of this state on public officials or employees.

CHAPTER 242

(Com. Sub. for H. B. 5583 By Delegates Toney, Howell, Hanshaw (Mr. Speaker), and Adkins)

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §17C-17-11 of the Code of West Virginia, 1931, as amended, relating to authorizing the Commissioner of the Division of Highways to issue special permits to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in state law over routes designated by the Commissioner of the Division of Highways at night, and during holidays, holiday weekends, Saturdays, and Sundays; specifying application of permit to certain highways; and specifying when such a permit shall be promptly issued.

Be it enacted by the Legislature of West Virginia:

ARTICLE 17. SIZE, WEIGHT AND LOAD.

§17C-17-11. Permits for excess size and weight.

(a) The Commissioner of the Division of Highways may, in his or her discretion, upon application in writing and good cause shown, issue a special permit in writing authorizing:

(1) The applicant, in crossing any highway of this state, to operate or move a vehicle or combination of vehicles of a size or weight or load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not, provided the applicant agrees to compensate the Commissioner of the Division of Highways for all damages or expenses incurred in connection with the crossing;

(2) The applicant to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter; and

(3) The applicant to move or operate, for limited or continuous operation, a vehicle hauling containerized cargo in a sealed, seagoing container to or from a seaport or inland waterway port that has or will be transported by marine shipment where the vehicle is not, as a result of hauling the container, in conformity with the provisions of this article relating to weight limitations, upon the conditions that:

(A) The container be hauled only on the roadways and highways designated by the Commissioner of the Division of Highways;

(B) The contents of the container are not changed from the time it is loaded by the consignor or the consignor's agent to the time it is delivered to the consignee or the consignee's agent; and

(C) Any additional conditions as the Commissioner of the Division of Highways or the Public Service Commission may impose to otherwise ensure compliance with the provisions of this chapter.

(b)(1) The Commissioner of the Division of Highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the Commissioner of the Division of Highways upon terms and restrictions prescribed by the Public Service Commission, together with the Commissioner of the Division of Highways.

(2) For purposes of this section, "nondivisible load" means any load exceeding applicable length or weight limits which, if separated into smaller loads or vehicles, would:

(A) Compromise the intended use of the vehicle, to the extent that the separation would make it unable to perform the function for which it was intended;

(B) Destroy the value of the load or vehicle, to the extent that the separation would make it unusable for its intended purpose; or

(C) Require more than eight work hours to dismantle using appropriate equipment: *Provided*, That the applicant for a nondivisible load permit has the burden of proof as to the number of work hours required to dismantle the load.

(3) The Commissioner of the Division of Highways may, in his or her discretion, upon application in writing and based upon an engineering analysis, issue a special permit in writing authorizing the applicant, when operating upon any highway of this state designated by the commissioner, to operate or move a vehicle or combination of vehicles, hauling commodities manufactured for interstate commerce, of a size or weight or divisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter, whether the operation is continuous or not.

(A) The engineering analysis must demonstrate that the vehicle permitted under this subdivision does not adversely affect the designated routes when compared to the size, weight, and load provisions of this chapter.

(B) The maximum gross vehicle weight permitted under this subsection is 120,000 pounds.

(C) The permit may contain any additional conditions the Commissioner of the Division of Highways or the Public Service Commission may impose to otherwise ensure compliance with the provisions of this chapter.

(4) The Commissioner of the Division of Highways may, in his or her discretion, upon application in writing, issue a special permit in writing authorizing the applicant to transport logs, wood chips, timber, other natural raw wood, lumber, paper, wood veneer, wood pellets, or any other wood product of the forest, craft, or

manufacturing. The vehicle authorized by the permit shall be a tractor-semitrailer combination with six axles, each axle equipped with brakes, and limited to a maximum gross vehicular weight of 94,000 pounds, without any tolerance. The maximum weight of each axle, beginning with the steering axle commencing rearwards, respectively shall be 15,000 pounds, 17,000 pounds, 17,000 pounds, 15,000 pounds, 15,000 pounds, and 15,000 pounds. The tractor shall have one steer axle and two drive axles in tandem, and the trailer shall have three trailer axles in tridem. The distance between the last drive axle of the tractor and the first trailer axle shall be a minimum of 29 feet and six inches. The Commissioner of the Division of Highways may issue permits for four-axle tractors with one steering axle and three axles in tridem in combination with dual axle pup trailers: *Provided*, That the maximum weight of each axle for pup-combination vehicles beginning with the steering axle commencing rearward respectively does not exceed 14,500 pounds, 16,613 pounds, 16,614 pounds, 16,613 pounds, 14,830 pounds, and 14,830 pounds. Permits under this subdivision will not be issued for any vehicle traveling on interstate routes.

(c) The application for any permit other than a special annual permit shall specifically describe the vehicle or vehicles and load to be operated or moved along or across the highway and the particular highway or crossing of the highway for which the permit to operate is requested, and whether the permit is requested for a single trip or for a continuous operation.

(d) The Public Service Commission is authorized to issue or withhold a permit at its discretion; or, if the permit is issued, to limit the number of trips, or to establish seasonal or other time limitations within which the vehicles described may be operated on or across the highways indicated, or otherwise to limit or prescribe conditions of operation of the vehicle or vehicles, when necessary to assure against undue damage to the road foundations, surface, or structures, and may require the undertaking, bond, or other security considered necessary to compensate for any injury to any roadway structure and to specify the type, number, and the location for escort vehicles for any vehicle: *Provided*, That in establishing

limitations on permits issued under this section, the Public Service Commission shall consult with the Commissioner of the Division of Highways, and may not issue, limit, or condition a permit in a manner inconsistent with the authority of the Commissioner of the Division of Highways.

The Public Service Commission may charge a fee for the issuance of a permit for a mobile home and a reasonable fee for the issuance of a permit for any other vehicle under the provisions of this section to pay the administrative costs thereof.

(e) Every permit shall be carried in the vehicle or combination of vehicles to which it refers and shall be open to inspection by any police officer or authorized agent of the Commissioner of the Division of Highways or the Public Service Commission, and no person shall violate any of the terms or conditions of the special permit.

(f) The Commissioner of the Division of Highways may issue a special permit to operate or move a vehicle or combination of vehicles of a size or weight of vehicles or nondivisible load exceeding the maximum specified in this chapter or otherwise not in conformity with the provisions of this chapter over routes designated by the Commissioner of the Division of Highways at night, and during holidays, holiday weekends, Saturdays, and Sundays: *Provided,* That the special permit outlined in this subsection shall apply to all interstate highways, United States highways with four or more travel lanes, and divided highways within the state with four or more travel lanes: *Provided, however*, That the Commissioner of the Division of Highways shall promptly issue a requested permit if the application is properly completed and the requested route, dates, and times meet state and federal laws, regulations, and safety requirements and do not violate any bond covenants.

CHAPTER 243

(S. B. 487 - By Senators Rucker, Grady, Stover, Deeds, and Roberts)

[Passed March 7, 2024; in effect 90 days from passage (June 5, 2024)]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §18A-3-1 of the Code of West Virginia, 1931, as amended, relating to providing for periodic reviews of required professional development for teachers and education staff.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-1. Teacher preparation programs; program approval and standards; authority to issue teaching certificates.

(a) The education of professional educators in the state is under the general direction and control of the state board.

The education of professional educators in the state includes all programs leading to certification to teach or serve in the public schools. The programs include the following:

(1) Programs in all institutions of higher education, including student teaching, resident teacher clinical experience, and the clinical teacher of record programs, as provided in this section;

(2) Beginning teacher and leader induction programs;

(3) Granting West Virginia certification to persons who received their preparation to teach outside the boundaries of this state, except as provided in subsection (b) of this section;

(4) Alternative preparation programs in this state leading to certification, including programs established pursuant to the provisions of §18A-3-1a, §18A-3-1b, §18A-3-1c, §18A-3-1d, §18A-3-1e, §18A-3-1f, §18A-3-1g, §18A-3-1h, and §18A-3-1i of this code and programs which are in effect on the effective date of this section; and

(5) Continuing professional education, professional development, and in-service training programs for professional educators employed in the public schools in the state. Beginning with school year 2024-2025, and every five years after, the State Board of Education shall perform periodic reviews of professional development for teachers and education staff to ensure the following:

(A) That requirements and current training regimens are necessary and truly essential; and

(B) That a distinction is made between those professional education opportunities which are required and those just encouraged.

(i) The purpose of these reviews shall be to establish a training regimen that has the minimum amount of required training so that teachers can be better focused on the classroom.

(ii) School personnel may recommend legislative changes to this section and any other requirements mandated in this code.

(b) The state board shall adopt standards for the education of professional educators in the state and for awarding certificates valid in the public schools of this state. The standards include, but are not limited to, the following:

(1) A provision for the study of the history and philosophical foundations of western civilization and the writings of the founders of the United States of America;

(2) A provision for the study of multicultural education. As used in this section, multicultural education means the study of the pluralistic nature of American society, including its values,

institutions, organizations, groups, status positions, and social roles;

(3) A provision for the study of classroom management techniques, including methods of effective management of disruptive behavior including addressing societal factors and their impact on student behavior; and

(4) A teacher from another state shall be awarded a teaching certificate for a comparable grade level and subject area valid in the public schools of this state, subject to §18A-3-10 of this code if he or she has met the following requirements:

(A) Holds a valid teaching certificate or a certificate of eligibility issued by another state;

(B) Has graduated from an educator preparation program at a regionally accredited institution of higher education or from another educator preparation program;

(C) Possesses the minimum of a bachelor's degree; and

(D) Meets all of the requirements of the state for full certification except employment.

(c) The state board may enter into an agreement with county boards for the use of the public schools in order to give prospective teachers the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(d) An agreement established pursuant to subsection (c) of this section shall recognize student teaching or teacher residency as a joint responsibility of the educator preparation institution and the cooperating public schools. The agreement shall include the following items:

(1) The minimum qualifications for the employment of public school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised

by a teacher fully certified in the state in which that teacher is supervising;

(2) The remuneration to be paid to public school teachers by the state board, in addition to their contractual salaries, for supervising student teachers or residents;

(3) Minimum standards to guarantee the adequacy of the facilities and program of the public school selected for student teaching or teacher residency;

(4) Assurance that the student teacher or resident teacher, under the direction and supervision of the supervising teacher, shall exercise the authority of a substitute teacher;

(5) A provision requiring any higher education institution with an educator preparation program to document that the student or resident teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk, and exceptional children at each programmatic level for which the student teacher seeks certification; and

(6) A provision authorizing a school or school district that has implemented a comprehensive beginning teacher induction program to enter into an agreement that provides for the training and supervision of student teachers or resident teachers consistent with the educational objectives of this subsection by using an alternate structure implemented for the support, supervision, and mentoring of beginning teachers. The agreement is in lieu of any specific provisions of this subsection and is subject to the approval of the state board.

(e) *Clinical teacher of record programs*. —

(1) In lieu of the provisions of subsections (c) and (d) of this section and subject to approval of the state board, an institution of higher education with a program for the education of professional educators approved by the state board may enter into an agreement with county boards for the use of clinical teacher of record programs in the public schools.

(2) A "clinical teacher of record program" means an intensively supervised and mentored program for prospective teachers during their senior year that refines their professional practice skills and helps them gain the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the West Virginia public schools.

(3) The authorization for the higher education institution and the county board to implement a clinical teacher of record program is subject to state board approval. The provisions of the agreement include, but are not limited to, the following items:

(A) A requirement that the prospective teacher in a clinical teacher of record program has completed all other preparation courses and has passed the appropriate basic skills and subject matter test or tests required by the state board for teachers to become certified in the area for which licensure is sought;

(B) A requirement that the clinical teacher of record serve only in a teaching position in the county which has been posted and for which no other teacher fully certified for the position has been employed;

(C) Specifics regarding the program of instruction for the clinical teacher of record setting forth the responsibilities for supervision and mentoring by the higher education institution's educator preparation program, the school principal, and peer teachers and mentors, and the responsibilities for the formal instruction or professional development necessary for the clinical teacher of record to perfect his or her professional practice skills. The program also may include other instructional items as considered appropriate;

(D) A requirement that the clinical teacher of record hold a clinical teacher of record permit qualifying the individual to teach in his or her assigned position as the teacher of record;

(E) A requirement that the salary and benefit costs for the position to which the clinical teacher of record is assigned shall be used only for program support and to pay a stipend to the clinical

teacher of record as specified in the agreement, subject to the following:

(i) The clinical teacher of record is a student enrolled in the teacher preparation program of the institution of higher education and is not a regularly employed employee of the county board;

(ii) The clinical teacher of record is included on the certified list of employees of the county eligible for state aid funding the same as an employee of the county at the appropriate level based on their permit and level of experience;

(iii) All state aid funding due to the county board for the clinical teacher of record shall be used only in accordance with the agreement with the institution of higher education for support of the program as provided in the agreement, including costs associated with instruction and supervision as set forth in paragraph (C) of this subdivision;

(iv) The clinical teacher of record is provided the same liability insurance coverage as other employees; and

(v) All state aid funding due to the county for the clinical teacher of record and not required for support of the program shall be paid as a stipend to the clinical teacher of record: *Provided*, That the stipend paid to the clinical teacher of record shall be no less than 65 percent of all state aid funding due the county for the clinical teacher of record;

(F) Other provisions that may be required by the state board.

(f) In lieu of the student teaching experience in a public school setting required by this section, an institution of higher education may provide an alternate student teaching or residency experience in a nonpublic school setting if the institution of higher education meets the following criteria:

(1) Complies with the provisions of this section;

(2) Has a state board-approved educator preparation program; and

(3) Enters into an agreement pursuant to subsections (g) and (h) of this section.

(g) At the discretion of the higher education institution, an agreement for an alternate student teaching or residency experience between an institution of higher education and a nonpublic school shall require one of the following:

(1) The prospective teacher shall complete at least one-half of the clinical experience in a public school; or

(2) The educator preparation program shall include a requirement that any student performing student teaching or residency in a nonpublic school shall complete the following:

(A) At least 200 clock hours of field-based training in a public school; and

(B) A course, which is a component of the institution's state board-approved educator preparation program, that provides information to prospective teachers equivalent to the teaching experience needed to demonstrate competence as a prerequisite to certification to teach in the public schools in West Virginia. The course also shall include instruction on at least the following elements:

(i) State board policy and provisions of this code governing public education;

(ii) Requirements for federal and state accountability, including the mandatory reporting of child abuse;

(iii) Federal and state mandated curriculum and assessment requirements, including multicultural education, safe schools, and student code of conduct;

(iv) Federal and state regulations for the instruction of exceptional students as defined by the Individuals with Disabilities Education Act, 20 U.S.C. §1400 *et seq.*; and

(v) Varied approaches for effective instruction for students who are at-risk.

(h) In addition to the requirements set forth in subsection (g) of this section, an agreement for an alternate student teaching or residency experience between an institution of higher education and a nonpublic school shall include the following:

(1) A requirement that the higher education institution with an educator preparation program shall document that the student or resident teacher's field-based and clinical experiences include participation and instruction with multicultural, at-risk, and exceptional children at each programmatic level for which the student teacher seeks certification; and

(2) The minimum qualifications for the employment of school teachers selected as supervising teachers, including the requirement that field-based and clinical experiences be supervised by a teacher fully certified in the state in which that teacher is supervising.

(i) The state superintendent may issue certificates as provided in §18A-3-2a of this code to graduates of educator preparation programs and alternative educator preparation programs approved by the state board. The certificates are issued in accordance with this section and rules adopted by the state board.

(1) A certificate to teach may be granted only to a person who meets the following criteria:

(A) Is a citizen of the United States, except as provided in subdivision (2) or (3) of this subsection;

(B) Is of good moral character;

(C) Is physically, mentally, and emotionally qualified to perform the duties of a teacher; and

(D) Is at least 18 years of age on or before October 1 of the year in which his or her certificate is issued.

(2) A permit to teach in the public schools of this state may be granted to a person who is an exchange teacher from a foreign country or an alien person who meets the requirements to teach.

(3) A certificate to teach may be granted to a noncitizen of the United States who holds a valid Permanent Resident Card, Employment Authorization Document, or work permit issued by the United States Citizenship and Immigration Services.

(j) Institutions of higher education approved for educator preparation may cooperate with each other and with one or more county boards to organize and operate centers to provide selected phases of the educator preparation program. The phases include, but are not limited to, the following:

(1) Student teaching and resident teacher clinical experience programs;

(2) Clinical teacher of record programs;

(3) Beginning teacher and leader induction programs;

(4) Instruction in methodology; and

(5) Seminar programs for college students, teachers with provisional certification, professional support team members, and supervising teachers.

By mutual agreement, the institutions of higher education and county boards may budget and expend funds to operate the centers through payments to the appropriate fiscal office of the participating institutions and the county boards.

(k) The provisions of this section do not require discontinuation of an existing student teacher training center or school which meets the standards of the state board.

(l) All institutions of higher education approved for educator preparation in the 1962-1963 school year continue to hold that distinction so long as they meet the minimum standards for educator preparation. Nothing in this section infringes upon the

rights granted to any institution by charter given according to law previous to the adoption of this code.

(m) *Definitions*. — For the purposes of this section, the following words have the meanings ascribed to them unless the context clearly indicates a different meaning:

(1) "Nonpublic school" means a private school, parochial school, church school, school operated by a religious order, or other nonpublic school that elects to meet the following conditions:

(A) Comply with the provisions of §18-28-1 *et seq.* of this code;

(B) Participate on a voluntary basis in a state-operated or state-sponsored program provided to this type school pursuant to this section; and

(C) Comply with the provisions of this section;

(2) "At-risk" means a student who has the potential for academic failure including, but not limited to, the risk of dropping out of school, involvement in delinquent activity, or poverty as indicated by free or reduced lunch status; and

(3) "Exceptional child" or "exceptional children" has the meaning ascribed to these terms pursuant to §18-20-1 of this code but, as used in this section, the terms do not include gifted students.

CHAPTER 244

(Com. Sub. for H. B. 4829 - By Delegates Toney, Statler, Ferrell, Campbell, Holstein, W. Clark, Ellington, and Adkins)

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18A-2-5 of the Code of West Virginia, 1931, as amended, relating to employment of service personnel and removing the requirement for a high school diploma or general education development certificate for school bus drivers who are 21 years of age or older.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-5. Employment of service personnel; limitation.

The board may employ such service personnel, including substitutes, as is deemed necessary for meeting the needs of the county school system: *Provided*, That the board may not employ a number of such personnel whose minimum monthly salary under §18A-4-8a of this code is specified as pay grade "H", which number exceeds the number employed by the board on March 1, 1988.

Effective July 1, 1988, a county board shall not employ for the first time any person who has not obtained a high school diploma or general educational development certificate (GED) or who is not enrolled in an approved adult education course by the date of employment in preparation for obtaining a GED: *Provided*, That such employment is contingent upon continued enrollment or successful completion of the GED program: *Provided further*, That this paragraph shall not apply to school bus drivers and who are 21 years of age or older.

Before entering upon their duties service personnel shall execute with the board a written contract which shall be in the following form:

"COUNTY BOARD OF EDUCATION

SERVICE PERSONNEL CONTRACT OF EMPLOYMENT

THIS (Probationary or Continuing) CONTRACT OF EMPLOYMENT, made and entered into this _____ day of _____, 19____, by and between THE BOARD OF EDUCATION OF THE COUNTY OF _____, a corporation, hereinafter called the 'Board,' and (Name and Social Security Number of Employee), of (Mailing Address), hereinafter called the 'Employee.'

WITNESSETH, that whereas, at a lawful meeting of the Board of Education of the County of _____ held at the offices of said Board, in the City of _____, _____ County, West Virginia, on the _____ day of _____, 19____, the Employee was duly hired and appointed for employment as a (Job Classification) at (Place of Assignment) for the school year commencing _____ for the employment term and at the salary and upon the terms hereinafter set out.

NOW, THEREFORE, pursuant to said employment, Board and Employee mutually agree as follows:

(1) The Employee is employed by the Board as a (Job Classification) at (Place of Assignment) for the school year or remaining part thereof commencing _____, 19_____. The period of employment is _____ days at an annual salary of $_____ at the rate of $_____ per month.

(2) The Board hereby certifies that the Employee's employment has been duly approved by the Board and will be a matter of the Board's minute records.

(3) The services to be performed by the Employee shall be such services as are prescribed for the job classification set out above in paragraph (1) and as defined in §18A-4-8 this code.

(4) The Employee may be dismissed at any time for immorality, incompetency, cruelty, insubordination, intemperance or willful neglect of duty pursuant to §18A-2-8 of this code.

(5) The Superintendent of the _____ County Board of Education, subject to the approval of the Board, may transfer and assign the Employee in the manner provided by §18A-7-2 of this code.

(6) This contract shall at all times be subject to any and all existing laws, or such laws as may hereafter be lawfully enacted, and such laws shall be a part of this contract.

(7) This contract may be terminated or modified at any time by the mutual consent of the Board and the Employee.

(8) This contract shall be automatically terminated if the Employee is convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, of any criminal offense that requires the Employee to register as a sex offender, or of any criminal offense which has as an element delivery or distribution of a controlled substance: *Provided*, That if the conviction resulting in automatic revocation pursuant to this section is overturned by any Court of this state or the United States, the Employee's contract shall be reinstated unless otherwise prohibited by law.

(9) This contract shall be signed and returned to the Board at its address of _____ within 30 days after being received by the Employee.

(10) By signing this contract the Employee accepts employment upon the terms herein set out.

WITNESS the following signatures as of the day, month and year first above written:

_____, (President, _____ County Board of Education) _____, (Secretary, _____ County Board of Education) _____, (Employee)"

The use of this form may not be interpreted to authorize boards to discontinue any employee's contract status with the board or rescind any rights, privileges or benefits held under contract or otherwise by any employee prior to the effective date of this section.

Each contract of employment shall be designated as a probationary or continuing contract. The employment of service personnel shall be made a matter of minute record. The employee shall return the contract of employment to the county board of education within 30 days after receipt or otherwise he or she shall forfeit his or her right to employment.

Under such regulation and policy as may be established by the county board, service personnel selected and trained for teacher-aide classifications, such as monitor aide, clerical aide, classroom aide and general aide, shall work under the direction of the principal and teachers to whom assigned.

CHAPTER 245

(H. B. 4838 - By Delegates Holstein, Statler, Dittman, Shamblin, Barnhart, E. Pritt, Householder, Hornby, Mazzocchi, Forsht, and Cannon)

[Passed March 1, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §18A-2-3 of the Code of West Virginia, 1931, as amended, relating to requiring county boards of education to inform persons, who are hired as long-term substitute teachers, about IEP and 504 plans, detailing their uses and what those long-term substitute teachers should do to implement these plans upon their hiring.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

§18A-2-3. Employment of substitute teachers; and employment of retired teachers as substitutes in areas of critical need and shortage.

(a) The county superintendent, subject to approval of the county board, may employ and assign substitute teachers to any of the following duties:

(1) Fill the temporary absence of any teacher or an unexpired school term made vacant by resignation, death, suspension, or dismissal;

(2) Fill a teaching position of a regular teacher on leave of absence; and

(3) Perform the instructional services of any teacher who is authorized by law to be absent from class without loss of pay,

providing the absence is approved by the board of education in accordance with the law.

The substitute shall be a duly certified teacher.

(b) Notwithstanding any other provision of this code to the contrary, a substitute teacher who has been assigned as a classroom teacher in the same classroom continuously for more than one half of a grading period and whose assignment remains in effect two weeks prior to the end of the grading period, shall remain in the assignment until the grading period has ended, unless the principal of the school certifies that the regularly employed teacher has communicated with and assisted the substitute with the preparation of lesson plans and monitoring student progress or has been approved to return to work by his or her physician. For the purposes of this section, teacher and substitute teacher, in the singular or plural, mean professional educator as defined in §18A-1-1 of this code.

(c) Persons who are hired as long-term substitute teachers shall be provided information by the county board relating to an IEP plan and 504 plan, detailing their uses and what those long-term substitute teachers should do to implement these plans upon their hiring.

(d) (1) The Legislature hereby finds and declares that due to a shortage of qualified substitute teachers, a compelling state interest exists in expanding the use of retired teachers to provide service as substitute teachers in areas of critical need and shortage. The Legislature further finds that diverse circumstances exist among the counties for the expanded use of retired teachers as substitutes.

(2) For the purposes of this subsection:

(A) "Area of critical need and shortage for substitute teachers" means an area of certification and training in which the number of available substitute teachers in the county who hold certification and training in that area and who are not retired is insufficient to meet the projected need for substitute teachers; and

(B) "Teacher or substitute teacher" includes speech pathologists, school nurses, and school counselors.

(3) A person receiving retirement benefits under §18-7A-1 *et seq.* of this code or who is entitled to retirement benefits during the fiscal year in which that person retired may accept employment as a critical needs substitute teacher for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled if the following conditions are satisfied:

(A) The county board adopts a policy recommended by the superintendent to address areas of critical need and shortage for substitute teachers;

(B) The policy sets forth the areas of critical need and shortage for substitute teachers in the county in accordance with the definition of area of critical need and shortage for substitute teachers set forth in subdivision (2) of this subsection;

(C) The policy provides for the employment of retired teachers as critical needs substitute teachers during the school year on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection;

(D) The policy provides that a retired teacher may be employed as a substitute teacher in an area of critical need and shortage for substitute teachers on an expanded basis as provided in this subsection only when no other teacher who holds certification and training in the area and who is not retired is available and accepts the substitute assignment;

(E) The policy is effective for one school year only and is subject to annual renewal by the county board;

(F) The state board approves the policy and the use of retired teachers as substitute teachers on an expanded basis in areas of critical need and shortage for substitute teachers as provided in this subsection; and

(G) Prior to employment of a retired teacher as a critical needs substitute teacher beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired teachers as substitutes to address areas of critical need and shortage, the name or names of the person or persons to be employed as a critical needs substitute pursuant to the policy, the critical need and shortage area position filled by each person, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical needs substitute teacher for employment beyond the post-retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(4) Any person who retires and begins work as a critical needs substitute teacher within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical needs substitute teacher in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical needs substitute teacher.

(5) Retired teachers employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(6) A retired teacher is eligible to be employed as a critical needs substitute teacher to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired teacher's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical needs substitute teacher.

(7) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed teacher who is fully certified or permitted for the position.

(8) When a retired teacher is employed as a critical needs substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(9) Until this subsection is expired pursuant to subdivision (10) of this subsection, the state board shall report to the Joint Committee on Government and Finance, prior to February 1 of each year, information indicating the effectiveness of the provisions of this subsection on reducing the critical need and shortage of substitute teachers including, but not limited to, the number of retired teachers, by critical need and shortage area position filled and by county, employed beyond the post-retirement employment limit established by the Consolidated Public Retirement Board, the date that each person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. A copy of the report shall also be provided to the Legislative Oversight Commission on Education Accountability.

(10) The provisions of this subsection shall expire on June 30, 2025.

CHAPTER 246

(H. B. 5056 - By Delegates Toney, Statler, Burkhammer, and Ellington)

[Passed March 6, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §18A-4-8h of the Code of West Virginia, 1931, as amended, relating to allowing for service personnel to serve as substitute workers under certain conditions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8h. Limitation on number of school service personnel positions to be held by an employee.

(a) Upon the effective date of this section, no school service personnel shall be permitted to become employed in more than one regular full-day position, nor more than two one-half day positions at the same time: *Provided,* That nothing herein shall be construed to prohibit a school service personnel from holding an extracurricular assignment or assignments, as provided in section sixteen of this article, or summer positions, as provided in section thirty-nine, article five, chapter eighteen of this code, nor from performing extra-duty assignments, as provided in section eight-b of this article, in addition to his or her regular position.

(b) Due to the shortages of substitutes in service personnel positions, a service personnel may substitute on a day-to-day basis in a position outside of their regular full-time position: *Provided*, That a service personnel may not substitute in another position if:

(a) A qualified substitute is available to fill the shift;

(b) The shift interferes with their regular duties and or responsibilities; and

(c) The service personnel assuming the shift is not properly certified and trained for that position.

CHAPTER 247

(H. B. 5252 - By Delegates Cooper and Toney)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18A-4-8 of the Code of West Virginia, 1931, as amended, relating to generally to service personnel class titles and definitions; requiring persons employed in a director or coordinator of services classification title as a director, assistant director, or coordinator of transportation to possess a commercial driver's license within one year of employment; providing exceptions; and removing outdated class title and terms.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.

§18A-4-8. Employment term and class titles of service personnel; definitions.

(a) The purpose of this section is to establish an employment term and class titles for service personnel. The employment term for service personnel may not be less than 10 months. A month is defined as 20 employment days. The county board may contract with, all or part of, these service personnel for a longer term.

(b) Service personnel employed on a yearly or 12-month basis may be employed by calendar months. Whenever there is a change in job assignment during the school year, the minimum pay scale and any county supplement are applicable.

(c) Service personnel employed in the same classification for more than the 200-day minimum employment term are paid for

additional employment at a daily rate of not less than the daily rate paid for the 200-day minimum employment term.

(d) A service person may not be required to report for work more than five days per week without his or her agreement, and no part of any working day may be accumulated by the employer for future work assignments, unless the employee agrees thereto.

(e) If a service person whose regular work week is scheduled from Monday through Friday agrees to perform any work assignments on a Saturday or Sunday, the service person is paid for at least one-half day of work for each day he or she reports for work. If the service person works more than three and one-half hours on any Saturday or Sunday, he or she is paid for at least a full day of work for each day.

(f) A custodian, aide, maintenance, office, and school lunch service person required to work a daily work schedule that is interrupted is paid additional compensation in accordance with this subsection.

(1) A maintenance person means a person who holds a classification title other than in a custodial, aide, school lunch, office or transportation category as provided in §18A-1-1 of this code.

(2) A service person's schedule is considered to be interrupted if he or she does not work a continuous period in one day. Aides are not regarded as working an interrupted schedule when engaged exclusively in the duties of transporting students;

(3) The additional compensation provided in this subsection:

(A) Is equal to at least one eighth of a service person's total salary as provided by the state minimum pay scale and any county pay supplement; and

(B) Is payable entirely from county board funds.

(g) When there is a change in classification or when a service person meets the requirements of an advanced classification, his or

her salary shall be made to comply with the requirements of this article and any county salary schedule in excess of the minimum requirements of this article, based upon the service person's advanced classification and allowable years of employment.

(h) A service person's contract, as provided in §18A-2-5 of this code, shall state the appropriate monthly salary the employee is to be paid, based on the class title as provided in this article and on any county salary schedule in excess of the minimum requirements of this article.

(i) The column heads of the state minimum pay scale and class titles, set forth in §18A-4-8a of this code, are defined as follows:

"Pay grade" means the monthly salary applicable to class titles of service personnel;

"Years of employment" means the number of years which an employee classified as a service person has been employed by a county board in any position prior to or subsequent to the effective date of this section and includes service in the Armed Forces of the United States, if the employee was employed at the time of his or her induction. For the purpose of §18A-4-8a of this code, years of employment is limited to the number of years shown and allowed under the state minimum pay scale as set forth in §18A-4-8a of this code;

"Class title" means the name of the position or job held by a service person;

"Accountant I" means a person employed to maintain payroll records and reports and perform one or more operations relating to a phase of the total payroll;

"Accountant II" means a person employed to maintain accounting records and to be responsible for the accounting process associated with billing, budgets, purchasing and related operations;

"Accountant III" means a person employed in the county board office to manage and supervise accounts payable, payroll procedures, or both;

"Accounts payable supervisor" means a person employed in the county board office who has primary responsibility for the accounts payable function and who either has completed 12 college hours of accounting courses from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

"Aide I" means a person selected and trained for a teacher-aide classification such as monitor aide, clerical aide, classroom aide or general aide;

"Aide II" means a service person referred to in the "Aide I" classification who has completed a training program approved by the state board, or who holds a high school diploma or has received a general educational development certificate. Only a person classified in an Aide II class title may be employed as an aide in any special education program;

"Aide III" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed six semester hours of college credit at an institution of higher education; or

(B) Is employed as an aide in a special education program and has one year's experience as an aide in special education;

"Aide IV" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate; and

(A) Has completed 18 hours of State Board-approved college credit at a regionally accredited institution of higher education, or

(B) Has completed 15 hours of State Board-approved college credit at a regionally accredited institution of higher education; and has successfully completed an in-service training program

determined by the state board to be the equivalent of three hours of college credit;

"Aide V (Special Education Assistant Teacher) – Temporary Authorization" means a person who does not possess minimum requirements for the Aide V permanent authorization, but is enrolled in and pursuing requirements as prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide V (Special Education Assistant Teacher)" means a service person referred to in the "Aide I" classification who holds a high school diploma or a general educational development certificate and who has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide VI (Behavioral Support Assistant Teacher – Temporary Authorization)" means a person who does not possess minimum requirements for the Aide VI permanent authorization, but is enrolled in and pursuing the requirements as prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Aide VI (Behavioral Support Assistant Teacher)" means a person who works with a student or students who have identified behavior difficulties, holds at least an Aide III classification and has completed the requirements and experience to be prescribed by the state board of education. No service person shall be entitled to receive the paygrade associated with this classification unless he or she has applied for and been selected to fill a posted position which specifically requires the successful candidate to hold or be enrolled in and pursuing the requirements for the classification. The determination as to whether a position will be posted requiring this classification is solely at the discretion of the county;

"Audiovisual technician" means a person employed to perform minor maintenance on audiovisual equipment, films, and supplies and who fills requests for equipment;

"Auditor" means a person employed to examine and verify accounts of individual schools and to assist schools and school personnel in maintaining complete and accurate records of their accounts;

"Autism mentor" means a person who works with students having been identified as a person of autism and who meets standards and experience to be determined by the state Board. A person who has held or holds an aide title and becomes employed as an autism mentor shall hold a multiclassification status that includes both aide and autism mentor titles, in accordance with §18A-4-8b of this code;

"Braille specialist" means a person employed to provide braille assistance to students. A service person who has held or holds an aide title and becomes employed as a braille specialist shall hold a multiclassification status that includes both aide and braille specialist title, in accordance with §18A-4-8b of this code;

"Bus operator" means a person employed to operate school buses and other school transportation vehicles as provided by the state board;

"Buyer" means a person employed to review and write specifications, negotiate purchase bids and recommend purchase agreements for materials and services that meet predetermined specifications at the lowest available costs;

"Cabinetmaker" means a person employed to construct cabinets, tables, bookcases and other furniture;

"Cafeteria manager" means a person employed to direct the operation of a food services program in a school, including assigning duties to employees, approving requisitions for supplies and repairs, keeping inventories, inspecting areas to maintain high standards of sanitation, preparing financial reports, and keeping records pertinent to food services of a school;

"Carpenter I" means a person classified as a carpenter's helper;

"Carpenter II" means a person classified as a journeyman carpenter;

"Chief mechanic" means a person employed to be responsible for directing activities which ensure that student transportation or other county board-owned vehicles are properly and safely maintained;

"Clerk I" means a person employed to perform clerical tasks;

"Clerk II" means a person employed to perform general clerical tasks, prepare reports and tabulations, and operate office machines;

"Computer operator" means a qualified person employed to operate computers;

"Cook I" means a person employed as a cook's helper;

"Cook II" means a person employed to interpret menus and to prepare and serve meals in a food service program of a school. This definition includes a service person who has been employed as a "Cook I" for a period of four years;

"Cook III" means a person employed to prepare and serve meals, make reports, prepare requisitions for supplies, order

equipment and repairs for a food service program of a school system;

"Crew leader" means a person employed to organize the work for a crew of maintenance employees to carry out assigned projects;

"Custodian I" means a person employed to keep buildings clean and free of refuse;

"Custodian II" means a person employed as a watchman or groundsman;

"Custodian III" means a person employed to keep buildings clean and free of refuse, to operate the heating or cooling systems and to make minor repairs;

"Custodian IV" means a person employed as a head custodian. In addition to providing services as defined in "Custodian III" duties may include supervising other custodian personnel;

"Director or coordinator of services" means an employee of a county board who is assigned to direct a department or division.

(A) Nothing in this subdivision prohibits a professional person or a professional educator from holding this class title: *Provided*, That after July 1, 2024, all persons employed for the first time in a position with this classification title as a director, assistant director, or coordinator of transportation shall possess a commercial driver's license within one year of employment except that this requirement shall not apply to persons who are multiclassified, hold multiple job titles, or provide documentation from a physician that they have a medical diagnosis that renders them physically unqualified to obtain a commercial driver's license;

(B) Professional personnel holding this class title may not be defined or classified as service personnel unless the professional person held a service personnel title under this section prior to holding the class title of "director or coordinator of services;"

(C) The director or coordinator of services is classified either as a professional person or a service person for state aid formula funding purposes;

(D) Funding for the position of director or coordinator of services is based upon the employment status of the director or coordinator either as a professional person or a service person; and

(E) A person employed under the class title "director or coordinator of services" may not be exclusively assigned to perform the duties ascribed to any other class title as defined in this subsection: *Provided*, That nothing in this paragraph prohibits a person in this position from being multiclassified;

"Draftsman" means a person employed to plan, design, and produce detailed architectural/engineering drawings;

"Early Childhood Classroom Assistant Teacher I" means a person who does not possess minimum requirements for the permanent authorization requirements, but is enrolled in and pursuing requirements;

"Early Childhood Classroom Assistant Teacher II" means a person who has completed the minimum requirements for a state-awarded certificate for early childhood classroom assistant teachers as determined by the state board;

"Early Childhood Classroom Assistant Teacher III" means a person who has completed permanent authorization requirements, as well as additional requirements comparable to current paraprofessional certificate;

"Educational Sign Language Interpreter I" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who holds the Initial Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

"Educational Sign Language Interpreter II" means a person employed to provide communication access across all educational environments to students who are deaf or hard of hearing, and who

holds the Permanent Paraprofessional Certificate – Educational Interpreter pursuant to state board policy;

"Electrician I" means a person employed as an electrician helper or one who holds an electrician helper license issued by the State Fire Marshal;

"Electrician II" means a person employed as an electrician journeyman or one who holds a journeyman electrician license issued by the State Fire Marshal;

"Electronic technician I" means a person employed to repair and maintain electronic equipment;

"Electronic technician II" means a person employed at the journeyman level to repair and maintain electronic equipment;

"Executive secretary" means a person employed as secretary to the county school superintendent or as a secretary who is assigned to a position characterized by significant administrative duties;

"Food services supervisor" means a qualified person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The food services supervisor is employed to manage and supervise a county school system's food service program. The duties include preparing in-service training programs for cooks and food service employees, instructing personnel in the areas of quantity cooking with economy and efficiency and keeping aggregate records and reports;

"Foreman" means a skilled person employed to supervise personnel who work in the areas of repair and maintenance of school property and equipment;

"General maintenance" means a person employed as a helper to skilled maintenance employees, and to perform minor repairs to equipment and buildings of a county school system;

"Glazier" means a person employed to replace glass or other materials in windows and doors and to do minor carpentry tasks;

"Graphic artist" means a person employed to prepare graphic illustrations;

"Groundsman" means a person employed to perform duties that relate to the appearance, repair, and general care of school grounds in a county school system. Additional assignments may include the operation of a small heating plant and routine cleaning duties in buildings;

"Handyman" means a person employed to perform routine manual tasks in any operation of the county school system;

"Heating and air conditioning mechanic I" means a person employed to install, repair and maintain heating and air conditioning plants and related electrical equipment;

"Heating and air conditioning mechanic II" means a person employed at the journeyman level to install, repair, and maintain heating and air conditioning plants and related electrical equipment;

"Heavy equipment operator" means a person employed to operate heavy equipment;

"Inventory supervisor" means a person employed to supervise or maintain operations in the receipt, storage, inventory and issuance of materials and supplies;

"Licensed practical nurse" means a nurse, licensed by the West Virginia Board of Examiners for Licensed Practical Nurses, employed to work in a public school under the supervision of a school nurse;

"Locksmith" means a person employed to repair and maintain locks and safes;

"Lubrication man" means a person employed to lubricate and service gasoline or diesel-powered equipment of a county school system;

"Machinist" means a person employed to perform machinist tasks which include the ability to operate a lathe, planer, shader, threading machine and wheel press. A person holding this class title also should have the ability to work from blueprints and drawings;

"Mail clerk" means a person employed to receive, sort, dispatch, deliver or otherwise handle letters, parcels, and other mail;

"Maintenance clerk" means a person employed to maintain and control a stocking facility to keep adequate tools and supplies on hand for daily withdrawal for all school maintenance crafts;

"Mason" means a person employed to perform tasks connected with brick and block laying and carpentry tasks related to these activities;

"Mechanic" means a person employed to perform skilled duties independently in the maintenance and repair of automobiles, school buses and other mechanical and mobile equipment to use in a county school system;

"Mechanic assistant" means a person employed as a mechanic apprentice and helper;

"Multiclassification" means a person employed to perform tasks that involve the combination of two or more class titles in this section. In these instances, the minimum salary scale is the higher pay grade of the class titles involved;

"Office equipment repairman I" means a person employed as an office equipment repairman apprentice or helper;

"Office equipment repairman II" means a person responsible for servicing and repairing all office machines and equipment. A person holding this class title is responsible for the purchase of parts necessary for the proper operation of a program of continuous maintenance and repair;

"Painter" means a person employed to perform duties painting, finishing and decorating wood, metal and concrete surfaces of buildings, other structures, equipment, machinery and furnishings of a county school system;

"Paraprofessional" means a person certified pursuant to §18A-3-2a of this code to perform duties in a support capacity including, but not limited to, facilitating in the instruction and direct or indirect supervision of students under the direction of a principal, a teacher or another designated professional educator.

(A) A person employed on the effective date of this section in the position of an aide may not be subject to a reduction in force or transferred to create a vacancy for the employment of a paraprofessional;

(B) A person who has held or holds an aide title and becomes employed as a paraprofessional shall hold a multiclassification status that includes both aide and paraprofessional titles in accordance with §18A-4-8b of this code; and

(C) When a service person who holds an aide title becomes certified as a paraprofessional and is required to perform duties that may not be performed by an aide without paraprofessional certification, he or she shall receive the paraprofessional title pay grade;

"Payroll supervisor" means a person employed in the county board office who has primary responsibility for the payroll function and who either has completed 12 college hours of accounting from an accredited institution of higher education or has at least eight years of experience performing progressively difficult accounting tasks. Responsibilities of this class title may include supervision of other personnel;

"Plumber I" means a person employed as an apprentice plumber and helper;

"Plumber II" means a person employed as a journeyman plumber;

"Printing operator" means a person employed to operate duplication equipment, and to cut, collate, staple, bind and shelve materials as required;

"Printing supervisor" means a person employed to supervise the operation of a print shop;

"Programmer" means a person employed to design and prepare programs for computer operation;

"Roofing/sheet metal mechanic" means a person employed to install, repair, fabricate and maintain roofs, gutters, flashing and duct work for heating and ventilation;

"Sanitation plant operator" means a person employed to operate and maintain a water or sewage treatment plant to ensure the safety of the plant's effluent for human consumption or environmental protection;

"School bus supervisor" means a qualified person:

(A) Employed to assist in selecting school bus operators and routing and scheduling school buses, operate a bus when needed, relay instructions to bus operators, plan emergency routing of buses and promote good relationships with parents, students, bus operators and other employees; and

(B) Certified to operate a bus or previously certified to operate a bus;

"Secretary I" means a person employed to transcribe from notes or mechanical equipment, receive callers, perform clerical tasks, prepare reports, and operate office machines;

"Secretary II" means a person employed in any elementary, secondary, kindergarten, nursery, special education, vocational, or any other school as a secretary. The duties may include performing general clerical tasks; transcribing from notes; stenotype, mechanical equipment, or a sound-producing machine; preparing reports; receiving callers and referring them to proper persons; operating office machines; keeping records and handling routine

correspondence. Nothing in this subdivision prevents a service person from holding or being elevated to a higher classification;

"Secretary III" means a person assigned to the county board office administrators in charge of various instructional, maintenance, transportation, food services, operations and health departments, federal programs, or departments with particular responsibilities in purchasing and financial control or any person who has served for eight years in a position which meets the definition of "Secretary II" or "Secretary III";

"Sign Support Specialist" means a person employed to provide sign supported speech assistance to students who can access environments through audition. A person who has held or holds an aide title and becomes employed as a sign support specialist shall hold a multiclassification status that includes both aide and sign support specialist titles, in accordance with §18A-4-8b of this code.

"Supervisor of maintenance" means a skilled person who is not a professional person or professional educator as defined in §18A-1-1 of this code. The responsibilities include directing the upkeep of buildings and shops, and issuing instructions to subordinates relating to cleaning, repairs and maintenance of all structures and mechanical and electrical equipment of a county board;

"Supervisor of transportation" means a qualified person employed to direct school transportation activities properly and safely, and to supervise the maintenance and repair of vehicles, buses and other mechanical and mobile equipment used by the county school system. After July 1, 2010, all persons employed for the first time in a position with this classification title or in a multiclassification position that includes this title shall have five years of experience working in the transportation department of a county board. Experience working in the transportation department consists of serving as a bus operator, bus aide, assistant mechanic, mechanic, chief mechanic or in a clerical position within the transportation department;

"Switchboard operator-receptionist" means a person employed to refer incoming calls, to assume contact with the public, to direct

and to give instructions as necessary, to operate switchboard equipment and to provide clerical assistance;

"Truck driver" means a person employed to operate light or heavy duty gasoline and diesel-powered vehicles;

"Warehouse clerk" means a person employed to be responsible for receiving, storing, packing, and shipping goods;

"Watchman" means a person employed to protect school property against damage or theft. Additional assignments may include operation of a small heating plant and routine cleaning duties;

"Welder" means a person employed to provide acetylene or electric welding services for a school system; and

"WVEIS data entry and administrative clerk" means a person employed to work under the direction of a school principal to assist the school counselor or counselors in the performance of administrative duties, to perform data entry tasks on the West Virginia Education Information System, and to perform other administrative duties assigned by the principal.

(j) Notwithstanding any provision in this code to the contrary, and in addition to the compensation provided for service personnel in §18A-4-8a of this code, each service person is entitled to all service personnel employee rights, privileges and benefits provided under this or any other chapter of this code without regard to the employee's hours of employment or the methods or sources of compensation.

(k) A service person whose years of employment exceeds the number of years shown and provided for under the state minimum pay scale set forth in §18A-4-8a of this code may not be paid less than the amount shown for the maximum years of employment shown and provided for in the classification in which he or she is employed.

(l) Each county board shall review each service person's job classification annually and shall reclassify all service persons as

required by the job classifications. The state superintendent may withhold state funds appropriated pursuant to this article for salaries for service personnel who are improperly classified by the county boards. Further, the state superintendent shall order a county board to immediately correct any improper classification matter and, with the assistance of the Attorney General, shall take any legal action necessary against any county board to enforce the order.

(m) Without his or her written consent, a service person may not be:

(1) Reclassified by class title; or

(2) Relegated to any condition of employment which would result in a reduction of his or her salary, rate of pay, compensation or benefits earned during the current fiscal year; or for which he or she would qualify by continuing in the same job position and classification held during that fiscal year and subsequent years.

(n) Any county board failing to comply with the provisions of this article may be compelled to do so by mandamus and is liable to any party prevailing against the board for court costs and the prevailing party's reasonable attorney fee, as determined and established by the court.

(o) Notwithstanding any provision of this code to the contrary, a service person who holds a continuing contract in a specific job classification and who is physically unable to perform the job's duties as confirmed by a physician chosen by the employee, shall be given priority status over any employee not holding a continuing contract in filling other service personnel job vacancies if the service person is qualified as provided in §18A-4-8e of this code.

(p) Any person employed in an aide position on the effective date of this section may not be transferred or subject to a reduction in force for the purpose of creating a vacancy for the employment of a licensed practical nurse.

(q) Without the written consent of the service person, a county board may not establish the beginning work station for a bus

operator or transportation aide at any site other than a county board-owned facility with available parking. The workday of the bus operator or transportation aide commences at the bus at the designated beginning work station and ends when the employee is able to leave the bus at the designated beginning work station, unless he or she agrees otherwise in writing. The application or acceptance of a posted position may not be construed as the written consent referred to in this subsection.

(r) Itinerant status means a service person who does not have a fixed work site and may be involuntarily reassigned to another work site. A service person is considered to hold itinerant status if he or she has bid upon a position posted as itinerant or has agreed to accept this status. A county board may establish positions with itinerant status only within the aide and autism mentor classification categories and only when the job duties involve exceptional students. A service person with itinerant status may be assigned to a different work site upon written notice 10 days prior to the reassignment without the consent of the employee and without posting the vacancy. A service person with itinerant status may be involuntarily reassigned no more than twice during the school year. At the conclusion of each school year, the county board shall post and fill, pursuant to §18A-4-8b of this code, all positions that have been filled without posting by a service person with itinerant status. A service person who is assigned to a beginning and ending work site and travels at the expense of the county board to other work sites during the daily schedule, is not considered to hold itinerant status.

(s) Any service person holding a classification title on June 30, 2013, that is removed from the classification schedule pursuant to amendment and reenactment of this section in the year 2013, has his or her employment contract revised as follows:

(1) Any service person holding the Braille or Sign Language Specialist classification title has that classification title renamed on his or her employment contract as either Braille Specialist or Sign Support Specialist. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Braille or Sign Language Specialist classification prior to July

1, 2013, continues to be credited as seniority earned in the Braille Specialist or Sign Support Specialist classification;

(2) Any service person holding the Paraprofessional classification title and holding the Initial Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter I added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter I classification; and

(3) Any service person holding the Paraprofessional classification title and holding the Permanent Paraprofessional Certificate – Educational Interpreter has the title Educational Sign Language Interpreter II added to his or her employment contract. This action does not result in a loss or reduction of salary or supplement by any employee. Any seniority earned in the Paraprofessional classification prior to July 1, 2013, continues to be credited as seniority earned in the Educational Sign Language Interpreter II classification;

(t) Any person employed as an aide in a kindergarten program who is eligible for full retirement benefits before the first day of the instructional term in the 2020-2021 school year, may not be subject to a reduction in force or transferred to create a vacancy for the employment of a less senior Early Childhood Classroom Assistant Teacher;

(u) A person who has held or holds an aide title and becomes employed as an Early Childhood Classroom Assistant Teacher shall hold a multiclassification status that includes aide and/or paraprofessional titles in accordance with §18A-4-8b of this code.

CHAPTER 248

(Com. Sub. for H. B. 5262 - By Delegates Ellington, Statler, Toney, Mazzocchi, Hornby, W. Clark, Thorne, Foggin, Smith, Jennings, and Longanacre)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18-5-18b of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §18-20-12; and to amend said code by adding thereto a new article, designated §18A-2A-1; all relating generally to the rights of certain school professional personnel; providing that school counselors may not perform certain duties without written agreement; requiring school counselors to participate in certain training; limiting the student/instructor ratio in self-contained and resource classrooms, as well as any special education environment; allowing for a two-week waiver with the understanding that the local county board is responsible to remediate the situation while compensating the teacher with overage pay provided by the county per county or federal funds; allowing the district upon agreement of the teacher to submit a waiver to the state board of education if the district is unable to find an additional classroom teacher; prohibiting county from submitting a waiver to exceed a certain limit of students without the written consent of the special education instructor; providing that county may not allow more than three students over the limit, even with the additional pay for the teacher; defining supplemental duty; requiring each classroom teacher, full-time counselor, and full-time librarian to be provided with a calendar that specifies the days each employee is expected to work for that school year; requiring that any supplemental duty exceeding the eight hour contracted day be by agreement with the employee unless the duty is the result of an anticipated

emergency; and requiring overtime pay to be by agreement and approved by the county superintendent or designee.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 5. COUNTY BOARD OF EDUCATION.

§18-5-18b. School counselors in public schools.

(a) A school counselor means a professional educator who holds a valid school counselor's certificate in accordance with §18A-1-1 of this code.

(b) Each county board shall provide counseling services for each pupil enrolled in the public schools of the county.

(c) The school counselor shall work with individual pupils and groups of pupils in providing developmental, preventive and remedial guidance and counseling programs to meet academic, social, emotional, and physical needs; including programs to identify and address the problem of potential school dropouts. The school counselor also may provide consultant services for parents, teachers, and administrators and may use outside referral services, when appropriate, if no additional cost is incurred by the county board.

(d) The state board may adopt rules consistent with the provisions of this section that define the role of a school counselor based on the "National Standards for School Counseling Programs" of the American School Counselor Association. A school counselor is authorized to perform such services as are not inconsistent with the provisions of the rule as adopted by the state board. To the extent that any funds are made available for this purpose, county boards shall provide training for counselors and administrators to implement the rule as adopted by the state board.

(e) Each county board shall develop a comprehensive drop-out prevention program utilizing the expertise of school counselors and any other appropriate resources available.

(f) School counselors shall be full-time professional personnel, shall spend at least 80 percent of work time in a direct counseling relationship with pupils, and shall devote no more than 20 percent of the workday to administrative activities: *Provided*, That such activities are directly related to their counseling duties: *Provided further,* That school counselors may not perform the following duties without a written agreement:

(1) Administering cognitive, aptitude, and achievement testing programs: *Provided*, That school counselors may administer make up tests and any tests that are required for virtual students, should no other person be available to administer the test;

(2) Routinely signing excuses for students who are tardy or absent;

(3) Performing disciplinary actions or assigning discipline consequences;

(4) Routinely covering classes when teachers are absent or to create teacher planning time;

(5) Maintaining student records: *Provided,* That school counselors may have access to student records;

(6) Computing grade-point averages: *Provided,* That school counselors may compute grade-point averages for the purpose of determining a student's eligibility for scholarships or post-secondary goals;

(7) Routinely supervising classrooms or common areas;

(8) Keeping clerical records: *Provided,* That school counselors may access clerical records;

(9) Coordinating Individual Education Plans: *Provided,* That this does not preclude school counselors from otherwise participating in Individual Education Plans when appropriate:

(10) Coordinating 504 Plans: *Provided,* That this does not preclude school counselors from otherwise participating in 504 Plans when appropriate; and

(11) Coordinating Student Study Teams; *Provided,* That this does not preclude school counselors from otherwise participating in Student Study Teams when appropriate.

(g) Beginning with the 2024—25 school year, school counselors shall participate in the training set forth below.

(1) At least once every two years, school counselors serving students in grades Pre-K through 12 shall participate in the School Counselors Conference, which shall address the following components:

(A) Career Counseling and Life Planning;

(B) Career awareness;

(C) Career and life planning;

(D) Career and life success;

(E) Opportunities with Career Technical Education available in West Virginia;

(F) Post secondary options;

(G) Academic Counseling and Personalized Planning;

(H) Academic motivation;

(I) Goal setting;

(J) Academic scheduling;

(K) Personalized Education Plans;

(L) Dual credit;

(M) Learning skills;

(N) Personal and Social Counseling;

(O) Decision making;

(P) Personal responsibility;

(Q) Conflict resolution; and

(R) Prevention.

(2) Every two years, school counselors serving students in grades seven through 12 shall receive training regarding building and trades and apprenticeship programs available to students in West Virginia. This training shall be administered by the department of education and provided at no cost to the counselors.

(h) Nothing in this section prohibits a county board from exceeding the provisions of this section, or requires any specific level of funding by the Legislature.

ARTICLE 20. EDUCATION OF EXCEPTIONAL CHILDREN.

§18-20-12. Special education student instructor ratio; waiver; compensation to teacher when ratio exceeded.

(a) Self-contained and resource classrooms, as well as any special education environment, shall not have a student/instructor ratio over the current limit provided for in the Individuals with Disabilities Education Act 2004 and State Board Policy 2419. A two-week waiver may be signed with the understanding that the local county board is responsible to remediate the situation while compensating the teacher with overage pay provided by the county per county or federal funds. This waiver shall be good for two weeks to allow the district time to find an additional classroom teacher. Should the district be unable to find an additional classroom teacher, the district, upon the agreement of the teacher, may submit a waiver to the state board of education. This waiver shall have the teachers signature acknowledging that although they are over the limit, they recognize that this is a dire situation.

(b) The county may not submit a waiver to exceed the current limit of students set forth in Individuals with Disabilities Education Act 2004 and Policy 2419 without the written consent of the special education instructor. If the instructor chooses to sign the waiver to exceed the limit, that instructor shall be entitled to the full amount of compensation as provided per county.

(c) The county may not allow more than three students over the limit, even with the additional pay for the teacher.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 2A. TEACHERS BILL OF RIGHTS.

§18A-2A-1. Supplemental duty calendar provisions.

(a) In this section, "supplemental duty" means a duty other than a duty assigned under an employee's contract that is generally expected to be performed during an educational day and which may be governed by an agreement, other than the employee's contract, between the district and the employee.

(b) Not later than the 15th day before the first day of the employment term of each school year, the county board shall adopt and provide to each classroom teacher, full-time counselor, and full-time librarian employed by the district a calendar that specifies the days each employee is expected to work for that school year: *Provided*, That any supplemental duty exceeding the eight hour contracted day shall be by agreement with the employee and preapproved by the county superintendent or by his or her designee, unless the supplemental duty is the result of an unanticipated emergency, and shall be paid in accordance with the agreement between the employee and the county.

CHAPTER 249

(Com. Sub. for H. B. 5405 - By Delegates Statler, Toney, Ellington, Fehrenbacher, and Hornby)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18-9A-10 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18A-3C-3 of said code, all relating to increasing support and professional development for educators; expanding factors used to determine how funds for supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth are allocated to the counties; authorizing retention of certain funding for 2024 – 2025 school year by the Department of Education for certain regional professional learning cadres or teacher leadership networks, implementing the Department of Education's academic initiatives, and to assist teachers who are less than fully certified; requiring up to a certain portion of the retained funding to be distributed to county boards for certain purposes under a grant program to be established by state board rule; specifying minimum contents of rule; requiring county boards to ensure that the results on the comprehensive statewide student assessment for the students taught by each teacher are provided to that teacher; adding to topics to be addressed by the plan for implementation of a comprehensive system of support for improving professional practice; requiring certain additional amounts paid to a teacher be only for the duration of any service provided and not be considered salary for the computation of an annuity under the Teachers Retirement System; and removing requirement for the Legislative Oversight Commission on Education Accountability to review the progress of the implementation of the comprehensive systems of support for teacher and leader induction and

professional growth and authority to make recommendations to the Legislature.

Be it enacted by the Legislature of West Virginia:

CHAPTER 18. EDUCATION.

ARTICLE 9A. PUBLIC SCHOOL SUPPORT.

§18-9A-10. Foundation allowance to improve instructional programs, instructional technology, and teacher and leader induction and professional growth.

(a) The total allowance to improve instructional programs and instructional technology is the sum of the following:

(1) For instructional improvement, in accordance with county and school electronic strategic improvement plans required by §18-2E-5 of this code, an amount equal to 10 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) One hundred fifty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional programs according to the county and school strategic improvement plans required by §18-2E-5 of this code and approved by the state board.

Up to 50 percent of this allocation for the improvement of instructional programs may be used to employ professional educators and service personnel in the county. Prior to the use of any funds from this subdivision for personnel costs, the county

board must receive authorization from the state superintendent. The state superintendent shall require the county board to demonstrate: (1) The need for the allocation; (2) efficiency and fiscal responsibility in staffing; (3) sharing of services with adjoining counties in the use of the total local district board budget; and (4) employment of technology integration specialists to meet the needs for implementation of the West Virginia Strategic Technology Learning Plan. County boards shall make application for the use of funds for personnel for the next fiscal year by May 1 of each year. On or before June 1, the state superintendent shall review all applications and notify applying county boards of the approval or disapproval of the use of funds for personnel during the fiscal year appropriate. The state superintendent shall require the county board to demonstrate the need for an allocation for personnel based upon the county's inability to meet the requirements of state law or state board policy.

The funds available for personnel under this subdivision may not be used to increase the total number of professional noninstructional personnel in the central office beyond four.

The plan shall be made available for distribution to the public at the office of each affected county board; plus

(2) For the purposes of improving instructional technology, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties as follows:

(A) Thirty thousand dollars shall be allocated to each county; and

(B) Allocation to the counties of the remainder of these funds shall be made proportional to the average of each county's average daily attendance for the preceding year and the county's second month net enrollment.

Moneys allocated by this subdivision shall be used to improve instructional technology programs according to the county board's strategic technology learning plan.

This allocation for the improvement of instructional technology programs may also be used for the employment of technology system specialists essential for the technology systems of the schools of the county to be fully functional and readily available when needed by classroom teachers. The amount of this allocation used for the employment of technology system specialists shall be included and justified in the county board's strategic technology learning plan; plus

(3) One percent of the state average per pupil state aid multiplied by the number of students enrolled in dual credit, advanced placement, and international baccalaureate courses, as defined by the state board, distributed to the counties proportionate to enrollment in these courses in each county; plus

(4) For the purpose of supporting county-level implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code, an amount equal to 20 percent of the increase in the local share amount for the next school year shall be added to the amount of the appropriation for this purpose for the immediately preceding school year. The sum of these amounts shall be allocated to the counties in a manner established by the state board which considers the following factors:

(A) The number of full-time-equivalent teachers employed by the county with zero years of experience;

(B) The number of full-time-equivalent teachers employed by the county who are less than fully certified for the teaching position in which they are employed;

(C) The total number of full-time-equivalent teachers employed by the county with one year of experience, with two years of experience, and with three years of experience;

(D) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first or second year of employment as a principal, assistant principal, or vocational administrator;

(E) The number of full-time-equivalent principals, assistant principals, and vocational administrators employed by the county who are in their first year in an assignment at a school with a programmatic level in which they have not previously served as a principal, assistant principal, or vocational administrator; and

(F) Needs identified in the strategic plans for continuous improvement of schools and school systems including those identified through the performance evaluations of professional personnel.

Notwithstanding any provision of this subsection to the contrary, no county may receive an allocation for the purposes of this subdivision which is less than the county's total 2016-2017 allocation from the Teacher Mentor and Principals Mentorship appropriations to the Department of Education. Moneys allocated by this subdivision shall be used for implementation of the comprehensive systems for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. Notwithstanding any provision of this subsection to the contrary, for each of the five school years beginning with the school year 2020 – 2021 and ending after the school year 2024 – 2025, from funds to be allocated under this subdivision, $100,000 shall be retained by the Department of Education to assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18A-3C-3 of this code. The Department of Education may also retain an additional amount of funds to be allocated under this subdivision beginning with the school year 2024 – 2025, not exceeding $15,000,000, to accommodate the participation by county school systems in regional professional learning cadres or teacher leadership networks established or supported by the Department of Education, to expand regional professional learning cadres or

teacher leadership networks designed to support the full implementation of the Third Grade Success Act provided in §18-2E-10 of this code, to implement the Department of Education's academic initiatives, and to assist teachers who are less than fully certified for the teaching position in which they are employed as further provided in §18A-3C-3 of this code. Up to $1,000,000 of the $15,000,000 shall be distributed to county boards for the purpose of expanding the school districts' ability to contract with organizations that facilitate the school districts' participation in regional professional learning cadres or teacher leadership networks designed to support math and science improvement or to support teachers who are less than fully certified for the teaching position in which they are employed as further provided in §18A-3C-3 of this code. The $1,000,000 shall be distributed to the county boards under a grant program to be established by the state board by rule pursuant to §29A-3B-1 *et seq.* of this code. The rule shall include at least the following:

(A) A requirement and procedures for county boards to submit applications for a grant;

(B) Criteria on which awards of the grants will be based on; and

(C) A requirement for an external evaluation for any program funded by a grant.

(b) Notwithstanding the restrictions on the use of funds pursuant to subdivisions (1) and (2), subsection (a) of this section, a county board may:

(1) Utilize up to 25 percent of the allocation for the improvement of instructional programs in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county and school strategic improvement plans or amendments thereto; and

(2) Utilize up to 50 percent of the allocation for improving instructional technology in any school year for school facility and equipment repair, maintenance, and improvement or replacement and other current expense priorities and for emergency purposes. The amount of this allocation used for any of these purposes shall be included and justified in the county board's strategic technology learning plan or amendments thereto.

CHAPTER 18A. SCHOOL PERSONNEL.

ARTICLE 3C. IMPROVING TEACHING AND LEARNING.

*§18A-3C-3. Comprehensive system for teacher and leader induction and professional growth.

(a) The intent of the Legislature is to allow for local-level implementation of comprehensive systems of support for building professional practice consistent with sound educational practices and resources available. In this regard, it is the intent of the Legislature that the comprehensive systems of support shall incorporate support for improved professional performance that begins with meaningful assistance for beginning teachers and leaders and also is targeted on deficiencies identified through the educator personnel evaluation process and other professional development needs identified in the strategic plans for continuous improvement of schools and school systems. Further, because of significant variability among the counties, not only in the size of their teaching force, distribution of facilities and available resources, but also because of their varying needs, the Legislature intends for the implementation of this section to be accomplished in a manner that provides adequate flexibility to the counties to design and implement a comprehensive system of support for improving professional performance that best achieves the goals of this section within the county. Finally, because of the critical importance of ensuring that all teachers perform at the accomplished level or higher in the delivery of instruction that at least meets the West Virginia Professional Teaching Standards and because achieving this objective at a minimum entails providing

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***NOTE:** This section was also amended by S. B. 806 (Chapter 107), which passed prior to this Act.

assistance to address the needs as indicated by the data informed results of annual performance evaluations, including the self-assessed needs of the teachers themselves, the Legislature expects the highest priority for county and state professional development will be on meeting these needs and that the comprehensive systems of support for improving professional practice will reflect substantial redirection of existing professional development resources toward this highest priority.

(b) Each county board shall ensure that the results on the comprehensive statewide student assessment for the students taught by each teacher are provided to that teacher so that the teacher can see the performance of the students he or she taught the previous school year.

(c) On or before July 1, 2018, the state board shall publish guidelines on the design and implementation of a county-level comprehensive system of support for improving professional practice. The purpose of the guidelines is to assist the county board with the design and implementation of a system that best achieves the goals of this section within the county. The guidelines may include examples of best practices and resources available to county boards to assist them with the design and implementation of a comprehensive system of support and may include guidelines for the design and implementation of a teacher leader framework committed to improving the quality of instruction.

(d) Effective for the school year beginning July 1, 2018, and thereafter, a county board is not eligible to receive state funding appropriated for the purposes of this section or any other provision of law related to beginning teacher and principal internships and mentor teachers and principals unless it has adopted a plan for implementation of a comprehensive system of support for improving professional practice, the plan has been verified by the state board as meeting the requirements of this section and the county is implementing the plan. The plan shall address the following:

(1) The manner in which the county will provide the strong school-based support and supervision that will assist beginning

teachers in developing instructional and management strategies, procedural and policy expertise, and other professional practices they need to be successful in the classroom and perform at the accomplished level. Nothing in this subdivision prohibits a school or school system that was granted an exception or waiver from §18A-3-2c of this code prior to the effective date of this section from continuing implementation of the program in accordance with the exception or waiver;

(2) The manner in which the county will provide the strong support and supervision necessary to assist teachers employed by the county who are less than fully certified for the teaching position in which they are employed that will include an emphasis on grade-level content, standards driven instruction, research-based instructional strategies, and mentoring support consistent with the West Virginia Professional Teaching Standards.

(3) The manner in which the county will provide the strong support and supervision that will assist beginning principals in developing instructional leadership, supervisory and management strategies, procedural and policy expertise, and other professional practices they need to be successful in leading continuous school improvement and performing at the accomplished level or above;

(4) The manner in which the county in cooperation with the teacher preparation programs in this state will provide strong school-based support and assistance necessary to make student and resident teaching a productive learning experience;

(5) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for providing professional development specifically targeted on the area or areas identified through the evaluation process as needing improvement. If possible, this targeted professional development should be delivered at the school site using collaborative processes, mentoring or coaching or other approaches that maximize use of the instructional setting;

(6) The manner in which the county will use the data from the educator performance evaluation system to serve as the basis for

establishing priorities for the provision of county-level professional development when aggregate evaluation data from the county's schools indicates an area or areas of needed improvement;

(7) If a county uses master teachers, mentors, academic coaches, or any other approaches using individual employees to provide support, supervision, or other professional development or training to other employees for the purpose of improving their professional practice, the manner in which the county will select each of these individual employees based upon demonstrated superior performance and competence as well as the manner in which the county will coordinate support for these employees. If the duties of the position are to provide mentoring to an individual teacher at only one school, then priority shall be given to applicants employed at the school at which those duties will be performed;

(8) The manner in which the county will use local resources available, including, but not limited to, funds for professional development and academic coaches, to focus on the priority professional development goals of this section;

(9) The manner in which the county will adjust its scheduling, use of substitutes, collaborative planning time, calendar, or other measures as may be necessary to provide sufficient time for professional personnel to accomplish the goals of this section as set forth in the county's plan; and

(10) The manner in which the county will monitor and evaluate the effectiveness of implementation and outcomes of the county system of support for improving professional practice.

(e) Effective the school year beginning July 1, 2020, and thereafter, appropriations for supporting county-level implementation of the comprehensive systems of support for teacher and leader induction and professional growth pursuant to §18-9A-10 of this code and any new appropriation which may be made for the purposes of this section shall be expended by county boards only to accomplish the activities as set forth in their county plan pursuant to this section. Effective the school year beginning July 1, 2020, and thereafter, any employee service or employment

as a mentor is not subject to the provisions of this code governing extra duty contracts. A county board may adopt a teacher leader framework designed to accomplish the purposes of this section related to teacher induction and professional growth and, if the county board adopts a county salary supplement pursuant to §18A-4-5a of this code to provide additional compensation to teachers who, in addition to teaching duties, are assigned other duties for new teacher induction, improving professional practice and furthering professional growth among teachers as set forth in the county's comprehensive system of support, then appropriations made for supporting the purposes of this section may be applied to that salary supplement and other associated costs which may include a reduction in the teaching load of the teacher leader: *Provided,* That effective July 1, 2024, and thereafter, any additional amount paid to a teacher pursuant to this section shall only be for the duration of any service provided under this section and not be considered salary for the purposes of the computation of an annuity under §18-7A-26 of this code.

(f) The Department of Education shall assist county boards with the design and implementation of a teacher leader framework to accomplish the teacher induction and professional growth aspects of their comprehensive systems of support pursuant to this section. The goals of a teacher leader framework are to achieve:

(1) Increased student achievement and growth through the development of a shared leadership structure at the school level;

(2) Broader dissemination and use of effective teacher strategies through an increase in teacher collaboration; and

(3) Stronger and more positive school and district culture through the development and retention of highly effective teachers.

(g) The Department of Education may form networks among schools or school systems, or both, of comparable size and interests for the design and implementation of teacher leader frameworks that are:

(A) Driven by varying district and school needs;

(B) Related to existing state and district initiatives;

(C) Designed to improve student achievement and growth; and

(D) Designed to fit district size, current culture for collaboration, and funding capacity.

(h) A teacher leader framework adopted by a county board must:

(1) Create specific roles and responsibilities, eligibility requirements, and compensation plans for each teacher leader position, and clearly communicate these to teacher leaders, administrators, and other stakeholders;

(2) Provide regular, targeted professional learning opportunities for teacher leaders, and encourage redelivery within their respective schools;

(3) Provide time and opportunities for teacher leaders to collaborate with administrators, curriculum staff, other teacher leaders, and teachers;

(4) Monitor and evaluate the effectiveness of the teacher leader program through surveys from school administrators and school faculty; and

(5) Include teacher leaders in the school improvement planning process.

CHAPTER 250

(Com. Sub. for H. B. 5650 - By Delegates Foggin, Gearheart, Foster, Heckert, Ellington, Statler, Toney, Hornby, and Young)

[Passed March 7, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §18A-2-8 of the Code of West Virginia, 1931, as amended, relating to prohibiting a suspended employee from being barred from attending public events on school property while serving the suspension; prohibiting a suspended employee who has a dependent family member from being barred from entering the school to exercise normal functions of a parent or guardian while suspended; and providing exceptions.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. SCHOOL PERSONNEL.

*§18A-2-8. Suspension and dismissal of school personnel by board; appeal.

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Human Services in accordance with §49-1-1 *et seq.* of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge. Upon the

*NOTE: This section was also amended by H. B. 4274 (Chapter 149), which passed prior to this Act.

commencement of any fact-finding investigation involving conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, whether being conducted internally, or in cooperation with police or Department of Human Services, the affected employee shall be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse shall be suspended, placed on administrative leave, or reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, or welfare of students be jeopardized or the learning environment of other students has been impacted. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

(e) It shall be the duty of any school principal to report any employee conduct alleged to jeopardize the health, safety, or welfare of students or the learning environment of other students, to the county superintendent within 24 hours of the allegation. Nothing in this subsection supersedes §49-2-803 of this code or the provisions therein regarding mandated reporting of child abuse and neglect.

(f) It shall be the duty of any county superintendent to report any employee suspended or dismissed, or resigned during the course of an investigation of the employee's alleged misconduct, in accordance with this section, including the rationale for the suspension or dismissal, to the state superintendent within seven business days of the suspension, dismissal, or resignation. The state superintendent shall maintain a database of all individuals suspended or dismissed for jeopardizing the health, safety, or welfare of students, or for impacting the learning environment of other students. The database shall also include the rationale for the suspension or dismissal. The database shall be confidential and shall only be accessible to county human resource directors, county superintendents, and the state superintendent of schools.

(g) Notwithstanding any other provisions of law, a suspended employee may not be barred from attending public events on school property while serving the suspension, nor may a suspended employee who has a dependent child, grandchild, foster child, or other family member be barred from entering the school to exercise normal functions of a parent or guardian while suspended: *Provided,* That the suspended employ's presence does not jeopardize the health, safety, or welfare of students, employees, or visitors; impact the learning environment or the school-sponsored activity; prejudice an investigation or disciplinary proceedings involving the employee; violate an order of a court or any law; or threaten damage to property.

CHAPTER 251

(Com. Sub. for H. B. 4940 - By Delegates Crouse, Lucas, Winzenreid, Petitto, Smith, and Kimble)

[Passed March 6, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 22, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended; by adding thereto a new section, designated as §37-6-31; and to amend said Code by adding thereto a new article, designated as §55-3C-1 and §55-3C-2; all relating to squatting and the remedies therefor; defining a term; clarifying that squatting is a wrongful occupation of property; excluding squatting from the provisions of certain sections of Code; providing that petition and eviction are not appropriate remedies to remove squatters from property; defining terms; providing that squatters are not tenants; noting that squatting is the same as trespass; and providing that petition and eviction are not appropriate remedies to remove squatters from property.

Be it enacted by the Legislature of West Virginia:

CHAPTER 37. REAL PROPERTY.

ARTICLE 6. LANDLORD AND TENANT.

§37-6-31. Exclusions from application of this article.

(a) For purposes of this Article, "squatter" means a person occupying a dwelling unit who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit. "Squatter" does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) Occupancy by a squatter is not governed by the provisions of this article.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under the provisions of this chapter, by an owner in any instance involving the removal of a squatter from possession of a property, and such removal shall not be unduly hindered.

ARTICLE 3C. REMEDIES FOR SQUATTING.

§55-3C-1. Squatting defined; squatting synonymous with trespass.

(a) "Squatter" means a person occupying a dwelling unit or other structure who is not so entitled under a rental agreement or who is not authorized by the tenant to occupy that dwelling unit or structure. "Squatter" does not include a tenant who holds over in a periodic tenancy as described in §37-6-5 of this code.

(b) "Squatting" means the act of being a squatter.

§55-3C-2. Squatters not tenants; squatting constitutes criminal trespass; petition and eviction not appropriate remedies for squatters; remedy is arrest for trespass.

(a) Squatters are not considered tenants for purposes of this code.

(b) Squatting is synonymous with trespass, and is a criminal act under §61-3B-2 or §61-3B-3 of this Code.

(c) No Court of this state shall require the utilization of eviction, or a similar procedure such as those found under §55-3A-1, *et seq.* or §55-3B-1, *et seq.* of this Code, by an owner in any instance involving the removal of a squatter from possession of a property.

CHAPTER 252

(S. B. 462 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed January 29, 2024; in effect from passage]
[Approved by the Governor on February 7, 2024.]

AN ACT to amend and reenact §11-21-9 of the Code of West Virginia, 1931, as amended, relating to updating the meaning of federal adjusted gross income and certain other terms used in the West Virginia Personal Income Tax Act; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-9. Meaning of terms.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to income taxes, unless a different meaning is clearly required. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2022, but prior to January 1, 2024, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2024, may be given any effect.

(b) *Medical savings accounts*. — The term "taxable trust" does not include a medical savings account established pursuant to §33-15-20 or §33-16-15 of this code. Employer contributions to a medical savings account established pursuant to said sections are not wages for purposes of withholding under §11-21-71 of this code.

(c) *Surtax*. — The term "surtax" means the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-15-20 of this code and the 20 percent additional tax imposed on taxable withdrawals from a medical savings account under §33-16-15 of this code which are collected by the Tax Commissioner as tax collected under this article.

(d) *Effective date*. — The amendments to this section enacted in the year 2024 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2024, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

(e) For purposes of the refundable credit allowed to a low-income senior citizen for property tax paid on his or her homestead in this state, the term "laws of the United States" as used in subsection (a) of this section means and includes the term "low income" as defined in §11-21-21(b) of this code and as reflected in the poverty guidelines updated periodically in the federal register by the U.S. Department of Health and Human Services under the authority of 42 U.S.C. §9902(2).

(f) For taxable years beginning on and after January 1, 2018, whenever this article refers to "each exemption for which he or she is entitled to a deduction for the taxable year for federal income tax purposes", this phrase means the exemption the person would have been allowed to claim for the taxable year had the federal income tax law not been amended to eliminate the personal exemption for federal tax years beginning on or after January 1, 2018.

CHAPTER 253

(S. B. 483 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed January 29, 2024; in effect from passage]
[Approved by the Governor on February 7, 2024.]

AN ACT to amend and reenact §11-24-3 of the Code of West Virginia, 1931, as amended, relating to bringing terms not defined in the Corporation Net Income Tax Act into conformity with the meaning of those terms for federal income tax purposes; and specifying effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 24. CORPORATION NET INCOME TAX.

§11-24-3. Meaning of terms; general rule.

(a) Any term used in this article has the same meaning as when used in a comparable context in the laws of the United States relating to federal income taxes, unless a different meaning is clearly required by the context or by definition in this article. Any reference in this article to the laws of the United States means the provisions of the Internal Revenue Code of 1986, as amended, and any other provisions of the laws of the United States that relate to the determination of income for federal income tax purposes. All amendments made to the laws of the United States after December 31, 2022, but prior to January 1, 2024, shall be given effect in determining the taxes imposed by this article to the same extent those changes are allowed for federal income tax purposes, whether the changes are retroactive or prospective, but no amendment to the laws of the United States made on or after January 1, 2024, shall be given any effect.

(b) The term "Internal Revenue Code of 1986" means the Internal Revenue Code of the United States enacted by the federal Tax Reform Act of 1986 and includes the provisions of law formerly known as the Internal Revenue Code of 1954, as amended, and in effect when the federal Tax Reform Act of 1986 was enacted that were not amended or repealed by the federal Tax Reform Act of 1986. Except when inappropriate, any reference in any law, executive order, or other document:

(1) To the Internal Revenue Code of 1954 includes a reference to the Internal Revenue Code of 1986; and

(2) To the Internal Revenue Code of 1986 includes a reference to the provisions of law formerly known as the Internal Revenue Code of 1954.

(c) *Effective date.* — The amendments to this section enacted in the year 2024 are retroactive to the extent allowable under federal income tax law. With respect to taxable years that began prior to January 1, 2024, the law in effect for each of those years shall be fully preserved as to that year, except as provided in this section.

CHAPTER 254

(S. B. 803 - By Senator Woodrum)

[Passed March 9, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §11-4-3 of the Code of West Virginia, 1931, as amended, relating to definitions used for assessment of real property; providing definitions for immediate family member and family trust; providing that owner includes homeowners who have vacated their homes under certain circumstances; including use by an immediate family member in definition of used and occupied by the owner thereof exclusively for residential purposes; and providing for owner when freehold possessed by a family trust.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. ASSESSMENT OF REAL PROPERTY.

§11-4-3. Definitions.

(a) For the purpose of giving effect to the Tax Limitations Amendment, this chapter shall be interpreted in accordance with the following definitions, unless the context clearly requires a different meaning:

"Owner" means the person, as defined in §2-2-10 of this code, who is possessed of the freehold, whether in fee or for life. A person seized or entitled in fee subject to a mortgage or deed of trust securing a debt or liability is considered the owner until the mortgagee or trustee takes possession, after which the mortgagee or trustee shall be considered the owner. A person who has an equitable estate of freehold, or is a purchaser of a freehold estate who is in possession before transfer of legal title is also considered

the owner. Owner includes the corporation or other organization possessed of the freehold of a qualified continuing care retirement community. Owner includes homeowners who have vacated their owner-occupied, single-family, residential property, which was their most recent primary residence, and have listed that property for sale with a licensed real estate broker, and have not leased said property to anyone since vacating said property. Owner means the person who is using and occupying all or a portion of a parcel of real estate the freehold of which is possessed by a family trust: *Provided,* That the parcel is used and occupied by the owner thereof exclusively for residential purposes.

"Used and occupied by the owner thereof exclusively for residential purpose" means actual habitation by the owner, or the owner's spouse, an immediate family member of the owner, or a qualified resident of all or a portion of a parcel of real property as a place of abode to the exclusion of any commercial use: *Provided,* That if the parcel of real property was unoccupied at the time of assessment and either:

(A) Was used and occupied by the owner thereof exclusively for residential purposes on July 1, of the previous year assessment date;

(B) Was unimproved on July 1, of the previous year but a building improvement for residential purposes was subsequently constructed thereon between that date and the time of assessment; or

(C) Is retained by the property owner for noncommercial purposes and was most recently used and occupied by the owner, or the owner's spouse, or an immediate family member of the owner as a residence and the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident in a nursing home, personal care home, rehabilitation center or similar facility, then the property shall be considered "used and occupied by the owner thereof exclusively for residential purpose": *Provided,* That nothing herein contained permits an unoccupied or unimproved property to be considered "used and occupied by the owner thereof exclusively for residential purposes" for more than

one year unless the owner, as a result of illness, accident or infirmity, is residing with a family member or is a resident of a nursing home, personal care home, rehabilitation center or similar facility. Except in the case of a qualified continuing care retirement community, if a license is required for an activity on the premises or if an activity is conducted thereon which involves the use of equipment of a character not commonly employed solely for domestic as distinguished from commercial purposes, the use may not be considered to be exclusively residential. I Qualified continuing care retirement community uses attendant to the functioning of the qualified continuing care retirement community, including, without limitation, cafeteria, laundry, personal and health care services, may not be considered commercial uses even if such activity or equipment requires a separate license or payment.

"Family member" means a person who is related by common ancestry, adoption or marriage including, but not limited to, persons related by lineal and collateral consanguinity.

"Family trust" means a trust the beneficiaries of which include only the person who is possessed of the freehold and his or her immediate family members.

"Immediate family member" means a spouse, child, sibling, parent, grandparent, or grandchild. This includes stepparents, stepchildren, stepsiblings, sons-in-law, daughters-in-law, fathers-in-law, mothers-in-law, brothers-in-law, sisters-in-law, and adoptive relationships.

"Farm" means a tract or contiguous tracts of land used for agriculture, horticulture or grazing and includes all real property designated as "wetlands" by the United States Army Corps of Engineers or the United States Fish and Wildlife Service.

"Occupied and cultivated" means subjected as a unit to farm purposes, whether used for habitation or not, and although parts may be lying fallow, in timber or in wastelands.

"Qualified continuing care retirement community" means a continuing care retirement community:

(A) Owned by a corporation or other organization exempt from federal income taxes under the Internal Revenue Code;

(B) Used in a manner consistent with the purpose of providing housing and health care for residents; and

(C) Which receives no Medicaid funding under the provisions of §9-4B-1 *et seq.* of this code. For purposes of this section, a continuing care retirement community is a licensed facility under the provisions of §16-5C-1 *et seq.* and §16-5D-1 *et seq.* of this code at which independent living, assisted living, and nursing care, if necessary, are provided to qualified residents.

"Qualified resident" means a person who contracts with a qualified continuing care retirement community to reside therein, in exchange for the payment of an entrance fee or deposit, or payment of periodic charges, or both.

(b)(1) Amendments to this section enacted during the 2006 regular session of the Legislature shall have retroactive effect to and including July 1, 2005, and shall apply in determining tax for tax years beginning January 1, 2006, and thereafter.

(2) Amendments to this section enacted during the 2007 regular session of the Legislature shall take effect on July 1, 2007.

(3) Amendments to this section enacted during the 2024 regular session of the Legislature shall take effect on July 1, 2024.

CHAPTER 255

(S. B. 858 - By Senator Trump)

[Passed March 9, 2024; to take effect July 1, 2024]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §11-3-25b of the Code of West Virginia, 1931, as amended, relating to appellate jurisdiction of Office of Tax Appeals; clarifying that Office of Tax Appeals has appellate jurisdiction and may hear and decide cases over property tax issues even when a taxpayer fails to file a petition in writing, register a complaint, or request a review by an assessor or county commission.

Be it enacted by the Legislature of West Virginia:

ARTICLE 3. ASSESSMENTS GENERALLY.

§11-3-25b. Appeal to Office of Tax Appeals.

(a) In all cases involving appeal to the Office of Tax Appeals from a property tax valuation pursuant to §11-3-15i or §11-3-23a of this code, or from an order of a County Commission sitting as a Board of Equalization and Review pursuant to §11-3-24 of this code, the appeal petition must be filed with the Office of Tax Appeals by March 31 of the property tax year as defined in §11-3-1 of this code to be considered timely filed. If a petition of appeal is not filed with the Office of Tax Appeals by March 31 of the property tax year, then it shall be dismissed as untimely.

(b) In all cases involving appeal to the Office of Tax Appeals from a property tax ruling on taxability or classification by the Tax Commissioner pursuant to §11-3-24a of this code, the appeal petition must be filed within 30 days after receiving written notice of the Tax Commissioner's ruling. If a petition of appeal is not

timely filed with the Office of Tax Appeals, then it shall be dismissed.

(c) In all cases involving property tax matters brought before the Office of Tax Appeals pursuant to subsections (a) and (b) of this section, the hearing before the Office of Tax Appeals shall be de novo as provided in §11-10A-10 of this code. Notwithstanding the provisions of §11-10A-10 of this code, a property tax appeal to the Office of Tax Appeals involving valuation, classification, or taxability may be set for hearing within 90 days of the due date of the answer unless continued by order of the Office of Tax Appeals for good cause.

(d) The provisions of this section shall be effective for all property tax appeals to the Office of Tax Appeals made on or after January 1, 2023.

(e) Notwithstanding any provisions of this article to the contrary, failure to file a petition in writing, register a complaint, or request an informal review, as provided in §11-3-15c, §11-3-15d, §11-3-23a, §11-3-24, or §11-3-24a shall not bar the Office of Tax Appeals' jurisdiction to hear any such property tax appeal. This provision is to clarify that the Office of Tax Appeals will have original property tax jurisdiction to hear such appeals.

CHAPTER 256

(S. B. 873 - By Senators Tarr, Phillips, Boley, Chapman, Clements, Jeffries, Maroney, Nelson, Oliverio, Queen, Roberts, Smith, Swope, and Woodrum)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §11-13A-9 of the Code of West Virginia, 1931, as amended, relating to due date for certain installment payments.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-9. Periodic installment payments of taxes imposed by sections three-a, three-b and three-c of this article; exceptions.

(a) *General rule.* — Except as provided in subsection (b) of this section, taxes levied under §11-13A-3a, §11-13A-3b, and §11-13A-3c of this code are due and payable in periodic installments as follows:

(1) *Tax of $50 or less per month.* — If a person's annual tax liability under this article is reasonably expected to be $50 or less per month, no installment payments of tax are required under this section during that taxable year.

(2) *Tax of more than $1,000 per month.* — For taxpayers whose estimated tax liability under this article exceeds $1,000 per month, the tax is due and payable in monthly installments on or before the last day of the month following the month in which the tax accrued:

(A) Each taxpayer shall, on or before the last day of each month, make out an estimate of the tax for which the taxpayer is liable for the preceding month, sign the estimate and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner.

(B) In estimating the amount of tax due for each month, the taxpayer may deduct one twelfth of any applicable tax credits allowable for the taxable year, and one twelfth of any annual exemption allowed for that year.

(3) *Tax of $1,000 per month or less.* — For taxpayers whose estimated tax liability under this article is $1,000 per month or less, the tax is due and payable in quarterly installments on or before the last day of the month following the quarter in which the tax accrued:

(A) Each taxpayer shall, on or before the last day of the fourth, seventh, and 10th months of the taxable year, make out an estimate of the tax for which the taxpayer is liable for the preceding quarter, sign the same, and mail it together with a remittance, in the form prescribed by the Tax Commissioner, of the amount of tax due to the office of the Tax Commissioner.

(B) In estimating the amount of tax due for each quarter, the taxpayer may deduct one fourth of any applicable tax credits allowable for the taxable year, and one fourth of any annual exemption allowed for that year.

(b) *Exceptions.* — (1) Notwithstanding the provisions of subsection (a) of this section, the Tax Commissioner, if he or she considers it necessary to ensure payment of the tax, may require the return and payment under this section for periods of shorter duration than those prescribed in subsection (a) of this section.

(2) Notwithstanding the provisions of subsection (a) of this section, taxpayers remitting tax on the privilege of severing timber may deduct the annual tax credit allowed in §11-13A-10 of this code only on the annual return filed for any taxable year beginning

on or after July 1, 1998. These taxpayers may not deduct any portion of the annual tax credit when they determine the amount of periodic installment payments of timber severance tax due during their taxable year.

CHAPTER 257

(Com. Sub. - for H. B. 4850 By Delegates Criss, Anderson, Zatezalo, Hardy, Householder, and Fehrenbacher)

[Passed February 23, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §11-1C-10 of the Code of West Virginia, 1931, as amended, relating to the valuation of industrial property and natural resources property by the Tax Commissioner; removing a sunset provision concerning valuation of property producing oil, natural gas, and natural gas liquids; and making technical corrections.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1C. FAIR AND EQUITABLE PROPERTY VALUATION.

§11-1C-10. Valuation of industrial property and natural resources property by Tax Commissioner; penalties; methods; values sent to assessors.

(a) As used in this section:

"Industrial property" means real and personal property integrated as a functioning unit intended for the assembling, processing and manufacturing of finished or partially finished products.

"Natural resources property" means coal, oil, natural gas, limestone, fireclay, dolomite, sandstone, shale, sand and gravel, salt, lead, zinc, manganese, iron ore, radioactive minerals, oil shale, managed timberland as defined in section two of this article, and other minerals.

(b) All owners of industrial property and natural resources property each year shall make a return to the State Tax Commissioner and, if requested in writing by the assessor of the county where situated, to such county assessor at a time and in the form specified by the commissioner of all industrial or natural resources property owned by them. The commissioner may require any information to be filed which would be useful in valuing the property covered in the return. Any penalties provided for in this chapter or elsewhere in this code relating to failure to list any property or to file any return or report may be applied to any owner of property required to make a return pursuant to this section.

(c) The State Tax Commissioner shall value all industrial property in the state at its fair market value within three years of the approval date of the plan for industrial property required in subsection (e) of this section. The commissioner shall thereafter maintain accurate values for all such property. The Tax Commissioner shall forward each industrial property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate for each tax year. The commissioner shall supply support data that the assessor might need to evaluate the appraisal.

(d) Within three years of the approval date of the plan required for natural resources property required pursuant to subsection (e) of this section, the State Tax Commissioner shall determine the fair market value of all natural resources property in the state and thereafter maintain accurate values for all such property.

(1) In order to qualify for identification as managed timberland for property tax purposes the owner must annually certify, in writing to the Division of Forestry, that the property meets the definition of managed timberland as set forth in this article and contracts to manage property according to a plan that will maintain the property as managed timberland. In addition, each owner's certification must state that forest management practices will be conducted in accordance with approved practices from the publication "Best Management Practices for Forestry". Property

certified as managed timberland shall be valued according to its use and productive potential. The Tax Commissioner shall promulgate rules for certification as managed timberland.

(2) In the case of all other natural resources property, the commissioner shall develop an inventory on a county by county basis of all such property and may use any resources, including, but not limited to, geological survey information; exploratory, drilling, mining and other information supplied by natural resources property owners; and maps and other information on file with the state Division of Environmental Protection and office of miners' health, safety and training. Any information supplied by natural resources owners or any proprietary or otherwise privileged information supplied by the state Division of Environmental Protection and office of miner's health, safety and training shall be kept confidential unless needed to defend an appraisal challenged by a natural resources owner. Formulas for natural resources valuation may contain differing variables based upon known geological or other common factors. The Tax Commissioner shall forward each natural resources property appraisal to the county assessor of the county in which that property is located and the assessor shall multiply each such appraisal by sixty percent and include the resulting assessed value in the land book or the personal property book, as appropriate, for each tax year. The commissioner shall supply support data that the assessor might need to explain or defend the appraisal. The commissioner shall directly defend any challenged appraisal when the assessed value of the property in question exceeds $2 million or an owner challenging an appraisal holds or controls property situated in the same county with an assessed value exceeding $2 million. At least every five years, the commissioner shall review current technology for the recovery of natural resources property to determine if valuation methodologies need to be adjusted to reflect changes in value which result from development of new recovery technologies.

(3) Property producing oil, natural gas, natural gas liquids-

(A) The Tax Commissioner shall value property producing oil, natural gas, natural gas liquids, or any combination thereof in the

state at its fair market value determined through the process of applying a yield capitalization model to the net proceeds.

(B) For the purposes of this subdivision:

(i) "Actual annual operating costs" shall include, without limitation, all lease operating expenses, lifting costs, gathering, compression, processing, separation, fractionation, and transportation costs as further defined herein.

(ii) "Capitalization rate" means a single state-wide capitalization rate for oil, natural gas, and natural gas liquids producing property, which shall be determined annually by the Tax Department based on a "Build-up-Model" of the Weighted Average Cost of Capital (WACC).

(iii) "Compression costs" are the actual costs in the process of raising the pressure of minerals.

(iv) "Fractionation costs" means the actual costs incurred by the producer in fractionation. Fractionation is the separating of components of a mixture through differences in physical or chemical properties. Fractionation is the process by which raw hydrocarbons are separated into products.

(v) "Gathering costs" means the actual costs of transportation of oil, natural gas, natural gas liquids, condensate, or any combination thereof from multiple wells by separate and individual pipelines to a central point of accumulation, dehydration, compression, separation, heating and treating or storage.

(vi) "Lease operating expenses" means the actual costs incurred to bring the subsurface minerals (oil, natural gas, and natural gas liquids) up to the surface and convert them to marketable products. Lease operating expenses refers to the costs of operating the wells and equipment. "Lease operating expenses" includes actual costs of labor, fuel, utilities, materials, rent or supplies, which are directly related to the production, processing, or transportation of oil, natural gas, natural gas liquids, or any combination thereof and that can be documented by the producer. For the purposes of this calculation, depreciation, depletion, extraordinary expenses, ad

valorem taxes, capital expenditures, intangible drilling costs, expenditures relating to vehicles or other tangible personal property not permanently used in the production of oil, natural gas, natural gas liquids, or any combination thereof shall not be included as lease operating expenses.

(vii) "Lifting costs" means the actual costs incurred to operate a well during production.

(viii) "Marginal well" means in the calendar year immediately preceding the July 1 assessment date a well with an average daily production of 2 barrels of oil or less and an average daily production of 10 MCF or less of natural gas.

(ix) "Natural gas liquids" means propane, ethane, butanes, and pentanes (also referred to as condensate), or a combination of them that are subject to recovery from raw gas liquids by processing in field separators, scrubbers, gas processing and reprocessing plants, or cycling plants.

(x) "Net proceeds" means actual gross receipts on a sales volume basis determined from the actual price received by the taxpayers as reported on the taxpayer's returns, less royalty interest receipts, and less actual annual operating costs as reported on the taxpayer's returns.

(xi) "Processing costs" means the actual costs incurred by the producer for activities occurring beyond the inlet to an oil, natural gas, or natural gas liquids processing facility that changes the physical or chemical characteristics, enhances the marketability, or enhances the value of the separate components. Processing costs are limited to the costs for the following activities: fractionation, adsorption, flashing, refrigeration, cryogenics. sweetening, dehydration within a processing facility, beneficiation, stabilizing, compression, and separation which occurs within a processing facility.

(xii) "Processing, Separation, and Fractionation costs" means de-ethnization fees, processing or fractionation fees, pipeline or

transportation fees, fuel fees, and electric fees charged by a processing or fractionation plant to the producer.

(xiii) "Royalty interest receipts" means the fractional interest in production of oil, natural gas, natural gas liquids, or any combination thereof, that may or may not be subject to development costs or operating expenses and extends undiminished over the life of the property. Typically, it is retained by the mineral owner, mineral lessor, or both.

(xiv) "Transportation costs" means the actual costs of moving oil, natural gas, natural gas liquids, unprocessed gas, residue gas, or gas plant products or any combination thereof to a point of sale.

(C) (i) For all assessments made on or after July 1, 2022, the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof shall be calculated using a yield capitalization model. The yield capitalization model shall be composed of a working interest model and a royalty interest model. The summation of the working interest model and the royalty interest model shall represent the fair market value of the property.

(I) The working interest model shall be calculated as the sum of the working interest net proceeds income series for natural gas, oil, and natural gas liquids. The net proceeds income series shall be calculated as a terminating series of net proceeds discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of net proceeds shall be the net proceeds for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the net proceeds income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(II) The royalty interest model shall be calculated as the sum of the royalty interest receipts income series for natural gas, oil, and natural gas liquids. The royalty interest receipts income series shall

be calculated as a terminating series of royalty interest receipts discounted by applying a capitalization rate multiplier and a decline rate multiplier. The initial term of the terminating series of royalty interest receipts shall be the royalty interest receipts for that product multiplied by a six month capitalization rate multiplier and an eighteen month decline rate multiplier.

In each subsequent term of the royalty interest receipts income series, the calculation shall use the value from the previous term and multiply that term by a capitalization rate multiplier and an applicable twelve-month decline rate multiplier.

(ii) For all assessments made on or after July 1, 2022, the Tax Commissioner shall annualize gross receipts and actual annual operating expenses before calculation of the working interest model and the royalty interest model for wells that produced for less than 12 months during the first calendar year of production or during the first calendar year of production after being shut-in during the previous calendar year. Companies may provide additional actual gross receipts and actual operating expense information that will be supplemented or used in lieu of the Tax Commissioner annualization calculations.

(iii) For all assessments made on or after July 1, 2024, but not before, the Tax Commissioner may not include a minimum valuation for any calculation related to determining the value of any well. For all assessments made prior to July 1, 2024, no minimum valuation shall exceed the values of $0.30 per MCF of natural gas, $10.00 per barrel of oil, or $0.30 per unit of natural gas liquids, as established in a Notice to taxpayers from the State Tax Department dated on or about December 22, 2021.

(D) Safe harbor. – The Tax Commissioner shall annually determine a safe harbor amount for actual annual operating costs to be published in the State Register for all marginal wells producing oil, natural gas, natural gas liquids, or any combination thereof. For operators of marginal wells choosing to use the safe harbor amount rather than calculate their actual annual operating costs, that safe harbor amount will be considered the costs associated with the production of the oil, natural gas, natural gas

liquids, or any combination thereof, typical of the producing geographical area and geological strata.

(E) The Tax Commissioner shall collect, retain, and report to the Speaker of the House of Delegates and the President of the Senate on or before April 1, 2023, and each April 1 thereafter, all information requested by the Division of Regulatory and Fiscal Affairs regarding the valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(F) The Tax Commissioner shall propose rules required to administer this subdivision, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code, regarding valuation of property producing oil, natural gas, natural gas liquids, or any combination thereof.

(e) The Tax Commissioner shall develop a plan for the valuation of industrial property and a plan for the valuation of natural resources property. The plans shall include expected costs and reimbursements, and shall be submitted to the property valuation training and procedures commission on or before January 1, 1991, for its approval on or before July 1, of such year. Such plan shall be revised, resubmitted to the commission and approved every three years thereafter.

(f) To perform the valuation duties under this section, the State Tax Commissioner has the authority to contract with a competent property appraisal firm or firms to assist with or to conduct the valuation process as to any discernible species of property statewide if the contract and the entity performing such contract is specifically included in a plan required by subsection (e) of this section or otherwise approved by the commission. If the Tax Commissioner desires to contract for valuation services only in one county or a group of counties, the contract must be approved by the commission.

(g) The county assessor may accept the appraisal provided, pursuant to this section, by the State Tax Commissioner: *Provided*, That if the county assessor fails to accept the appraisal provided by the State Tax Commissioner, the county assessor shall show just

cause to the valuation commission for the failure to accept such appraisal and shall further provide to the valuation commission a plan by which a different appraisal will be conducted.

(h) The costs of appraising the industrial and natural resources property within each county, and any costs of defending same shall be paid by the state: *Provided*, That the office of the state Attorney General shall provide legal representation on behalf of the Tax Commissioner or assessor, at no cost, in the event the industrial and natural resources appraisal is challenged in court.

(i) For purposes of revaluing managed timberland as defined in section two of this article, any increase or decrease in valuation by the commissioner does not become effective prior to July 1, 1991. The property owner may request a hearing by the director of the Division of Forestry, who may thereafter rescind the disqualification or allow the property owner a reasonable period of time in which to qualify the property. A property owner may appeal a disqualification to the circuit court of the county in which the property is located.

CHAPTER 258

(Com. Sub. for H. B. 4880 - By Delegates Hanshaw (Mr. Speaker), Hornbuckle, Fehrenbacher, Holstein, Howell, Burkhammer, Hillenbrand, Dean, and Nestor)

[By Request of the Executive]

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §11-21-12 of the Code of West Virginia, 1931, as amended, relating to personal income tax; providing for the gradual elimination of the limitations set forth in §11-21-12(c)(8) of the said Code relating to the decreasing modification for social security benefits received pursuant to specified provisions of Title 42 U.S.C., Chapter 7; making technical corrections to remove obsolete language; and specifying retrospective effect.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-12. West Virginia adjusted gross income of resident individual.

(a) General. — The West Virginia adjusted gross income of a resident individual means his or her federal adjusted gross income as defined in the laws of the United States for the taxable year with the modifications specified in this section.

(b) Modifications increasing federal adjusted gross income. — There shall be added to federal adjusted gross income, unless already included therein, the following items:

(1) Interest income on obligations of any state other than this state or of a political subdivision of any other state unless created by compact or agreement to which this state is a party;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States, which the laws of the United States exempt from federal income tax but not from state income taxes;

(3) Any deduction allowed when determining federal adjusted gross income for federal income tax purposes for the taxable year that is not allowed as a deduction under this article for the taxable year;

(4) Interest on indebtedness incurred or continued to purchase or carry obligations or securities the income from which is exempt from tax under this article, to the extent deductible in determining federal adjusted gross income;

(5) Interest on a depository institution tax-exempt savings certificate which is allowed as an exclusion from federal gross income under Section 128 of the Internal Revenue Code, for the federal taxable year;

(6) The amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes; and

(7) Amounts withdrawn from a medical savings account established by or for an individual under §33-15-20 or §33-16-15 of this code that are used for a purpose other than payment of medical expenses, as defined in those sections.

(c) Modifications reducing federal adjusted gross income. — There shall be subtracted from federal adjusted gross income to the extent included therein:

(1) Interest income on obligations of the United States and its possessions to the extent includable in gross income for federal income tax purposes;

(2) Interest or dividend income on obligations or securities of any authority, commission or instrumentality of the United States or of the State of West Virginia to the extent includable in gross income for federal income tax purposes but exempt from state income taxes under the laws of the United States or of the State of West Virginia, including federal interest or dividends paid to shareholders of a regulated investment company, under Section 852 of the Internal Revenue Code for taxable years ending after June 30, 1987;

(3) Any amount included in federal adjusted gross income for federal income tax purposes for the taxable year that is not included in federal adjusted gross income under this article for the taxable year;

(4) The amount of any refund or credit for overpayment of income taxes imposed by this state, or any other taxing jurisdiction, to the extent properly included in gross income for federal income tax purposes;

(5) Annuities, retirement allowances, returns of contributions and any other benefit received under the West Virginia Public Employees Retirement System, and the West Virginia State Teachers Retirement System, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes: *Provided*, That notwithstanding any provisions in this code to the contrary this modification shall be limited to the first $2,000 of benefits received under the West Virginia Public Employees Retirement System, the West Virginia State Teachers Retirement System and, including any survivorship annuities derived therefrom, to the extent includable in gross income for federal income tax purposes for taxable years beginning after December 31, 1986; and the first $2,000 of benefits received under any federal retirement system to which Title 4 U.S.C. §111 applies: *Provided, however*, That the total modification under this paragraph shall not exceed $2,000 per person receiving retirement benefits and this limitation shall apply to all returns or amended returns filed after December 31, 1988;

(6) Retirement income received in the form of pensions and annuities after December 31, 1979, under any West Virginia police, West Virginia Firemen's Retirement System or the West Virginia State Police Death, Disability and Retirement Fund, the West Virginia State Police Retirement System or the West Virginia Deputy Sheriff Retirement System, including any survivorship annuities derived from any of these programs, to the extent includable in gross income for federal income tax purposes;

(7) (A) For taxable years beginning after December 31, 2000, and ending prior to January 1, 2003, an amount equal to two percent multiplied by the number of years of active duty in the Armed Forces of the United States of America with the product thereof multiplied by the first $30,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2000, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(B) For taxable years beginning after December 31, 2000, the first $20,000 of military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2002, including any survivorship annuities, to the extent included in gross income for federal income tax purposes for the taxable year.

(C) For taxable years beginning after December 31, 2017, military retirement income, including retirement income from the regular Armed Forces, Reserves and National Guard paid by the United States or by this state after December 31, 2017, including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year. For taxable years beginning after December 31, 2018, retirement income from the uniformed services, including the Army, Navy, Marines, Air Force, Coast Guard, Public Health Service, National Oceanic Atmospheric Administration, reserves, and National Guard, paid by the United States or by this state after December 31, 2018,

including any survivorship annuities, to the extent included in federal adjusted gross income for the taxable year.

(D) In the event that any of the provisions of this subdivision are found by a court of competent jurisdiction to violate either the Constitution of this state or of the United States, or is held to be extended to persons other than specified in this subdivision, this subdivision shall become null and void by operation of law.

(8) Decreasing modification for social security income.

(A) For taxable years beginning on or after January 1, 2022, 100 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq.* or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq.*, included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(B) of this code.

(B) The deduction allowed by §11-21-12(c)(8)(A) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return does not exceed $100,000, or $50,000 in the case of a single individual or a married individual filing a separate return.

(C) For taxable years beginning on and after January 1, 2024, 35 percent of the amount of social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West

Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(D) For taxable years beginning on or after January 1, 2025, 65 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(E) For taxable years beginning on or after January 1, 2026, 100 percent of the social security benefits received pursuant to Title 42 U.S.C., Chapter 7, including, but not limited to, social security benefits paid by the Social Security Administration as Old Age, Survivors and Disability Insurance Benefits as provided in §42 U.S.C. 401 *et. seq*. or as Supplemental Security Income for the Aged, Blind, and Disabled as provided in §42 U.S.C. 1381 *et. seq*., included in federal adjusted gross income for the taxable year shall be allowed as a decreasing modification from federal adjusted gross income when determining West Virginia taxable income subject to the tax imposed by this article, subject to the limitation in §11-21-12(c)(8)(F) of this code.

(F) The deduction allowed by §11-21-12(c)(8)(C), §11-21-12(c)(8)(D), and §11-21-12(c)(8)(E) of this code are allowable only when the federal adjusted gross income of a married couple filing a joint return exceeds $100,000, or $50,000 in the case of a single individual or a married individual filing a separate return.

(9) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by any person who has attained the age of 65 on or before the last day of the taxable year, or by any person certified by proper authority as permanently and totally disabled, regardless of age, on or before

the last day of the taxable year, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That if a person has a medical certification from a prior year and he or she is still permanently and totally disabled, a copy of the original certificate is acceptable as proof of disability. A copy of the form filed for the federal disability income tax exclusion is acceptable: *Provided, however*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is $8,000 per person or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of modifications under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(10) Federal adjusted gross income in the amount of $8,000 received from any source after December 31, 1986, by the surviving spouse of any person who had attained the age of 65 or who had been certified as permanently and totally disabled, to the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That:

(i) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is $8,000 or more, no deduction shall be allowed under this subdivision; and

(ii) Where the total modification under subdivisions (1), (2), (5), (6), (7), and (8) of this subsection is less than $8,000 per person, the total modification allowed under this subdivision for all gross income received by that person shall be limited to the difference between $8,000 and the sum of subdivisions (1), (2), (5), (6), (7), and (8) of this subsection;

(11) Contributions from any source to a medical savings account established by or for the individual pursuant to §33-15-20 or §33-16-15 of this code, plus interest earned on the account, to

the extent includable in federal adjusted gross income for federal tax purposes: *Provided*, That the amount subtracted pursuant to this subdivision for any one taxable year may not exceed $2,000 plus interest earned on the account. For married individuals filing a joint return, the maximum deduction is computed separately for each individual; and

(12) Any other income which this state is prohibited from taxing under the laws of the United States including, but not limited to, tier I retirement benefits as defined in Section 86(d)(4) of the Internal Revenue Code.

(d) Modification for West Virginia fiduciary adjustment. — There shall be added to or subtracted from federal adjusted gross income, as the case may be, the taxpayer's share, as beneficiary of an estate or trust, of the West Virginia fiduciary adjustment determined under §11-21-19 of this code.

(e) Partners and S corporation shareholders. — The amounts of modifications required to be made under this section by a partner or an S corporation shareholder, which relate to items of income, gain, loss or deduction of a partnership or an S corporation, shall be determined under §11-21-17 of this code.

(f) Husband and wife. — If husband and wife determine their federal income tax on a joint return but determine their West Virginia income taxes separately, they shall determine their West Virginia adjusted gross incomes separately as if their federal adjusted gross incomes had been determined separately.

(g) Effective date. –

(1) Changes in the language of this section enacted in the year 2000 shall apply to taxable years beginning after December 31, 2000.

(2) Changes in the language of this section enacted in the year 2002 shall apply to taxable years beginning after December 31, 2002.

(3) Changes in the language of this section enacted in the year 2019 shall apply to taxable years beginning after December 31, 2018.

(4) Changes in the language of this section enacted in the year 2024 shall apply retroactively to taxable years beginning after December 31, 2023.

CHAPTER 259

(Com. Sub. for H. B. 4971 - By Delegates Criss, Anderson, Cooper, Heckert, Fehrenbacher, Street, Young, Hansen, Horst, and Hott)

[Passed March 7, 2024; in effect July 1, 2025.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §11-6M-1, §11-6M-2, and §11-6M-3, all relating to limiting property tax on silicon and silicon carbide manufacturing property; providing for property tax treatment of silicon and silicon carbide manufacturing property as its salvage value; providing for rule making authority and administration by the Tax Commissioner; providing an effective date for assessments on or after July 1, 2025; and providing a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 6M. CRITICAL MATERIALS MANUFACTURING PROPERTY TAX TREATMENT.

§11-6M-1. Property Tax Treatment of Silicon and Silicon Carbide Manufacturing Equipment.

(a) Notwithstanding any other provision of this code to the contrary, for all assessments made on or after July 1, 2025, until July 1, 2035, the value of silicon and silicon carbide manufacturing equipment, for the purpose of ad valorem property taxation under this chapter, shall be its salvage value, being no more than five percent of its fair market value for which such equipment would sell in place if voluntarily offered for sale.

(b) As used in this article, "silicon and silicon carbide manufacturing equipment" means any personal or real property and

fixtures thereon, which are designed, constructed, and installed primarily for the purpose of processing, concentrating, converting, transforming, or manufacturing silicon and silicon carbide into a raw material and directly and ancillary to the product process: *Provided,* That the personal or real property and fixtures used are not silicon and silicon carbide manufacturing equipment when it turns raw materials into finished goods through the use of tools or machinery, such as, without limitation, machining, casting, molding, or fabricating.

§11-6M-2. Rulemaking and Administration by Tax Commissioner.

The State Tax Commissioner shall promulgate rules, including emergency rules, and create forms for the administration of this article. The Tax Commissioner shall have the authority to make inquiries and procure information necessary to establish the salvage valuation for such property. Such rules may provide, among other things, for the identification and certification of silicon and silicon carbide manufacturing equipment that is directly and ancillary to the product process, the determination of whether such equipment is real or personal property, the determination of methods for the allocation or separation of values where the silicon and silicon carbide manufacturing equipment produces non-critical materials as by-products with commercial value, and such other matters as may be related to the administration of this article.

§11-6M-3. Effective Date and Sunset Date.

This article shall be effective for all assessments made on and after July 1, 2025, and shall be effective until July 1, 2035.

CHAPTER 260

(Com. Sub. for H. B. 5024 - By Delegates Criss and Hott)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §11-21-3, §11-21-4g, §11-21-18, §11-21-30, §11-21-40, §11-21-51, and §11-21-71a of the Code of West Virginia, 1931, as amended, all relating to the personal income tax by exempting non-grantor trusts administered by licensed private trust companies in this state from the personal income tax.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-3. Imposition of tax; persons subject to tax.

(a) Imposition of tax. — A tax determined in accordance with the rates hereinafter set forth in this article is hereby imposed for each taxable year on the West Virginia taxable income of every individual, estate, electing pass-through entity, and trust: *Provided,* That, for tax years beginning on or after January 1, 2024, the income of a non-grantor trust administered by a licensed private trust company created pursuant to the provisions of §31I-1-1 *et seq.* of this code shall have no tax imposed upon it by this section.

(b) Partners and partnerships. — A partnership or other pass-through entity as such shall not be subject to tax under this article, unless the partnership or other pass-through entity elects to be subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. Persons carrying on business as partners or owners of a pass-through entity shall be liable for tax under this article only in their separate or individual capacities, unless the partnership or other pass-through entity elects to be

subject to the tax levied under this section for a taxable year pursuant to §11-21-3a of this code. However, partnerships and other pass-through entities are subject to the tax imposed by this article to the extent they elect to pay additional West Virginia income taxes owed that are attributable to final federal partnership audit adjustments under §11-21A-3 of this code.

(c) Associations taxable as corporations. — An association, trust, or other unincorporated organization which is taxable as a corporation for federal income tax purposes, shall not be subject to tax under this article.

(d) Exempt trusts and organizations. — A trust or other unincorporated organization which by reason of its purposes or activities is exempt from federal income tax shall be exempt from tax under this article (regardless of whether subject to federal income tax on unrelated business taxable income).

(e) Cross references. — For definitions of West Virginia taxable income of:

(1) Resident individual, see §11-21-11 of this code.

(2) Resident estate or trust, see §11-21-18 of this code.

(3) Nonresident individual, see §11-21-30 of this code.

(4) Nonresident estate or trust, see §11-21-38 of this code.

(f) Effective date. — This section as amended in 2023 shall apply to taxable years beginning on and after January 1, 2022.

§11-21-4g Rate of tax — Taxable years beginning on and after January 1, 2023.

(a) Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts. — The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income

tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) shall be determined in accordance with the following table:

If the West Virginia taxable income is:	The tax is:
Not over $10,000	2.36% of the taxable income
Over $10,000 but not over $25,000	$236 plus 3.15% of excess over $10,000
Over $25,000 but not over $40,000	$708.50 plus 3.54% of excess over $25,000
Over $40,000 but not over $60,000	$1,239.50 plus 4.72% of excess over $40,000
Over $60,000	$2,183.50 plus 5.12% of excess over $60,000

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable income is:	The tax is:
Not over $5,000	2.36% of the taxable income
Over $5,000 but not over $12,500	$118 plus 3.15% of excess over $5,000

Over $12,500 but not over $20,000	$354.25 plus 3.54% of excess over $12,500
Over $20,000 but not over $30,000	$619.75 plus 4.72% of excess over $20,000
Over $30,000	$1,091.75 plus 5.12% of excess over $30,000

(c) Rate of tax on non-grantor trusts administered by licensed private trust companies. – In the case of non-grantor trusts administered by licensed private trust companies created pursuant to §31I-1-1 *et seq.* of this code, there is no tax imposed by §11-21-3 of this code.

(c) (d) Effect of rates on Nonresident Composite and Withholding Obligations — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the retroactive date specific in §11-21-4g(d) of this code subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77, of this article, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), the stated percentage shall be changed to 5.12%.

(d) (e) Applicability of this section. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply retroactively for all taxable years beginning on and after January 1, 2023, and shall be in lieu of the rates of tax specified in §11-21-4e of this code.

§11-21-18. West Virginia taxable income of resident estate or trust.

The West Virginia taxable income of a resident estate or trust (except non-grantor trusts administered by licensed private trust

companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) means its federal taxable income for the taxable year as defined in the laws of the United States and section nine of this article §11-21-9 of this code for the taxable year, with the following modifications:

(1) There shall be subtracted $600 as the West Virginia personal exemption of the estate or trust, and there shall be added the amount of its federal deduction for a personal exemption.

(2) There shall be added or subtracted, as the case may be, the share of the estate or trust in the West Virginia fiduciary adjustment determined under section nineteen of this article §11-21-19 of this code.

(3) There shall be added to federal adjusted gross income, unless already included therein, the amount of a lump sum distribution for which the taxpayer has elected under Section 402(e) of the Internal Revenue Code of 1986, as amended, to be separately taxed for federal income tax purposes: *Provided,* That the provisions of this subdivision shall first be effective for taxable years beginning after December 31, 1990.

(4) There shall be added by an electing small business trust as defined in Section 1361(e) of the Internal Revenue Code of 1986, as amended, which is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641 of the Internal Revenue Code of 1986, as amended.

(b) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

PART III. NONRESIDENT AND PART-YEAR RESIDENTS.

§11-21-30. Computation of tax on income of nonresidents and part-year residents.

(a) *Computation of tax.* — For taxable years beginning after December 31, 1991, the tax due under this article on taxable

income derived from sources in this state by a nonresident individual, estate, or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) or by a part-year resident individual shall be calculated as provided in this section.

(1) Taxpayer shall first calculate tax liability under this article as if taxpayer, whether an individual, estate or trust, were a resident of this state for the entire taxable year. When determining tentative tax liability under this subdivision, a nonresident shall be allowed the same deductions, exemptions and credits that would be allowable if taxpayer were a resident individual, estate or trust, as the case may be, for the entire taxable year, except that no credit shall be allowed under section twenty of this article §11-21-20 of this code.

(2) The amount of tentative tax determined under subdivision (1) of this subsection shall then be multiplied by a fraction the numerator of which is the taxpayer's West Virginia source income, determined in accordance with Part III of this article for the taxable year, and the denominator of which is such taxpayer's "federal adjusted gross income" for the taxable year as defined in section nine of this article §11-21-9 of this code: *Provided*, That if this computation produces a result that is out of all appropriate proportion to the amount of taxpayer's West Virginia source income, the Tax Commissioner may provide such equitable relief as the Tax Commissioner, in his or her discretion, considers to be appropriate under the circumstances.

(b) *Special rules for estates and trusts.* — For purposes of subdivision (1), subsection (a) of this section:

(1) The "federal adjusted gross income" of an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) shall be determined as if such estate or trust were an individual; and

(2) In the case of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the

provisions of §31I-1-1 *et seq.* of this code), "federal adjusted gross income" shall be its "federal adjusted gross income" for the taxable year increased by the amount of any includable gain, reduced by any deductions properly allocable thereto, upon which the tax is imposed for the taxable year pursuant to Section 644 of the Internal Revenue Code.

(3) When an electing small business trust as defined in Section 1361(e)(1) of the Internal Revenue Code of 1986, as amended, is a shareholder in one or more electing small business corporations, the portion of the trust's income attributable to electing small business corporation stock held by the trust that is not included in the trust's federal taxable income pursuant to Section 641(c) of that code the Internal Revenue Code of 1986 shall be included in West Virginia taxable income of the trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code).

(c) *Special rules for part-year residents.* —

(1) For purposes of subdivision (1), subsection (a) of this section, the "federal adjusted gross income" of a part-year resident individual shall be taxpayer's federal adjusted gross income for the taxable year, as defined in section nine of this article §11-21-9 of this code, increased or decreased, as the case may be, by the items accrued under subdivision (1), subsection (b), section forty-four of this article §11-21-44(b)(1) of this code, to the extent such items are not otherwise included in federal adjusted gross income for the taxable year, and decreased or increased, as the case may be by the items accrued under subdivision (2) of said subsection §11-21-44(b)(2) of this code, to the extent such items are included in federal adjusted gross income for the taxable year; and

(2) In computing the tax due as if taxpayer were a resident of this state for the entire tax year, West Virginia adjusted gross income shall include the accruals specified in subdivision (1) of this subsection, with the applicable modifications described in section forty-four of this article §11-21-44 of this code.

(d) *Definitions.* —

(1) "Nonresident estate" means an estate of a decedent who was not a resident of this state at the time of his or her death.

(2) "Nonresident trust" means a trust which is not a resident trust, as defined in section seven of this article §11-21-7 of this code.

(3) "Part-year resident individual" means an individual who is not a resident or nonresident of this state for the entire taxable year.

(e) *Effective date.* — (1) The provisions of this section shall apply to taxable years beginning after December 31, 1991. As to taxable years beginning prior to that date, the provisions of this article as then in effect shall apply and be controlling, and for that purpose, prior law is fully and completely preserved.

(2) The amendments to this section enacted in the 2005 regular session of the Legislature are effective for tax years beginning on or after January 1, 2005.

§11-21-40. Credit for income tax of state of residence.

(a) General. — A nonresident shall be allowed a credit against the tax otherwise due under this article for any income tax imposed for the taxable year by another state of the United States or by the District of Columbia, of which the taxpayer is a resident.

(b) Limitation. — The credit under this section shall not exceed either:

(1) The percentage of the other tax determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of his or her income subject to such other tax, or

(2) The percentage of the tax otherwise due under this article, determined by dividing the portion of the taxpayer's West Virginia income which is also subject to the other tax by the total amount of the taxpayer's West Virginia income.

(c) Exceptions. — No credit may be allowed under this section for a taxable year beginning after December 31, 1987, except pursuant to a written agreement between this state and the nonresident individual's state of residence. The State Tax Commissioner is hereby authorized to enter into such agreements necessary to effectuate the purpose of this section when he or she determines that such agreements are in the best interest of this state and its residents.

(d) Definition. — For purposes of this section West Virginia income means:

(1) The West Virginia adjusted gross income of an individual, or

(2) The income derived from West Virginia sources by an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), determined in accordance with the applicable rules of section thirty-two §11-21-32 of this code as in the case of a nonresident individual.

§11-21-51. Returns and liabilities.

(a) *General.* — On or before the fifteenth day of the fourth month following the close of a taxable year, an income tax return under this article shall be made and filed by or for:

(1) Every resident individual required to file a federal income tax return for the taxable year, or having West Virginia adjusted gross income for the taxable year, determined under section twelve of this article §11-21-12 of this code in excess of the sum of his or her West Virginia personal exemptions: *Provided,* That the Tax Commissioner shall by legislative rule specify circumstances when an individual is not required to file a return as a result of the application of section ten of this article §11-21-10 of this code;

(2) Every resident estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) required to file a federal income tax return for the taxable year, or having any West

Virginia taxable income for the taxable year, determined under section eighteen of this article §11-21-18 of this code;

(3) Every nonresident individual having any West Virginia adjusted gross income for the taxable year, determined under section thirty-two of this article §11-21-32 of this code, in excess of the sum of his or her West Virginia personal exemptions, except when all of such nonresident individual's West Virginia source income is taxed on a composite return filed under this article for the taxable year; and

(4) Every nonresident estate or trust having items of income or gain derived from West Virginia sources, determined in accordance with the applicable rules of section thirty-two of this article §11-21-32 of this code as in the case of a nonresident individual, in excess of its West Virginia exemption.

(b) *Husband and wife. —*

(1) If the federal income tax liability of husband or wife is determined on a separate federal income tax return, their West Virginia income tax liabilities and returns shall be separate.

(2) If the federal income tax liabilities of husband and wife other than a husband and wife described in subdivision (3) of this subsection are determined on a joint federal return, or if neither files a federal return:

(A) They shall file a joint West Virginia income tax return, and their tax liabilities shall be joint and several; or

(B) They may elect to file separate West Virginia income tax returns on a single or separate form, as may be required by the Tax Commissioner, if they comply with the requirements of the Tax Commissioner in setting forth information, and in such event their tax liabilities shall be separate.

(3) If either husband and/or wife is a resident and the other is a nonresident, they shall file separate West Virginia income tax returns on such single or separate forms as may be required by the

Tax Commissioner, and in such event their tax liabilities shall be separate.

(c) *Decedents.* — The return of any deceased individual shall be made and filed by his or her executor, administrator or other person charged with his or her property.

(d) *Individuals under a disability.* — The return for an individual who is unable to make a return by reason of minority or other disability shall be made and filed by his or her guardian, committee, fiduciary or other person charged with the care of his or her person or property (other than a receiver in possession of only a part of his or her property), by his or her duly authorized agent.

(e) *Estates and trusts.* — The return for an estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) shall be made and filed by the fiduciary.

(f) *Joint fiduciaries.* — If two or more fiduciaries are acting jointly, the return may be made by any one of them.

(g) *Tax a debt.* — Any tax under this article, and any increase, interest or penalty thereon, shall, from the time it is due and payable, be a personal debt of the person liable to pay the same, to the State of West Virginia.

(h) *Cross reference.* — For provisions as to information returns by partnerships, employers and other persons, see section fifty-eight of this article §11-21-58 of this code. For provisions as to composite returns of nonresidents, see section fifty-one-a of this article §11-21-51a of this code. For provisions as to information returns by electing small business corporations, see section thirteen-b, article twenty-four of this chapter.

(i) *Effective date.* — This section, as amended by this act in the year 1996, shall apply to all taxable years beginning after December 31, 1995.

§11-21-71a. Withholding tax on West Virginia source income of nonresident partners, nonresident S corporation shareholders, and nonresident beneficiaries of estates and trusts.

(a) General rule. — For the privilege of doing business in this state or deriving rents or royalties from real or tangible personal property located in this state, including, but not limited to, natural resources in place and standing timber, a partnership, S corporation, estate or trust, which is treated as a pass-through entity for federal income tax purposes and which has taxable income for the taxable year derived from or connected with West Virginia sources any portion of which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary, as the case may be, shall pay a withholding tax under this section, except as provided in subsections (c) and (k) of this section.

(b) Amount of withholding tax. —

(1) In general. — The amount of withholding tax payable by any partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), under subsection (a) of this section, shall be equal to four percent of the effectively connected taxable income of the partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) or estate: *Provided*, That for taxable years commencing on or after January 1, 2008, the amount of withholding tax payable by any partnership, S corporation, estate or trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), under subsection (a) of this section, shall be equal to six and one-half percent of the effectively connected taxable income of the partnership, S corporation, estate or trust

(except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), as the case may be, which may lawfully be taxed by this state and which is allocable to a nonresident partner, nonresident shareholder, or nonresident beneficiary of a trust or estate.

(2) Credits against tax. — When determining the amount of withholding tax due under this section, the pass-through entity may apply any tax credits allowable under this chapter to the pass-through entity which pass through to the nonresident distributees: *Provided*, That in no event may the application of any credit or credits reduce the tax liability of the distributee under this article to less than zero.

(c) When withholding is not required. — Withholding may not be required:

(1) On distribution to a person, other than a corporation, who is exempt from the tax imposed by this article. For purposes of this subdivision, a person is exempt from the tax imposed by this article only if such person is, by reason of that person's purpose or activities, exempt from paying federal income taxes on such person's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by this article provided the pass-through entity discloses the name and federal taxpayer identification number for all such persons in its return for the taxable year filed under this article or §11-24-1 *et seq.* of this code; or

(2) On distributions to a corporation which is exempt from the tax imposed by §11-24-1 *et seq.* of this code. For purposes of this subdivision, a corporation is exempt from the tax imposed by §11-24-1 *et seq.* of this code only if the corporation, by reason of its purpose or activities is exempt from paying federal income taxes on the corporation's West Virginia source income. The pass-through entity may rely on the written statement of the person claiming to be exempt from the tax imposed by §11-24-1 *et seq.* of this code provided the pass-through entity discloses the name and federal taxpayer identification number for all such corporations in

its return for the taxable year filed under this article or §11-24-1 *et seq.* of this code; or

(3) On distributions when compliance will cause undue hardship on the pass-through entity: *Provided*, That no pass-through entity shall be exempt under this subdivision from complying with the withholding requirements of this section unless the Tax Commissioner, in his or her discretion, approves in writing the pass-through entity's written petition for exemption from the withholding requirements of this section based on undue hardship. The Tax Commissioner may prescribe the form and contents of such a petition and specify standards for when a pass-through entity will not be required to comply with the withholding requirements of this section due to undue hardship. Such standards shall take into account (among other relevant factors) the ability of a pass-through entity to comply at reasonable cost with the withholding requirements of this section and the cost to this state of collecting the tax directly from a nonresident distributee who does not voluntarily file a return and pay the amount of tax due under this article with respect to such distributions; or

(4) On distributions by nonpartnership ventures. An unincorporated organization that has elected, under Section 761 of the Internal Revenue Code, to not be treated as a partnership for federal income tax is not treated as a partnership under this article and is not required to withhold under this section. However, such unincorporated organizations shall make and file with the Tax Commissioner a true and accurate return of information under §11-21-58(c) of this code, under such rules and in such form and manner as the Tax Commissioner may prescribe, setting forth: (A) The amount of fixed or determinable gains, profits, and income; and (B) the name, address and taxpayer identification number of persons receiving fixed or determinable gains, profits or income from the nonpartnership venture.

(5) Publicly traded partnerships. — A publicly traded partnership, as defined in §11-21A-1 of this code, that is treated as a partnership for federal income tax purposes for the taxable year, is exempt from the withholding requirements of §11-21-71a of this code of this section, if the following information is provided to the

Tax Commissioner: The name, address, taxpayer identification number, and West Virginia source income of each partner that had an interest in the publicly traded partnership during the taxable year. This information shall be provided in an electronic format approved by the Tax Commissioner.

(d) Payment of withheld tax. —

(1) General rule. — Each partnership, S corporation, estate or trust, required to withhold tax under this section, shall pay the amount required to be withheld to the Tax Commissioner no later than:

(A) S corporations. — The 15th day of the third month following the close of the taxable year of the S corporation along with the annual information return due under §11-24-1 *et seq.* of this code, unless paragraph (C) of this subdivision applies.

(B) Partnerships, estates, and trusts. — The 15th day of the fourth month following the close of the taxable year of the partnership, estate or trust, with the annual return of the partnership, estate or trust due under this article, unless paragraph (C) of this subdivision applies: *Provided*, That for tax years beginning after December 31, 2015, partnerships shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return of the partnership due under this article, on the 15th day of the third month following the close of the taxable year of the partnership, unless paragraph (C) of this subdivision applies.

(C) Composite returns. — The 15th day of the fourth month of the taxable year with the composite return filed under §11-21-51a of this code: *Provided*, That for tax years beginning after December 31, 2015, partnerships or partners in a partnership filing composite returns under §11-21-51a of this code shall pay the amount required to be withheld to the Tax Commissioner, along with the annual return due under this article, on the 15th day of the third month following the close of the taxable year.

(2) Special rules. —

(A) Where there is extension of time to file return. — An extension of time for filing the returns referenced in subdivision (1) of this subsection does not extend the time for paying the amount of withholding tax due under this section. In this situation, the pass-through entity shall pay, by the date specified in subdivision (1) of this subsection, at least 90 percent of the withholding tax due for the taxable year, or 100 percent of the tax paid under this section for the prior taxable year, if such taxable year was a taxable year of 12 months and tax was paid under this section for that taxable year. The remaining portion of the tax due under this section, if any, shall be paid at the time the pass-through entity files the return specified in subdivision (1) of this subsection. If the balance due is paid by the last day of the extension period for filing the return and the amount of tax due with such return is 10 percent or less of the tax due under this section for the taxable year, no additions to tax may be imposed under §11-10-1 *et seq.* of this code with respect to balance so remitted. If the amount of withholding tax due under this section for the taxable year is less than the estimated withholding taxes paid for the taxable year by the pass-through entity, the excess shall be refunded to the pass-through entity or, at its election, established as a credit against withholding tax due under this section for the then current taxable year.

(B) Deposit in trust for Tax Commissioner. — The Tax Commissioner may, if the commissioner believes such action is necessary for the protection of trust fund moneys due this state, require any pass-through entity to pay over to the Tax Commissioner the tax deducted and withheld under this section, at any earlier time or times.

(e) Effectively connected taxable income. — For purposes of this section, the term "effectively connected taxable income" means the taxable income or portion thereof of a partnership, S corporation, estate or trust, as the case may be, which is derived from or attributable to West Virginia sources as determined under §11-21-32 of this code and such rules as the Tax Commissioner may prescribe, whether the amount is actually distributed or is determined to have been distributed for federal income tax purposes.

(f) Treatment of nonresident partners, S corporation shareholders, or beneficiaries of a trust or estate. —

(1) Allowance of credit. — Each nonresident partner, nonresident shareholder, or nonresident beneficiary shall be allowed a credit for such partner's or shareholder's or beneficiary's share of the tax withheld by the partnership, S corporation, estate or trust under this section: *Provided*, That when the distribution is to a corporation taxable under §11-24-1 *et seq.* of this code, the credit allowed by this section shall be applied against the distributee corporation's liability for tax under §11-24-1 *et seq.* of this code.

(2) Credit treated as distributed to partner, shareholder, or beneficiary. — Except as provided in rules, a nonresident partner's share, a nonresident shareholder's share, or a nonresident beneficiary's share of any withholding tax paid by the partnership, S corporation, estate or trust under this section shall be treated as distributed to the partner by the partnership, or to the shareholder by the S corporation, or to the beneficiary by the estate or trust on the earlier of:

(A) The day on which the tax was paid to the Tax Commissioner by the partnership, S corporation, estate, or trust; or

(B) The last day of the taxable year for which the tax was paid by the partnership, S corporation, estate, or trust.

(g) Regulations. — The Tax Commissioner shall prescribe such rules as may be necessary to carry out the purposes of this section.

(h) Information statement. —

(1) Every person required to deduct and withhold tax under this section shall furnish to each nonresident partner, or nonresident shareholder, or nonresident beneficiary, as the case may be, a written statement, as prescribed by the Tax Commissioner, showing the amount of West Virginia effectively connected taxable income, whether distributed or not distributed for federal income tax purposes by such partnership, S corporation, estate or trust, to

the nonresident partner, or nonresident shareholder, or nonresident beneficiary, the amount deducted and withheld as tax under this section; and such other information as the Tax Commissioner may require.

(2) A copy of the information statements required by this subsection shall be filed with the West Virginia return filed under this article (or §11-24-1 *et seq.* of this code for S corporations) by the pass-through entity for its taxable year to which the distribution relates. This information statement shall be furnished to each nonresident distributee on or before the due date of the pass-through entity's return under this article or §11-24-1 *et seq.* of this code for the taxable year, including extensions of time for filing such return, or such later date as may be allowed by the Tax Commissioner.

(i) Liability for withheld tax. — Every person required to deduct and withhold tax under this section is hereby made liable for the payment of the tax due under this section for taxable years (of such persons) beginning after December 31, 1991, except as otherwise provided in this section. The amount of tax required to be withheld and paid over to the Tax Commissioner shall be considered the tax of the partnership, estate, or trust, as the case may be, for purposes of §11-9-1 *et seq.* and §11-10-1 *et seq.* of this code. Any amount of tax withheld under this section shall be held in trust for the Tax Commissioner. No partner, S corporation shareholder, or beneficiary of a trust or estate, may have a right of action against the partnership, S corporation, estate, or trust, in respect to any moneys withheld from the person's distributive share and paid over to the Tax Commissioner in compliance with or in intended compliance with this section.

(j) Failure to withhold. — If any partnership, S corporation, estate or trust fails to deduct and withhold tax as required by this section and thereafter the tax against which the tax may be credited is paid, the tax so required to be deducted and withheld under this section may not be collected from the partnership, S corporation, estate, or trust, as the case may be, but the partnership, S corporation, estate, or trust may not be relieved from liability for

any penalties or interest on additions to tax otherwise applicable in respect of the failure to withhold.

(k) Distributee agreements. —

(1) The Tax Commissioner shall permit a nonresident distributee to file with a pass-through entity, on a form prescribed by the Tax Commissioner, the agreement of the nonresident distributee: (A) To timely file returns and make timely payment of all taxes imposed by this article or §11-24-1 *et seq.* of this code in the case of a C corporation, on the distributee with respect to the effectively connected taxable income of the pass-through entity; and (B) to be subject to personal jurisdiction in this state for purposes of the collection of any unpaid income tax under this article (or §11-24-1 *et seq.* of this code in the case of a C corporation), together with related interest, penalties, additional amounts and additions to tax, owed by the nonresident distributee.

(2) A nonresident distributee electing to execute an agreement under this subsection shall file a complete and properly executed agreement with each pass-through entity for which this election is made, on or before the last day of the first taxable year of the pass-through entity in respect of which the agreement applies. The pass-through entity shall file a copy of that agreement with the Tax Commissioner as provided in subdivision (5) of this subsection.

(3) After an agreement is filed with the pass-through entity, that agreement may be revoked by a distributee only in accordance with rules promulgated by the Tax Commissioner.

(4) Upon receipt of such an agreement properly executed by the nonresident distributee, the pass-through entity may not withhold tax under this section for the taxable year of the pass-through entity in which the agreement is received by the pass-through entity and for any taxable year subsequent thereto until either the nonresident distributee notifies the pass-through entity, in writing, to begin withholding tax under this section or the Tax Commissioner directs the pass-through entity, in writing, to begin withholding tax under this section because of the distributee' s continuing failure to comply with the terms of the agreement.

(5) The pass-through entity shall file with the Tax Commissioner a copy of all distributee agreements received by the pass-through entity during any taxable year with this annual information return filed under this article, or §11-24-1 *et seq.* of this code if S corporations. If the pass-through entity fails to timely file with the Tax Commissioner a copy of an agreement executed by a distributee and furnished to the pass-through entity in accordance with this section, then the pass-through entity shall remit to the Tax Commissioner an amount equal to the amount that should have been withheld under this section from the nonresident distributee. The pass-through entity may recover payment made pursuant to the preceding sentence from the distributee on whose behalf the payment was made.

(l) Definitions. — For purposes of this section, the following terms mean:

(1) Corporation. — The term "corporation" includes associations, joint stock companies, and other entities which are taxed as corporations for federal income tax purposes.

(A) C corporation. — The term "C corporation" means a corporation which is not an S corporation for federal income tax purposes.

(B) S corporation. — The term "S corporation" means a corporation for which a valid election under Section 1362(a) of the Internal Revenue Code is in effect for the taxable period. All other corporations are C corporations.

(2) Distributee. — The term "distributee" includes any partner of a partnership, any shareholder of an S corporation and any beneficiary of an estate or trust that is treated as a pass-through entity for federal income tax purposes for the taxable year of the entity, with respect to all or a portion of its income.

(3) Internal Revenue Code. — The term "Internal Revenue Code" means the Internal Revenue Code of 1986, as amended, through the date specified in §11-21-9 of this code.

(4) Nonresident distributee. — The term "nonresident distributee" includes any individual who is treated as a nonresident of this state under this article; and any partnership, estate, trust, or corporation whose commercial domicile is located outside this state.

(5) Partner. — The term "partner" includes a member of a partnership as that term is defined in this section, and an equity owner of any other pass-through entity.

(6) Partnership. — The term "partnership" includes a syndicate, group, pool, joint venture, or other unincorporated organization through or by means of which any business, financial operation, or venture is carried on and which is not a trust or estate, a corporation or a sole proprietorship. "Partnership" does not include an unincorporated organization which, under Section 761 of the Internal Revenue Code, is not treated as a partnership for the taxable year for federal income tax purposes.

(7) "Pass-through entity" means any partnership or other business entity, that is not subject to tax under §11-24-1 *et seq.* of this code, imposing tax on C corporations or other entities taxable as a C corporation for federal income tax purposes.

(8) Taxable period. — The term "taxable period" means, if an S corporation, any taxable year or portion of a taxable year during which a corporation is an S corporation.

(9) Taxable year of the pass-through entity. — The term "taxable year of the pass-through entity" means the taxable year of the pass-through entity for federal income tax purposes. If a pass-through entity does not have a taxable year for federal tax purposes, its tax year for purposes of this article shall be the calendar year.

(m) Effective date. — The provisions of this section shall first apply to taxable years of pass-through entities beginning after December 31, 1991.

(n) This section as amended in the year 2019 shall apply, without regard to the taxable year, to taxes owed attributable to federal determinations that become final on or after the effective date of this section enacted in the year 2019.

CHAPTER 261

(Com. Sub. for H. B. 5157 - By Delegates Rohrbach, Criss, Worrell, Akers, Chiarelli, Summers, Tully, Dittman, Forsht, Fehrenbacher, and Hornbuckle)

[Passed February 14, 2024; in effect from passage.]
[Approved by the Governor on February 29, 2024.]

AN ACT to amend and reenact §11-27-38 of the Code of West Virginia, 1931, as amended, relating to increasing the tax rate imposed on certain hospitals up to the maximum amount allowed by the Centers for Medicare and Medicaid Services (CMS).

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. HEALTH CARE PROVIDER TAXES.

§11-27-38. Contingent increase of tax rate on certain eligible hospitals.

(a) In addition to the rate of the tax imposed by §11-27-9 and §11-27-15 of this code on providers of inpatient and outpatient hospital services, there is imposed on certain eligible acute care hospitals an additional tax of 75 one-hundredths of one percent on the gross receipts received or receivable by eligible acute care hospitals that provide inpatient or outpatient hospital services in this state through a directed payment program, or its successor, in accordance with 42 C.F.R. 438.6.

(b) The tax rate shall be increased on eligible hospitals, as needed, to provide non-federal share funding as described in subsection (d) of this section, up to the maximum amount allowed by the Centers for Medicare and Medicaid Services (CMS). The CMS allowable tax rate and maximum payment shall be calculated by the West Virginia Bureau for Medical Services (BMS) pursuant

to CMS approved methodology. The Tax Commissioner, using the certified calculations from the West Virginia Bureau for Medical Services, shall publish the rates to be applicable by Administrative Notice at least 30 days prior to implementation on the first day of the next calendar quarter following publication.

(c) For purposes of this section, prior to approval by CMS of the state plan amendment made pursuant to amendment and reenactment of this section in 2024, the term "eligible acute care hospital" means any inpatient or outpatient hospital conducting business in this state that is not:

(1) A state-owned or -designated facility;

(2) A critical access hospital, designated as a critical access hospital after meeting all federal eligibility criteria;

(3) A licensed free-standing psychiatric or medical rehabilitation hospital;

(4) A licensed long-term acute care hospital; or

(5) A facility designated pursuant to §16-5B-14 of this code.

For purposes of this section, on and after approval by CMS of the state plan amendment made pursuant to amendment to this section in 2024, the term "eligible hospital" means any inpatient or outpatient hospital conducting business in this state that is not a state-owned or state-designated facility.

(d) There is continued a special revenue account in the State Treasury designated the Medicaid State Share Fund. The amount of taxes collected under this section, including any interest, additions to tax and penalties collected under §11-10-1 *et seq.* of this code, less the amount of allowable refunds, the amount of any interest payable with respect to such refunds, and costs of administration and collection, shall be deposited into the special revenue fund and do not revert to General Revenue. The Tax Commissioner shall establish and maintain a separate account and accounting for the funds collected under this section in an account to be designated as the Eligible Facility Directed Payment Program

Enhancement Account. The amounts collected shall be deposited, within 15 days after receipt by the Tax Commissioner, into the Eligible Facility Directed Payment Program Enhancement Account. Disbursements from the Eligible Facility Directed Payment Program Enhancement Account within the Medicaid State Share Fund may only be used to support West Virginia Medicaid and the directed payment program, or its successor, in accordance with 42 C.F.R. 438.6 and as otherwise set forth in this section.

(e) The imposition and collection of taxes imposed by this section is suspended immediately upon the occurrence of any of the following:

(1) The effective date of any action by Congress that would disqualify the taxes imposed by this section from counting toward state Medicaid funds available to be used to determine the federal financial participation;

(2) The effective date of any decision, enactment, or other determination by the Legislature or by any court, officer, department, agency, or office of state or federal government that has the effect of disqualifying the tax from counting toward state Medicaid funds available to be used to determine federal financial participation for Medicaid matching funds or creating for any reason a failure of the state to use the assessment of the Medicaid program as described in this section; and

(3) If the tax payments remitted by the eligible hospitals are not used to effectuate the provisions of this article.

(f) Any funds remaining in the Eligible Facility Directed Payment Program Enhancement Account as of June 30, 2024, and on June 30 of each year thereafter, shall be transferred to the West Virginia Medical Services Fund after that June 30 but no later than the next ensuing September 30. These funds shall be used during the state fiscal year in which they were transferred at the discretion of the Bureau for Medical Services.

(g) The changes in this section enacted in the regular session of the Legislature, 2024, are effective upon approval by CMS of the state plan amendment.

CHAPTER 262

(H. B. 5261 - By Delegates Horst, Howell, Hardy, Phillips, McGeehan, Summers, Hite, Criss, Thorne, Maynor, and Steele)

[Passed February 19, 2024; in effect July 1, 2024.]
[Approved by the Governor on March 6, 2024.]

AN ACT to amend and reenact §11-15-9u of the Code of West Virginia, 1931, as amended, relating to the definition of small arms for purposes of taxation; defining terms, and expanding definition of "small arms" to include receiver or frame as part of the small arm.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-9u. Exemption for sales of small arms and ammunitions.

(a) Notwithstanding any provision of this code to the contrary, the sale of small arms and small arms ammunition, as those terms are defined in subsections (c) and (d) of this section, are exempted from the taxes imposed by this article and by §11-15A-1 *et seq.* of this code.

(b) "Receiver or frame" means that part of a firearm containing a manufacturer assigned serial number to track and identify a firearm and which provides housing for the hammer, bolt, or breechblock, and firing mechanism and which are usually threaded at its forward portion to receive the barrel.

(c) "Small arms" means any portable firearm, including the receiver or frame of the firearm, designed to be carried and operated by a single person, including, but not limited to, rifles,

shotguns, pistols, and revolvers, with no barrel greater than an internal diameter of .50 caliber or a shotgun of 10 gauge or smaller.

(d) "Small arms ammunition" means firearm ammunition designed for use in small arms.

CHAPTER 263

(S. B. 874 - By Senators Jeffries, Martin, Hamilton, Hunt, Oliverio, Roberts, Swope, Chapman, and Plymale)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §17-16F-1, §17-16F-3, §17-16F-4, and §17-16F-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto three new sections, designated §17-16F-10a, §17-16F-10b, and §17-16F-10c, all relating to the West Virginia Division of Multimodal Transportation Facilities; providing for additional legislative findings; modifying definitions; authorizing division to create local port authority districts; authorizing division to propose legislative rules for application process for creation of local port authority districts; providing that political subdivisions and certain joint ventures may create local port authority districts in accordance with a certain procedure; establishing an application and approval process for creation of local port authority districts; directing division to make certain considerations relating to creation of local port authority districts; providing for creation of board of directors for local port authority districts and membership composition; authorizing board to exercise certain powers; limiting eminent domain powers to the Division itself and prohibiting its imposition directly by local port authority districts; and directing board to prepare a certain annual plan.

Be it enacted by the Legislature of West Virginia:

ARTICLE 16F. WEST VIRGINIA DIVISION OF MULTIMODAL TRANSPORTATION FACILITIES.

§17-16F-1. Legislative findings and creation of division.

(a) The Legislature finds and declares that there is a need to streamline the execution and implementation of the state's multimodal transportation goals and reduce related costs by consolidating existing multimodal authorities to a single division, known as the West Virginia Division of Multimodal Transportation Facilities, under the Secretary of Transportation pursuant to the provisions of chapter 5F of this code. The Department of Transportation, through the West Virginia Division of Multimodal Transportation Facilities, is designated as the agency of this state responsible for administering all federal and state programs related to public ports, railroads, aeronautics, airports, and air navigation facilities.

(b) The Legislature further finds and declares that the establishment of local port authority districts will enhance the efficiency and cost of the movement of goods and services to and from markets in this state and will encourage the construction and completion of local infrastructure projects for all types of transportation systems.

(c) On July 1, 2022, the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission are reestablished, reconstituted, and continued as the West Virginia Division of Multimodal Transportation Facilities, an agency of the state. The purpose of the division is to administer all federal and state programs related to public ports, railroad transportation and commerce, public transit, aeronautics, airports, and air navigation facilities in the State of West Virginia, and thereby to encourage and facilitate growth and economic development opportunities utilizing such transport facilities. The powers and duties heretofore imposed upon the Public Port Authority, the West Virginia State Rail Authority, Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to and imposed upon the West Virginia Division of Multimodal Transportation Facilities in the manner prescribed by this article.

(d) It is the intent of this article to consolidate into the West Virginia Division of Multimodal Transportation Facilities those entities and employees performing functions which will be facilitated by their consolidation. The Department of Transportation shall provide appropriate office locations necessary to fulfill the functions of the division.

(e) On the effective date of this article, all real property interests, vehicles, equipment contracts or agreements, interests under any existing insurance policy, and records belonging to the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission shall be transferred to the West Virginia Division of Multimodal Transportation Facilities. Any state funds, special revenue funds, and all accounts created for the benefit or use of the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, and the West Virginia State Aeronautics Commission are transferred to the West Virginia Division of Multimodal Transportation Facilities in accordance with the provisions of this article.

§17-16F-3. Definitions.

As used in this article, unless the context indicates another or different meaning or intent:

"Aeronautics" means the art and science of flight, including, but not limited to, transportation by aircraft; the operation, construction, repair, or maintenance of aircraft, aircraft power plants, and accessories, including the repair, packing, and maintenance of parachutes; and the design, establishment, construction, extension, operation, improvement, repair, or maintenance of airports or other air navigation facilities.

"Aircraft" means any contrivance now known, or hereafter invented, used, or designed for navigation of, or flight in the air whether manned or unmanned.

"Air navigation" means the operation or navigation of aircraft in the air space over this state or upon any airport within this state.

"Air navigation facility" means any facility other than one owned or controlled by the federal government used in, available for use in, or designed for use in aid of air navigation, including airports, and any structures, mechanisms, lights, beacons, markers, communications system, or other instrumentalities or devices used or useful as an aid or constituting an advantage or convenience to the safe taking off, air navigation, and landing of aircraft or the safe and efficient operation or maintenance of an airport, and any combination of any or all of such facilities.

"Airport" means any area of land or water which is used, or intended for use, for the landing and takeoff of aircraft and any appurtenant areas which are used, or intended for use, for airport buildings or other airport facilities or rights-of-way, together with all airport buildings and facilities located thereon.

"Bond" means a revenue bond or rate issued by the division to effectuate the intents and purposes of this article.

"Commissioner" means the chief operating officer and administrative head of the Multimodal Division, when such person is appointed by the Secretary of Transportation.

"Commuter rail" means a transit mode that is an electric or diesel propelled railway for urban passenger train service consisting of local short distance travel operating between a central city and adjacent suburbs. Service must be operated on a regular basis by or under contract with a transit operator for the purpose of transporting passengers within urbanized areas or between urbanized areas and outlying areas. The rail service, using either locomotive-hauled or self-propelled railroad passenger cars, is generally characterized by multi-trip tickets, specific station-to-station fares, or railroad employment practices and usually has only one or two stations in the central business district. It does not include heavy rail, rapid transit, light rail, or streetcar transit service. Intercity rail service is excluded except for that portion of service operated by or under contract with a public transit agency for predominantly commuter services. Only the predominantly commuter service portion of an intercity route is eligible for inclusion when determining commuter rail route miles.

"Development plan" means a document which details the overall strategy of the division for the proper planning and sustainable development of an area and consists of a written statement and accompanying maps.

"Division" means the West Virginia Division of Multimodal Transportation Facilities.

"Heavy rail" means a transit mode that is an electric railway with the capacity for a heavy volume of traffic. It is characterized by high speed and rapid acceleration passenger rail cars operating singly or in multicar trains on fixed rails, separate rights-of-way from which all other vehicular and foot traffic are excluded, sophisticated signaling, and high-platform loading.

"Income" means and includes all money accruing to the division or part thereof from any source.

"Intermodal transportation" means the successive transport of goods or passengers using more than one mode of transportation, including air, rail, ship, or roadway.

"Light rail" means a transit mode that typically is an electric railway with a light volume traffic capacity. It is characterized by passenger rail cars operating singly or in short, usually two-car trains, on fixed rails in shared or exclusive rights-of-way, low- or high-platform loading, and vehicle power drawn from an overhead electric line via a trolley or a pantograph.

"Multimodal transportation" means the consideration or connection of various modes of transportation, including air, rail, ship, or roadway.

"Operation fund" means the special West Virginia Public Port Operation Fund as created by §17-16F-12 of this code.

"Operation of aircraft" or "operate aircraft" means the use, navigation, or piloting of aircraft in the airspace over this state or upon the ground within this state.

"Owner" means and includes all individuals, co-partnerships, associations, corporations, companies, transportation companies, public service corporations, the United States or any of its agencies or instrumentalities, common carriers by rail and railroad companies having any title or interest in any rail properties authorized to be acquired, leased, or used by this article.

"Person" means any individual, firm, corporation, partnership, company, foreign or domestic association, including railroads, joint stock association, or body politic and includes any trustee, receiver, assignee, or other similar representative.

"Political subdivision" means any county commission, municipality, city, town, village, or county board of education; any separate corporation or instrumentality established by one or more counties or municipalities, as permitted by law; any instrumentality supported in most part by municipalities; or any public body charged by law with the performance of a government function and whose jurisdiction is coextensive with one or more counties, cities, or towns.

"Port" or "public port" means ports, airports, wayports, terminals, buildings, roadways, rights-of-way, rails, rail lines, facilities for rail, water, highway or air transportation, and such structures, equipment, facilities, or improvements as are necessary.

"Predominantly commuter services" means that for any given trip segment (i.e., distance between two stations), more than 50 percent of the average daily ridership travels on the train at least three times a week.

"Public port development" or "public port project" means any activities which are undertaken with respect to public ports.

"Rail properties" means assets or rights owned, leased, or otherwise controlled by a railroad or other person which are used, or useful, in rail transportation service: *Provided*, That rail properties do not include any properties owned, leased, or otherwise controlled by a railroad not in reorganization, unless it consents to such properties' inclusion in the particular transaction.

"Rail service" means both freight and passenger service.

"Railroad" means a common carrier by railroad as defined in Section 10102 of the Interstate Transportation Act (49 U.S.C. § 10102).

"Railroad project" means the initiation, acquisition, construction, maintenance, repair, equipping, or operation of rail properties or rail service, or the provisions of loans or grants to or with government agencies, or to persons for such purposes, by the division.

"Secretary" means the Secretary of Transportation.

"Wayport" means an airport used primarily as a location at which passengers and cargo may be transferred between connecting flights of air carriers engaged in air commerce, but also allows passengers to initiate and terminate flights and shipments of cargo to originate and terminate at the airport or similar type facility.

"West Virginia Commuter Rail Access Fund" means the special West Virginia Commuter Rail Access Fund created by §17-16F-27 of this code.

"West Virginia Railroad Maintenance Fund" means the West Virginia Railroad Maintenance Fund created by §17-16F-17 of this code.

§17-16F-4. Powers and duties of division.

The division shall perform all acts necessary and proper to carry out the purposes of this article and is granted the following powers and duties:

(1) To promote, supervise, and support safe, adequate, and efficient transportation throughout the state;

(2) To preserve roadway, railroad, waterway, and airway facilities;

(3) To help facilitate economic development in this state utilizing transportation facilities;

(4) To meet and cooperate with similar divisions, authorities, or bodies of any of the several states contiguous with this state, whose purpose in their respective states is to establish an interstate or intermodal transportation network;

(5) To take all steps appropriate and necessary to effect siting, development, and operation of public ports, railroads, or airport facilities within the state;

(6) To employ managers, superintendents, and other sufficiently trained and qualified personnel and retain or contract with consulting engineers, financial consultants, accountants, attorneys, and other consultants and independent contractors when necessary to carry out the provisions of this article and fix their compensation or fees. All expenses are payable from the proceeds of revenue bonds or notes issued by the division, from revenues and funds appropriated for this purpose by the Legislature, or from grants from the federal government which may be used for such purpose;

(7) To make and enter into all contracts and agreements with any federal, state, county, municipal agency, or private entity and execute all instruments necessary or incidental to the performance of its duties and the execution of its powers including, but not limited to, the power to make contracts and agreements in accordance with the provisions set forth in this article;

(8) To acquire, purchase, lease, construct, own, hold, operate, maintain, equip, use, and control, by eminent domain or other means, any land, property, rights, franchises, easements, ports, and such terminals, buildings, roadways, rights-of-way, rails and such structures, equipment, facilities, any and every kind or character of motive powers and conveyances or appliances necessary or proper to carry goods, wares, and merchandise over, along, upon, or through the railway, waterway or airway, or other conveyance of such transportation system, excluding pipelines or improvements, as are necessary or incident to carry out the provisions of this

article, upon such terms and at such price as may be considered by it to be reasonable and to take title in the name of the state;

(9) To lease, sell, or otherwise 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) To act on behalf of the state and to represent the state in the planning, financing, development, construction, and operation of any port, transit facility, railroad, or aeronautics project or any facility related to any such project, with the concurrence of the affected public agency. Other state agencies and local governmental entities in this state shall cooperate to the fullest extent the division deems appropriate to effectuate the duties of the division;

(11) To act as agent for the United States of America, or any of its agencies, departments, corporations, or instrumentalities, in any manner coming within the purposes or powers of the division;

(12) To expend funds available for the purpose of studying any proposed railroad project, which may include consulting with engineers. All expenses incurred in conducting the study and necessary engineering shall be paid from the funds established in §17-16F-17 of this code;

(13) To report annually to the Legislature by December 31 of each year the status of projects, operations, financial condition, and other necessary information relating to the statewide multimodal transportation system and activities in accordance with this article and any report may be made electronically with paper copies provided upon request to any member of the Legislature;

(14) To meet with political subdivisions of the state to assess both specific and general transportation needs of the state in terms of transportation, as well as consider feasibility studies for the purpose of determining the best site locations for transportation centers, terminals, railroads, airports, ports and harbors, and foreign trade zones;

(15) To authorize creation of local port authority districts;

(16) To apply for and accept loans, grants or gifts of money, property, or service from the United States, any political subdivision, any public or private sources available, or any public or private lender or donor, to give such evidence of indebtedness as may be required and to permit the state Board of Investments to invest, as provided by this code, any funds received by the division pursuant to the provisions of this code;

(17) To make loans and grants, out of any appropriation made to the division by the Legislature or out of any funds at its disposal, to governmental agencies and persons for carrying out any multimodal transportation projects by any governmental agency or person in accordance with rules adopted under this article;

(18) To issue revenue bonds or request other appropriate state agencies to issue and administer revenue bonds to finance port, railroad, transit, or aeronautics projects;

(19) To collect reasonable fees and charges in connection with making and servicing loans, notes, bonds, obligations, commitments, and other evidence of indebtedness, and in connection with providing technical, consulting, and project assistance services; and

(20) To act, through the Department of Transportation, the division is hereby designated as the agency of this state responsible for administering all federal and state programs relating to public transportation and public transit facilities.

§17-16F-5. Rules of division.

(a) All rules promulgated by the Public Port Authority, the West Virginia State Rail Authority, the Division of Public Transit, or the West Virginia State Aeronautics Commission in effect at the time of creation of the division shall continue in full force and effect until revised or repealed by the division.

(b) The division, upon consultation with the Secretary of the Department of Transportation, may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement the purposes of this article, including an application

process for the creation of local port authority districts. The division may promulgate any necessary emergency rules to implement the provisions of this article pursuant to the provisions of §29A-3-15 of this code.

§17-16F-10a. Authorization to create a local port authority district.

A political subdivision of this state, a joint venture of two or more political subdivisions, a joint venture of political subdivisions and a private entity or entities, or a joint venture of political subdivisions and any bordering state may create a local port authority district in accordance with the procedure set forth in §17-16F-10b of this of this code.

§17-16F-10b. Application to division for approval to create local port authority district.

The division shall create an application and approval process for creation of a local port authority district. In deciding on a local port authority district designation, the division shall consider areas which have entered into a joint venture with private industry and areas which have made or will make the greatest effort, both financially and otherwise, to encourage the establishment of facilities to enhance the efficiency and cost of the movement of goods and services to and from markets in West Virginia, or will make the greatest effort to encourage the construction and completion of infrastructure projects, including all types of transportation systems.

§17-16F-10c. Creation of board of directors for local port authority district; powers and duties.

(a) A local port authority district may appoint a board of directors to administer the district. Board members shall be appointed from political subdivisions and the private sector and, at a minimum, represent the following areas:

(1) One member from each political subdivision and each private entity comprising the local port authority district;

(2) One member from the congressional district in which the local port authority district is located who shall represent the public interest generally;

(3) At least two members that have recognized ability and practical experience in transportation;

(4) At least two members with recognized ability and practical experience in economic development, freight, or logistics;

(5) At least one member that has recognized ability and practical experience in international trade;

(6) At least one member with recognized ability and practical experience in business management, economics, or accounting; and

(7) Two members representing the public at large.

(b) The board may exercise all powers necessary and proper to implement the purpose of the local port authority district so long as those powers do not exceed or supersede the powers of the division: *Provided*, That the power of eminent domain may only be exercised by the division itself and not by any local port authority district.

(c) The board shall prepare and submit a plan by October 31 of each year with the division for future development, construction, and improvement of its services and facilities.

CHAPTER 264

(Com. Sub. for S. B. 841 - By Senator Woodrum)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]

AN ACT to amend and reenact §21A-1A-28 of the Code of West Virginia, 1931, as amended; to amend and reenact §21A-6-1 and §21A-6-10 of said code; to amend said code by adding thereto an new section, designated §21A-6-1d; to amend and reenact §21A-6A-4 and §21A-6A-5 of said code; and to amend §21A-6B-6 of said code; all relating to the amount of unemployment taxes and benefits; removing definitions; modifying the calculation of the taxable wage base; modifying the maximum benefit rate; requiring work search activities to qualify for unemployment benefits; defining what constitutes work search activities; mandating submittal of proof of work search activities; providing for verification of work search activities; granting commissioner of Workforce West Virginia discretion in verification of work search activities; mandating establishment of process to refer individuals seeking unemployment benefits to job opportunities; requiring individuals receiving referrals to suitable work to apply for and accept that work; mandating employers to report refusal of offer of employment to commissioner and other matters; allowing individuals who accept part-time non-suitable employment to receive unemployment benefits without reduction for wages under certain circumstances; making certain individuals applying for or receiving unemployment benefits exempt from work search requirements; establishing process for notification of work search activity requirements; requiring rulemaking; setting internal effective dates; modifying the total extended benefit amount; and modifying the short-time compensation weekly benefit amount.

Be it enacted by the Legislature of West Virginia:

ARTICLE 1A. DEFINITIONS.

§21A-1A-28. Wages.

(a) "Wages" means all remuneration for personal service, including commissions, gratuities customarily received by an individual in the course of employment from persons other than the employing unit, as long as such gratuities equal or exceed an amount of not less than $20 each month and which are required to be reported to the employer by the employee, bonuses and the cash value of all remuneration in any medium other than cash except for agricultural labor and domestic service. The term "wages" includes remuneration for service rendered to the state as a member of the state National Guard or Air National Guard only when serving on a temporary basis pursuant to a call made by the Governor under §15-1D-1 and §15-1D-2 of this code.

(b) The term "wages" does not include:

(1) That part of the remuneration which, after remuneration equal to $9,500 is paid during a calendar year to an individual by an employer or his or her predecessor with respect to employment during any calendar year, is paid to such individual by such employer during such calendar year unless that part of the remuneration is subject to a tax under a federal law imposing a tax against which credit may be taken for contributions required to be paid into a state unemployment fund. For the purposes of this section, the term "employment" includes service constituting employment under any unemployment compensation law of another state; or which as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act is required to be covered under this chapter; and, except that for the purposes of §21A-6-1, §21A-6-10, §21A-6-11, and §21A-6-13 of this code, all remuneration earned by an individual in employment shall be credited to the individual and included in his or her computation of base period wages: *Provided*, That the remuneration paid to an individual by an employer with respect to employment in another state or other states upon which contributions were required of and

paid by such employer under an unemployment compensation law of such other state or states shall be included as a part of the remuneration equal to the amounts of $9,500. In applying such limitation on the amount of remuneration that is taxable, an employer shall be accorded the benefit of all or any portion of such amount which may have been paid by its predecessor or predecessors: *Provided, however*, That if the definition of the term "wages" as contained in Section 3306(b) of the Internal Revenue Code of 1954, as amended, is amended to include remuneration in excess of $9,500 paid to an individual by an employer under the federal Unemployment Tax Act during any calendar year, wages for the purposes of this definition shall include remuneration paid in a calendar year to an individual by an employer subject to this chapter or his or her predecessor with respect to employment during any calendar year up to an amount equal to the amount of remuneration taxable under the federal Unemployment Tax Act;

(2) The amount of any payment made (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) to, or on behalf of, an individual in its employ or any of his or her dependents, under a plan or system established by an employer which makes provision for individuals in its employ generally (or for such individuals and their dependents), or for a class or classes of such individuals (or for a class or classes of such individuals and their dependents) on account of: (A) Retirement; or (B) sickness or accident disability payments made to an employee under an approved state workers' compensation law; or (C) medical or hospitalization expenses in connection with sickness or accident disability; or (D) death;

(3) Any payment made by an employer to an individual in its employ (including any amount paid by an employer for insurance or annuities, or into a fund, to provide for any such payment) on account of retirement;

(4) Any payment made by an employer on account of sickness or accident disability, or medical or hospitalization expenses in connection with sickness or accident disability to, or on behalf of, an individual in its employ after the expiration of six calendar

months following the last calendar month in which such individual worked for such employer;

(5) Any payment made by an employer to, or on behalf of, an individual in its employ or his or her beneficiary: (A) From or to a trust described in Section 401(a) which is exempt from tax under Section 501(a) of the federal Internal Revenue Code at the time of such payments unless such payment is made to such individual as an employee of the trust as remuneration for services rendered by such individual and not as a beneficiary of the trust; or (B) under or to an annuity plan which, at the time of such payment, is a plan described in Section 403(a) of the federal Internal Revenue Code;

(6) The payment by an employer of the tax imposed upon an employer under Section 3101 of the federal Internal Revenue Code with respect to remuneration paid to an employee for domestic service in a private home or the employer of agricultural labor;

(7) Remuneration paid by an employer in any medium other than cash to an individual in its employ for service not in the course of the employer's trade or business;

(8) Any payment (other than vacation or sick pay) made by an employer to an individual in its employ after the month in which he or she attains the age of 65 years if he or she did not work for the employer in the period for which such payment is made;

(9) Payments, not required under any contract of hire, made to an individual with respect to his or her period of training or service in the armed forces of the United States by an employer by which such individual was formerly employed; and

(10) Vacation pay, severance pay or savings plans received by an individual before or after becoming totally or partially unemployed but earned prior to becoming totally or partially unemployed: *Provided,* That the term totally or partially unemployed does not include: (A) Employees who are on vacation by reason of the request of the employees or their duly authorized agent, for a vacation at a specific time, and which request by the employees or their agent is acceded to by their employer; (B)

employees who are on vacation by reason of the employer's request provided they are so informed at least 90 days prior to such vacation; or (C) employees who are on vacation by reason of the employer's request where such vacation is in addition to the regular vacation and the employer compensates such employee at a rate equal to or exceeding their regular daily rate of pay during the vacation period.

(c) The reasonable cash value of remuneration in any medium other than cash shall be estimated and determined in accordance with rules prescribed by the commissioner, except for remuneration other than cash for services performed in agricultural labor and domestic service.

(d) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.

§21A-6-1. Eligibility qualifications.

An unemployed individual shall be eligible to receive benefits only if the commissioner finds that:

(1) He or she has registered for work at and thereafter continues to report at an employment office in accordance with the regulations of the commissioner;

(2) He or she has made a claim for benefits in accordance with the provisions of article seven of this chapter §21A-7-1 *et seq.* of this code and has furnished his or her Social Security number, or numbers if he or she has more than one such number;

(3) He or she is able to work and is available for full-time work for which he or she is fitted by prior training or experience and is actively seeking work as defined in §21A-6-1d of this code;

(4) He or she has been totally or partially unemployed during his or her benefit year for a waiting period of one-week prior to the week for which he or she claims benefits for total or partial unemployment;

(5) He or she has within his or her base period been paid wages for employment equal to not less than $2,200 and must have earned wages in more than one quarter of his or her base period or, if he or she is not eligible under his or her base period, has within his or her alternative base period been paid wages for employment equal to not less than $2,200 and must have earned wages in more than one quarter of his or her alternative base period; and

(6) He or she participates in reemployment services as defined in §21A-6-1d of this code, such as job search assistance services, if the individual has been determined to be likely to exhaust regular benefits and needs reemployment services pursuant to a profiling system established by the commissioner, unless the commissioner determines that:

(A) The individual has completed such services; or

(B) There is justifiable cause for the claimant's failure to participate in such services.

The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

§21A-6-1d. Jobs and Reemployment Act.

(a) In addition to compliance with all other eligibility requirements, an individual shall be eligible, and shall remain eligible, for unemployment benefits only if he or she actively seeks, and continues to seek, work by conducting at least four work search activities weekly, defined as:

(1) Registering for work with the state’s labor exchange system, placement firm, temporary work agencies, or educational institution with job placement offices;

(2) Logging on and looking for work in the state’s labor exchange or other online job matching system;

(3) Using reemployment services in job centers or completing similar online or self-service activities, including, but not limited to, obtaining and using labor market and career information,

participating in Reemployment Services and Eligibility Assessment activities, participating in skills assessment for occupational matching, instructional workshops, or other specialized activities;

(4) Completing job applications for employers that have, or are reasonably expected to have, job openings, or following through on job referrals or job development attempts, as directed by Workforce West Virginia staff;

(5) Applying for or participating in employment and training services provided by partner programs in job centers;

(6) Participating in work-related networking events, such as job clubs, job fairs, industry association events, or networking groups;

(7) Making contacts with, or in-person visits to, employers that have, or are reasonably expected to have, job openings;

(8) Taking a civil service examination;

(9) Going on interviews with employers, either in-person or virtually; or

(10) Performing any other work search activities prescribed or allowed by rules promulgated by Workforce West Virginia.

(b) The commissioner may:

(1) Require an individual, at the time of application for unemployment benefits and weekly thereafter, to provide proof of all his or her work search activities;

(2) Verify submissions of proof of work search activities by individuals applying for or receiving unemployment benefits; and

(3) Determine any individual who fails to perform work search activities or provide proof of work search activities as required by this section, ineligible to receive unemployment benefits unless the individual can reasonably explain his or her failure to do so or timely remedy the failure to provide proof of his or her work search activity.

(c) The commissioner shall have discretion to determine the sufficiency of the proof of work search activities submitted, the explanation of a failure to submit such proof, the provision of such proof after an inaccuracy in the proof provided is identified, and whether an individual has otherwise complied with the requirements of this section.

(d) The commissioner shall, utilizing existing resources:

(1) Establish a process by which Workforce West Virginia will share open positions submitted to, or posted by, the Division of Personnel or any other state-administered job board by employers directly with individuals applying for or receiving unemployment benefits; and

(2) Establish a process by which, for the purpose of helping individuals applying for or receiving unemployment benefits secure suitable work, Workforce West Virginia shall refer individuals applying for or receiving unemployment benefits to such open positions, including facilitating contact between employers and those individuals, and monitoring whether those individuals are sufficiently responsive to a referral.

(e) An individual applying for or receiving unemployment benefits who receives referrals from Workforce West Virginia to a job or jobs considered to be suitable, as that term is defined in this chapter, shall apply for that job or those jobs within one-week of receiving the referrals and accept employment in suitable work if offered.

(f) Employers shall report the refusal of any individual who is receiving unemployment benefits and who receives job referrals from Workforce West Virginia to accept an offer of employment to the commissioner and also report those that accept employment and either leave or are dismissed from that employment within six weeks of the start date of that employment. The report shall be made in writing in a manner prescribed by the commissioner and shall be signed by the employer. The report shall become part of the file of the individual's claim for benefits.

(g) Individuals receiving unemployment benefits who accept a referral to a part-time open position or otherwise accept part-time employment for which the wages are less than his or her weekly benefit rate, shall continue to receive unemployment benefits without reduction for those wages for the duration of his or her benefits period.

(h) With the exception of individuals who have received or been served with a summons for jury duty or are serving on a jury in any court of this state, the United States, or any state of the United States; are receiving vocational training as described in the provisions of §21A-6-4 of this code; are partially unemployed and are receiving low-earnings reports from their employer; are eligible to receive short-time compensation under a work-sharing plan as described in §21A-6B-5 of this code; or who are members in good standing of a union that refers its members to employment from a union hall; all individuals applying for or receiving unemployment benefits shall be subject to the requirements of this section, including, but not limited to, individuals who are seasonally unemployed or laid off subject to recall by their employer.

(i) Workforce West Virginia shall notify individuals seeking benefits, at the time an initial claim is filed and at any other time during the benefit year that the requirements substantively change, of the obligation to actively seek work. Delivery of the notification shall be made by the method selected by the individual seeking benefits, and may include United States mail, email, online mailbox, or text message. The notification shall include, at a minimum, the types of work search activities that are acceptable; the number of work search activities that are required in any week; the requirement that work search activities be documented; and the requirement to apply, and accept if offered, suitable jobs referred by the agency.

(j) The commissioner shall promulgate rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.

(k) The provisions of this section shall become effective July 1, 2024.

§21A-6-10. Benefit rate — total unemployment;

(a) Each eligible individual who is totally unemployed in any week shall be paid benefits with respect to that week at the weekly rate appearing in Column (C) in the benefit table in this section, on the line on which in Column (A) there is indicated the employee's wage class, except as otherwise provided under the term "total and partial unemployment" in §21A-1A-27 of this code. The employee's wage class shall be determined by his or her base period wages as shown in Column (B) in the benefit table. The right of an employee to receive benefits shall not be prejudiced nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages.

(b) The maximum benefit for each wage class shall be equal to 26 times the weekly benefit rate.

BENEFIT TABLE

A	B	C	
WAGE CLASS	WAGES IN BASE PERIOD	WEEKLY BENEFIT RATE	MAXIMUM BENEFIT RATE
	Under $ 2,200.00	Ineligible	
1	$2,200.00 - 2,359.99	24.00	624.00
2	2,350.00 - 2,499.99	25.00	650.00
3	2,500.00 - 2,649.99	27.00	702.00
4	2,650.00 - 2,799.99	28.00	728.00
5	2,800.00 - 2,949.99	30.00	780.00
6	2,950.00 - 3,099.99	31.00	806.00
7	3,100.00 - 3,249.99	33.00	858.00
8	3,250.00 - 3,399.99	35.00	910.00
9	3,400.00 - 3,549.99	36.00	936.00

10	3,550.00	-	3,699.99	38.00	988.00
11	3,700.00	-	3,849.99	39.00	1,014.00
12	3,850.00	-	3,999.99	41.00	1,066.00
13	4,000.00	-	4,149.99	43.00	1,118.00
14	4,150.00	-	4,299.99	44.00	1,144.00
15	4,300.00	-	4,449.99	46.00	1,196.00
16	4,450.00	-	4,599.99	47.00	1,222.00
17	4,600.00	-	4,749.99	49.00	1,274.00
18	4,750.00	-	4,899.99	51.00	1,326.00
19	4,900.00	-	5,049.99	52.00	1,352.00
20	5,050.00	-	5,199.99	54.00	1,404.00
21	5,200.00	-	5,349.99	55.00	1,430.00
22	5,350.00	-	5,499.99	57.00	1,482.00
23	5,500.00	-	5,649.99	58.00	1,508.00
24	5,650.00	-	5,799.99	60.00	1,560.00
25	5,800.00	-	5,949.99	62.00	1,612.00
26	5,950.00	-	6,099.99	63.00	1,638.00
27	6,100.00	-	6,249.99	65.00	1,690.00
28	6,250.00	-	6,399.99	66.00	1,716.00
29	6,400.00	-	6,549.99	68.00	1,768.00
30	6,550.00	-	6,699.99	70.00	1,820.00
31	6,700.00	-	6,849.99	71.00	1,846.00
32	6,850.00	-	6,999.99	73.00	1,898.00
33	7,000.00	-	7,149.99	74.00	1,924.00

34	7,150.00	-	7,299.99	76.00	1,976.00
35	7,300.00	-	7,449.99	78.00	2,028.00
36	7,450.00	-	7,599.99	79.00	2,054.00
37	7,600.00	-	7,749.99	81.00	2,106.00
38	7,750.00	-	7,899.99	82.00	2,132.00
39	7,900.00	-	8,049.99	84.00	2,184.00
40	8,050.00	-	8,199.99	85.00	2,210.00
41	8,200.00	-	8,349.99	87.00	2,262.00
42	8,350.00	-	8,499.99	89.00	2,314.00
43	8,500.00	-	8,649.99	90.00	2,340.00
44	8,650.00	-	8,799.99	92.00	2,392.00
45	8,800.00	-	8,949.99	93.00	2,418.00
46	8,950.00	-	9,099.99	95.00	2,470.00
47	9,100.00	-	9,249.99	97.00	2,522.00
48	9,250.00	-	9,399.99	98.00	2,548.00
49	9,400.00	-	9,549.99	100.00	2,600.00
50	9,550.00	-	9,699.99	101.00	2,626.00
51	9,700.00	-	9,849.99	103.00	2,678.00
52	9,850.00	-	9,999.99	104.00	2,704.00
53	10,000.00	-	10,149.99	106.00	2,756.00
54	10,150.00	-	10,299.99	108.00	2,808.00
55	10,300.00	-	10,449.99	109.00	2,834.00
56	10,450.00	-	10,599.99	111.00	2,886.00
57	10,600.00	-	10,749.99	112.00	2,912.00

58	10,750.00	- 10,899.99	114.00	2,964.00
59	10,900.00	- 11,049.99	116.00	3,016.00
60	11,050.00	- 11,199.99	117.00	3,042.00
61	11,200.00	- 11,349.99	119.00	3,094.00
62	11,350.00	- 11,499.99	120.00	3,120.00
63	11,500.00	- 11,649.99	122.00	3,172.00
64	11,650.00	- 11,799.99	124.00	3,224.00
65	11,800.00	- 11,949.99	125.00	3,250.00
66	11,950.00	- 12,099.99	127.00	3,302.00
67	12,100.00	- 12,249.99	128.00	3,328.00
68	12,250.00	- 12,399.99	130.00	3,380.00
69	12,400.00	- 12,549.99	131.00	3,406.00
70	12,550.00	- 12,699.99	133.00	3,458.00
71	12,700.00	- 12,849.99	135.00	3,510.00
72	12,850.00	- 12,999.99	136.00	3,536.00
73	13,000.00	- 13,149.99	138.00	3,588.00
74	13,150.00	- 13,299.99	139.00	3,614.00
75	13,300.00	- 13,449.99	141.00	3,666.00
76	13,450.00	- 13,599.99	143.00	3,718.00
77	13,600.00	- 13,749.99	144.00	3,744.00
78	13,750.00	- 13,899.99	146.00	3,796.00
79	13,900.00	- 14,049.99	147.00	3,822.00
80	14,050.00	- 14,199.99	149.00	3,874.00
81	14,200.00	- 14,349.99	150.00	3,900.00

82	14,350.00	-	14,499.99	152.00	3,952.00
83	14,500.00	-	14,649.99	154.00	4,004.00
84	14,650.00	-	14,799.99	155.00	4,030.00
85	14,800.00	-	14,949.99	157.00	4,082.00
86	14,950.00	-	15,099.99	158.00	4,108.00
87	15,100.00	-	15,249.99	160.00	4,160.00
88	15,250.00	-	15,399.99	162.00	4,212.00
89	15,400.00	-	15,549.99	163.00	4,238.00
90	15,550.00	-	15,699.99	165.00	4,290.00
91	15,700.00	-	15,849.99	166.00	4,316.00
92	15,850.00	-	15,999.99	168.00	4,368.00
93	16,000.00	-	16,149.99	170.00	4,420.00
94	16,150.00	-	16,299.99	171.00	4,446.00
95	16,300.00	-	16,449.99	173.00	4,498.00
96	16,450.00	-	16,599.99	174.00	4,524.00
97	16,600.00	-	16,749.99	176.00	4,576.00
98	16,750.00	-	16,899.99	177.00	4,602.00
99	16,900.00	-	17,049.99	179.00	4,654.00
100	17,050.00	-	17,199.99	181.00	4,706.00
101	17,200.00	-	17,349.99	182.00	4,732.00
102	17,350.00	-	17,499.99	184.00	4,784.00
103	17,500.00	-	17,649.99	185.00	4,810.00
104	17,650.00	-	17,799.99	187.00	4,862.00
105	17,800.00	-	17,949.99	189.00	4,914.00

106	17,950.00	-	18,099.99	190.00	4,940.00
107	18,100.00	-	18,249.99	192.00	4,992.00
108	18,250.00	-	18,399.99	193.00	5,018.00
109	18,400.00	-	18,549.99	195.00	5,070.00
110	18,550.00	-	18,699.99	196.00	5,096.00
111	18,700.00	-	18,849.99	198.00	5,148.00
112	18,850.00	-	18,999.99	200.00	5,200.00
113	19,000.00	-	19,149.99	201.00	5,226.00
114	19,150.00	-	19,299.99	203.00	5,278.00
115	19,300.00	-	19,449.99	204.00	5,304.00
116	19,450.00	-	19,599.99	206.00	5,356.00
117	19,600.00	-	19,749.99	208.00	5,408.00
118	19,750.00	-	19,899.99	209.00	5,434.00
119	19,900.00	-	20,049.99	211.00	5,486.00
120	20,050.00	-	20,199.99	212.00	5,512.00
121	20,200.00	-	20,349.99	214.00	5,564.00
122	20,350.00	-	20,499.99	216.00	5,616.00
123	20,500.00	-	20,649.99	217.00	5,642.00
124	20,650.00	-	20,799.99	219.00	5,694.00
125	20,800.00	-	20,949.99	220.00	5,720.00
126	20,950.00	-	21,099.99	222.00	5,772.00
127	21,100.00	-	21,249.99	223.00	5,798.00
128	21,250.00	-	21,399.99	225.00	5,850.00
129	21,400.00	-	21,549.99	227.00	5,902.00

130	21,550.00	-	21,699.99	228.00	5,928.00
131	21,700.00	-	21,849.99	230.00	5,980.00
132	21,850.00	-	21,999.99	231.00	6,006.00
133	22,000.00	-	22,149.99	233.00	6,058.00
134	22,150.00	-	22,299.99	235.00	6,110.00
135	22,300.00	-	22,449.99	236.00	6,136.00
136	22,450.00	-	22,599.99	238.00	6,188.00
137	22,600.00	-	22,749.99	239.00	6,214.00
138	22,750.00	-	22,899.99	241.00	6,266.00
139	22,900.00	-	23,049.99	243.00	6,318.00
140	23,050.00	-	23,199.99	244.00	6,344.00
141	23,200.00	-	23,349.99	246.00	6,396.00
142	23,350.00	-	23,499.99	247.00	6,422.00
143	23,500.00	-	23,649.99	249.00	6,474.00
144	23,650.00	-	23,799.99	250.00	6,500.00
145	23,800.00	-	23,949.99	252.00	6,552.00
146	23,950.00	-	24,099.99	254.00	6,604.00
147	24,100.00	-	24,249.99	255.00	6,630.00
148	24,250.00	-	24,399.99	257.00	6,682.00
149	24,400.00	-	24,549.99	258.00	6,708.00
150	24,550.00	-	24,699.99	260.00	6,760.00
151	24,700.00	-	24,849.99	262.00	6,812.00
152	24,850.00	-	24,999.99	263.00	6,838.00
153	25,000.00	-	25,149.99	265.00	6,890.00

154	25,150.00	-	25,299.99	266.00	6,916.00
155	25,300.00	-	25,449.99	268.00	6,968.00
156	25,450.00	-	25,599.99	269.00	6,994.00
157	25,600.00	-	25,749.99	271.00	7,046.00
158	25,750.00	-	25,899.99	273.00	7,098.00
159	25,900.00	-	26,049.99	274.00	7,124.00
160	26,050.00	-	26,199.99	276.00	7,176.00
161	26,200.00	-	26,349.99	277.00	7,202.00
162	26,350.00	-	26,499.99	279.00	7,254.00
163	26,500.00	-	26,649.99	281.00	7,306.00
164	26,650.00	-	26,799.99	282.00	7,332.00
165	26,800.00	-	26,949.99	284.00	7,384.00
166	26,950.00	-	27,099.99	285.00	7,410.00
167	27,100.00	-	27,249.99	287.00	7,462.00
168	27,250.00	-	27,399.99	289.00	7,514.00
169	27,400.00	-	27,549.99	290.00	7,540.00
170	27,550.00	-	27,699.99	292.00	7,592.00
171	27,700.00	-	27,849.99	293.00	7,618.00
172	27,850.00	-	27,999.99	295.00	7,670.00
173	28,000.00	-	28,149.99	296.00	7,696.00
174	28,150.00	-	28,299.99	298.00	7,748.00
175	28,300.00	-	28,449.99	300.00	7,800.00
176	28,450.00	-	28,599.99	301.00	7,826.00
177	28,600.00	-	28,749.99	303.00	7,878.00

178	28,750.00	-	28,899.99	304.00	7,904.00
179	28,900.00	-	29,049.99	306.00	7,956.00
180	29,050.00	-	29,199.99	308.00	8,008.00
181	29,200.00	-	29,349.99	309.00	8,034.00
182	29,350.00	-	29,499.99	311.00	8,086.00
183	29,500.00	-	29,649.99	312.00	8,112.00
184	29,650.00	-	29,799.99	314.00	8,164.00
185	29,800.00	-	29,949.99	315.00	8,190.00
186	29,950.00	-	30,099.99	317.00	8,242.00
187	30,100.00	-	30,249.99	319.00	8,294.00
188	30,250.00	-	30,399.99	320.00	8,320.00
189	30,400.00	-	30,549.99	322.00	8,372.00
190	30,550.00	-	30,699.99	323.00	8,398.00
191	30,700.00	-	30,849.99	325.00	8,450.00
192	30,850.00	-	30,999.99	327.00	8,502.00
193	31,000.00	-	31,149.99	328.00	8,528.00
194	31,150.00	-	31,299.99	330.00	8,580.00
195	31,300.00	-	31,449.99	331.00	8,606.00
196	31,450.00	-	31,599.99	333.00	8,658.00
197	31,600.00	-	31,749.99	335.00	8,710.00
198	31,750.00	-	31,899.99	336.00	8,736.00
199	31,900.00	-	32,049.99	338.00	8,788.00
200	32,050.00	-	32,199.99	339.00	8,814.00
201	32,200.00	-	32,349.99	341.00	8,866.00

202	32,350.00	-	32,499.99	342.00	8,892.00
203	32,500.00	-	32,649.99	344.00	8,944.00
204	32,650.00	-	32,799.99	346.00	8,996.00
205	32,800.00	-	32,949.99	347.00	9,022.00
206	32,950.00	-	33,099.99	349.00	9,074.00
207	33,100.00	-	33,249.99	350.00	9,100.00
208	33,250.00	-	33,399.99	352.00	9,152.00
209	33,400.00	-	33,549.99	354.00	9,204.00
210	33,550.00	-	33,699.99	355.00	9,230.00
211	33,700.00	-	33,849.99	357.00	9,282.00
212	33,850.00	-	33,999.99	358.00	9,308.00
213	34,000.00	-	34,149.99	360.00	9,360.00
214	34,150.00	-	34,299.99	361.00	9,386.00
215	34,300.00	-	34,449.99	363.00	9,438.00
216	34,450.00	-	34,599.99	365.00	9,490.00
217	34,600.00	-	34,749.99	366.00	9,516.00
218	34,750.00	-	34,899.99	368.00	9,568.00
219	34,900.00	-	35,049.99	369.00	9,594.00
220	35,050.00	-	35,199.99	371.00	9,646.00
221	35,200.00	-	35,349.99	373.00	9,698.00
222	35,350.00	-	35,499.99	374.00	9,724.00
223	35,500.00	-	35,649.99	376.00	9,776.00
224	35,650.00	-	35,799.99	377.00	9,802.00
225	35,800.00	-	35,949.99	379.00	9,854.00

226	35,950.00	-	36,999.99	381.00	9,906.00
227	36,100.00	-	36,249.99	382.00	9,932.00
228	36,250.00	-	36,399.99	384.00	9,984.00
229	36,400.00	-	36,549.99	385.00	10,010.00
230	36,550.00	-	36,699.99	387.00	10,062.00
231	36,700.00	-	36,849.99	388.00	10,088.00
232	36,850.00	-	36,999.99	390.00	10,140.00
233	37,000.00	-	37,149.99	392.00	10,192.00
234	37,150.00	-	37,299.99	393.00	10,218.00
235	37,300.00	-	37,449.99	395.00	10,270.00
236	37,450.00	-	37,599.99	396.00	10,296.00
237	37,600.00	-	37,749.99	398.00	10,348.00
238	37,750.00	-	37,899.99	400.00	10,400.00
239	37,900.00	-	38,049.99	401.00	10,426.00
240	38,050.00	-	38,199.99	403.00	10,478.00
241	38,200.00	-	38,349.99	404.00	10,504.00
242	38,350.00	-	38,499.99	406.00	10,556.00
243	38,500.00	-	38,649.99	408.00	10,608.00
244	38,650.00	-	38,799.99	409.00	10,634.00
245	38,800.00	-	38,949.99	411.00	10,686.00
246	38,950.00	-	39,099.99	412.00	10,712.00
247	39,100.00	-	39,249.99	414.00	10,764.00
248	39,250.00	-	39,399.99	415.00	10,790.00
249	39,400.00	-	39,549.99	417.00	10,842.00

250	39,550.00	-	39,699.99	419.00	10,894.00
251	39,700.00	-	39,849.99	420.00	10,920.00
252	39,850.00	-	39,999.99	422.00	10,972.00
253	40,000.00	-	40,149.99	423.00	10,998.00
254	40,150.00	-	and above	424.00	11,024.00
254	40,150.00	-	40,299.99	425.00	11,050.00
255	40,300.00	-	40,449.99	427.00	11,102.00
256	40,450.00	-	40,599.99	428.00	11,128.00
257	40,600.00	-	40,749.99	430.00	11,180.00
258	40,750.00	-	40,899.99	431.00	11,206.00
259	40,900.00	-	41,049.99	433.00	11,258.00
260	41,050.00	-	41,199.99	434.00	11,284.00
261	41,200.00	-	41,349.99	436.00	11,336.00
262	41,350.00	-	41,499.99	438.00	11,388.00
263	41,500.00	-	41,649.99	439.00	11,414.00
264	41,650.00	-	41,799.99	441.00	11,466.00
265	41,800.00	-	41,949.99	442.00	11,492.00
266	41,950.00	-	42,099.99	444.00	11,544.00
267	42,100.00	-	42,249.99	446.00	11,596.00
268	42,250.00	-	42,399.99	447.00	11,622.00
269	42,400.00	-	42,549.99	449.00	11,674.00
270	42,550.00	-	42,699.99	450.00	11,700.00
271	42,700.00	-	42,849.99	452.00	11,752.00
272	42,850.00	-	42,999.99	454.00	11,804.00

273	43,000.00	-	43,149.99	455.00	11,830.00
274	43,150.00	-	43,299.99	457.00	11,882.00
275	43,300.00	-	43,449.99	458.00	11,908.00
276	43,450.00	-	43,599.99	460.00	11,960.00
277	43,600.00	-	43,749.99	461.00	11,986.00
278	43,750.00	-	43,899.99	463.00	12,038.00
279	43,900.00	-	44,049.99	465.00	12,090.00
280	44,050.00	-	44,199.99	466.00	12,116.00
281	44,200.00	-	44,349.99	468.00	12,168.00
282	44,350.00	-	44,499.99	469.00	12,194.00
283	44,500.00	-	44,649.99	471.00	12,246.00
284	44,650.00	-	44,799.99	473.00	12,298.00
285	44,800.00	-	44,949.99	474.00	12,324.00
286	44,950.00	-	45,099.99	476.00	12,376.00
287	45,100.00	-	45,249.99	477.00	12,402.00
288	45,250.00	-	45,399.99	479.00	12,454.00
289	45,400.00	-	45,549.99	480.00	12,480.00
290	45,550.00	-	45,699.99	482.00	12,532.00
291	45,700.00	-	45,849.99	484.00	12,584.00
292	45,850.00	-	45,999.99	485.00	12,610.00
293	46,000.00	-	46,149.99	487.00	12,662.00
294	46,150.00	-	46,299.99	488.00	12,688.00
295	46,300.00	-	46,449.99	490.00	12,740.00
296	46,450.00	-	46,599.99	492.00	12,792.00

297	46,600.00	-	46,749.99	493.00	12,818.00
298	46,750.00	-	46,899.99	495.00	12,870.00
299	46,900.00	-	47,049.99	496.00	12,896.00
300	47,050.00	-	47,199.99	498.00	12,948.00
301	47,200.00	-	47,349.99	500.00	13,000.00
302	47,350.00	-	47,499.99	501.00	13,026.00
303	47,500.00	-	47,649.99	503.00	13,078.00
304	47,650.00	-	47,799.99	504.00	13,104.00
305	47,800.00	-	47,949.99	506.00	13,156.00
306	47,950.00	-	48,099.99	507.00	13,182.00
307	48,100.00	-	48,249.99	509.00	13,234.00
308	48,250.00	-	48,399.99	511.00	13,286.00
309	48,400.00	-	48,549.99	512.00	13,312.00
310	48,550.00	-	48,699.99	514.00	13,364.00
311	48,700.00	-	48,849.99	515.00	13,390.00
312	48,850.00	-	48,999.99	517.00	13,442.00
313	49,000.00	-	49,149.99	519.00	13,494.00
314	49,150.00	-	49,299.99	520.00	13,520.00
315	49,300.00	-	49,449.99	522.00	13,572.00
316	49,450.00	-	49,599.99	523.00	13,598.00
317	49,600.00	-	49,749.99	525.00	13,650.00
318	49,750.00	-	49,899.99	526.00	13,676.00
319	49,900.00	-	50,049.99	528.00	13,728.00
320	50,050.00	-	50,199.99	530.00	13,780.00

321	50,200.00	-	50,349.99	531.00	13,806.00
322	50,350.00	-	50,499.99	533.00	13,858.00
323	50,500.00	-	50,649.99	534.00	13,884.00
324	50,650.00	-	50,799.99	536.00	13,936.00
325	50,800.00	-	50,949.99	538.00	13,988.00
326	50,950.00	-	51,099.99	539.00	14,014.00
327	51,100.00	-	51,249.99	541.00	14,066.00
328	51,250.00	-	51,399.99	542.00	14,092.00
329	51,400.00	-	51,549.99	544.00	14,144.00
330	51,550.00	-	51,699.99	546.00	14,196.00
331	51,700.00	-	51,849.99	547.00	14,222.00
332	51,850.00	-	51,999.99	549.00	14,274.00
333	52,000.00	-	52,149.99	550.00	14,300.00
334	52,150.00	-	52,299.99	552.00	14,352.00
335	52,300.00	-	52,449.99	553.00	14,378.00
336	52,450.00	-	52,599.99	555.00	14,430.00
337	52,600.00	-	52,749.99	557.00	14,482.00
338	52,750.00	-	52,899.99	558.00	14,508.00
339	52,900.00	-	53,049.99	560.00	14,560.00
340	53,050.00	-	53,199.99	561.00	14,586.00
341	53,200.00	-	53,349.99	563.00	14,638.00
342	53,350.00	-	53,499.99	565.00	14,690.00
343	53,500.00	-	53,649.99	566.00	14,716.00
344	53,650.00	-	53,799.99	568.00	14,768.00

345	53,800.00	-	53,949.99	569.00	14,794.00
346	53,950.00	-	54,099.99	571.00	14,846.00
347	54,100.00	-	54,249.99	573.00	14,898.00
348	54,250.00	-	54,399.99	574.00	14,924.00
349	54,400.00	-	54,549.99	576.00	14,976.00
350	54,550.00	-	54,699.99	577.00	15,002.00
351	54,700.00	-	54,849.99	579.00	15,054.00
352	54,850.00	-	54,999.99	580.00	15,080.00
353	55,000.00	-	55,149.99	582.00	15,132.00
354	55,150.00	-	55,299.99	584.00	15,184.00
355	55,300.00	-	55,449.99	585.00	15,210.00
356	55,450.00	-	55,599.99	587.00	15,262.00
357	55,600.00	-	55,749.99	588.00	15,288.00
358	55,750.00	-	55,899.99	590.00	15,340.00
359	55,900.00	-	56,049.99	592.00	15,392.00
360	56,050.00	-	56,199.99	593.00	15,418.00
361	56,200.00	-	56,349.99	595.00	15,470.00
362	56,350.00	-	56,499.99	596.00	15,496.00
363	56,500.00	-	56,649.99	598.00	15,548.00
364	56,650.00	-	56,799.99	599.00	15,574.00
365	56,800.00	-	56,949.99	601.00	15,626.00
366	56,950.00	-	57,099.99	603.00	15,678.00
367	57,100.00	-	57,249.99	604.00	15,704.00
368	57,250.00	-	57,399.99	606.00	15,756.00

369	57,400.00	-	57,549.99	607.00	15,782.00
370	57,550.00	-	57,699.99	608.00	15,808.00
371	57,700.00	-	57,849.99	611.00	15,886.00
372	57,850.00	-	57,999.99	612.00	15,912.00
373	58,000.00	-	58,149.99	614.00	15,964.00
374	58,150.00	-	58,299.99	615.00	15,990.00
375	58,300.00	-	58,449.99	617.00	16,042.00
376	58,450.00	-	58,599.99	619.00	16,094.00
377	58,600.00	-	58,749.99	620.00	16,120.00
378	58,750.00	-	58,899.99	622.00	16,172.00
379	58,900.00	-	59,049.99	623.00	16,198.00
380	59,050.00	-	59,199.99	625.00	16,250.00
381	59,200.00	-	59,349.99	626.00	16,276.00
382	59,350.00	-	59,499.99	628.00	16,328.00
383	59,500.00	-	59,649.99	630.00	16,380.00
384	59,650.00	-	59,799.99	631.00	16,406.00
385	59,800.00	-	59,949.99	633.00	16,458.00
386	59,950.00	-	60,099.99	634.00	16,484.00
387	60,100.00	-	60,249.99	636.00	16,536.00
388	60,250.00	-	60,399.99	638.00	16,588.00
389	60,400.00	-	60,549.99	639.00	16,614.00
390	60,550.00	-	60,699.99	641.00	16,666.00
391	60,700.00	-	60,849.99	642.00	16,692.00
392	60,850.00	-	60,999.99	644.00	16,744.00

393	61,000.00	-	61,149.99	645.00	16,770.00
394	61,150.00	-	61,299.99	647.00	16,822.00
395	61,300.00	-	61,449.99	649.00	16,874.00
396	61,450.00	-	61,599.99	650.00	16,900.00
397	61,600.00	-	61,749.99	652.00	16,952.00
398	61,750.00	-	61,899.99	653.00	16,978.00
399	61,900.00	-	62,049.99	655.00	17,030.00
400	62,050.00	-	62,199.99	657.00	17,082.00
401	62,200.00	-	62,349.99	658.00	17,108.00
402	62,350.00	-	62,499.99	660.00	17,160.00
403	62,500.00	-	62,649.99	661.00	17,186.00
404	62,650.00	-	and over	662.00	17,212.00

(a) For individuals with base period wages of $62,650 or more, the weekly benefit amount shall be $662.

(b) An individual who is totally unemployed but earns in excess of $60 as a result of an odd job, a non-payrolled job or work from a non-covered employer or is paid a bonus in any benefit week, shall be paid benefits for such week in accordance with the provisions of §21A-6-11 of this code pertaining to benefits for partial unemployment.

(c) If a balance of benefits remains after an individual receives 26 weeks of unemployment benefits, due to partial unemployment as defined in §21A-6-11 of this code, the individual may receive benefit payments at the same weekly benefit rate as the most recent week, until the maximum benefit balance is exhausted.

(f) The right of an employee to receive benefits shall not be prejudiced, nor the amount thereof be diminished by reason of failure by an employer to pay either the wages earned by the employee or the contribution due on such wages.

(g) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

ARTICLE 6A. EXTENDED BENEFITS PROGRAM.

§21A-6A-4. Weekly extended benefit amount.

The weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be an amount equal to the weekly benefit payable to the eligible individual during the eligible individual's applicable benefit year: *Provided*, That for any week during a period in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the weekly extended benefit amount payable to an individual for a week of total unemployment in his eligibility period shall be reduced by a percentage equivalent to the percentage of the reduction in the federal payment. Such reduced weekly extended benefit amount, if not a full dollar amount, shall be rounded to the nearest lower full dollar amount.

The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

§21A-6A-5. Total extended benefit amount.

The total extended benefit amount payable to an eligible individual with respect to his or her applicable benefit year shall be the least of the following amounts:

(1) Fifty percent of the total amount of regular benefits which were payable to him or her under this chapter in his or her applicable benefit year;

(2) Thirteen times his or her weekly benefit amount which was payable to him or her under this chapter for a week of total unemployment in the applicable benefit year: *Provided,* That an individual filing for extended benefits through the interstate benefit payment plan and residing in a state where an extended benefit

period is not in effect shall be limited to payment for only the first two weeks of such extended benefits: *Provided, however*, That during any fiscal year in which federal payments to states under section 204 of the Federal-State Extended Unemployment Compensation Act of 1970 are reduced under an order issued under section 252 of the Balanced Budget and Emergency Deficit Control Act of 1985, the total extended benefit amount payable to an individual with respect to his or her applicable benefit year shall be reduced by an amount equal to the aggregate of the reductions under §21A-6A-4 of this code in the weekly amounts paid to the individual.

(3)(A) For weeks beginning in a high unemployment period, subdivision (1) of this section shall be applied by substituting 80 percent for 50 percent, and subdivision (2) of this section shall be applied by substituting 20 for 13.

(B) For the purposes of this article, the term "high unemployment period" means any period during which the provisions of §21A-6A-1(3) of this code would result in a "state >on' indicator" if §21A-6A-1(3) of this code were applied by substituting eight percent for six and one-half percent.

(4) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

ARTICLE 6B. SHORT TIME COMPENSATION PROGRAM.

§21A-6B-6. Benefits

(a) The short-time compensation weekly benefit amount shall be the product of the regular weekly unemployment compensation amount for a week of total unemployment as defined in §21A-6-10 multiplied by the percentage of reduction in the individual’s usual weekly hours of work.

(b) An individual may be eligible for short-time compensation or unemployment benefits, as appropriate: *Provided*, That no individual shall be eligible for combined benefits in any benefit year in an amount more than the maximum entitlement established

for regular unemployment benefits: *Provided, however*, That no individual shall be paid short-time compensation benefits for more than 26 weeks under a plan.

(c) Provisions applicable to unemployment benefits claimants shall apply to short-time compensation claimants to the extent that they are not inconsistent with the program's provisions. An individual who files an initial claim for short-time compensation benefits shall receive a monetary determination.

(d) An employee who is not provided any work during a week by the short-time compensation employer, or any other employer, and who is otherwise eligible for unemployment benefits shall be eligible for the amount of regular unemployment compensation to which he or she would otherwise be eligible.

(e) An employee who is not provided any work by the short-time compensation employer during a week, but who works for another employer and is otherwise eligible, may be paid unemployment benefits for that week subject to the disqualifying income and other provisions applicable to claims for regular unemployment benefits.

(f) An employee who has received all of the short-time compensation or combined unemployment benefits and short-time compensation available in a benefit year shall be considered an exhaustee for purposes of extended benefits and, if otherwise eligible under those provisions, shall be eligible to receive extended benefits.

(g) The amendments made to this section during the 2024 Regular Session shall become effective July 1, 2024.

CHAPTER 265

(Com. Sub. for S. B. 222 - By Senators Weld, Stuart, Trump, Caputo, Grady, Chapman, and Smith)

[Passed March 9, 2024; in effect 90 days from passage (June 7, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §20-5-23†, relating to the development of an incentive plan for West Virginia veterans which includes reductions and discounts in fees and charges at state parks.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PARKS AND RECREATION.

†§20-5-23. Development of comprehensive incentive plan for West Virginia veterans.

(a) The director, in consultation with the Department of Tourism and the Department of Veterans' Assistance, shall develop a comprehensive plan for the development of, and support for, a program which encourages the use of state parks and forests by veterans of this state. The plan may include, without being limited to, reduced or discounted rates on charges and fees for campground rental fees, lodging, and park activities.

(b) For purposes of this section, "veteran" means any West Virginia resident who has served as an active member of the armed forces of the United States, the National Guard, or a reserve component as described in 38 U.S.C. §101. Notwithstanding any provision in this code to the contrary, a veteran must be honorably discharged or under honorable conditions as described in 38 U.S.C. §101.

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†**NOTE:** S. B. 4, which passed in the 2023 Regular Session, also created a new Section 23. Therefore, this has been redesignated as Section 24 for the code.

(c) No later than December 1, 2024, the director shall submit to the Joint Committee on Government and Finance a written report detailing the program developed pursuant to subsection (a) of this section.

(d) The director shall promulgate rules, including emergency rules, if necessary, to the Legislature in accordance with §29A-3-1 *et seq.* of this code.

CHAPTER 266

(Com. Sub. for S. B. 261 - By Senators Weld and Smith)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31-18F-1, §31-18F-2, §31-18F-3, §31-18F-4, §31-18F-5, and §31-18F-6; and to amend and reenact §36-8-13 of said code, all relating generally to creating the West Virginia Veterans' Home Loan Mortgage Program of 2024; establishing a fund known as the West Virginia Veterans' Home Loan Mortgage Fund; declaring the purpose of the fund; providing that the West Virginia Housing Development Fund shall administer the fund; setting forth terms of the program; authorizing the West Virginia Housing Development Fund to make certain mortgage loans from the fund; authorizing rulemaking; and authorizing the unclaimed property administrator to transfer a certain amount from the Unclaimed Property Trust Fund to the fund.

Be it enacted by the Legislature of West Virginia:

CHAPTER 31. CORPORATIONS.

ARTICLE 18F. THE WEST VIRGINIA VETERANS' HOME LOAN MORTGAGE PROGRAM OF 2024.

§31-18F-1. Short title.

This article shall be known as the West Virginia Veterans' Home Loan Mortgage Program Act of 2024.

§31-18F-2. Definitions.

As used in this section, the following definitions apply:

(1) "Eligible veteran" means any veteran as defined in this section who:

(A) Is a West Virginia resident;

(B) Is a first-time home buyer; and

(C) Is establishing his or her primary residence in West Virginia.

(2) "Fund" means the West Virginia Veterans' Home Loan Mortgage Fund created pursuant to the provisions of §31-18F-5 of this code.

(3) "Mortgage loan" means a loan for the purchase of real property, and any improvements thereon, located within this state that is to be used for primary residential purposes by the eligible veteran and that is based upon a written instrument evidenced by a promissory note, and that is secured by a deed of trust.

(4) "Participating financial institution" means a corporate lender or other loan originator approved by the West Virginia Housing Development Fund for originating loans pursuant to the provisions this article.

(5) "Resident" or "West Virginia resident" means an individual who maintains, or will maintain after receiving a mortgage loan, a primary residence within West Virginia, and who has not established a residence elsewhere even though the individual may be temporarily absent from the state.

(6) "Under honorable conditions" means a discharge or separation from military duty characterized by the armed forces as under honorable conditions. The term includes honorable discharge and general discharge. The term does not include a dishonorable discharge, or another administrative discharge characterized by military regulation as other than honorable.

(7) "Veteran" means a person who satisfies one of the following requirements:

(A) Is a member of the West Virginia National Guard;

(B) Is a member of the federal reserve forces of the armed forces of the United States, serving pursuant to Title 10 of the United States Code;

(C) Is a person serving on federal active duty pursuant to Title 10 of the United States Code;

(D) Is the unmarried spouse or child of an individual who otherwise met the requirements of paragraphs (A), (B), or (C) of this subdivision, but was killed in the line of duty;

(E) Is a person who previously met the requirements of paragraphs (A), (B), or (C) of this subdivision, but has since been discharged under honorable conditions; or

(F) A person defined as a veteran by rule promulgated by the West Virginia Housing Development Fund pursuant to the provisions of this article.

(8) "Veterans' Home Loan Mortgage Program" or "program" means the program created pursuant to the provisions of this article.

(9) "West Virginia Housing Development Fund" or "Housing Development Fund" means the West Virginia Housing Development Fund created and established by §31-18-4 of this code.

§31-18F-3. Veterans' Home Loan Mortgage Program created.

(a) There is hereby created the West Virginia Veterans' Home Loan Mortgage Program of 2024 to be administered by the West Virginia Housing Development Fund for eligible veterans who are first-time home buyers.

(b) The West Virginia Housing Development Fund is authorized to make or purchase mortgage loans from participating financial institutions or through direct origination.

§31-18F-4. Terms of program.

(a) *Interest.* — Interest on a home mortgage loan made pursuant to the provisions of this article shall be one percent less than the federal national mortgage association's delivery rate or one percent less than the interest rate applicable to loans provided by the West Virginia Housing Development Fund's Homeownership Program, whichever is less. If the federal national mortgage association's delivery rate becomes unavailable, the Housing Development Fund shall provide another similar rate to use for the purposes of this section by rule promulgated pursuant to the provisions of this article.

(b) *Loan amount.* — The maximum amount of a loan made pursuant to the provisions of this article is 100 percent of the value of the statewide allowable purchase price.

(c) *Required education program.* — The West Virginia Housing Development Fund shall require, as a condition for a loan, that an eligible veteran participate in a first-time home buyer education program approved by the West Virginia Housing Development Fund.

(d) *Government guaranty.* — A loan made by the West Virginia Housing Development Fund must be secured by a government guaranty, unless the West Virginia Housing Development Fund makes a determination that the use of conventional mortgage insurance requirements and coverage will satisfy security requirements.

(e) *Minimum amount of veteran monetary payment.* — An eligible veteran shall participate in a loan by paying a minimum amount of $2,500, unless the West Virginia Housing Development Fund provides, by legislative rule promulgated pursuant to the provisions of this section, circumstances under which a smaller minimum amount may be allowed. An eligible veteran may use this minimum payment toward paying closing costs and may borrow from the program the maximum loan amount allowed by the mortgage insurer for the loan.

(f) *Income limitations.* — There is no limit on the maximum amount of income that may be earned by an eligible veteran in order to qualify for the program.

(g) In order to allow small financial institutions to participate equitably in the program along with large financial institutions, the West Virginia Housing Development Fund may adopt rules to specify the maximum amount of mortgage loans that may be made by any one participating financial institution.

(h) The Legislative Auditor shall have access to all documentation used for the purpose of the program.

(i) The West Virginia Housing Development Fund shall annually submit to the Joint Committee on Government and Finance a report describing, at a minimum, the operation and use of this program. This report shall be due no later than December 1 of each year and may be combined with other reports submitted by the West Virginia Housing Development Fund to the Legislature.

§31-18F-5. West Virginia Veterans' Home Loan Mortgage Fund.

(a) The board of directors of the West Virginia Housing Development Fund shall create and establish the West Virginia Veterans' Home Loan Mortgage Fund. The fund shall be a special revolving fund of moneys made available by contribution or loan, and to be governed, administered, and accounted for by the directors, officers, and managerial staff of the Housing Development Fund as a public purpose trust account separate and distinct from any other moneys, funds or funds owned and managed by the Housing Development Fund. The purpose for organizing and operating the fund shall be to provide a source from which the Housing Development Fund may implement the provisions of this article.

(b) The Housing Development Fund shall administer the West Virginia Veterans' Home Loan Mortgage Fund and service the mortgage loans made pursuant to the program.

(c) The West Virginia Housing Development Fund shall receive all moneys transferred to the fund pursuant to §36-8-13(f) of this code, any other moneys to be deposited into the fund, and any repayments and interest paid to the fund.

(d) As a loan pursuant to this article is repaid, the principal payments on the loan must be redeposited in the fund until all the principal of the loan is repaid. In the event of foreclosure, the proceeds from the sale of the foreclosed property must be deposited to the fund. The fund may be used to cover the initial purchase of the mortgage loans from participating lenders as well as amounts determined by the Housing Development Fund, to pay for the origination and servicing release fees of a loan by a participating financial institution and to cover the holding costs of any foreclosed properties. Interest received on the loans may be used by the Housing Development Fund to pay the reasonable costs for the administration of the program and servicing of the loans. Remaining interest received on the loan must be deposited into the fund.

(e) Following the initial origination of loans, loan repayments and any interest earnings of the fund may be used by the Housing Development Fund to originate additional program loans or to assist in the development of affordable housing units for the benefit of veterans.

(f) The West Virginia Housing Development Fund may invest and reinvest all moneys in the Veterans' Home Loan Mortgage Fund in any investments authorized under §31-18-6 of this code pending the disbursement thereof in connection with the Veterans' Home Loan Mortgage Fund.

(g) The West Virginia Housing Development Fund will operate the Veterans' Home Loan Mortgage Fund in accordance with customary practices of mortgage lending and loan servicing, including originating loans through qualified lending institutions, industry standard underwriting, minimum down payments, house purchase prices, mortgage lien position, loan origination, and loan servicing fees like the West Virginia Housing Development Fund's Homeownership Program or similar program.

§31-18F-6. Rules to be adopted by fund.

The fund shall promulgate rules, including emergency rules, if necessary, in accordance with §29A-3-1 *et seq.* of this code, including rules:

(1) Specifying qualifications for financial institutions to participate in the program;

(2) Specifying underwriting criteria for a program loan, such as minimum down payment, credit score, ratios of housing expense and of all reoccurring debt as a percentage of income of the borrower, and any exceptions to those criteria;

(3) Specifying the statewide allowable purchase price of a home for the purposes of the program;

(4) Specifying the security required for a mortgage loan financed by the program;

(5) Specifying the qualifications of a first-time homebuyer;

(6) Providing the Legislative Auditor with access to records of participating financial institutions regarding loans made pursuant to this program;

(7) Governing the loan application process;

(8) Specifying the maximum origination fee that may be charged by a participating financial institution;

(9) Specifying the maximum servicing fees that may be charged by the fund; and

(10) Other loan conditions determined to be necessary by the fund.

CHAPTER 36. ESTATES AND PROPERTY.

ARTICLE 8. UNIFORM UNCLAIMED PROPERTY ACT.

§36-8-13. Deposit of funds.

(a) The administrator shall record the name and last known address of each person appearing from the holders reports to be entitled to the property, and the name and last known address of each insured person or annuitant and beneficiary and with respect to each policy or annuity listed in the report of an insurance company, its number, the name of the company, and the amount due.

(b) The Unclaimed Property Fund is continued. The administrator shall deposit all funds received pursuant to this article in the Unclaimed Property Fund, including the proceeds from the sale of abandoned property under §36-8-12 of this code. The administrator may invest the Unclaimed Property Fund with the West Virginia Board of Treasury Investments, or the Investment Management Board, and all earnings shall accrue to the fund and are available for expenditure in accordance with the article. In addition to paying claims of unclaimed property duly allowed, the administrator may deduct the following expenses from the Unclaimed Property Fund:

(1) Expenses of the sale of abandoned property;

(2) Expenses incurred in returning the property to owners, including, without limitation, the costs of mailing and publication to locate owners;

(3) Reasonable service charge; and

(4) Expenses incurred in examining records of holders of property and in collecting the property from those holders.

(c) The Unclaimed Property Trust Fund is continued within the State Treasury. The administrator may invest the Unclaimed Property Trust Fund with the West Virginia Board of Treasury Investments and all earnings shall accrue to the fund and are available for expenditure in accordance with this article. After deducting the expenses specified in subsection (b) of this section and maintaining a sum of money from which to pay claims duly allowed, the administrator shall transfer the remaining moneys in

the Unclaimed Property Fund to the Unclaimed Property Trust Fund.

(d) On or before December 15 of each year, notwithstanding any provision of this code to the contrary, the administrator may transfer the sum of $1 million from the Unclaimed Property Trust Fund to the Jumpstart Savings Trust Fund, until an actuary certifies there are sufficient funds to satisfy all obligations and administrative expenses of the Jumpstart Savings Program.

(e) Subject to a liquidity determination and cash availability, effective July 1, 2022, the unclaimed property administrator may transfer an amount in any fiscal year from the Unclaimed Property Trust Fund to the Military Authority Reimbursable Expenditure Fund: *Provided*, That the aggregate amount that may be transferred under this subsection may not exceed $10,000,000.

(f) Subject to cash availability, on or before July 15, 2024, the unclaimed property administrator may transfer up to $8 million from the Unclaimed Property Trust Fund to the West Virginia Veterans' Home Loan Mortgage Fund, as provided in §31-18F-5 of this code.

(g) After transferring any money required by subsections (e) and (f) of this section, the administrator shall transfer moneys remaining in the Unclaimed Property Trust Fund to the General Revenue Fund.

CHAPTER 267

(S. B. 147 - By Senators Rucker, Deeds, Hamilton, Hunt, Oliverio, Phillips, Roberts, Swope, Tarr, Woodrum, Chapman, and Jeffries)

[Passed March 8, 2024; in effect 90 days from passage (June 6, 2024)]
[Approved by the Governor on March 26, 2024.]

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 concealed deadly weapons licenses; adding definition of "ammunition" for purposes of the live fire requirement for obtaining a license to carry a deadly weapon; adding definition of "ammunition" for purposes of the live fire requirement for obtaining a provisional license to carry a deadly weapon; clarifying that ammunition designed for training including marking rounds and simulated ammunition may be used in the required training course; and removing the requirement that an applicant for a concealed deadly weapon license or a provisional concealed deadly weapon license must provide a Social Security number.

Be it enacted by the Legislature of West Virginia:

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-4. License to carry deadly weapons; how obtained.

(a)(1) Except as provided in §61-7-4(q) of this code, a legal resident or citizen of West Virginia desiring to obtain a state resident 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 $50. A concealed weapons license may only be issued for pistols and revolvers.

(2) A legal resident or citizen of another state of the United States desiring to obtain a nonresident state license to carry a concealed deadly weapon shall apply to a sheriff of any county in this state for the license, and pay to the sheriff, at the time of application, a fee of $100. A concealed weapons license may only be issued for pistols and revolvers.

(b) Each applicant for a state resident license or nonresident license to carry a concealed deadly weapon 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, 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 either a resident of this state and of the county in which the application is made or a resident of another state in the United States and has a valid driver's license or other state-issued or federally issued photo identification showing the residence;

(3) That the applicant is 21 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, 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 shall 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 (e) 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.

(c) 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 (b) 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).

(d)(1) Twenty-five dollars of the resident license application fee shall be deposited into the State Treasury and credited to the account of the State Police, and $25 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.

(2) Fifteen dollars of the nonresident license application fee shall be deposited in the Courthouse Facilities Improvement Fund created by §29-26-6 of this code; $25 of the application fee shall be deposited into the State Treasury and credited to the account of the State Police for the purchase of vehicles, equipment for vehicles, and maintenance of vehicles; and $60 of the application fee shall be deposited in the concealed weapons license administration fund to be administered as provided in this subsection.

(e) All persons applying for a license shall 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: *Provided however*, That for purposes of this subsection, the term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm and includes ammunition designed for training such as marking rounds and simulated training loads:

(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 using 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.

(f) 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.

(g) 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.

(h) 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, is 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, subject to revocation for cause, are valid for a period of five years from the licensees' most recent birthday.

(i) 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.

(j) The Superintendent of the West Virginia State Police, in cooperation with the West Virginia Sheriffs' Bureau of Professional Standards, shall prepare uniform applications for both resident and nonresident 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.

(k) 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.

(l) 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.

(m) Whenever an applicant or licensee relocates from the address provided in his or her application to another address, he or she shall comply with the following notification requirements:

(1) Within 20 days of a resident licensee relocating from the address provided in his or her application to another county in the

state, he or she shall provide written notification of the relocation to the sheriff of the county to which he or she moved and provide his or her new address. The sheriff shall then issue a new resident license bearing the licensee's new address and the original expiration date, for a fee not to exceed $5. The license remains valid for the remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(2) Within 20 days of a resident licensee relocating from the address provided in his or her application to an address outside the state, he or she shall provide written notification to the sheriff of the issuing county of the relocation and provide his or her new address. The sheriff shall then issue a new nonresident license bearing the licensee's new address and the original expiration date, for a fee not to exceed $5. The license remains valid for the remainder of the original five-year term unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article: *Provided*, That any renewal of the license in the new jurisdiction after expiration requires the payment of a nonresident license fee.

(3) Within 20 days of a nonresident licensee relocating from the address provided in his or her application to another address outside of the state, he or she shall provide written notification of the relocation to the sheriff of the issuing county and provide his or her new address. The sheriff shall then issue a new nonresident license bearing the licensee's new address and original expiration date, for a fee not to exceed $5. This license remains valid for the remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(4) Within 20 days of a nonresident licensee relocating to West Virginia from the address provided in his or her application, he or she shall provide written notification of the relocation to the sheriff of the county to which he or she has moved and provide his or her new address. The sheriff shall then issue a new resident license bearing the licensee's new address and the original expiration date, for a fee not to exceed $5. This license remains valid for the

remainder of the original five-year term, unless the sheriff has determined that the person is no longer eligible for a concealed weapon license under the provisions of this article.

(n) The sheriff shall, immediately after the license is granted under this section 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.

(o) 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.

(p) 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.

(q) Notwithstanding subsection (a) of this section, with respect to application for a resident license by an honorably discharged veteran of the armed forces of the United States, reserve, or National Guard, 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, reserve, or National Guard, 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.

(r) 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, shall be fined not less than $50 or more than $200 for each offense.

(s) 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.

(t) 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 18 years of age and less than 21 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, 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 18 years of age and less than 21 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 §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 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: *Provided*, *however*, That for purposes of this subsection, the term "ammunition" means ammunition or cartridge cases, primers, bullets, or propellant powder designed for use in any firearm and includes ammunition designed for training such as marking rounds and simulated training loads:

(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 §29-4-1 *et seq.* 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 45 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 30 days of receipt. The provisional license is valid until the licensee turns 21 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 55 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 §61-7-4 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 30 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 21 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 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 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 268

(Com. Sub. for H. B. 4782 - By Delegates Horst, Chiarelli, Summers, Householder, Kimble, Phillips, Hite, Maynor, Hardy, Howell, and Espinosa)

[Passed March 1, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact §8-12-5a of the Code of West Virginia, 1931, as amended, relating to limitations upon municipalities' power to restrict the sale and storage of weapons and ammunition; preventing municipalities from targeting protected businesses with planning and zoning ordinances more restrictive than those placed upon other businesses; declaring ordinances which restrict or prohibit certain sales of firearms, firearms accessories or components, and other lawful personal defense tools or products as void; restricting a municipality from using its planning or zoning powers solely to prohibit the sale of firearms, firearms accessories or components, or lawful personal defense tools or products other than firearms within a prescribed distance of any other type of commercial property or of school property or other educational property; and providing remedies for violations.

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), subsection (b), 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 through planning or zoning ordinances; except that a municipality may not restrict or regulate a firearms or ammunitions related business entity in a manner more restrictive than the planning or zoning ordinances imposed upon any other retail business, nor shall a municipality place restrictions on quantity limitations regarding the lawful sale or servicing of any firearm or ammunition, any firearm or ammunition component or accessory, ammunition reloading equipment and supplies, or personal weapons other than firearms, including all indoor or outdoor shooting ranges.

(A) Any provision of an ordinance that is designed or enforced to effectively restrict or prohibit the sale, purchase, transfer,

manufacture, repair, or display of firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal defense tools or products other than firearms which are otherwise lawful under the laws of this state is void.

(B) A municipality may not use its planning or zoning powers solely to prohibit the sale of firearms, ammunition, firearms accessories or components as that term is defined in §31A-2B-3 of this code, or personal defense tools or products other than firearms within a prescribed distance of any other type of commercial property or of school property or other educational property.

Any person aggrieved by a violation of this subdivision may seek redress as provided in subsection (f) of this section.

CHAPTER 269

(Com. Sub. for H. B. 5232 - By Delegates Maynor, Phillips, Smith, Crouse, McGeehan, Horst, Steele, Willis, Gearheart, Hornby, and Hite)

[Passed March 8, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §61-7-14 of the Code of West Virginia, 1931, as amended, relating to instances when an employer may not terminate or take adverse action against an employee in certain circumstances; updating the Business Liability Protection Act; clarifying when a property owner may inquire as to lawful firearm possession; clarifying when a property owner may not remove a person from the property based on lawful firearm possession; defining terms.

Be it enacted by the Legislature of West Virginia:

CHAPTER 61. CRIMES AND THEIR PUNISHMENT.

ARTICLE 7. DANGEROUS WEAPONS.

§61-7-14. Right of certain persons to limit possession of firearms on premises.

This section may be referred to as "The Business Liability Protection Act".

(a) As used in this section:

(1) "Parking lot" means any property that is used for parking motor vehicles and is available to customers, employees, or invitees for temporary or long-term parking or storage of motor vehicles: *Provided*, That for purposes of this section, parking lot

does not include the private parking area at a business located at the primary residence of the property owner.

(2) "Motor vehicle" means any privately-owned automobile, truck, minivan, sports utility vehicle, motor home, recreational vehicle, motorcycle, motor scooter, or any other vehicle operated on the roads of this state and, which is required to be registered under state law: *Provided*, That for purposes of this section, motor vehicle does not mean vehicles owned, rented, or leased by an employer and used by the employee in the course of employment.

(3) "Employee" means any person, who is over 18 years of age, not prohibited from possessing firearms by the provisions of this code or federal law, and who:

(A) Works for salary, wages, or other remuneration;

(B) Is an independent contractor; or

(C) Is a volunteer, intern, or other similar individual for an employer.

(4) "Employer" means any business that is a sole proprietorship, partnership, corporation, limited liability company, professional association, cooperative, joint venture, trust, firm, institution, association, or public-sector entity, that has employees.

(5) "Invitee" means any business invitee, including a customer or visitor, who is lawfully on the premises of a public or private employer.

(6) "Locked inside or locked to" means:

(A) The vehicle is locked; or

(B) The firearm is in a locked trunk, glove box, or other interior compartment, or

(C) The firearm is in a locked container securely fixed to the vehicle; or

(D) The firearm is secured and locked to the vehicle itself by the use of some form of attachment and lock.

(b) Notwithstanding the provisions of this article, any owner, lessee, or other person charged with the care, custody, and control of real property may prohibit the carrying openly or concealing of any firearm or deadly weapon on property under his or her domain: *Provided*, That for purposes of this section "person" means an individual or any entity which may acquire title to real property: *Provided, however*, That for purposes of this section "natural person" means an individual human being.

(c) Any natural person carrying or possessing a firearm or other deadly weapon on the property of another who refuses to temporarily relinquish possession of the firearm or other deadly weapon, upon being requested to do so, or to leave the premises, while in possession of the firearm or other deadly weapon, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than six months, or both: *Provided*, That the provisions of this section do not apply to a natural person as set forth in §61-7-6(a)(5) through §61-7-6(a)(7) and §61-7-6(a)(9) through §61-7-6(a)(10) of this code while acting in his or her official capacity or to a natural person as set forth in §61-7-6(b)(1) through §61-7-6(b)(8) of this code, while acting in his or her official capacity: *Provided, however*, That under no circumstances, except as provided for by the provisions of §61-7-11a(b)(2)(A) through (K) of this code, may any natural person possess or carry or cause the possession or carrying of any firearm or other deadly weapon on the premises of any primary or secondary educational facility in this state unless the natural person is a law-enforcement officer or he or she has the express written permission of the county school superintendent.

(d) *Prohibited acts*. – Notwithstanding the provisions of subsections (b) and (c) of this section:

(1) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit any customer, employee, or invitee from possessing any legally owned firearm, when the firearm is:

(A) Lawfully possessed;

(B) Out of view;

(C) Locked inside or locked to a motor vehicle in a parking lot; and

(D) When the customer, employee, or invitee is lawfully allowed to be present in that area.

(2) No owner, lessee, or other person charged with the care, custody, and control of real property may violate the privacy rights of a customer, employee, or invitee by conducting an actual search of a motor vehicle in a parking lot to ascertain the presence of a firearm within the vehicle: *Provided*, That a search of a motor vehicle in a parking lot to ascertain the presence of a firearm within that motor vehicle may only be conducted by on-duty, law enforcement personnel, in accordance with statutory and constitutional protections.

(3) No owner, lessee, or other person charged with the care, custody, and control of real property may remove a customer, employee, or invitee for storing a firearm inside a motor vehicle in a parking lot as defined in this section, nor may they terminate an employee or take other adverse employment action against an employee for such storage, except in cases of threats of unlawful action.

(4) No employer may condition employment upon either:

(A) The fact that an employee or prospective employee holds or does not hold a license issued pursuant to §61-7-4 or §61-7-4a of this code; or

(B) An agreement with an employee or a prospective employee prohibiting that natural person from keeping a legal firearm locked inside or locked to a motor vehicle in a parking lot when the firearm is kept for lawful purposes.

(5) No owner, lessee, or other person charged with the care, custody, and control of real property may prohibit or attempt to

prevent any customer, employee, or invitee from entering the parking lot of the person's place of business because the customer's, employee's, or invitee's motor vehicle contains a legal firearm being carried for lawful purposes that is out of view within the customer's, employee's, or invitee's motor vehicle.

(e) Limitations on duty of care; immunity from civil liability. —

(1) When subject to the provisions of subsection (d) of this section, an employer, owner, lessee, or other person charged with the care, custody, and control of real property has no duty of care related to the acts prohibited under said subsection.

(2) An employer, owner, lessee, or other person charged with the care, custody, and control of real property is not liable in a civil action for money damages based upon any actions or inactions taken in compliance with subsection (d) of this section. The immunity provided in this subdivision does not extend to civil actions based on actions or inactions of employers, owners, lessees, or other persons charged with the care, custody, and control of real property unrelated to subsection (d) of this section.

(3) Nothing contained in this section may be interpreted to expand any existing duty or create any additional duty on the part of an employer, owner, lessee, or other person charged with the care, custody, and control of real property.

(f) *Enforcement*. – The Attorney General is authorized to enforce the provisions of subsection (d) of this section and may bring an action seeking either:

(1) Injunctive or other appropriate equitable relief to protect the exercise or enjoyment of the rights secured in subsection (d) of any customer, employee, or invitee;

(2) Civil penalties of no more than $5,000 for each violation of subsection (d) and all costs and attorney's fees associated with bringing the action; or

(3) Both the equitable relief and civil penalties described in subdivisions (1) and (2) of this subsection, including costs and

attorney's fees. This action must be brought in the name of the state and instituted in the Circuit Court of Kanawha County. The Attorney General may negotiate a settlement with any alleged violator in the course of his or her enforcement of subsection (d) of this section.

(4) Notwithstanding any other provision in this section to the contrary, the authority granted to the Attorney General in this subsection does not affect the right of a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section to bring an action for violation of the rights protected under this section in his or her own name and instituted in the circuit court for the county where the alleged violator resides, has a principal place of business, or where the alleged violation occurred. In any successful action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court may award injunctive or other appropriate equitable relief and civil penalties as set forth in subdivisions one, two and three of this subsection. In any action brought by a customer, employee, or invitee aggrieved under the authority of subsection (d) of this section, the court shall award all court costs and attorney's fees to the prevailing party.

CHAPTER 270

(S. B. 170 - By Senators Weld, Takubo, Phillips, Tarr, Oliverio, Deeds, Swope, Hamilton, Queen, Woodrum, Stuart, Jeffries, and Grady)

[Passed March 8, 2024; in effect from passage]
[Approved by the Governor on March 26, 2024.]

AN ACT to amend and reenact §23-4-1 of the Code of West Virginia, 1931, as amended, relating to compensable diseases of certain firefighters covered by workers' compensation; establishing rebuttable presumption of injury arising out of, and in the course of, employment for certain covered firefighters that develop bladder cancer, mesothelioma, and testicular cancer; providing for conditions of the presumption; and providing that the rebuttable presumption expires on July 1, 2027, unless extended by the Legislature.

Be it enacted by the Legislature of West Virginia:

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1. To whom compensation fund disbursed; occupational pneumoconiosis and other occupational diseases included in "injury" and "personal injury"; definition of occupational pneumoconiosis and other occupational diseases; rebuttable presumption for cardiovascular injury and disease or pulmonary disease for firefighters.

(a) Subject to the provisions and limitations elsewhere in this chapter, workers' compensation benefits shall be paid to the employees of employers subject to this chapter who have received personal injuries in the course of and resulting from their covered employment or to the dependents, if any, of the employees in case death has ensued, according to the provisions hereinafter made:

Provided, That in the case of any employees of the state and its political subdivisions, including: Counties; municipalities; cities; towns; any separate corporation or instrumentality established by one or more counties, cities or towns as permitted by law; any corporation or instrumentality supported in most part by counties, cities or towns; any public corporation charged by law with the performance of a governmental function and whose jurisdiction is coextensive with one or more counties, cities or towns; any agency or organization established by the Department of Mental Health, or its successor agencies, for the provision of community health or intellectual and developmental disability services and which is supported, in whole or in part, by state, county, or municipal funds; board, agency, commission, department, or spending unit, including any agency created by rule of the Supreme Court of Appeals, who have received personal injuries in the course of, and resulting from, their covered employment, the employees are ineligible to receive compensation while the employees are at the same time, and for the same reason, drawing sick leave benefits. The state employees may only use sick leave for nonjob-related absences consistent with sick leave use and may draw workers' compensation benefits only where there is a job-related injury. This proviso does not apply to permanent benefits: *Provided, however*, That the employees may collect sick leave benefits until receiving temporary total disability benefits. The Division of Personnel shall propose rules for legislative approval pursuant to §29A-3-1 *et seq.* of this code relating to use of sick leave benefits by employees receiving personal injuries in the course of, and resulting from, covered employment: *Provided further*, That if an employee is injured in the course of and resulting from covered employment and the injury results in lost time from work and the employee, for whatever reason, uses or obtains sick leave benefits and subsequently receives temporary total disability benefits for the same time period, the employee may be restored sick leave time taken by him or her as a result of the compensable injury by paying to his or her employer the temporary total disability benefits received or an amount equal to the temporary total disability benefits received. The employee shall be restored sick leave time on a day-for-day basis which corresponds to temporary total disability benefits paid to the employer: *And provided further*, That

since the intent of this subsection is to prevent an employee of the state or any of its political subdivisions from collecting both temporary total disability benefits and sick leave benefits for the same time period, nothing in this subsection prevents an employee of the state or any of its political subdivisions from electing to receive either sick leave benefits or temporary total disability benefits, but not both.

(b) For the purposes of this chapter, the terms "injury" and "personal injury" include occupational pneumoconiosis and any other occupational disease, as hereinafter defined, and workers' compensation benefits shall be paid to the employees of the employers in whose employment the employees have been exposed to the hazards of occupational pneumoconiosis or other occupational disease and have contracted occupational pneumoconiosis or other occupational disease, or have suffered a perceptible aggravation of an existing pneumoconiosis or other occupational disease, or to the dependents, if any, of the employees, in case death has ensued, according to the provisions hereinafter made: *Provided*, That compensation is not payable for the disease of occupational pneumoconiosis, or death resulting from the disease, unless the employee has been exposed to the hazards of occupational pneumoconiosis in the State of West Virginia over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to such hazards, or for any five of the 15 years immediately preceding the date of his or her last exposure. An application for benefits on account of occupational pneumoconiosis shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from such claim among the employers by whom the claimant was employed for as much as 60 days during the period of three years immediately preceding the date of last exposure to the hazards of occupational pneumoconiosis. The allocation shall be based upon the time and degree of exposure withemployer.

(c) For the purposes of this chapter, disability or death resulting from occupational pneumoconiosis, as defined in subsection (d) of

this section, shall be treated and compensated as an injury by accident.

(d) Occupational pneumoconiosis is a disease of the lungs caused by the inhalation of minute particles of dust over a period of time due to causes and conditions arising out of, and in the course of, the employment. The term "occupational pneumoconiosis" includes, but is not limited to, such diseases as silicosis, anthracosilicosis, coal worker's pneumoconiosis, commonly known as black lung or miner's asthma, silicotuberculosis (silicosis accompanied by active tuberculosis of the lungs), coal worker's pneumoconiosis accompanied by active tuberculosis of the lungs, asbestosis, siderosis, anthrax, and any and all other dust diseases of the lungs and conditions and diseases caused by occupational pneumoconiosis which are not specifically designated in this section meeting the definition of occupational pneumoconiosis set forth in this subsection.

(e) In determining the presence of occupational pneumoconiosis, x-ray evidence may be considered, but may not be accorded greater weight than any other type of evidence demonstrating occupational pneumoconiosis.

(f) For the purposes of this chapter, occupational disease means a disease incurred in the course of and resulting from employment. No ordinary disease of life to which the general public is exposed outside of the employment is compensable except when it follows as an incident of occupational disease as defined in this chapter. Except in the case of occupational pneumoconiosis, a disease is considered to have been incurred in the course of, or to have resulted from, the employment only if it is apparent to the rational mind, upon consideration of all the circumstances: (1) That there is a direct causal connection between the conditions under which work is performed and the occupational disease; (2) that it can be seen to have followed as a natural incident of the work as a result of the exposure occasioned by the nature of the employment; (3) that it can be fairly traced to the employment as the proximate cause; (4) that it does not come from a hazard to which workmen would have been equally exposed outside of the employment; (5) that it is incidental to the character of the business and not

independent of the relation of employer and employee; and (6) that it appears to have had its origin in a risk connected with the employment and to have flowed from that source as a natural consequence, though it need not have been foreseen or expected before its contraction: *Provided*, That compensation is not payable for an occupational disease or death resulting from the disease unless the employee has been exposed to the hazards of the disease in the State of West Virginia over a continuous period that is determined to be sufficient, by rule of the Insurance Commissioner and Industrial Council, for the disease to have occurred in the course of and resulting from the employee's employment. An application for benefits on account of an occupational disease shall set forth the name of the employer or employers and the time worked for each. The commission may allocate to and divide any charges resulting from the claim among the employers by whom the claimant was employed. The allocation shall be based upon the time and degree of exposure with each employer.

(g) No award may be made under the provisions of this chapter for any occupational disease contracted prior to July 1, 1949. An employee has contracted an occupational disease within the meaning of this subsection if the disease or condition has developed to such an extent that it can be diagnosed as an occupational disease.

(h) For purposes of this chapter, a rebuttable presumption that a professional firefighter who has developed a cardiovascular or pulmonary disease or sustained a cardiovascular injury or who has developed leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or testicular cancer arising out of, and in the course of, employment as a firefighter has received an injury or contracted a disease arising out of, and in the course of, his or her employment exists if: (A) The person has been actively employed by a fire department as a professional firefighter for a minimum of two years prior to the cardiovascular injury or onset of a cardiovascular or pulmonary disease or death; (B) the injury or onset of the disease or death occurred within six months of having participated in firefighting or a training or drill exercise which actually involved firefighting; and (C) in the case of the

development of leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or testicular cancer, the person has been actively employed by a fire department as a professional firefighter for a minimum of five years in the state prior to the development of leukemia, lymphoma, multiple myeloma, bladder cancer, mesothelioma, or testicular cancer, has not used tobacco products more than six times in a calendar year for at least 10 years, and is not over the age of 65 years. When the above conditions are met, it shall be presumed that sufficient notice of the injury, disease, or death has been given and that the injury, disease, or death was not self-inflicted. The amendments made to this section during the regular session of the Legislature, 2024, to include bladder cancer, mesothelioma or testicular cancer arising out of, and in the course of, employment as a firefighter as a rebuttable presumption expire on July 1, 2027, unless extended by the Legislature.

(i) Claims for occupational disease as defined in §23-4-1(f) of this code, except occupational pneumoconiosis for all workers and pulmonary disease and cardiovascular injury and disease for professional firefighters, shall be processed in like manner as claims for all other personal injuries.

CHAPTER 271

(H. B. 5348 - By Delegates Brooks, Toney, Kirby, Steele, and Maynor)

[Passed March 9, 2024; in effect ninety days from passage.]
[Approved by the Governor on March 27, 2024.]

AN ACT to amend and reenact section two, chapter 136, Acts of the Legislature, regular session, 1982, as last amended and reenacted by section two, chapter 154, Acts of the Legislature, regular session, 1987, relating to renaming the Raleigh County Recreation Authority to the Raleigh County Parks and Recreation Authority.

Be it enacted by the Legislature of West Virginia:

RALEIGH COUNTY PARKS AND RECREATION AUTHORITY.

§2. Members; appointment; powers and duties generally; officers; bylaws; rules and regulations; compensation.

The authority shall consist of five or seven members at the discretion of the Raleigh County commission to be appointed by the Raleigh County commission. Such members shall be appointed and such authority shall commence operation on or before the first day of July, 1984. If the authority consists of seven members, no more than four shall be from the same political party, and if the authority consists of five members then no more than three members shall be from the same political party. One member shall be appointed for a term of five years, one member for a term of four years, one member for a term of three years, one member for a term of two years and one member for a term of one year. The initial terms of office for new appointees shall commence on the first day of July, 1984. Each successor member shall be appointed

for a term of five years, except that any person appointed to fill a vacancy occurring before the expiration of the term shall serve only for the unexpired portion thereof. Any member of the authority shall be eligible for reappointment and the county commission may remove any member for cause. There shall be an annual meeting of the authority on the second Monday in July in each year and a monthly meeting on the day in each month which the authority may designate in its bylaws. A special meeting may be called by the president, the secretary or any two members of the authority and shall be held only after all of the members are given notice thereof in writing. At all meetings more than fifty percent of the members shall constitute a quorum and at each annual meeting of the authority it shall elect a president, a vice president, a secretary and a treasurer. The authority shall adopt such bylaws, rules and regulations as are necessary for its own guidance. The authority shall have all the powers necessary, convenient and advisable to effectuate the purposes of this act. In order to keep the peace within the boundaries of the recreational facilities under the authority's supervision and control, the authority is specifically authorized to adopt as its own any rules or regulations promulgated by the West Virginia department of natural resources or the West Virginia department of commerce for the regulation of use of state parks, forests and hunting and fishing areas. Upon adoption of any such rules and regulations by the authority, the same shall have the authority of law and any magistrate within Raleigh County shall have jurisdiction of any violation thereof. Each member of the authority shall be compensated monthly by the county in an amount to be fixed by the county commission. Each member presently holding a position on the board of the Raleigh County Parks and Recreation Authority shall keep the same until his term shall normally expire.

LEGISLATURE OF WEST VIRGINIA

CONSTITUTIONAL AMENDMENT

REGULAR SESSION, 2024

COMMITTEE SUBSTITUTE FOR HOUSE JOINT RESOLUTION 28

(Com. Sub. for HJR 28 - By Delegates Hanshaw (Mr. Speaker), McGeehan, Phillips, Kimble, Barnhart, Chiarelli, Street, Rohrbach, C. Pritt, Ellington, and Jeffries)

[Adopted by the Legislature on March 9, 2024.]

Proposing an amendment to the Constitution of the State of West Virginia amending Article III thereof by adding thereto a new section, designated section twenty-three, relating to the protection from medically-assisted suicide or euthanasia in West Virginia; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2024, which proposed amendment is that Article III thereof, be amended by adding thereto a new section, designated section twenty-three, to read as follows:

ARTICLE III. BILL OF RIGHTS.

§3-23. Protection against medically assisted suicide.

No person, physician, or health care provider in the State of West Virginia shall participate in the practice of medically assisted suicide, euthanasia, or mercy killing of a person. Nothing in this section prohibits the administration or prescription of medication for the purpose of alleviating pain or discomfort while the patient's condition follows its natural course; nor does anything in this section prohibit the withholding or withdrawing of life-sustaining treatment, as requested by the patient or the patient's decision-maker, in accordance with State law. Further, nothing in this section prevents the State from providing capital punishment.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered "Amendment 1" and designated as the "Protection of persons against medically assisted suicide" and the purpose of the proposed amendment is summarized as follows: "The purpose of this amendment is to protect West Virginians against medically assisted suicide."

LEGISLATURE OF WEST VIRGINIA

ACTS

FIRST EXTRAORDINARY SESSION, 2024

CHAPTER 1

(S. B. 1001 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 21, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Health, Department of Health – Central Office, fund 0407, fiscal year 2025, organization 0506, Office of the Inspector General, fund 0437, fiscal year 2025, organization 0513, Department of Health, Consolidated Medical Services Fund, fund 0525, fiscal year 2025, organization 0506, Department of Human Services, Division of Human Services, fund 0403, fiscal year 2025, organization 0511, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025, by adding new items of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular appropriations for the fiscal year 2025;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, and included a Statement of the State Fund, General Revenue, for the fiscal year 2025; and

WHEREAS, It appears from the Statement of the State Fund, General Revenue, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, fund 0407, fiscal year 2025, organization 0506, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH

57 - Department of Health – Central Office

(W.V. Code Chapter 16)

Fund 0407 FY 2025 Org 0506

	Appro-priation		General Revenue Fund
Personal Services and Employee Benefits	00100	$	3,362,243
Salary and Benefits of Cabinet Secretary and Agency Heads	00201		358,400
Unclassified	09900		6,459
Current Expenses	13000		225,201
Capital Outlay and Maintenance (R)	75500		70,000
BRIM Premium	91300		169,791

Department of Health Reserve.....	XXXXX	5,013,844
Total.....		$ 9,205,938

Any unexpended balances remaining in the appropriations for Capital Outlay and Maintenance (fund 0407, appropriation 75500), Emergency Response Entities – Special Projects (fund 0407, appropriation 82200), Tobacco Education Program (fund 0407, appropriation 90600), and Pregnancy Centers – Surplus (fund 0407, appropriation 49999) at the close of the fiscal year 2024 are hereby reappropriated for expenditure during the fiscal year 2025.

Any unexpended balances remaining in the appropriation Chief Medical Examiner (fund 0407, appropriation 04500) at the close of fiscal year 2024 shall be transferred to Chief Medical Examiner appropriation (fund 0432, appropriation 04500).

Any unexpended balances remaining in the appropriation Safe Drinking Water Program (fund 0407, appropriation 18700) at the close of fiscal year 2024 shall be transferred to Environmental Health Services appropriation (fund 0417, appropriation 30002).

Any unexpected balances remaining in the appropriation Statewide EMS Program Support (fund 0407, appropriation 38300) at the close of fiscal year 2024 shall be transferred to Statewide EMS Program Support appropriation (fund 0434, appropriation 38300).

Any unexpended balances remaining in the appropriation Office of Medical Cannabis (fund 0407, appropriation 42001) at the close of fiscal year 2024 shall be transferred to Office of Medical Cannabis appropriation (fund 0427, appropriation 42001).

Any unexpended balances remaining in the appropriation Office of Medical Cannabis – Surplus (fund 0407, appropriation 42099) at the close of fiscal year 2024 shall be transferred to Office of Medical Cannabis – Surplus appropriation (fund 0427, appropriation 42099).

Any unexpended balances remaining in the appropriation Vaccine for Children (fund 0407, appropriation 55100) at the close

of fiscal year 2024 shall be transferred to Vaccine for Children appropriation (fund 0418, appropriation 55100).

Any unexpended balances remaining in the appropriation Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees (fund 0407, appropriation 57500) at the close of fiscal year 2024 shall be transferred to the Maternal and Child Health Clinics, Clinicians and Medical Contracts and Fees appropriation (fund 0405, appropriation 57500).

Any unexpended balances remaining in the appropriations Office of Drug Control Policy (fund 0407, appropriation 35401) at the close of fiscal year 2024 shall be transferred to Office of Drug Control Policy (fund 0403, appropriation 35401).

Any unexpended balances remaining in the appropriations Office of Drug Control Policy – Surplus (fund 0407, appropriation 35402) at the close of fiscal year 2024 shall be transferred to Office of Drug Control Policy – Surplus (fund 0403, appropriation 35402).

Notwithstanding the provisions of Title I, section three of this bill, the Secretary of the Department of Health 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: *Provided, further, notwithstanding the above,* That for Fiscal Year 2025 the Secretary of the Department of Health shall have additional authority to transfer appropriations between Personal Services and Employee Benefits and other dedicated appropriations within the respective departments to effectuate the 5 percent average salary increases granted during the 2024 regular legislative session: *Provided, further, notwithstanding the above,* That for Fiscal Year 2025 the Secretary of Health shall have the authority to make transfers from the Department of Health Reserve (fund 0407, appropriation XXXXX) appropriation to any general revenue funds under the department. The Secretary shall submit a monthly report to the Joint Committee on Government and Finance

beginning on August 1, 2024, on transfers made from the Department of Health Reserve appropriation. The report shall provide an individual accounting on each transfer of funds out of the Department of Health Reserve appropriation, including the fund and appropriation to which the transfer was made and a detailed explanation of the need for the transfer. At the request of the co-chairs, the report shall be presented in person to the Joint Committee on Government and Finance.

Any unexpended balance remaining in the appropriation Department of Health Reserve (fund 0407, appropriation XXXXX) as of March 31, 2025, shall revert to the unappropriated surplus balance of General Revenue.

And, That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, fund 0437, fiscal year 2025, organization 0513, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH

78 - Office of the Inspector General
(W.V. Code Chapter 16B)

Fund 0437 FY 2025 Org 0513

	Appro-priation	General Revenue Fund
Personal Services and Employee Benefits	00100	$ 5,583,690
Unclassified	09900	57,469
Current Expenses	13000	1,583,603
Total		$ 7,224,762

From the above appropriation for Current Expenses (fund 0437, appropriation 13000), $73,065 shall be used for informal dispute resolution relating to nursing home administrative appeals and $650,000 shall be transferred to OIG fund 5209.

And, That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, to fund 0525, fiscal year 2025, organization 0506, be supplemented and amended to add a new item of appropriation:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH

79A - Consolidated Medical Services Fund

(W.V. Code Chapter 16)

Fund 0525 FY 2025 Org 0506

Any unexpended balances remaining in the appropriations for Behavioral Health Program – Surplus (fund 0525, appropriation 63100) at the close of the fiscal year 2024 are hereby reappropriated for expenditure during the fiscal year 2025.

And, That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, fund 0403, fiscal year 2025, organization 0511, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HUMAN SERVICES

80 - Division of Human Services
(W.V. Code Chapters 9, 48, and 49)

Fund 0403 FY 2025 Org 0511

	Appro-priation	General Revenue Fund
Personal Services and Employee Benefits	00100	$ 32,554,845
Salary and Benefits of Cabinet Secretary and Agency Heads	00201	159,250
Unclassified	09900	5,120,050
Current Expenses	13000	5,557,409
Child Care Development	14400	3,138,536
Jobs & Hope	14902	2,357,000
Social Services	19500	46,136
Behavioral Health Program (R)	21900	66,864,419
Family Resource Networks	27400	1,762,464
Substance Abuse Continuum of Care (R)	35400	1,656,000
Office of Drug Control Policy (R)	35401	567,875
James "Tiger" Morton Catastrophic Illness Fund	45500	373,424
In-Home Family Education	68800	1,000,000
WV Works Separate State Program	69800	1,381,500
Child Support Enforcement	70500	6,227,186
Temporary Assistance for Needy Families/ Maintenance of Effort	70700	23,237,186
Child Care – Maintenance of Effort Match	70800	5,693,743
Capital Outlay and Maintenance (R)	75500	11,875
Medical Services Administrative Costs	78900	58,017
Indigent Burials (R)	85100	1,550,000
CHIP Administrative Costs	85601	633,107
CHIP Services	85602	12,122,368
BRIM Premium	91300	945,891
Children's Trust Fund – Transfer	95100	220,000
Department of Human Services Reserve	XXXXX	183,437,463
Total		$ 356,675,744

Any unexpended balances remaining in the appropriations for Behavioral Health Program (fund 0403, appropriation 21900), Substance Abuse Continuum of Care (fund 0403, appropriation 35400), Office of Drug Control Policy (fund 0403, appropriation 35401), Capital Outlay and Maintenance (fund 0403, appropriation 75500), Indigent Burials (fund 0403, appropriation 85100), and Office of Drug Control Policy – Surplus (fund 0403, appropriation 35402) at the close of the fiscal year 2024 are hereby reappropriated for expenditure during the fiscal year 2025.

Notwithstanding the provisions of Title I, section three of this bill, the Secretary of the Department of Human Services 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: *Provided, further, notwithstanding the above,* That for Fiscal Year 2025 the Secretary of the Department of Human Services shall have additional authority to transfer appropriations between Personal Services and Employee Benefits and other dedicated appropriations within the respective departments to effectuate the 5 percent average salary increases granted during the 2024 regular legislative session: *And provided, further, notwithstanding the above,* That for Fiscal Year 2025 the Secretary of Human Services shall have the authority to make transfers from the Department of Human Services Reserve (fund 0403, appropriation XXXXX) appropriation to any general revenue funds under the department: *And provided, further, notwithstanding the above,* That no funds may be transferred from Fund 0485, FY 2025 Org 0511 Bureau for Medical Services - Home and Community Based Waiver Programs to any other appropriation. The Secretary shall submit monthly report to the Joint Committee on Government and Finance beginning on August 1, 2024, on transfers made from the Department of Human Services Reserve appropriation. The report shall provide an individual accounting on each transfer of funds out of the Department of Human Services appropriation, including the fund and appropriation to which the transfer was made and a detailed explanation of the need for the transfer. At the request of the co-

chairs, the report shall be presented in person to the Joint Committee on Government and Finance.

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.

Any unexpended balance remaining in the appropriation Department of Human Services Reserve (fund 0403, appropriation XXXXX) as of March 31, 2025, shall revert to the unappropriated surplus balance of General Revenue.

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 W.V. 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 Human Services.

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.

Included in the appropriation for Behavioral Health Program (fund 0403, appropriation 21900), is $100,000 for Recovery Point of Huntington.

The above appropriation for Children’s Trust Fund – Transfer (fund 0403, appropriation 95100) shall be transferred to the Children’s Trust Fund (fund 5469).

From the above appropriation for Substance Abuse Continuum of Care (fund 0403, appropriation 35400), the funding will be consistent with the goal areas outlined in the Comprehensive Substance Abuse Strategic Action Plan.

CHAPTER 2

(S. B. 1002 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Transportation, Division of Highways, fund 0620, fiscal year 2024, organization 0803, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by increasing an existing item of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue and the Executive message, there remains an unappropriated balance in the State

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2023, known as the budget bill, fund 0620, fiscal year 2024, organization 0803, be supplemented and amended to read a as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF TRANSPORTATION

87a - Division of Highways

(W.V. Code Chapters 17 and 17C)

Fund 0620 FY 2024 Org 0803

		Appro-priation	General Revenue Fund
1	Directed Transfer.....	70000	$ 150,000,000
2	Directed Transfer – Surplus	70099	150,000,000

3 The above appropriation for Directed Transfer (fund 0620, appropriation 70000) shall be

4 transferred to the cash balance of the State Road Fund to be utilized by the Division of

5 Highways.

6 The above appropriation for Directed Transfer - Surplus (fund 0620, appropriation

7 70099) shall be transferred to the cash balance of the State Road Fund to be utilized by the 8Division of Highways.

CHAPTER 3

(S. B. 1003 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Governor's Office – Civil Contingent Fund, fund 0105, fiscal year 2024, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by adding a new item of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue and the Executive message, there remains an unappropriated balance in the State

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0105, fiscal year 2024, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 - Governor's Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2024 Org 0100

		Appro-priation	General Revenue Fund
2a	Agriculture Lab (R)	XXXXX	50,000,000

Any unexpended balance remaining in the appropriation for Agriculture Lab (fund 0105, appropriation XXXXX) at the close of the fiscal year 2024 is hereby reappropriated for expenditure during the fiscal year 2025.

CHAPTER 4

(S. B. 1004 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Governor's Office, fund 0101, fiscal year 2024, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by adding a new item of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue and the Executive message, there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0101, fiscal year 2024, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

5 - Governor's Office

(W.V. Code Chapter 5)

Fund 0101 FY 2024 Org 0100

		Appro-priation	General Revenue Fund
9a	Posey Perry Emergency Food Bank Fund (R).....	XXXXX	10,000,000

Any unexpended balance remaining in the appropriation for Posey Perry Emergency Food Bank Fund (fund 0101, appropriation XXXXX) at the close of the fiscal year 2024 is hereby reappropriated for expenditure during the fiscal year 2025.

CHAPTER 5

(S. B. 1005 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Education, State Board of Education – State Department of Education, fund 0313, fiscal year 2024, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by increasing existing items of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue and the Executive message, there remains an unappropriated balance in the State

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0313, fiscal year 2024, organization 0402, be supplemented and amended by increasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

44 - State Board of Education –

State Department of Education

(W.V. Code Chapters 18 and 18A)

Fund 0313 FY 2024 Org 0402

		Appro-priation	General Revenue Fund
6	Increased Enrollment.....	14000	3,289,060
12	Hope Scholarship Program (R).....	30401	27,321,613

CHAPTER 6

(S. B. 1006 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

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, 2025, to the Department of Human Services, Bureau for Medical Services – Policy and Programming, fund 0484, fiscal year 2025, organization 0511, State Board of Education – State Department of Education, fund 0313, fiscal year 2025, organization 0402 by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0484, fiscal year 2025, organization 0511, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 9. Appropriations from general revenue fund surplus accrued.

436 - Bureau for Medical Services –

Policy and Programming

(W.V. Code Chapter 16)

Fund 0484 FY 2025 Org 0511

1	Medical Services - Surplus	63300	$	18,000,000

And, That the total appropriation for the fiscal year ending June 30, 2025, to fund 0313, fiscal year 2025, organization 0402, be supplemented and amended by decreasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 9. Appropriations from general revenue fund surplus accrued.

438 - State Board of Education –

State Department of Education

(W.V. Code Chapters 18 and 18A)

Fund 0313 FY 2025 Org 0402

1	Hope Scholarship Program - Surplus.....	XXXXX	$	27,321,613

CHAPTER 7

(S. B. 1007 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Higher Education Policy Commission, Higher Education Policy Commission – Administration – Control Account, fund 0589, fiscal year 2024, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by adding new items of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a Statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue, and the Executive message, there remains an unappropriated surplus balance in the State

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0589, fiscal year 2024, organization 0441, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

105 - Higher Education Policy Commission –

Administration –

Control Account

(W.V. Code Chapter 18B)

Fund 0589 FY 2024 Org 0441

		Appro-priation	General Revenue Fund
6a	Higher Education Grant Program – Surplus (R)	XXXXX	40,000,000
14a	Support for Colleges and Universities – Surplus (R)	XXXXX	32,000,000
14b	College Access Grant – Surplus (R)	XXXXX	11,215,351

Any unexpended balance remaining in the appropriation for Higher Education Grant Program – Surplus (fund 0589, appropriation XXXXX), Support for Colleges and Universities – Surplus (fund 0589, appropriation XXXXX), and College Access Grant – Surplus (fund 0589, appropriation XXXXX) at the close of the fiscal year 2024 is hereby reappropriated for expenditure during the fiscal year 2025.

CHAPTER 8

(S. B. 1008 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated balance in the State Fund, General Revenue, to the Department of Veterans' Assistance, fund 0456, fiscal year 2024, organization 0613, by supplementing and amending the appropriations for the fiscal year ending June 30, 2024, by increasing existing items of appropriation.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget document, Statement of the State Fund, General Revenue and the Executive message, there remains an unappropriated balance in the State

Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2024, to fund 0456, fiscal year 2024, organization 0613, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

92 - Department of Veterans' Assistance

(W.V. Code Chapter 9A)

Fund 0456 FY 2024 Org 0613

		Appro-priation	General Revenue Fund
13	Directed Transfer.....	70000	2,000,000

CHAPTER 9

(S. B. 1009 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, in Title II from the appropriations of public moneys out of the Treasury in the State Fund, General Revenue, to the Department of Education, State Board of Education – State Aid to Schools, fund 0317, fiscal year 2025, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025, by decreasing items of appropriation.

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill, fund 0317, fiscal year 2025, organization 0402 be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

47 - State Board of Education –

State Aid to Schools

(W.V. Code Chapters 18 and 18A)

Fund 0317 FY 2025 Org 0402

1	Other Current Expenses.....	02200	$ 198,222,172
2	Advanced Placement	05300	716,707
3	Professional Educators	15100	968,083,481
4	Service Personnel	15200	384,280,888
5	Fixed Charges.....	15300	116,934,718
6	Transportation.....	15400	99,231,183
7	Improved Instructional Programs	15600	63,626,561
8	Professional Student Support Services.....	65500	66,746,268
9	21st Century Strategic Technology Learning Growth	93600	49,747,886
10	Teacher and Leader Induction	93601	28,783,005
11	Basic Foundation Allowances		1,976,372,869
12	Less Local Share.....		(592,781,390)
13	Adjustments.....		8,212,243
14	Total Basic State Aid.....		1,391,803,722
15	Public Employees' Insurance Matching	01200	292,043,423
16	Teachers' Retirement System.....	01900	71,801,000
17	Retirement Systems – Unfunded Liability	77500	283,653,000
18	Total.....		$ 2,039,301,145

CHAPTER 10

(S. B. 1010 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

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, 2025, to the Department of Administration, Division of Information Services and Communications, fund 2220, fiscal year 2025, organization 0210, and Department of Administration, Office of Technology – Chief Technology Officer Administration Fund, fiscal year 2025, fund 2531, organization 0231, Department of Administration, Office of Technology – Office of Technology Fund, fund 2220, fiscal year 2025, organization 0231, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, In the 2024 regular session, the Legislature passed House Bill 5432, which consolidated and reorganized funds under the Department of Administration's Division of Information Services and Communication and Office of Technology, but did not reflect said consolidation and reorganization in Senate Bill 200, the Budget Bill; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 2220, fiscal year 2025, organization 0210, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

190 - Division of Information Services and Communications

(W.V. Code Chapter 5A)

Fund 2220 FY 2025 Org 0210

1	Personal Services and Employee Benefits.....	00100	$	23,367,490
2	Equipment.....	07000		2,050,000
3	Unclassified	09900		344,119
4	Current Expenses	13000		34,418,001
5	Other Assets.....	69000		1,045,000
6	Total.....		$	61,224,610

And, That the total appropriation for the fiscal year ending June 30, 2025, to fund 2531, fiscal year 2025, organization 0231, be supplemented and amended by decreasing existing items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

198 - Office of Technology –

Chief Technology Officer Administration Fund

(W.V. Code Chapter 5A)

Fund 2531 FY 2025 Org 0231

1	Personal Services and Employee Benefits.....	00100	$	469,481
2	Repairs and Alterations.....	06400		1,000
3	Equipment.....	07000		50,000

4	Unclassified	09900		6,949
5	Current Expenses	13000		2,196,504
6	Other Assets	69000		10,000
7	Total		$	2,733,934

And, That the total appropriation for the fiscal year ending June 30, 2025, to fund 2220, fiscal year 2025, organization 0231, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF ADMINISTRATION

197A - Office of Technology –

Office of Technology Fund

(W.V. Code Chapter 5A)

Fund 2220 FY 2025 Org 0231

1	Personal Services and Employee Benefits	00100	$	24,213,297
2	Repairs and Alterations	06400		1,000
3	Equipment	07000		2,100,000
4	Unclassified	09900		351,068
5	Current Expenses	13000		57,927,608
6	Other Assets	69000		1,055,000
7	Total		$	85,647,973

CHAPTER 11

(S. B. 1011 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; to take effect May 22, 2024]
[Approved by the Governor on May 24, 2024.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2024, in the amount of $83,215,351.25 from the Department Revenue, State Budget Office, PEIA Rainy Day Fund, fund 7402, fiscal year 2024, organization 0703.

WHEREAS, The Governor finds that the account balance in the Department of Revenue, State Budget Office, PEIA Rainy Day Fund, fund 7402, fiscal year 2024, organization 0703 exceeds that which is necessary for the purposes for which the account was established; and

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended supplemental appropriations from the balance of the State Fund, General Revenue;

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, for the fiscal year 2024; and

WHEREAS, It appears from the Executive Budget Document, Statement of the State Fund, General Revenue and the Executive Message, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2024; therefore

Be it enacted by the Legislature of West Virginia:

That the balance of the funds available for expenditure in the fiscal year ending June 30, 2024, in the Department Revenue, State Budget Office, PEIA Rainy Day Fund, fund 7402, fiscal year 2024, organization 0703, be decreased by expiring the amount of $83,215,351.25 to the unappropriated surplus balance of the State Fund, General Revenue to be available for appropriation during the fiscal year ending June 30, 2024.

CHAPTER 12

(S. B. 1012 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT expiring funds to the balance of the Department of Arts, Culture, and History, Cultural Facilities and Capital Resource Match Grant Program Fund, fund 3537, fiscal year 2023, organization 0432, in the amount of $2,877,636, from the balance of Lottery Net Profits, Division of Culture and History – Lottery Education Fund, fund 3534, organization 0432.

WHEREAS, The Governor finds that the account balance in Lottery Net Profits, Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2023, organization 0432, 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 Lottery Net Profits, Division of Culture and History – Lottery Education Fund, fund 3534, fiscal year 2023, organization 0432, be decreased by expiring the amount of $2,877,636 to the Department of Arts, Culture, and History, Cultural Facilities and Capital Resource Match Grant Program Fund, fund 3537, organization 0432.

CHAPTER 13

(S. B. 1014 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT to amend and reenact §3-5-21 of the Code of West Virginia, 1931, as amended, relating to political party nomination of presidential electors.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-21. Party conventions to nominate of presidential electors; candidates; organization; duties.

Presidential electors shall be nominated by each political party in a manner governed and prescribed by the rules of that state executive committee and not inconsistent with the rules of that national political party. If party rules do not provide procedures to nominate presidential electors, then candidates for presidential electors shall be nominated by the delegated representatives of the political party assembled in a state convention to be held during the months of June, July, or August next preceding any general election at which presidential electors are to be elected. The state executive committee of the political party, by resolution, shall designate the place and fix the date of the convention, shall prescribe the number of delegates thereto, and shall apportion the delegates among the several counties of the state in proportion to the vote cast in the state for the party's candidate for Governor at the last preceding general election at which a Governor was

elected. The state executive committee shall also ascertain and designate all offices for which candidates are to be nominated at the convention.

At least 60 days prior to the date fixed for holding any state convention, the chairman of the party's state executive committee shall cause to be delivered to the party's county executive committee in each county of the state a copy of the resolutions fixing the time and place for holding the state convention and prescribing the number of delegates from each county to the convention. Within 10 days after receipt of the copy of the resolutions, the party executive committee of each county shall meet and, by resolution, shall apportion the delegates to the state convention among the several magisterial districts of the county, on a basis of the vote received in the county by the candidate of the party for Governor at the last preceding general election at which a Governor was elected, but in such apportionment of county delegates each magisterial district shall be entitled to at least one delegate to the state convention. The party's county executive committee shall call a meeting of the members of the political party in mass convention in the county, which meeting shall be held at least 30 days prior to the date fixed for the state convention and at which meeting the members of the political party in each magisterial district shall elect the number of delegates to which the district is entitled in the state convention.

The meeting place in the county shall be as central and convenient as can reasonably be selected, and all recognized members of the political party shall be entitled to participate in any mass convention and in the selection of delegates. Notice of the time and place of holding the county mass convention and of the person who shall act as temporary chairman thereof shall be given by publication as a Class II-0 legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for the publication shall be the county. The first publication shall be made not more than 15 days and the second publication shall be made not less than five days prior to the date fixed for holding the convention. The notice published

shall specify the number of delegates which each magisterial district in the county is entitled to elect to the state convention.

Upon assembling, the mass convention of the county, shall choose a chairman and a secretary, who, within five days after the holding of the convention, shall certify to the chairman of the state executive committee of the political party and the chairman of the county committee of the political party, the names and addresses of the parties selected as delegates to the state convention.

If, after the election, a vacancy exists for a delegate from any magisterial district, the party's county executive committee, within 10 days after the mass convention, shall appoint a member of the political party in the magisterial district to fill the vacancy, and shall certify the appointment to the chairman of the state executive committee of the political party.

All contests over the selection of delegates to conventions shall be heard and determined by the party executive committee of the county from which the delegates are chosen, and the county executive committee shall, upon written petition of any contest, meet for a hearing and make a determination within 10 days after the holding of a county mass convention. The circuit court of the county and the Supreme Court of Appeals of the state shall have concurrent original jurisdiction to review, by mandamus or other proper proceeding, the decision of a county executive committee in any contest.

The delegates chosen and certified by and from the several magisterial districts in the state and, in the event of any contest, those prevailing in the contest, shall make up the state convention. The number present of those entitled to participate in any convention shall cast the entire vote to which the county is entitled in the convention, and it shall require a majority vote to nominate any candidate for office.

All nominations made at state conventions shall be certified within 15 days thereafter, by the chairman and the secretary of the convention, to the Secretary of State, who shall certify them to the clerk of the circuit court of each county concerned, and the names

of the persons so nominated shall be printed upon the regular ballot to be voted at the ensuing general election, except that the names of the presidential elector candidates shall not be printed thereon.

The delegates to any state convention may formulate and promulgate the party platform or declaration of party principles as to them shall seem advisable.

CHAPTER 14

(H. B. 113 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage.]
[Approved by the Governor on May 24, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-29a, relating to residential substance use disorder treatment facilities; prohibiting payment to facilities that do not meet certain requirements; requiring licensure; requiring accreditation; requiring the Bureau for Medical Services to make necessary filings; setting forth specific timeframe to obtain licensure and accreditation; requiring residential substance use disorder treatment facility to obtain accreditation within one year of operation; providing provisions for operation at a new site or new ownership; requiring a report; stating licensed treatment beds are subject to specific provisions; providing for rulemaking; and providing a sunset date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-29a. Prohibition against payments to certain residential substance use disorder facilities; Requirement for licensure and accreditation; and rulemaking.

(a) Effective January 1, 2026, unless otherwise mandated by federal law or regulation, neither the Bureau for Medical Services, nor any managed care organization contracted to provide services on behalf of the bureau, shall reimburse providers for services

rendered on or after January 1, 2026, at a residential substance use disorder treatment facility unless:

At the time treatment was rendered, the facility site was actively:

(A) Licensed by the West Virginia Office of Health Facility Licensure and Certification; and

(B) Accredited by the Commission on Accreditation of Rehabilitation Facilities International (CARF), the Joint Commission, or Det Norske Veritas (DNV) to operate an inpatient facility that provides behavioral health services.

(b) No later than October 1, 2025, the Bureau for Medical Services shall make all necessary filings with the Centers for Medicare and Medicaid Services and submit for public comment any changes to its provider manual that are necessary to ensure the ability to enforce the provisions of subsection (a) of this code section.

(c) Residential substance use disorder facilities shall obtain both licensure and accreditation as required by subsection (a) of this section by January 1, 2026. Any residential substance use disorder facility beginning new operations as a result of a lawful change in ownership, or opening a facility at a new site, shall be required to comply with the requirements of this section to be accredited with CARF, the Joint Commission, or DNV, within one year of its start of operations. However, the Office of Health Facility Licensure and Certification licensure requirement in subsection (a) of this section, all other applicable state laws and regulations, and requirements of the bureau required to be eligible for reimbursement for residential substance use disorder services, shall be applicable during this one year period.

(d) All licensed substance abuse treatment beds are subject to the provisions of §16-2D-9(5) of this code.

(e) The Office of the Inspector General shall propose or amend 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 section.

(f) The Bureau for Medical Services shall prepare a report to the Legislative Oversight Commission on Health and Human Resources Accountability on or before December 31, 2030. That report shall provide data on the effectiveness of the provisions of this section.

(g) Effective July 1, 2031, the provisions of this section shall expire and have no further force or effect unless continued by act of the Legislature.

CHAPTER 15

(S. B. 1015 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed May 20, 2024; in effect from passage]
[Approved by the Governor on May 24, 2024.]

AN ACT to amend and reenact §11B-2-20 of the Code of West Virginia, 1931, as amended, relating to the amount of surplus deposited into the Revenue Shortfall Reserve Fund; and providing for an effective date.

Be it enacted by the Legislature of West Virginia:

ARTICLE 2. STATE BUDGET OFFICE.

§11B-2-20. Reduction of appropriations; powers of Governor; Revenue Shortfall Reserve Fund and permissible expenditures therefrom.

(a) Notwithstanding any provision of this section, the Governor may reduce appropriations according to any of the methods set forth in §11B-2-21 and §11B-2-22 of this code. The Governor may, in lieu of imposing a reduction in appropriations, request an appropriation by the Legislature from the Revenue Shortfall Reserve Fund established in this section.

(b) The Revenue Shortfall Reserve Fund is continued within the State Treasury. The Revenue Shortfall Reserve Fund shall be funded continuously and on a revolving basis in accordance with this subsection from surplus revenues, if any, in the State Fund, General Revenue, as the surplus revenues may accrue from time to time.

Except as provided otherwise in this subsection, effective July 1, 2024, within 60 days of the end of each fiscal year, the secretary shall cause to be deposited into the Revenue Shortfall Reserve Fund such amount of the first 50 percent of all surplus revenues, if any, determined to have accrued during the fiscal year just ended, as may be necessary to bring the combined balance of the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B to an amount equal to 20 percent of a rolling average of the preceding three fiscal years' general revenue appropriations in Title II, Section 1, providing for appropriations from general revenue, of the enrolled and enacted version of the state's fiscal year budget: *Provided,* That no general revenue supplemental appropriations appropriated from the state's general revenue unappropriated balance or general revenue unappropriated surplus balance will be included in the calculation of the state's general revenue appropriations.

(c) Not earlier than November 1 of each calendar year, if the state's fiscal circumstances are such as to otherwise trigger the authority of the Governor to reduce appropriations under this section or §11B-2-21 or §11B-2-22 of this code, then in that event the Governor may notify the presiding officers of both houses of the Legislature in writing of his or her intention to convene the Legislature pursuant to section 19, article VI of the Constitution of West Virginia for the purpose of requesting the introduction of a supplementary appropriation bill or to request a supplementary appropriation bill at the next preceding regular session of the Legislature to draw money from the surplus Revenue Shortfall Reserve Fund to meet any anticipated revenue shortfall. If the Legislature fails to enact a supplementary appropriation from the Revenue Shortfall Reserve Fund during any special legislative session called for the purposes set forth in this section or during the next preceding regular session of the Legislature, then the Governor may proceed with a reduction of appropriations pursuant to §11B-2-21 and §11B-2-22 of this code. Should any amount drawn from the Revenue Shortfall Reserve Fund pursuant to an appropriation made by the Legislature prove insufficient to address any anticipated shortfall, then the Governor may also proceed with

a reduction of appropriations pursuant to §11B-2-21 and §11B-2-22 of this code.

(d) Upon the creation of the fund, the Legislature is authorized and may make an appropriation from the Revenue Shortfall Reserve Fund for revenue shortfalls, for emergency revenue needs caused by acts of God or natural disasters, or for other fiscal needs as determined solely by the Legislature.

(e) Prior to October 31 in any fiscal year in which revenues are inadequate to make timely payments of the state's obligations, the Governor may, by executive order, after first notifying the presiding officers of both houses of the Legislature in writing, borrow funds from the Revenue Shortfall Reserve Fund. The amount of funds borrowed under this subsection may not exceed one and one-half percent of the general revenue estimate for the fiscal year in which the funds are to be borrowed, or the amount the Governor determines is necessary to make timely payment of the state's obligations, whichever is less. Any funds borrowed pursuant to this subsection shall be repaid, without interest, and redeposited to the credit of the Revenue Shortfall Reserve Fund within 90 days of their withdrawal.

(f) The Revenue Shortfall Reserve Fund – Part B is continued within the State Treasury. The Revenue Shortfall Reserve Fund – Part B shall consist of moneys transferred from the West Virginia Tobacco Settlement Medical Trust Fund pursuant to §4-11A-2 of this code, repayments made of the loan from the West Virginia Tobacco Settlement Medical Trust Fund to the Physician's Mutual Insurance Company pursuant to §33-20F-1 *et seq.* of this code and all interest and other return earned on the moneys in the Revenue Shortfall Reserve Fund – Part B. Moneys in the Revenue Shortfall Reserve Fund – Part B may be expended solely for the purposes set forth in subsection (d) of this section, subject to the following conditions:

(1) No moneys in the Revenue Shortfall Reserve Fund – Part B nor any interest or other return earned thereon may be expended for any purpose unless all moneys in the Revenue Shortfall Reserve Fund described in subsection (b) of this section have first been

expended, except that the interest or other return earned on moneys in the Revenue Shortfall Reserve Fund – Part B may be expended as provided in subdivision (2) of this subsection;

(2) Notwithstanding any other provision of this section to the contrary, the Legislature may appropriate any interest and other return earned thereon that may accrue on the moneys in the Revenue Shortfall Reserve Fund – Part B after June 30, 2025, for expenditure for the purposes set forth in §4-11A-3 of this code; and

(3) Any appropriation made from Revenue Shortfall Reserve Fund – Part B shall be made only in instances of revenue shortfalls or fiscal emergencies of an extraordinary nature.

(g) Subject to the conditions upon expenditures from the Revenue Shortfall Reserve Fund – Part B prescribed in subsection (f) of this section, in appropriating moneys pursuant to the provisions of this section, the Legislature may in any fiscal year appropriate from the Revenue Shortfall Reserve Fund and the Revenue Shortfall Reserve Fund – Part B a total amount up to, but not exceeding, 10 percent of the total appropriations from the State Fund, General Revenue, for the fiscal year just ended.

(h) (1) Of the moneys in the Revenue Shortfall Reserve Fund, $100 million, or such greater amount as may be certified as necessary by the Director of the Budget Office for the purposes of subsection (e) of this section, shall be made available to the West Virginia Board of Treasury Investments for management and investment of the moneys in accordance with the provisions of §12-6C-1 *et seq.* of this code. All other moneys in the Revenue Shortfall Reserve Fund shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq.* of this code. Any balance of the Revenue Shortfall Reserve Fund, including accrued interest and other return earned thereon at the end of any fiscal year, does not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund for the purposes set forth in this section.

(2) All of the moneys in the Revenue Shortfall Reserve Fund – Part B shall be made available to the West Virginia Investment Management Board for management and investment of the moneys in accordance with the provisions of §12-6-1 *et seq.* of this code. Any balance of the Revenue Shortfall Reserve Fund – Part B, including accrued interest and other return earned thereon at the end of any fiscal year, shall not revert to the General Fund but shall remain in the Revenue Shortfall Reserve Fund – Part B for the purposes set forth in this section.

LEGISLATURE OF WEST VIRGINIA

ACTS

SECOND EXTRAORDINARY SESSION, 2024

CHAPTER 1

(H. B. 201 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed September 30, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Education, State Board of Education, State Department of Education, fund 0313, fiscal year 2025, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General

Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0313, fiscal year 2025, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

45 - State Board of Education –

State Department of Education

(W.V. Code Chapters 18 and 18A)

Fund 0313 FY 2025 Org 0402

		Appro-priation	General Revenue Fund
30a	Communities in Schools – Surplus.....	78199	10,000,000

CHAPTER 2

(H. B. 202 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed September 30, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing, amending and increasing an existing item of appropriation from the State Road Fund to the Department of Transportation, Division of Highways, fund 9017, fiscal year 2025, organization 0803, for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included an updated Statement of the State Road Fund; and

WHEREAS, It appears from the Statement of the State Road Fund there remains an unappropriated balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 9017, fiscal year 2025, organization 0803, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 2. Appropriations from state road fund.

DEPARTMENT OF TRANSPORTATION

155 - Division of Highways

(W.V. Code Chapters 17 and 17C)

Fund 9017 FY 2025 Org 0803

		Appro-priation	State Road Fund
4	Maintenance.....	23700	150,000,000

CHAPTER 3

(H. B. 203 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed September 30, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Veterans' Assistance, Department of Veterans' Assistance, Veterans' Home, fund 0460, fiscal year 2025, organization 0618, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0460, fiscal year 2025, organization 0618, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF VETERANS' ASSISTANCE

126 - Department of Veterans' Assistance –

Veterans' Home

(W.V. Code Chapter 9A)

Fund 0460 FY 2025 Org 0618

		Appro-priation	**General Revenue Fund**
3a	Capital Outlay, Repairs and Equipment – Surplus.....	67700	1,200,000

CHAPTER 4

(H. B. 204 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed September 30, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, West Virginia State Police, fund 0453, fiscal year 2025, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0453, fiscal year 2025, organization 0612, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

111 - West Virginia State Police

(W.V. Code Chapter 15)

Fund 0453 FY 2025 Org 0612

	Appro-priation	General Revenue Fund
10a Capital Outlay, Repairs and Equipment – Surplus.....	67700	375,000

CHAPTER 5

(H. B. 205 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 7, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to Miscellaneous Boards and Commissions, Adjutant General, State Militia, fund 0433, fiscal year 2025, organization 0603, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0433, fiscal year 2025, organization 0603, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

MISCELLANEOUS BOARDS AND COMMISSIONS

152 - Adjutant General –

State Militia

(W.V. Code Chapter 15)

Fund 0433 FY 2025 Org 0603

		Appro-priation	General Revenue Fund
5a	Capital Outlay, Repairs and Equipment – Surplus.....	67700	6,700,000
8a	Military Authority – Surplus	74899	3,350,000
9a	Recruit WV Employment Program – Surplus.....	30799	2,500,000

CHAPTER 6

(H. B. 206 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed September 30, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Higher Education Policy Commission, West Virginia University, General Administrative Fund, fund 0344, fiscal year 2025, organization 0463, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0344, fiscal year 2025, organization 0463, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

140 - West Virginia University –

General Administrative Fund

(W.V. Code Chapter 18B)

Fund 0344 FY 2025 Org 0463

		Appro-priation	General Revenue Fund
1a	West Virginia University – Surplus.....	30099	2,000,000

CHAPTER 7

(H. B. 207 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed September 30, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Education, State Board of Education, Aid for Exceptional Children, fund 0314, fiscal year 2025, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included

the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0314, fiscal year 2025, organization 0402, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

46 - State Board of Education –

Aid for Exceptional Children

(W.V. Code Chapters 18 and 18A)

Fund 0314 FY 2025 Org 0402

		Appro-priation	General Revenue Fund
2a	Special Education - Institutions – Surplus.....	16099	41,423
4a	Education of Juveniles Held in Predispositional Juvenile Detention Centers – Surplus.....	30299	15,051
5a	Education of Institutionalized Juveniles and Adults – Surplus	47299	322,994

CHAPTER 8

(H. B. 211 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Executive, Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2025, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0105, fiscal year 2025, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 - Governor's Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2025 Org 0100

		Appro-priation	General Revenue Fund
4a	Federal Funds/Grant Match – Surplus.....	85700	100,000,000

CHAPTER 9

(H. B. 212 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Higher Education Policy Commission, Higher Education Policy Commission, Administration, Control Account, fund 0589, fiscal year 2025, organization 0441, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0589, fiscal year 2025, organization 0441, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

138 - Higher Education Policy Commission –

Administration –

Control Account

(W.V. Code Chapters 18B and 18C)

Fund 0589 FY 2025 Org 0441

		Appro-priation	General Revenue Fund
8a	Fire and EMS Training Program Support – Surplus	31099	5,000,000
10a	Nursing Program Expansion Support – Surplus.....	42299	17,000,000

CHAPTER 10

(H. B. 213 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Economic Development, Department of Economic Development, Office of the Secretary, fund 0256, fiscal year 2025, organization 0307, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0256, fiscal year 2025, organization 0307, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ECONOMIC DEVELOPMENT

43 - Department of Economic Development –

Office of the Secretary

(W.V. Code Chapter 5B)

Fund 0256 FY 2025 Org 0307

		Appro-priation	General Revenue Fund
8a	Directed Transfer – Surplus.....	70099	135,000,000

From the above appropriation for Directed Transfer – Surplus (fund 0256, appropriation 70099) $125,000,000 shall be transferred to the Economic Enhancement Grant Fund (fund 3382) and $10,000,000 shall be transferred to the West Virginia Jobs Investment Trust (fund 9071).

CHAPTER 11

(H. B. 214 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health, Office of the Inspector General, fund 0437, fiscal year 2025, organization 0513, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0437, fiscal year 2025, organization 0513, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH

78 - Office of the Inspector General

(W.V. Code Chapter 16B)

Fund 0437 FY 2025 Org 0513

		Appro-priation	General Revenue Fund
3a	Current Expenses – Surplus.....	13099	2,000,000

CHAPTER 12

(H. B. 215 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Environmental Protection, Division of Environmental Protection, fund 0273, fiscal year 2025, organization 0313, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0273, fiscal year 2025, organization 0313, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ENVIRONMENTAL PROTECTION

55 - Division of Environmental Protection

(W.V. Code Chapter 22)

Fund 0273 FY 2025 Org 0313

		Appro-priation	General Revenue Fund
5a	Current Expenses – Surplus.....	13099	2,800,000

CHAPTER 13

(H. B. 216 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Office of Technology, fund 0204, fiscal year 2025, organization 0231, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0204, fiscal year 2025, organization 0231, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

31 - Office of Technology

(W.V. Code Chapter 5A)

Fund 0204 FY 2025 Org 0231

		Appro-priation	General Revenue Fund
1a	Directed Transfer – Surplus.....	70099	9,300,000

The above appropriation for Directed Transfer – Surplus (fund 0204, appropriation 70099) shall be transferred to the Office of Technology Fund (fund 2220). From the above appropriation for Directed Transfer – Surplus (fund 0204, appropriation 70099), upon the transfer to the Office of Technology Fund (fund 2220), the Office of Technology shall utilize $7,000,000 for the following

purposes: (1) To design, architect, plan, facilitate and carry out the transfer of resources and systems to off-site data centers; and (2) To design, architect, plan, facilitate and carry out the transition of outdated systems, environments and data structures to modern systems, environments and data structures.

CHAPTER 14

(H. B. 218 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Executive, West Virginia Conservation Agency, fund 0132, fiscal year 2025, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0132, fiscal year 2025, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

11 - West Virginia Conservation Agency

(W.V. Code Chapter 19)

Fund 0132 FY 2025 Org 1400

		Appro-priation	General Revenue Fund
3a	Soil Conservation Projects – Surplus.....	26900	1,150,000

CHAPTER 15

(H. B. 219 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Defender Services, fund 0226, fiscal year 2025, organization 0221, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0226, fiscal year 2025, organization 0221, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

27 - Public Defender Services

(W.V. Code Chapter 29)

Fund 0226 FY 2025 Org 0221

		Appro-priation	General Revenue Fund
6a	Public Defender Corporations – Surplus.....	35299	1,050,000

CHAPTER 16

(H. B. 230 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Education, State Board of Education, State Department of Education, fund 0313, fiscal year 2025, organization 0402, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0313, fiscal year 2025, organization 0402, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF EDUCATION

45 - State Board of Education –

State Department of Education

(W.V. Code Chapters 18 and 18A)

Fund 0313 FY 2025 Org 0402

		Appro-priation	General Revenue Fund
7a	Safe Schools – Surplus	XXXXX	1,000,000

CHAPTER 17

(H. B. 245 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Health, Office of Emergency Medical Services, fund 0434, fiscal year 2025, organization 0506, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0434, fiscal year 2025, organization 0506, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HEALTH

76 - Office of Emergency Medical Services

(W.V. Code Chapter 16)

Fund 0434 FY 2025 Org 0506

		Appro-priation	General Revenue Fund
1a	Statewide EMS Program Support – Surplus.....	XXXXX	5,000,000

CHAPTER 18

(S. B. 2009 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 7, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Administration, Public Employees Insurance Agency, fund 0200, fiscal year 2025, organization 0225, by supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill to fund 0200, fiscal year 2025, organization 0225, be supplemented and amended to insert a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF ADMINISTRATION

29A - Public Employees Insurance Agency

(W.V. Code Chapter 5)

Fund 0200 FY 2025 Org 0225

		Appro-priation	General Revenue Fund
1	PEIA Subsidy – Surplus	XXXXX	$ 87,000,000

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 – Surplus (fund 0200, appropriation XXXXX) 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.

CHAPTER 19

(S. B. 2010 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Executive, Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2025, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0105, fiscal year 2025, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 - Governor's Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2025 Org 0100

		Appro-priation	General Revenue Fund
1a	Civil Contingent Fund – Rural Hospitals - Surplus.....	XXXXX	40,000,000

CHAPTER 20

(S. B. 2020 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 7, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Higher Education Policy Commission, West Virginia School of Osteopathic Medicine, fund 0336, fiscal year 2025, organization 0476, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0336, fiscal year 2025, organization 0476, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

143 - West Virginia School of Osteopathic Medicine

(W.V. Code Chapter 18B)

Fund 0336 FY 2025 Org 0476

		Appro-priation	General Revenue Fund
5a	Capital Outlay, Repairs and Equipment – Surplus.....	67700	13,600,000

CHAPTER 21

(S. B. 2021 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, Division of Corrections and Rehabilitation, Correctional Units, fund 0450, fiscal year 2025, organization 0608, by supplementing and amending Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an

Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That Chapter 11, Acts of the Legislature, Regular Session, 2024, known as the budget bill to fund 0450, fiscal year 2025, organization 0608, be supplemented and amended to read as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

109 - Division of Corrections and Rehabilitation –

Correctional Units

(W.V. Code Chapter 15A)

Fund 0450 FY 2025 Org 0608

	Appro-priation		General Revenue Fund
Employee Benefits	01000	$	1,258,136
Children's Protection Act (R)	09000		838,437
Unclassified.....	09900		1,578,800
Current Expenses (R).....	13000		57,690,483

Facilities Planning		
and Administration (R)	38600	1,274,200
Charleston Correctional Center	45600	4,041,521
Charleston Correctional Center –		
Surplus	45699	112,300
Beckley Correctional Center	49000	3,018,511
Beckley Correctional Center –		
Surplus	45099	169,176
Anthony Correctional Center	50400	6,905,924
Anthony Correctional Center –		
Surplus	50499	2,900
Huttonsville Correctional Center	51400	23,165,663
Huttonsville Correctional Center –		
Surplus	28500	50,750
Northern Correctional Center	53400	9,593,719
Northern Correctional Center –		
Surplus	53499	371,680
Inmate Medical Expenses (R)	53500	62,226,064
Pruntytown Correctional Center	54300	10,310,325
Pruntytown Correctional Center –		
Surplus	54399	396,685
Corrections Academy	56900	2,106,862
Corrections Academy – Surplus	56999	110,850
Information Technology Services	59901	2,759,052
Martinsburg Correctional Center	66300	5,358,718
Martinsburg Correctional Center –		
Surplus	66399	255,050
Parole Services	68600	6,512,380
Parole Services – Surplus	68699	600,000
Special Services	68700	6,317,554
Special Services – Surplus	68799	555,700
Directed Transfer	70000	7,432,686
Directed Transfer – Surplus	70099	343,650
Investigative Services	71600	3,743,303
Investigative Services – Surplus	71699	58,355
Capital Outlay and Maintenance (R)	75500	2,000,000
Salem Correctional Center	77400	13,168,692
Salem Correctional Center – Surplus	77499	368,780
McDowell County Correctional Center	79000	2,542,590

Stevens Correctional Center.....	79100	7,863,195
Stevens Correctional Center – Surplus	79500	6,485,156
Parkersburg Correctional Center.....	82800	7,511,290
Parkersburg Correctional Center – Surplus	82899	501,745
St. Mary's Correctional Center	88100	17,061,358
St. Mary's Correctional Center – Surplus	88199	820,920
Denmar Correctional Center	88200	6,018,233
Denmar Correctional Center – Surplus	88299	298,875
Ohio County Correctional Center	88300	2,629,742
Ohio County Correctional Center – Surplus	88399	122,450
Mt. Olive Correctional Complex	88800	27,136,647
Mt. Olive Correctional Complex – Surplus	88899	1,074,155
Lakin Correctional Center.....	89600	12,619,819
Lakin Correctional Center – Surplus ...	89699	681,060
BRIM Premium.....	91300	2,527,657
Total.....		$ 330,591,800

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 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 2024 are hereby reappropriated for 60 expenditure during the fiscal year 2025.

The Commissioner of Corrections and Rehabilitation shall have the authority to transfer between appropriations.

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.

The above appropriation for Directed Transfer (fund 0450, appropriation 70000) shall be transferred to the Regional Jails Operating Cash Control Account (fund 6678).

The above appropriation for Directed Transfer – Surplus (fund 0450, appropriation 70099) shall be transferred to the Regional Jails Operating Cash Control Account (fund 6678).

From the above appropriation for Stevens Correctional Center – Surplus (fund 0450, appropriation 79500), $4,578,327 shall be used to pay outstanding invoices at the Stevens 72 Correctional Center.

Any realized savings from Energy Savings Contract may be transferred to Facilities Planning and Administration (fund 0450, appropriation 38600).

CHAPTER 22

(S. B. 2022 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, Division of Corrections and Rehabilitation, Bureau of Juvenile Services, fund 0570, fiscal year 2025, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0570, fiscal year 2025, organization 0608, be supplemented and amended by adding new items of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

110 - Division of Corrections and Rehabilitation –

Bureau of Juvenile Services

(W.V. Code Chapter 15A)

Fund 0570 FY 2025 Org 0608

		Appro-priation	General Revenue Fund
1a	Statewide Reporting Centers – Surplus.....	26299	192,500
2a	Robert L. Shell Juvenile Center – Surplus.....	26799	132,650

3a	Resident Medical Expenses – Surplus	53599	2,750,000
4a	Central Office – Surplus	70199	122,500
6a	Gene Spadaro Juvenile Center – Surplus	79399	142,900
8a	Kenneth Honey Rubenstein Juvenile Center – Surplus	98099	224,400
9a	Vicki Douglas Juvenile Center – Surplus	98199	161,750
11a	Lorrie Yeager Jr. Juvenile Center – Surplus	98399	147,250
12a	Sam Perdue Juvenile Center – Surplus	98499	123,950
13a	Tiger Morton Center – Surplus	98599	179,350
14a	Donald R. Kuhn Juvenile Center – Surplus	98699	309,100
15a	J.M. "Chick" Buckbee Juvenile Center – Surplus	98799	126,750

CHAPTER 23

(S. B. 2024 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

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, 2025, to the Department of Homeland Security, Division of Corrections and Rehabilitation, Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2025, organization 0608, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Homeland Security, Division of Corrections and Rehabilitation, Regional Jail and Correctional Facility Authority, fund 6675, fiscal year 2025, organization 0608, that is available for expenditure during the fiscal year ending June 30, 2025, 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, 2025, to fund 6675, fiscal year 2025, organization 0608, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF HOMELAND SECURITY

275 - Division of Corrections and Rehabilitation –

Regional Jail and Correctional Facility Authority

(W.V. Code Chapter 15A)

Fund 6675 FY 2025 Org 0608

		Appro-priation	Other Funds
6a	Buildings.....	25800	15,000,000

CHAPTER 24

(S. B. 2031 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

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, 2025, to the Department of Education, School Building Authority, School Construction Fund, fund 3952, fiscal year 2025, organization 0404, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor has established that there now remains an unappropriated balance in the Department of Education, School Building Authority, School Construction Fund, fund 3952, fiscal year 2025, organization 0404, that is available for expenditure during the fiscal year ending June 30, 2025, 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, 2025, to fund 3952, fiscal year 2025, organization 0404, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Sec. 3. Appropriations from other funds.

DEPARTMENT OF EDUCATION

229 - School Building Authority –

School Construction Fund

(W.V. Code Chapters 18 and 18A)

Fund 3952 FY 2025 Org 0404

		Appro-priation	Other Funds
1a	Charter School Construction Grants.....	XXXXX	5,000,000

CHAPTER 25

(S. B. 2032 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to Executive, Department of Agriculture, fund 0131, fiscal year 2025, organization 1400, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0131, fiscal year 2025, organization 1400, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

10 - Department of Agriculture

(W.V. Code Chapter 19)

Fund 0131 FY 2025 Org 1400

		Appro-priation	General Revenue Fund
21a	2024 Drought Relief - Surplus.....	XXXXX	10,000,000

CHAPTER 26

(S. B. 2034 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Department of Homeland Security, West Virginia State Police, fund 0453, fiscal year 2025, organization 0612, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0453, fiscal year 2025, organization 0612, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

DEPARTMENT OF HOMELAND SECURITY

111 – West Virginia State Police

(W.V. Code Chapter 15)

Fund 0453 FY 2025 Org 0612

		Appro-priation	General Revenue Fund
11a	Capital Outlay, Repairs and Equipment – Surplus.....	67700	175,000

CHAPTER 27

(S. B. 2036 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Higher Education Policy Commission, West Virginia University, General Administrative Fund, fund 0344, fiscal year 2025, organization 0463, to the Higher Education Policy Commission, Marshall University, General Administration Fund, fund 0348, fiscal year 2025, organization 0471, to the Higher Education Policy Commission, Concord University, fund 0357, fiscal year 2025, organization 0483, and to the Higher Education Policy Commission, Shepherd University, fund 0366, fiscal year 2025, organization 0486, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a

revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0344, fiscal year 2025, organization 0463, be supplemented and amended by increasing an existing item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

140 - West Virginia University –

General Administrative Fund

(W.V. Code Chapter 18B)

Fund 0344 FY 2025 Org 0463

1a	West Virginia University – Surplus.....	30099		5,147,926

AND, That the total appropriation for the fiscal year ending June 30, 2025, to fund 0348, fiscal year 2025, organization 0471, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

142 - Marshall University –

General Administration Fund

(W.V. Code Chapter 18B)

Fund 0348 FY 2025 Org 0471

1a	Marshall University – Surplus	30199	2,386,218

AND, That the total appropriation for the fiscal year ending June 30, 2025, to fund 0357, fiscal year 2025, organization 0483, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

145 - Concord University

(W.V. Code Chapter 18B)

Fund 0357 FY 2025 Org 0483

1a	Concord University – Surplus	29999	455,024

AND, That the total appropriation for the fiscal year ending June 30, 2025, to fund 0366, fiscal year 2025, organization 0486, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

HIGHER EDUCATION POLICY COMMISSION

148 - Shepherd University

(W.V. Code Chapter 18B)

Fund 0366 FY 2025 Org 0486

1a	Shepherd University – Surplus	43299	404,150

CHAPTER 28

(S. B. 2037 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the West Virginia Council for Community and Technical College Education, New River Community and Technical College, fund 0600, fiscal year 2025, organization 0445, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included

a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0600, fiscal year 2025, organization 0445, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

WEST VIRGINIA COUNCIL FOR COMMUNITY AND TECHNICAL COLLEGE EDUCATION

130 - New River Community and Technical College

(W.V. Code Chapter 18B)

Fund 0600 FY 2025 Org 0445

1a	New River Community and Technical College – Surplus....	30399	$	349,715

CHAPTER 29

(S. B. 2038 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT expiring funds to the unappropriated surplus balance in the State Fund, General Revenue, for the fiscal year ending June 30, 2025, in the amount of $15,000,000 from the Executive, Treasurer's Office, Unclaimed Property Fund, fund 1324, fiscal year 2025, organization 1300.

WHEREAS, The Governor finds that the account balance in the Executive, Treasurer's Office, Unclaimed Property Fund, fund 1324, fiscal year 2025, organization 1300, 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 the funds available for expenditure in the fiscal year ending June 30, 2025, in the Executive, Treasurer's Office, Unclaimed Property Fund, fund 1324, fiscal year 2025, organization 1300, be decreased by expiring the amount of $15,000,000 to the unappropriated surplus balance of the State Fund, General Revenue, to be available for appropriation during the fiscal year ending June 30, 2025.

CHAPTER 30

(S. B. 2039 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 10, 2024.]

AN ACT supplementing and amending the appropriations of public moneys out of the Treasury from the balance of moneys remaining as an unappropriated surplus balance in the State Fund, General Revenue, to the Executive, Governor's Office, Civil Contingent Fund, fund 0105, fiscal year 2025, organization 0100, by supplementing and amending the appropriations for the fiscal year ending June 30, 2025.

WHEREAS, The Governor submitted the Executive Budget Document to the Legislature on January 10, 2024, containing a statement of the State Fund, General Revenue, setting forth therein the cash balance as of July 1, 2023, and further included the estimate of revenue for the fiscal year 2024, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2024, and further included recommended expirations to the unappropriated surplus balance of the State Fund, General Revenue; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated May 19, 2024, which included a revised estimate of revenues for the State Fund, General Revenue, and recommended supplementary appropriations for the fiscal year 2024; and

WHEREAS, The Governor submitted to the Legislature an Executive Message dated September 30, 2024, which included a statement of the State Fund, General Revenue, setting forth

therein the cash balance as of July 1, 2024, and further included the estimate of revenue for the fiscal year 2025, less net appropriation balances forwarded and regular and surplus appropriations for the fiscal year 2025; and

WHEREAS, It appears from the Executive Message, Statement of the State Fund, General Revenue, there remains an unappropriated surplus balance in the State Treasury which is available for appropriation during the fiscal year ending June 30, 2025; therefore

Be it enacted by the Legislature of West Virginia:

That the total appropriation for the fiscal year ending June 30, 2025, to fund 0105, fiscal year 2025, organization 0100, be supplemented and amended by adding a new item of appropriation as follows:

TITLE II – APPROPRIATIONS.

Section 1. Appropriations from general revenue.

EXECUTIVE

7 - Governor's Office –

Civil Contingent Fund

(W.V. Code Chapter 5)

Fund 0105 FY 2025 Org 0100

		Appro-priation	General Revenue Fund
4a	Deferred Maintenance – Colleges and Universities – Surplus.....	XXXXX	15,000,000

CHAPTER 31

(S. B. 2035 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 16, 2024.]

AN ACT to amend and reenact §31-15-8, §31-15-8a, and §31-15-23a of the Code of West Virginia, 1931, as amended, all relating generally to funding for certain broadband expansion programs administered by the Economic Development Authority; permitting the authority to use certain moneys transferred to the Insurance Fund to finance the Broadband Loan Insurance Program; permitting the authority to use the Economic Development Project Fund to finance certain federally supported broadband expansion programs; permitting the authority to transfer moneys from the authority's Economic Development Project Fund to the Insurance Fund to finance the Broadband Loan Insurance Program; and requiring certain annual audits by the Legislative Auditor.

Be it enacted by the Legislature of West Virginia:

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-8. Insurance fund.

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

(1) Moneys appropriated by the state to the insurance fund;

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

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

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

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

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

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

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

(1) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on bonds or notes whether issued under this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or,

with respect to health care facilities only, §8-33-1 *et seq.* of this code;

(2) To insure the payment or repayment of all or any part of the principal of, redemption or prepayment premiums or penalties on, and interest on any instrument executed, obtained, or delivered in connection with the issuance and sale of bonds or notes whether under this article or under the Industrial Development and Commercial Development Bond Act, the West Virginia Hospital Finance Authority Act or, with respect to health care facilities only, §8-33-1 *et seq.* of this code;

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

(4) To pay or insure the payment of any fees or premiums necessary to obtain insurance, guarantees, letters of credit, or other credit support from any person or financial institution in connection with financial assistance provided by the authority under this section;

(5) To pay any and all expenses of the authority, including, but not limited to:

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

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

(6) To insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on any form of debt instrument entered into by an eligible broadband provider with a financial institution, including, but not limited to, banks, insurance companies, and other institutions in the business of lending money, which debt instruments are to be solely for capital costs relating to the purposes authorized in §31-15-8a of this code: *Provided*, That loan moneys shall not be transferred to the fund except as authorized by §12-6C-11a or §31-15-23a of this code. All moneys transferred to the fund for the purpose of issuing broadband loan insurance shall be held in accounts that are separate and segregated from other moneys in the fund. Moneys transferred to the fund pursuant to §31-15-23a of this code which are no longer required for outstanding loan insurance obligations may be returned to the Economic Development Project Fund, along with any interest or earnings accruing to the account in which said moneys are held.

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

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

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

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

(i) The obligations of the authority under any insurance agreement entered into pursuant to this article shall not constitute a debt or a pledge of the faith and credit or taxing powers of this state or of any county, municipality, or any political subdivision of this state for the payment of any amount due thereunder or pursuant thereto, but the obligations evidenced by such insurance agreement shall be payable solely from the funds pledged for their payment.

(j) On or before the 30th day of January, April, July, and October of each year, the authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor a quarterly report which shall include, at a minimum:

(1) The aggregate outstanding amount of insurance issued from the insurance fund; and

(2) For each agreement to insure a debt or security instrument, the name of the parties to the agreement; the lending financial institution to which any insured debt or security instrument is owed; the total value of any insured debt or security interest; the maturity date of the insured debt or security instrument; and the status of the insured debt or security instrument, including whether the party to the insurance agreement is delinquent or in default on any insured debt or security instrument.

§31-15-8a. Broadband Loan Insurance Program; requirements.

(a) *Definitions.* – For the purposes of this section:

(1) "Broadband Enhancement Council" or "council" refers to the governmental instrumentality established by §31G-1-3 of this code.

(2) "Broadband Loan Insurance Program" or the "program" refers to the program through which the authority issues loan insurance, as authorized by this section.

(3) "Broadband provider" or "provider" means a business or enterprise providing broadband service, as defined in §31G-1-2 of this code.

(4) "Debt instrument" means any note, loan agreement, or any other form of indebtedness whatsoever and shall expressly include a letter of credit or other agreement relating to a letter of credit.

(5) "Eligible broadband provider" means a business or enterprise certified, in writing, by the Broadband Enhancement Council to the authority to be a broadband provider, and that is not disqualified from participating in the Broadband Loan Insurance Program according to subdivision (4), subsection (c) of this section, as certified, in writing, by the authority.

(6) "Federally funded broadband expansion program" means the Rural Digital Opportunity Fund of the Federal Communications Commission; the Broadband ReConnect Program of the United States Department of Agriculture; the Broadband Equity, Access, and Deployment Program of the National Telecommunications and Information Administration; or any other federally funded broadband expansion or enhancement program that Congress may from time to time establish.

(7) "Financial institution" means the bank, insurance company, or other institution in the business of lending money, that conditions issuance of a debt or security instrument on loan insurance by the authority, as provided in subdivision (2), subsection (b) of this section.

(8) "Loan insurance" refers to an agreement to insure the payment or repayment of all or any part of the principal of and interest on a debt or security instrument.

(b) *Insurance of certain debt or security instruments authorized*. –

(1) The authority is authorized to insure, for up to 20 years, the payment or repayment of all or any part of the principal of and interest on any form of debt or security instrument entered into by an eligible broadband provider with a financial institution, which debt or security instruments are to be solely for capital costs relating to:

(A) A project which has as its principal purpose providing broadband service, as defined in §31G-1-2 of this code, to a household or business located in an unserved area, as defined in §31G-1-2 of this code, or to an underserved area meeting the following criteria:

(i) Access to internet service is only available by wireline or fixed wireless technology; and

(ii) Access to internet service in which 15 percent or more of households and businesses cannot obtain internet service with an actual downstream or upstream data rate equivalent to or faster than the current definition of broadband service as defined by the Federal Communications Commission and further certified by the council; or

(B) A project which has as its principal purpose building a segment of a telecommunications network that links a network operator's core network to a local network plant that serves either an unserved area, as defined in §31G-1-2 of this code, or an area in which no more than two wireline providers are operating.

(2) The authority may not issue loan insurance to a provider, unless the participating financial institution provides written certification to the authority that, but for the authority's insuring the debt instrument, the financial institution would not otherwise make the loan based solely on the creditworthiness of the loan

applicant: *Provided*, That nothing contained in this section or any other provision of this article may be construed as permitting the authority to insure the refinancing of existing debt.

(3) The authority may make the provision of loan insurance authorized by this section contingent upon the eligible broadband provider receiving an award under a federally funded broadband expansion program.

(4) To fund the loan insurance authorized by this section, the authority shall request a loan from the West Virginia Board of Treasury Investments, according to the requirements of §12-6C-11a of this code, or utilize funds in the Insurance Fund transferred pursuant to §31-15-23a(d)(5) of this code.

(5) The authority may not award an amount of loan insurance exceeding $50 million, in any single calendar year, to insure the debt or security instruments, or costs related thereto, of any one broadband provider.

(c) *Insurance application requirements*. –

(1) An eligible provider may apply to the authority for loan insurance. The authority shall make the application form or forms available to the public on its website.

(2) The application for loan insurance shall, at a minimum, require the applicant to submit:

(A) Proof of business ownership and other business registration information;

(B) Detailed information regarding all current, previous, and pending business debt, including any past instances of loan delinquency or default or any breach of a borrower covenant;

(C) Detailed records of the provider's financial history, including, but not limited to, tax returns and financial statements detailing the provider's income, cash flow, and account balances for the past five years;

(D) The number of persons employed by the provider and the names and contact information for all managers of the project to be insured;

(E) Detailed information regarding assets being presented as collateral, including, but not limited to, serial or identification numbers for all large value machinery, equipment, furniture and fixtures, inventory records, and accounts receivable;

(F) Detailed business plans, financial plans, and financial projections related to the broadband deployment project for which the applicant is requesting loan insurance; and

(G) Any additional information that is relevant to the provider's eligibility to receive loan insurance and the provider's ability to deploy broadband in the state, including, but not limited to, any required authorizations or determinations by any applicable regulatory bodies.

(3) The authority shall ensure that applicants are eligible to receive loan insurance and shall select applicants who demonstrate a minimal risk of default on any debt or security instrument to be insured through the program. At a minimum, the authority shall consider the following criteria in determining whether to approve a loan insurance application:

(A) The financial ability of the applicant to complete the insured project and repay the loan;

(B) The credit history of the provider;

(C) The past earnings and projected cash flow of the provider;

(D) The provider's past performance as a participant in any previous economic development program of this state or of any other state;

(E) The provider's experience with broadband service deployment in the state or any other state; and

(F) The nature and value of the collateral being offered for the loan insurance.

(4) The authority may not issue loan insurance to a provider if the provider, or a parent company of the provider, has previously defaulted on a debt or security instrument insured by the authority.

(5) The requirements of this subsection do not apply to applications received by the authority for broadband loan insurance or debt instrument insurance prior to the effective date of this section for such applications.

(d) *Public notice by applicant.* –

(1) Upon the filing of an application for loan insurance under this section, the broadband provider shall cause to be published as a Class II legal advertisement in compliance with §59-3-1 *et seq.* of this code notice of the filing of the application and that the authority may approve the same unless within 10 business days after completion of publication a written objection is received by the authority from a person or persons alleging that the proposed broadband project does not satisfy the provisions of this section.

(2) The publication area for such notice is to be the county or counties in which any portion of the proposed broadband project is to be constructed. The notice shall be in such form as the authority shall direct and shall include a map of the area or areas to be served by the proposed broadband project. The applicant shall also cause to be mailed by first class, on or before the first day of publication of the notice, a copy of the notice to all known current providers of broadband service within the area proposed to be served.

(3) If an objection under this subsection is timely received by the authority, the authority shall advise the council within five business days. The council shall set the matter for hearing within 30 days of receipt of notice from the authority. The council may establish procedural rules governing such hearings by legislative rule, or the council may follow the Rules of Practice and Procedure of the Public Service Commission. The council shall issue a decision on whether the proposed project satisfies the requirements

of this section or not within 30 days of completion of the hearing. Any party participating in the hearing may appeal the council's decision within 30 days of the issuance of the council's decision to the Circuit Court of Kanawha County.

(4) This subsection shall apply to all applicants except to those broadband providers that plan on providing a downstream data rate of at least one gigabyte per second to the end user or applicants that have been preliminarily determined to be eligible for a federally funded broadband expansion program.

(5) The requirements this subsection do not apply to applications received by the authority for broadband loan insurance or debt instrument insurance prior to the effective date of this section.

(e) *Information to be posted by the authority.* — The authority shall make the following information, pertaining to all loan insurance agreements, available on its website:

(1) The name of the insured provider;

(2) The location or locations of the project;

(3) The amount of the authority loan or financial assistance provided by the insurance fund;

(4) The purpose of the loan or financial assistance;

(5) The term, rate, and interest of the loan; and

(6) The fixed assets that serve as security for the loan or insurance provided.

(f) *Internal controls and accounting.* — The authority shall keep itemized records of all transactions and agreements entered into in furtherance of the program. In administering the program, the authority shall adopt appropriate accounting practices and develop internal controls, including, but not limited to, strict compliance with the requirements of §5A-8-9 of this code.

(g) *Quarterly reports and annual legislative audits.* —

(1) On or before the 30th day of January, April, July, and October of each year, the authority shall prepare and submit to the Joint Committee on Government and Finance, the Governor, and the West Virginia Board of Treasury Investments a quarterly report which shall include, at a minimum:

(A) For each insured project, the provider name; the lending financial institution; the total value of the loan; the total amount of the loan that is insured pursuant to this section; the maturity date of the loan; the balance of loan moneys outstanding with the authority; and the status of the loan, including whether the loan is in delinquent or in default status.

(B) For loans not in good standing with the financial institution, the reason for the delinquent or default status of the loan; the provider's plans to address the delinquency or default; the availability of loan collateral that may be seized by the state; the expected outcome of the delinquency or default; and the estimated loss to any state funds that will result from the delinquency or default.

(2) During each year in which a loan insurance agreement entered into pursuant to this section remains in effect, the authority shall prepare and submit to the Joint Committee on Government and Finance, the Governor, and the board an annual report addressing the status of each project that is insured, pursuant to this section. The report shall, at a minimum, provide project-specific data addressing the broadband service levels being provided by the project, the geographic area to which different broadband service levels are being provided by the project, and the number of households actively receiving broadband service from the project.

(3) During each year in which a loan insurance agreement entered into pursuant to this section remains in effect, the Legislative Auditor shall audit the procedures, accounting practices, and internal controls of the authority for compliance with this section and §12-6C-11a of this code and report the findings of the audit to the Joint Committee on Government and Finance.

§31-15-23a. Economic Development Project Fund.

(a) For the purposes of this section:

"Eligible broadband provider" has the meaning provided in §31-15-8a of this code.

"Federally funded broadband expansion program" has the meaning provided in §31-15-8a of this code.

"High impact development project" means a project meeting the following criteria, according to a resolution adopted by the authority:

(A) The Governor has requested, in writing, that the project be approved for financing by the authority in an amount of $50 million or greater;

(B) The industrial development agency or enterprise undertaking the project will privately invest an amount of $50 million or greater in the project; and

(C) The project meets or exceeds the loan per job ratio criteria for high-impact development projects that may be established, in consultation with the Secretary of the Department of Economic Development, by the board of directors.

(b) There is hereby created a special revenue fund in the State Treasury known as the Economic Development Project Fund. The fund shall consist of all moneys appropriated to the authority during the regular session of the Legislature, 2022, from available revenue surplus funds; transfers from the Industrial Development Loans Fund; gifts, grants, and contributions to the fund; any earnings or interest accruing to said fund; and any other moneys appropriated to said fund by the Legislature. The authority may invest and reinvest moneys in the fund with the West Virginia Investment Management Board or the Board of Treasury Investments.

(c) The authority may transfer funds in the Industrial Development Loans fund to the Economic Development Project

Fund created by this section and any loan repayments or other amounts that would otherwise have been paid into the Industrial Development Loans fund may be paid into the Economic Development Project Fund created by this section.

(d) The authority may use moneys in the Economic Development Project Fund to offer incentives for business formation or expansion and provide assistance with site development or other concerns to industrial development agencies or enterprises according to the requirements of this article as set forth in this subsection.

(1) *High impact development projects*. — In addition to any powers granted to the authority under any other section of this code, the authority may finance any high impact development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, grants, or other offers of financial assistance or aid upon such terms as the Governor may request and the authority shall deem appropriate: *Provided*, That moneys available to fund such high impact development projects may not exceed $300 million dollars annually, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and reloaned by the authority for the same purpose. Any interest accruing shall be retained and made available for high impact projects as set forth in this subsection and shall not revert to the General Revenue Fund.

(2) *Traditional loans*. — The authority may finance any economic development project under this section by offering incentives for business formation or expansion to industrial development agencies or enterprises in this state in the form of loans, which shall be repaid to provide financing for subsequent borrowers: *Provided*, That moneys available to fund such traditional loans may not exceed $250 million dollars annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal

pursuant to this subsection may be utilized and reloaned by the authority for the same purpose. Any interest accruing shall be retained and made available for traditional loans as set forth in this subsection and shall not revert to the General Revenue Fund.

(3) *Business retention projects*. — The authority may finance any economic development project under this section by offering incentives for business development and expansion to industrial development agencies or enterprises already existing and operating in the State of West Virginia in the form of loans, which shall be repaid to provide financing for subsequent borrowers: *Provided*, That moneys available to fund such business retention loans may not exceed $50 million dollars annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments received pursuant to this subsection. Funds which are paid back to the authority as principal pursuant to this subsection may be utilized and reloaned by the authority for the same purpose. Any interest accruing shall be retained and made available for business retention projects as set forth in this subsection and shall not revert to the General Revenue Fund.

(4) *Federal broadband expansion projects*. – The authority may use moneys in the fund to provide incentives for eligible broadband providers to participate in federally funded broadband expansion programs: *Provided,* That the moneys available for such incentives may not exceed $25 million annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments or investment earnings on said moneys.

(5) *Broadband loan insurance*. – The authority may transfer moneys from the fund to the Insurance Fund, created in §31-15-8 of this code, in amounts necessary to issue loan insurance to eligible broadband providers: *Provided,* That the moneys available for transfer pursuant to this subdivision may not exceed $125 million annually, on a rolling basis, unless otherwise appropriated by the Legislature or increased by interest payments or investment earnings on said moneys. With regard to any loan insurance issued using the moneys transferred pursuant to this subdivision, the authority shall follow the requirements of §31-15-8a of this code.

(e) The authority shall keep itemized records of all fund transactions and agreements entered into in furtherance of the Economic Development Project Fund expenditures. In administering the fund, the authority shall adopt appropriate accounting practices and internal controls, including, but not limited to, strict compliance with the requirements of §5A-8-9 of this code. Fund transactions shall be subject to an annual audit by an independent firm of certified public accountants.

(f) The authority shall prepare and submit to the Joint Committee on Government and Finance and the Governor an annual report addressing the status of each project with outstanding financing issued pursuant to this section. The report shall, at a minimum, provide project-specific data addressing:

(1) The outstanding amount of authority financing for each project;

(2) The total amount of private investment in each project;

(3) The number of jobs created by each project since the project's inception; and

(4) The number of jobs maintained by each project.

(g) Except for the records and audit required under subsection (e) of this section and the annual reports required under subsection (f) of this section, any documentary material, data, or other writing made or received by the authority relating to high impact development projects under this section, shall be exempt from §29B-1-1 *et seq.* of this code: *Provided*, That any agreement or resolution entered into or signed by the authority which obligates public funds for any high-impact development project shall be subject to inspection and copying pursuant to §29B-1-1 *et seq.* of this code as of the date the agreement or resolution is entered into, signed, or otherwise made public.

CHAPTER 32

(S. B. 2028 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 16, 2024.]

AN ACT to amend and reenact §16-2D-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §30-7-15a of said code; and to amend and reenact §60A-9-4 of said code, all relating to permitting research activities; providing that opioid treatment program may be developed only if part of an approved clinical trial; providing opioid treatment program must have institutional review board approval; describing opioid treatment program to be developed; requiring the opioid treatment program to register with the Board of Pharmacy; specifying the permitted clinical trial; permitting an advanced practice registered nurse who is participating in clinical trial to dispense; limiting the exemption to a one-time use; permitting an advanced practice registered nurse who is participating in a clinical trial to exceed prescription limitations; and requiring clinical trial to be registered with the Board of Pharmacy.

Be it enacted by the Legislature of West Virginia:

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-9. Health services that cannot be developed.

Notwithstanding §16-2D-8 and §16-2D-11 of this code, these health services require a certificate of need but the authority may not issue a certificate of need to:

(1) A health care facility adding intermediate care or skilled nursing beds to its current licensed bed complement, except as provided in §16-2D-11 of this code;

(2) A person developing, constructing, or replacing a skilled nursing facility except in the case of facilities designed to replace existing beds in existing facilities that may soon be deemed unsafe or facilities utilizing existing licensed beds from existing facilities which are designed to meet the changing health care delivery system;

(3) Add beds in an intermediate care facility for individuals with an intellectual disability, except that prohibition does not apply to an intermediate care facility for individuals with intellectual disabilities beds approved under the Kanawha County Circuit Court order of August 3, 1989, civil action number MISC-81-585 issued in the case of *E.H. v. Matin*, 168 W.V. 248, 284 S.E. 2d 232 (1981) including the 24 beds provided in §16-2D-8 of this code;

(4) An opioid treatment program: *Provided*, That an opioid treatment program that is an approved clinical trial, with institutional review board approval, for the study of office-based methadone versus buprenorphine to address retention in medication for opioid use disorder treatment may be developed for the limited purposes of conducting the clinical trial and shall be limited to the time frame set forth in the clinical trial, after registering with the Board of Pharmacy: *Provided, further,* That this exemption only permits one program to participate once in CTN-0131; and

(5) Add licensed substance abuse treatment beds in any county which already has greater than 250 licensed substance abuse treatment beds.

CHAPTER 30. PROFESSIONS AND OCCUPATIONS.

ARTICLE 7. REGISTERED PROFESSIONAL NURSES.

§30-7-15a. Prescriptive authority for prescription drugs.

(a) An advanced practice registered nurse may not prescribe a Schedule I controlled substance as provided in §60A-2-204 of this code.

(b) An advanced practice registered nurse may prescribe up to a three-day supply of a Schedule II narcotic as provided in §60A-2-206 of this code: *Provided*, That an advanced practice registered nurse who is participating in a clinical trial, with institutional review board approval, for the rural expansion of medication-assisted treatment for opioid use disorder may dispense for the time frame of the clinical trial, after registering with the Board of Pharmacy: *Provided, further*, That this exemption only permits one program to participate once in CTN-0102-XR, which is also the same program as provided for in §60A-9-4 of this code.

(c) There are no other limitations on the prescribing authority of an advanced practice registered nurse, except as provided in §16-54-1 *et seq.* of this code.

CHAPTER 60A. UNIFORM CONTROLLED SUBSTANCES ACT.

ARTICLE 9. CONTROLLED SUBSTANCES MONITORING.

§60A-9-4. Required information.

(a) The following individuals shall report the required information to the Controlled Substances Monitoring Program Database when:

(1) A medical services provider dispenses a controlled substance listed in Schedule II, III, IV, or V;

(2) A prescription for the controlled substance or opioid antagonist is filled by:

(A) A pharmacist or pharmacy in this state;

(B) A hospital, or other health care facility, for outpatient use; or

(C) A pharmacy or pharmacist licensed by the Board of Pharmacy, but situated outside this state for delivery to a person residing in this state; and

(3) A pharmacist or pharmacy sells an opioid antagonist.

(b) The above individuals shall, in a manner prescribed by rules promulgated by the Board of Pharmacy pursuant to this article, report the following information, as applicable:

(1) The name, address, pharmacy prescription number, and Drug Enforcement Administration controlled substance registration number of the dispensing pharmacy or the dispensing physician or dentist;

(2) The full legal name, address, and birth date of the person for whom the prescription is written;

(3) The name, address, and Drug Enforcement Administration controlled substances registration number of the practitioner writing the prescription;

(4) The name and national drug code number of the Schedule II, III, IV, and V controlled substance or opioid antagonist dispensed;

(5) The quantity and dosage of the Schedule II, III, IV, and V controlled substance or opioid antagonist dispensed;

(6) The date the prescription was written and the date filled;

(7) The number of refills, if any, authorized by the prescription;

(8) If the prescription being dispensed is being picked up by someone other than the patient on behalf of the patient, information about the person picking up the prescription as set forth on the person's government-issued photo identification card shall be retained in either print or electronic form until such time as otherwise directed by rule promulgated by the Board of Pharmacy; and

(9) The source of payment for the controlled substance dispensed.

(c) Whenever a medical services provider treats a patient for an overdose that has occurred as a result of illicit or prescribed medication, the medical service provider shall report the full legal

name, address, and birth date of the person who is being treated, including any known ancillary evidence of the overdose. The Board of Pharmacy shall coordinate with the Division of Justice and Community Services and the Office of Drug Control Policy regarding the collection of overdose data.

(d) The Board of Pharmacy may prescribe, by rule promulgated pursuant to this article, the form to be used in prescribing a Schedule II, III, IV, and V substance or opioid antagonist if, in the determination of the Board of Pharmacy, the administration of the requirements of this section would be facilitated.

(e) Products regulated by the provisions of §60A-10-1 *et seq.* of this code shall be subject to reporting pursuant to the provisions of this article to the extent set forth in said article.

(f) Reporting required by this section is not required for a drug administered directly to a patient by a practitioner. Reporting is, however, required by this section for a drug dispensed to a patient by a practitioner. The quantity dispensed by a prescribing practitioner to his or her own patient may not exceed an amount adequate to treat the patient for a maximum of 72 hours with no greater than two 72-hour cycles dispensed in any 15-day period of time: *Provided*, That an advanced practice registered nurse who is participating in a clinical trial, with institutional review board approval, for the rural expansion of medication-assisted treatment for opioid use disorder may exceed the 3-day supply for the time frame of the clinical trial, after registering with the Board of Pharmacy: *Provided, further,* That this exemption only permits one program to participate once in CTN-0102-XR, which is also the same program as provided for in §30-7-15a of this code.

(g) The Board of Pharmacy shall notify a physician prescribing buprenorphine or buprenorphine/naloxone within 60 days of the availability of an abuse deterrent or a practitioner-administered form of buprenorphine or buprenorphine/naloxone if approved by the Food and Drug Administration as provided in FDA Guidance to Industry. Upon receipt of the notice, a physician may switch his or her patients using buprenorphine or buprenorphine/naloxone to the abuse deterrent or a practitioner-administered form of the drug.

CHAPTER 33

(H. B. 244 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 16, 2024.]

AN ACT to amend and reenact §8-13-13 of the Code of West Virginia, 1931, as amended, relating to fees and charges for municipality provided fire services; and placing a limited moratorium on new municipal fire fees imposed on non-municipal residents.

Be it enacted by the Legislature of West Virginia:

ARTICLE 13. TAXATION AND FINANCE.

§8-13-13. Special charges for municipal services.

(a) Notwithstanding any charter provisions to the contrary, a municipality which furnishes any essential or special municipal service, including, but not limited to, police and fire protection, parking facilities on the streets or otherwise, parks and recreational facilities, street cleaning, street lighting, street maintenance and improvement, sewerage and sewage disposal, and the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter, has plenary power and authority to provide by ordinance for the installation, continuance, maintenance, or improvement of the service, to make reasonable regulations of the service, and to impose by ordinance upon the users of the service reasonable rates, fees, and charges to be collected in the manner specified in the ordinance: *Provided,* That no new fire protection fee or charge effective on or after June 30, 2024, may be imposed pursuant to this section on any resident or business situated outside

the boundaries of any municipality until June 30, 2025: *Provided, however,* That this prohibition does not prohibit a municipality from increasing or decreasing a fire protection fee or charge, in accordance with this section, in effect prior to June 30, 2024.

(b) Any sewerage and sewage disposal service and any service incident to the collection and disposal of garbage, refuse, waste, ashes, trash, and any other similar matter is subject to the provisions of Chapter 24 of this code.

(c) A municipality shall not have a lien on any property as security for payments due under subsection (a) of this section except as provided in subsection (d) of this section.

(d) A municipality may enact an ordinance, pursuant to this section, permitting it to file a lien on real property located within the municipal corporate limits for unpaid and delinquent fire, police, or street fees. The ordinance must provide an administrative procedure for the municipality's assessment and collection of the fees. The administrative procedure must require that, before any lien is filed, the municipality will give notice to the property owner, by certified mail, return receipt requested, that the municipality will file the lien unless the delinquency is paid by a date stated in the notice, which must be no less than 90 days from the date the notice is mailed. The administrative procedure must include the right to appeal to the circuit court of the county in which the real property is located. The circuit court shall consider the appeal under its general authority, including but not limited to §51-2-2(f) of this code.

(e) Notwithstanding the provisions of §8-11-4 of this code, any ordinance enacted or substantially amended under the provisions of this section shall be published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code. The publication area for the publication is the municipality.

(f) In the event 30 percent of the qualified voters of the municipality, by petition duly signed by them in their own handwriting and filed with the recorder of the municipality within 45 days after the expiration of the publication, protest against the

ordinance as enacted or amended, the ordinance shall not become effective until it is ratified by a majority of the legal votes cast by the qualified voters of the municipality at a regular municipal election or special municipal election, as the governing body directs. Voting shall not take place until after notice of the submission is given by publication as provided in subsection (e) of this section.

(g) The powers and authority granted to municipalities and to the governing bodies of municipalities in this section are in addition and supplemental to the powers and authority named in any charters of the municipalities.

(h) Notwithstanding any other provisions of this section, if rates, fees, and charges provided in this section are imposed by the governing body of a municipality for the purpose of replacing, and in amounts approximately sufficient to replace in its general fund amounts appropriated to be paid from ad valorem taxes upon property within the municipality, pursuant to an election duly called and held under the Constitution and laws of the state to authorize the issuance and sale of the municipality's general obligation bonds for public improvement purposes, the call for the election shall state that the governing body of the municipality proposes to impose rates, fees, and charges in specified amounts under this section for the use of one or more of the services specified in subsection (a) of this section, which shall be related to the public improvement proposed to be made with the proceeds of the bonds, no notice, publication of notice, or referendum, or election or other condition or prerequisite to the imposition of the rates, fees, and charges shall be required or necessary other than the legal requirements for issuance and sale of the general obligation bonds.

(i) Payments for rates, fees, and charges due under this section that are postmarked after the due date by which they are owed shall be considered late and may be subject to late fees or penalties: *Provided*, That payments that are received by the municipality after the due date, but that were postmarked on or before the due date shall be considered to be on time and shall not be assessed any late fees or penalties.

CHAPTER 34

(H. B. 227 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 16, 2024.]

AN ACT to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to a public charter school's application for funding.

Be it enacted by the Legislature of West Virginia:

ARTICLE 9D. SCHOOL BUILDING AUTHORITY.

§18-9D-15. Legislative intent; allocation of money among categories of projects; lease-purchase options; limitation on time period for expenditure of project allocation; county maintenance budget requirements; project disbursements over period of years; preference for multicounty arrangements; submission of project designs; set-aside to encourage local participation.

(a) It is the intent of the Legislature to empower the School Building Authority to facilitate and provide state funds and to administer all federal funds provided for the construction and major improvement of school facilities so as to meet the educational needs of the people of this state in an efficient and economical manner. The authority shall make funding determinations in accordance with the provisions of this article and shall assess existing school facilities and each facility's school major improvement plan in relation to the needs of the individual student, the general school population, the communities served by the facilities and facility needs statewide.

(b) An amount that is not more than 10 percent of the sum of moneys that are determined by the authority to be available for distribution during the then current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be allocated and may be expended by the authority for projects authorized in accordance with §18-9D-16 of this code that service the educational community statewide or, upon application by the state board, for educational programs that are under the jurisdiction of the state board. In addition, upon application by the state board or the administrative council of an area vocational educational center established pursuant to §18-2B-1 *et seq.* of this code, the authority may allocate and expend under this subsection moneys for school major improvement projects authorized in accordance with §18-9D-16 of this code proposed by the state board or an administrative council for school facilities under the direct supervision of the state board or an administrative council, respectively. Furthermore, upon application by a county board, the authority may allocate and expend under this subsection moneys for school major improvement projects for vocational programs at comprehensive high schools, vocational programs at comprehensive middle schools, vocational schools cooperating with community and technical college programs, or any combination of the three. Each county board is encouraged to cooperate with community and technical colleges in the use of existing or development of new vocational technical facilities. All projects eligible for funds from this subsection shall be submitted directly to the authority which shall be solely responsible for the project's evaluation, subject to the following:

(A) Any project funded by the authority shall be in accordance with a comprehensive educational facility plan which must be approved by the state board and the authority. The authority may not expend any moneys for a school major improvement project proposed by the state board or the administrative council of an area vocational educational center unless the state board or an administrative council has submitted a 10-year facilities plan; and

(B) The authority shall, before allocating any moneys to the state board or the administrative council of an area vocational educational center for a school improvement project, consider all other funding sources available for the project.

(c) An amount that is not more than two percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, shall be set aside by the authority as an emergency fund to be distributed in accordance with the guidelines adopted by the authority.

(d) An amount that is not more than five percent of the moneys that are determined by the authority to be available for distribution during the current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, may be reserved by the authority for multiuse vocational-technical education facilities projects that may include post-secondary programs as a first priority use. The authority may allocate and expend under this subsection moneys for any purposes authorized in this article on multiuse vocational-technical education facilities projects, including equipment and equipment updates at the facilities, authorized in accordance with §18-9D-16 of this code. If the projects approved under this subsection do not require the full amount of moneys reserved, moneys above the amount required may be allocated and expended in accordance with other provisions of this article. A county board, the state board, an administrative council, or the joint administrative board of a vocational-technical education facility which includes post-secondary programs may propose projects for facilities or equipment, or both, which are under the direct supervision of the respective body: *Provided*, That the authority shall, before allocating any moneys for a project under this subsection, consider all other funding sources available for the project.

(e) The remaining moneys determined by the authority to be available for distribution during the then current fiscal year from:

(1) The issuance of revenue bonds for which moneys in the School Building Debt Service Fund or the Excess Lottery School Building Debt Service Fund are pledged as security;

(2) Moneys paid into the School Construction Fund pursuant to §18-9D-6 of this code; and

(3) Any other moneys received by the authority, except moneys deposited into the School Major Improvement Fund and moneys deposited into the School Access Safety Fund pursuant to §18-9F-5 of this code, shall be allocated and expended on the basis of need and efficient use of resources for projects funded in accordance with §18-9D-16 of this code.

(f) If a county board proposes to finance a project that is authorized in accordance with §18-9D-16 of this code through a lease with an option to purchase leased premises upon the expiration of the total lease period pursuant to an investment contract, the authority may not allocate moneys to the county board in connection with the project: *Provided*, That the authority may transfer moneys to the state board which, with the authority, shall lend the amount transferred to the county board to be used only for a one-time payment due at the beginning of the lease term, made for the purpose of reducing annual lease payments under the investment contract, subject to the following conditions:

(1) The loan shall be secured in the manner required by the authority, in consultation with the state board, and shall be repaid in a period and bear interest at a rate as determined by the state board and the authority and shall have any terms and conditions that are required by the authority, all of which shall be set forth in a loan agreement among the authority, the state board and the county board;

(2) The loan agreement shall provide for the state board and the authority to defer the payment of principal and interest upon any loan made to the county board during the term of the investment contract, and annual renewals of the investment contract, among the state board, the authority, the county board and a lessor, subject to the following:

(A) If a county board which has received a loan from the authority for a one-time payment at the beginning of the lease term does not renew the lease annually until performance of the investment contract in its entirety is completed, the county board is in default and the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board;

(B) If a county board renews the lease annually through the performance of the investment contract in its entirety, the county board shall exercise its option to purchase the leased premises;

(C) The failure of the county board to make a scheduled payment pursuant to the investment contract constitutes an event of default under the loan agreement;

(D) Upon a default by a county board, the principal of the loan, together with all unpaid interest accrued to the date of the default, shall, at the option of the authority, in consultation with the state board, become due and payable immediately or subject to renegotiation among the state board, the authority and the county board; and

(E) If the loan becomes due and payable immediately, the authority, in consultation with the state board, shall use all means available under the loan agreement and law to collect the outstanding principal balance of the loan, together with all unpaid interest accrued to the date of payment of the outstanding principal balance; and

(3) The loan agreement shall provide for the state board and the authority to forgive all principal and interest of the loan upon the county board purchasing the leased premises pursuant to the investment contract and performance of the investment contract in its entirety.

(g) To encourage county boards to proceed promptly with facilities planning and to prepare for the expenditure of any state moneys derived from the sources described in this section, any county board or other entity to whom moneys are allocated by the authority that fails to expend the money within three years of the allocation shall forfeit the allocation and thereafter is ineligible for further allocations pursuant to this section until it is ready to expend funds in accordance with an approved facilities plan: *Provided*, That the authority may authorize an extension beyond the three-year forfeiture period not to exceed an additional two years. Any amount forfeited shall be added to the total funds available in the School Construction Fund of the authority for future allocation and distribution. Funds may not be distributed for any project under this article unless the responsible entity has a facilities plan approved by the state board and the School Building

Authority and is prepared to commence expenditure of the funds during the fiscal year in which the moneys are distributed.

(h) The remaining moneys that are determined by the authority to be available for distribution during the then current fiscal year from moneys paid into the School Major Improvement Fund pursuant to §18-9D-6 of this code shall be allocated and distributed on the basis of need and efficient use of resources for projects authorized in accordance with §18-9D-16 of this code, subject to the following:

(1) The moneys may not be distributed for any project under this section unless the responsible entity has a facilities plan approved by the state board and the authority and is to commence expenditures of the funds during the fiscal year in which the moneys are distributed;

(2) Any moneys allocated to a project and not distributed for that project shall be deposited in an account to the credit of the project, the principal amount to remain to the credit of and available to the project for a period of two years; and

(3) Any moneys which are unexpended after a two-year period shall be redistributed on the basis of need from the School Major Improvement Fund in that fiscal year.

(i) Local matching funds may not be required under the provisions of this section. However, this article does not negate the responsibilities of the county boards to maintain school facilities. Therefore, as a prerequisite for eligibility to receive an allocation of school major improvement funds from the authority, a county board shall provide annual school facility maintenance expenditure data to the authority which shall be jointly reviewed by the authority and the state Department of Education Office of School Facilities and Transportation to assist the authority in its determination of the most meritorious projects to be funded through the School Major Improvement Fund. The state board shall promulgate rules relating to county boards' school facility maintenance budgets, including items which shall be included in these budgets.

(j) Any county board may use moneys provided by the authority under this article in conjunction with local funds derived from bonding, special levy, or other sources. Distribution to a county board, or to the state board or the administrative council of an area vocational educational center pursuant to subsection (b) of this section, may be in a lump sum or in accordance with a schedule of payments adopted by the authority pursuant to guidelines adopted by the authority.

(2) A county board may apply to the authority for funding under this article as part of the county's bond finance plan for a proposed capital improvement bond levy to be submitted to the voters of that county. The county board shall first submit a request for the funding to the executive director of the authority prior to the county board's proposed bond levy election. After initial consultation with the executive director, the county board shall prepare a written outline of the bond finance plan, the capital improvements to be made with levy funds, and the amount and timing of funding requested from the authority. The county board shall then present its request at a meeting of the members of the authority.

Grants of financial assistance that have received initial approval under this section are contingent upon passage of the bond levy and final approval by the School Building Authority of the county's bond finance plan. Any materials produced by the county or its county board that refer to the authority shall include a statement of this contingency and terms. Notwithstanding any other provision of this subsection, financial assistance to be provided by the authority may only be used to pay costs of capital improvements and may not be pledged as security for or repayment of any bonds issued by the county board.

Upon passage of the bond levy, the county board shall have four years to finalize the project: *Provided*, That the authority may grant an extension to the four years in extenuating circumstances. The provisions of this subsection do not apply to any proposed capital improvement bond levy that is scheduled to be submitted to the voters on or before December 31, 2023.

(k) Funds in the School Construction Fund shall first be transferred and expended as follows:

(1) Any funds deposited in the School Construction Fund shall be expended first in accordance with an appropriation by the Legislature.

(2) To the extent that funds are available in the School Construction Fund in excess of that amount appropriated in any fiscal year, the excess funds may be expended for projects authorized in accordance with §18-9D-16 of this code.

(l) It is the intent of the Legislature to encourage county boards to explore and consider arrangements with other counties that may facilitate the highest and best use of all available funds, which may result in improved transportation arrangements for students, or which otherwise may create efficiencies for county boards and the students. In order to address the intent of the Legislature contained in this subsection, the authority shall grant preference to those projects which involve multicounty arrangements as the authority shall determine reasonable and proper.

(m) County boards shall submit all designs for construction of new school buildings to the School Building Authority for review and approval prior to preparation of final bid documents. A vendor who has been debarred pursuant §5A-3-33b through §5A-3-33f of this code may not bid on or be awarded a contract under this section.

(n) The authority may elect to disburse funds for approved construction projects over a period of more than one year subject to the following:

(1) The authority may not approve the funding of a school construction project over a period of more than three years;

(2) The authority may not approve the use of more than 50 percent of the revenue available for distribution in any given fiscal year for projects that are to be funded over a period of more than one year; and

(3) In order to encourage local participation in funding school construction projects, the authority may set aside limited funding, not to exceed $500,000, in reserve for one additional year to provide a county the opportunity to complete financial planning for a project prior to the allocation of construction funds. Any funding shall be on a reserve basis and converted to a part of the construction grant only after all project budget funds have been secured and all county commitments have been fulfilled. Failure of the county to solidify the project budget and meet its obligations to the state within 18 months of the date the funding is set aside by the authority will result in expiration of the reserve and the funds shall be reallocated by the authority in the succeeding funding cycle.

(o) Notwithstanding the provisions of West Virginia Code §18-9D-15 or §18-9D-16, a public charter school may, in its name and sole discretion, submit application to the School Building Authority for funding for costs associated with the renovating, remodeling, purchase or construction of a building to be used for public charter school purposes and for the cost of the project, and the authority may, in its sole discretion, approve such amount of funding as it determines appropriate, in its sole discretion, for such project from monies appropriated to the authority for the benefit of public charter schools. In the event that a public charter school closes, and the public charter school used School Building Authority funding for its building, the building shall be returned to the authorizer, as defined in §18-5G-2 of this code, for purposes of ownership. If the building cannot be returned to the authorizer, the building shall be returned to the state. Additionally, if School Building Authority funds were used to improve an existing property, the School Building Authority is authorized to develop a formula to determine the monetary amount of improvements to be returned to either the authorizer or the state.

CHAPTER 35

(H. B. 208 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 16, 2024.]

AN ACT to repeal §16-27-1, §16-27-2, §16-27-3, and §16-27-4 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new article, designated §16-27B-1, §16-27B-2, §16-27B-3, §16-27B-4, §16-27B-5, §16-27B-6, §16-27B-7, §16-27B-8, §16-27B-9, §16-27B-10, §16-27B-11, §16-27B-12, §16-27B-13, §16-27B-14, §16-27B-15 and §16-27B-16, all relating to making West Virginia an agreement state with the United States Nuclear Regulatory Commission; establishing a comprehensive regulatory system for the control of sources of radiation for the protection of the public; creating the Radiation Control Act; providing for declaration of policy and purpose; providing for certain definitions; providing for exemptions; providing that the Department of Health is to be designated as the state radiation control agency; providing for the department's duties, authorities, and requirements for consistency with federal law and regulations; providing for comprehensive programs and procedures to control radiation through general and specific licensing of radioactive materials and equipment; establishing rule making authority under the department concerning radiation control; establishing licensing and registration requirements and procedures; establishing fee schedules, funding sources, and forms; establishing procedures and requirements regarding radioactive materials and sureties; creating the Radiation Site Closure and Reclamation Fund with requirements and funding sources; creating the Radiation Licensure and Inspection Fund with requirements and funding

sources; allowing for impounding sources of ionizing radiation; providing authority for the Governor and the department to enter into agreements with the federal government, other states, or interstate agencies; defining effects on local ordinances; defining enforcement procedures regarding violations of law; establishing civil penalties; establishing felonies with criminal penalties; providing for administrative procedures; and authorizing judicial review.

Be it enacted by the Legislature of West Virginia:

ARTICLE 27. STORAGE AND DISPOSAL OF RADIOACTIVE WASTE MATERIALS.

§16-27-1. Definitions.

[Repealed.]

§16-27-2. Storage or disposal of radioactive waste material within the state prohibited; exceptions.

[Repealed.]

§16-27-3. Authority of director of health.

[Repealed.]

§16-27-4. Penalties.

[Repealed].

ARTICLE 27B. RADIATION CONTROL ACT.

§16-27B-1. Declaration of policy.

It is the policy of the state in furtherance of its responsibility to protect the occupational and public health and safety and the environment:

(1) To institute and maintain a regulatory program for sources of ionizing radiation so as to provide for compatibility and equivalency with the standards and regulatory programs of the

federal government, a single effective system of regulation within the state, and a system consonant insofar as possible with those of other states.

(2) To institute and maintain a program to permit development and use of sources of radiation for peaceful purposes consistent with the health and safety of the public.

(3) To provide for the availability of capacity outside the state for the disposal of low-level radioactive waste generated within the state except for waste generated as a result of defense or federal research and development activities and to recognize that such radioactive waste can be most safely and efficiently managed on a regional basis.

§16-27B-2. Declaration of purpose.

This article is enacted to provide:

(1) A program of effective regulation of sources of radiation for the protection of the occupational and public health and safety.

(2) A program to promote an orderly regulatory pattern within the state, among the states, and between the federal government and the state and facilitate intergovernmental cooperation with respect to use and regulation of sources of radiation to the end that duplication of regulation may be minimized.

(3) A program to establish procedures for assumption and performance of certain regulatory responsibilities with respect to byproduct, source and special nuclear materials, and radiation generating equipment.

(4) A program to permit use of sources of radiation consistent with the health and safety of the public.

§16-27B-3. Definitions.

As used in this article unless the context requires a different meaning:

(1) "By-product material" means:

(A) Any radioactive material, except special nuclear material, yielded in or made radioactive by exposure to the radiation incident to the process of producing or utilizing special nuclear material;

(B) Any discrete source of radium-226 that is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity;

(C) Any material that has been made radioactive by use of a particle accelerator and is produced, extracted, or converted after extraction for use for a commercial, medical, or research activity; and

(D) Any discrete source of naturally occurring radioactive material (NORM), other than source material that the United States Nuclear Regulatory Commission, in consultation with the Administrator of the Environmental Protection Agency, the Secretary of Energy, the Secretary of Homeland Security, and the head of any other appropriate federal agency, determines would pose a threat similar to the threat posed by a discrete source of radium-226 to the public health and safety or the common defense and security including conversion to technologically enhanced naturally occurring radioactive material (TENORM) through extraction, or conversion after extraction, for use for a commercial, medical, or research activity.

(2) "Civil penalty" means any monetary penalty levied on a licensee or registrant because of violations of statutes, regulations, licenses, or registration certificates, but does not include criminal penalties.

(3) "Decommissioning" means final operational activities at a facility to dismantle site structures, to decontaminate site surfaces and remaining structures, to stabilize and contain residual radioactive material, and to carry out any other activities to prepare the site for post-operational care.

(4) "Department" means the West Virginia Department of Health.

(5) "General license" means a license effective under rules promulgated by the department without the filing of an application with the department or the issuance of licensing documents to particular persons to transfer, acquire, own, possess, or use quantities of, or devices or equipment utilizing, radioactive material.

(6) "High-level radioactive waste" means:

(A) Irradiated reactor fuel;

(B) Liquid wastes resulting from the operation of the first cycle solvent extraction system, or equivalent, and the concentrated wastes from subsequent extraction cycles, or equivalent, in a facility for reprocessing irradiated reactor fuel; or

(C) Solids into which such liquid wastes have been converted.

(7) "Ionizing radiation" means gamma rays and X-rays, alpha and beta particles, high-speed electrons, neutrons, protons, and other nuclear particles.

(8) "Licensing" means licensing with the department in accordance with rules and regulations adopted pursuant to this article.

(9) "Low-level radioactive waste" means radioactive waste not classified as high-level radioactive waste, transuranic waste, spent nuclear fuel, or byproduct material.

(10) "Person" means any individual, corporation, LLC, partnership, firm, association, trust, estate, public or private institution, group, agency of this state, other than the Department of Health, political subdivision of this state, any other state or political subdivision or department thereof, and any legal successor, representative, agent, or department of the foregoing, but not including federal government agencies.

(11) "Radiation" means ionizing radiation.

(12) "Radiation emergency" means any situation, excluding events resulting from nuclear warfare, which involves the possibility of accidental release of ionizing radiation that may pose a threat to public health and safety or the environment.

(13) "Radiation generating equipment" means any manufactured product or device, or component part of such a product or device, or any machine or system which during operation can generate or emit radiation except those which emit radiation only from radioactive material.

(14) "Radioactive material" means any material (solid, liquid, or gas) which emits ionizing radiation spontaneously. It includes accelerator-produced, byproduct, naturally occurring, and source and special nuclear materials.

(15) "Registration" means registration with the department in accordance with rules and regulations adopted pursuant to this article.

(16) "Secretary" means the secretary of the West Virginia Department of Health or his or her designee.

(17) "Source material" means uranium or thorium, or any combination thereof, in any physical or chemical form; or ores that contain by weight one-twentieth of one percent (0.05 percent) or more of uranium, thorium, or any combination thereof. Source material does not include special nuclear material.

(18) "Sources of radiation" means, collectively, radioactive material and radiation generating equipment.

(19) "Special nuclear material" means (i) plutonium, uranium 233, uranium enriched in the isotope 233 or in the isotope 235, and any other material which the United States Nuclear Regulatory Commission or any successor thereto has determined to be such but does not include source material; or (ii) any material artificially enriched by any of the foregoing but not including source material.

(20) "Specific license" means a license, issued to a named person upon application filed under the rules promulgated pursuant

to this article, to use, manufacture, produce, transfer, receive, acquire, or possess quantities of, or devices utilizing, radioactive material.

(21) "Spent nuclear fuel" means irradiated nuclear fuel that has undergone at least one year's decay since being used as a source of energy in a power reactor. Spent fuel includes the special nuclear material, byproduct material, source material, and other radioactive material associated with fuel assemblies.

(22) "Transuranic waste" means radioactive waste containing alpha emitting transuranic elements, with radioactive half-lives greater than five years, in excess of 10 nanocuries per gram.

§16-27B-4. Exemption.

The provisions of this article shall not apply to radioactive materials or facilities, including nuclear reactors, that are subject to exclusive licensing and regulation by the United States Nuclear Regulatory Commission.

§16-27B-5. Department designated state radiation control agency; powers and duties.

(a) The Department of Health is hereby designated as the state radiation control agency.

(b) The secretary shall designate the director of the state radiation control agency who shall perform the functions vested in the state radiation control agency under the provisions of this article.

(c) In accordance with the laws of the state, the state radiation control agency may employ, compensate, and prescribe the powers and duties of such individuals as may be necessary to carry out the provisions of this article.

(d) The state radiation control agency, for the protection of the occupational and public health and safety, and the environment shall:

(1) Develop programs for evaluation and control of hazards associated with use of sources of radiation.

(2) Develop programs with due regard for compatibility with federal programs for regulation of byproduct, source, and special nuclear materials.

(3) Develop programs with due regard for consistency with federal programs for regulation of radiation generating equipment.

(4) Formulate, adopt, promulgate, and repeal rules and regulations, which may provide for licensing and/or registration, relating to control of sources of radiation with due regard for compatibility with the regulatory programs of the federal government.

(5) Advise, consult, and cooperate with other agencies of the state, the federal government, other states and interstate agencies, political subdivisions, and other organizations concerned with the control of sources of radiation.

(6) Have the authority to accept and administer loans, grants, or other funds or gifts, conditional or otherwise, in furtherance of its functions, from the federal government and from public or private sources.

(7) Encourage, participate in, or conduct studies, investigations, training, research, and demonstrations relating to the control of sources of radiation.

(8) Collect and disseminate information relating to the control of sources of radiation, including:

(A) Establish and maintain a file of all license applications, issuances, denials, amendments, transfers, renewals, modifications, suspensions, and revocations;

(B) Establish and maintain a file of registrants possessing sources of radiation requiring registration under the provisions of this article and any administrative or judicial action pertaining thereto; and

(C) Establish and maintain a file of all agency rules related to regulation of sources of radiation, pending or promulgated, and proceedings thereon.

(9) Establish a database of registered and certified radiation producing devices, which shall include but not be limited to the name of the owner or operator and the location of the machine.

(10) Pursuant to its powers enumerated in §16-27B-6 of this code, provide for scheduled and random unannounced inspections of facilities that house radiation producing devices and radioactive sources and provide relevant services to ensure compliance with all applicable laws, rules, licenses, or conditions.

(11) Establish all necessary forms, including periodic radiation inspection reports.

(12) Develop programs for responding adequately to radiation emergencies and coordinate such programs with the emergency management agencies.

(13) Publish and make available a list of qualified physicists and vendors of radiation producing devices, radioactive supplies, and those qualified to perform work related to the same.

(14) Ensure compliance with all requirements under the Appalachian States Low-Level Radioactive Waste Compact pursuant to §29-1H-1 *et seq.* of this code and all federal laws.

(15) Promulgate all rules necessary under this article, in accordance with the provisions of §29A-3-1 *et seq.* of this code, related to (i) general or specific licenses necessary to use, store, dispose, manufacture, produce, transfer, receive, acquire, own, or possess quantities of, or devices or equipment utilizing, by-product, source, special nuclear materials, or other radioactive material occurring naturally or produced artificially, (ii) registration of the possession of a source of radiation and maintaining all related records, (iii) regulation of by-product, source and special nuclear material and (iv) compliance with Appalachian States Low-Level Radioactive Waste Compact pursuant to §29-1H-1 *et seq.* of this code and all federal laws.

(16) Issue such orders or modifications thereof as may be necessary in connection with proceedings under this article.

(e) The department is authorized to require by rule, regulation, or order, the keeping of such records with respect to activities under licenses and registration certificates issued under this article as may be necessary to effectuate the purpose of this article. These records shall be made available for inspection by, or copies thereof shall be submitted to, the department on request.

(f) The secretary shall establish fee schedules for licensures, registrations, inspections, and modifications thereto required pursuant to this article. All such fees collected shall be paid to the department for deposit in a special fund called the Radiation Licensure and Inspection Fund created pursuant to §16-27B-9 of this code.

(g) The secretary shall provide compensation, office space, staff, and office equipment as may be necessary to discharge the responsibilities imposed by this article.

§16-27B-6. Licensing of radioactive material.

(a) All radioactive material not under the authority of the United States Nuclear Regulatory Commission, and devices or equipment utilizing such material, shall be licensed by the department under the rules promulgated by the department. Rules promulgated under this article shall provide for recognition of other Agreement State or federal licenses.

(b) It shall be unlawful for any person to use, store, dispose, manufacture, produce, distribute, sell, transport, transfer, install, repair, receive, acquire, own, or possess any source of radiation unless licensed by or registered with the department in accordance with this article and with any rules promulgated by the department pursuant to this article. The disposal of radioactive waste material in a solid waste facility or in a commercial solid waste facility, as defined in §22-15-2 of this code, is prohibited.

(c) The department shall provide by rule or regulation for general or specific licensing of radioactive material or devices or

equipment utilizing such material. Such rule or regulation shall provide for the amendment, suspension, or revocation of licenses.

(d) The department is authorized to require registration or licensing of other sources of radiation.

(e) The department is authorized to exempt certain sources of radiation or kinds of uses or users from the licensing or registering requirements set forth in this section when the department makes a finding that the exemption of such sources of radiation or kinds of use or users will not constitute a significant risk to public health and safety or the environment.

§16-27B-7. Surety requirements.

(a) For licensed activities the department may, establish by rule or regulation standards and procedures to ensure that the licensee will provide an adequate surety or other financial arrangement to permit the completion of all requirements established by the department for the decontamination, closure, decommissioning and reclamation of sites, structures, and equipment used in conjunction with such licensed activity, in the event that the licensee should default for any reason in performing such requirements.

(b) All sureties or moneys made a part of any other financial arrangement required under subsection (a) which are forfeited shall be paid to the department for deposit in a special fund called the Radiation Site Closure and Reclamation Fund created pursuant to §16-27B-8 of this code.

(c) For licensed activities when radioactive material which will require surveillance or care is likely to remain at the site after the licensed activities cease, the department may, establish by rule or regulation standards and procedures to ensure that the licensee, before termination of the license, will make available such funding arrangements as may be necessary to provide for long-term site surveillance and care.

(d) All funds collected from licensees under subsection (c) shall be paid to the department for deposit in a special fund called

Radiation Site Closure and Reclamation Fund created under §16-27B-8 of this code.

(e) The sureties or other financial arrangements and funds required by subsections (a) and (c) shall be established in amounts sufficient to ensure compliance with those standards, if any, established by the United States Nuclear Regulatory Commission pertaining to closure, decommissioning, reclamation, and long-term site surveillance and care of such facilities and sites.

(f) In order to provide for the proper care and surveillance of sites subject to subsection (c) of this section, the department may acquire by gift or transfer from another government agency or private person any land and appurtenances necessary to fulfill the purposes of this section. Any such gift or transfer is subject to approval and acceptance by the department.

(g) The department may by contract, agreement, lease, or license with any person, including another state or federal agency, provide for the decontamination, closure, decommissioning, reclamation, surveillance, or other care of a site subject to this section as needed to carry out the purposes of this section.

(h) All federal, state, local, or other governmental agencies, shall be exempt from the requirements of subsection (a) and (c).

§16-27B-8. Radiation Site Closure and Reclamation Fund.

(a) There is hereby created in the State Treasury a special revenue fund known as the Radiation Site Closure and Reclamation Fund. The fund shall be administered by and under the control of the Secretary of the Department of Health. Expenditures from the fund shall be solely for the purposes under this article of administration, acquisition, construction, decommission, decontamination, maintenance, surveillance, remediation, reclamation, closure, or other care on sites containing or associated with licensable radioactive material for the protection of public health and safety and the environment.

(b) The fund shall consist of moneys appropriated by the Legislature, moneys received from the federal government,

moneys received from forfeited sureties, moneys received under §16-27B-7(a) or (d) of this code, and from private donations, grants, bequests, and all other moneys received from all sources for the purposes stated herein.

(c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the general revenue but shall remain in the fund solely for the purposes stated in this article.

(d) The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia Investment Management Board are reserved solely and exclusively for the purposes set forth in this code section.

§16-27B-9. Radiation Licensure and Inspection Fund.

(a) There is hereby created in the State Treasury a special revenue fund known as the Radiation Licensure and Inspection Fund. The fund shall be administered by and under the control of the Secretary of the Department of Health. Expenditures from the fund shall be solely for the purposes under this article of administration, registration, licensing, and inspection of radioactive materials facilities and equipment for the protection of public health and safety and the environment.

(b) The fund shall consist of moneys appropriated by the Legislature, moneys received from the federal government, moneys received from licensing and registration fees, and from private donations, grants, bequests, and all other moneys received from all sources for the purposes stated herein. Moneys from forfeited sureties or which are part of other financial arrangements under §16-27B-7 of this code and any interest earned thereon shall not be deposited into this fund or used for normal operating expenses.

(c) Any funds remaining in the Fund at the end of the fiscal year shall not revert to the general revenue but shall remain in the fund solely for the purposes stated in this article.

(d) The moneys accrued in this fund, any earnings thereon, and yield from investments by the State Treasurer or West Virginia

Investment Management Board are reserved solely and exclusively for the purposes set forth in this section.

§16-27B-10. Impounding sources of ionizing radiation.

The department is authorized, in the event of an emergency or under other circumstances constituting a hazard to public health and safety or the environment, to impound or order the impounding of sources of ionizing radiation in the possession of any person who is not equipped to observe or fails to observe the provisions of this article, federal law, or any rules or regulations promulgated or issued thereunder.

§16-27B-11. Authority of Governor to enter into agreements with federal government; effect on federal license.

(a) The Governor is authorized to enter into agreements with the U.S. Nuclear Regulatory Commission under Section 274b of the Atomic Energy Act of 1954, as amended, providing for discontinuance of certain licensing and related regulatory authority of the U.S. Nuclear Regulatory Commission with respect to byproduct, source and special nuclear materials, and the assumption of regulatory authority therefore by this state.

(b) Any person who, on the effective date of an agreement under subsection (a) above, except those exempted under §16-27B-4 of this code, possesses a license issued by the U.S. Nuclear Regulatory Commission for radioactive materials subject to the agreement shall be deemed to possess a like license issued under this article, which shall expire either 90 days after receipt from the department of a notice of expiration of such license, or on the date of expiration specified in the U.S. Nuclear Regulatory Commission license, whichever is earlier.

§16-27B-12. Authority of department to enter into agreements with federal government, other states or interstate agencies; training programs for personnel.

(a) The department, with the prior approval of the Governor, is authorized to enter into an agreement or agreements with the federal government, other states or interstate agencies, whereby

this state will perform, on a cooperative basis with the federal government, other states or interstate agencies, inspections or other functions relating to control of sources of ionizing radiation.

(b) The department, from funds provided by law, may institute programs for the purpose of training personnel to carry out the provisions of this article and, with the prior approval of the Governor, may make such personnel available for participation in any program or programs of the federal government, other states, or interstate agencies in furtherance of this article.

(c) The West Virginia Department of Environmental Protection (WVDEP) shall, upon request from the Secretary of the Department of Health, provide technical guidance and support to the department to implement sound and scientific principles for the program based upon the WVDEP's expertise in the coal, oil, and gas industries. The WVDEP shall also provide technical guidance and support to the department on issues related to air and water pollution generated from radiation sources regulated by the department.

§16-27B-13. Effect upon local ordinances, etc.

Ordinances, resolutions, or rules, now or hereafter in effect, of the governing body of a county, political subdivision, municipality, other state agencies, or other local government body relating to by-product, source, and special nuclear materials shall not be superseded by this article, provided that such ordinances or rules are and continue to be consistent with the provisions of this article, amendments thereto and rules thereunder.

§16-27B-14. Enforcement; civil penalties.

(a) Any person who violates any licensing or registration provision of this article or any rule, regulation, or order issued thereunder, or any term, condition, or limitation of any license or registration certificate issued thereunder or commits any violation for which a license or registration certificate may be revoked under rules or regulations issued under this article may be subject to a civil penalty, to be imposed by the department, not to exceed

$10,000. If any violation is a continuing one, each day of such violation shall constitute a separate and distinct violation for the purposes of computing the applicable civil penalty. The department shall have the power to compromise, mitigate, or remit such penalties.

(b) Whenever the department proposes to subject a person to the imposition of a civil penalty under the provisions of this section, it shall notify such person in writing;

(1) Setting forth the date, facts, and nature of each act or omission with which the person is charged;

(2) Specifically identifying the particular provision or provisions of the article, rule, regulation, order, license, or registration certificate involved in the violation; and

(3) Advising of each penalty which the department proposes to impose and its amount.

Such written notice shall be sent by registered or certified mail by the department to the last known address of such person. The person so notified shall be granted an opportunity to show in writing, within such reasonable period as the department shall by rule prescribe, why such penalty should not be imposed. The notice shall also advise such person that upon failure to pay the civil penalty subsequently determined by the department, if any, the penalty may be collected by civil action. Any person upon whom a civil penalty is imposed may appeal such action under §29A-1-1 *et seq.* of this code.

(c) The department, or upon the request of the department, the Attorney General, is authorized in the name of the state to institute a civil action to collect a penalty imposed pursuant to this section. The department, or upon the request of the department, the Attorney General, shall have the exclusive power to compromise, mitigate, or remit such civil penalties as are referred for collection.

(d) All moneys collected from civil penalties shall be deposited in the Radiation Licensure and Inspection Fund created pursuant to §16-27B-9 of this code.

(e) In addition to the provisions of §16-27B-5 of this code, the department shall have the power to enter at all reasonable times, or in cases of an emergency, upon any private or public property for the purpose of determining whether or not there is compliance with or violation of the provisions of this article and rules issued thereunder, except that entry into areas under the jurisdiction of the federal government shall be effected only with the concurrence of the federal government or its duly designated representative.

§16-27B-15. Felony created; criminal penalties; injunctions; civil penalties; charges for violations.

(a) Any person who willfully violates any of the provisions of the rules, regulations, or orders of the department or secretary or any provision under this article is guilty of a felony, and, upon conviction thereof, shall be fined not less than $1,000 nor more than $25,000, for each day of such violation, or imprisoned not less than one nor more than five years, or both fined and imprisoned. Upon a second or subsequent conviction, the person shall be guilty of a felony, and, upon conviction thereof, shall be fined not less than $5,000 nor more than $50,000 for each day of such violation, or imprisoned not less than two nor more than ten years, or both fined and imprisoned.

(b) Any person who violates or intends to violate, or fails, neglects, or refuses to obey any law, lawful rule, or order of the department or secretary or any provision of this article may be compelled in a proceeding instituted in an appropriate court by the department or secretary to obey such rule, order or provision of this article and to comply therewith by injunction, mandamus, or other appropriate remedy.

(c) Without limiting the remedies which may be obtained in subsection (b) of this section, any person violating or failing, neglecting or refusing to obey any injunction, mandamus or other remedy obtained pursuant to subsection (b) shall be subject, in the discretion of the court, to a civil penalty not to exceed $25,000 for each violation, which shall be paid to the Radiation Licensure and Inspection Fund created pursuant to §16-27B-8 of this code. Each day of violation shall constitute a separate and distinct offense.

(d) With the consent of any person who has violated or failed, neglected, or refused to obey any rule or order of the department or secretary or any provision of this article, the department or secretary may provide, in an order issued by the department or secretary against such person, for the payment of civil charges for past violations in specific sums, not to exceed the limits specified in §16-27B-14 of this code. Such civil charges shall be instead of any appropriate civil penalty which could be imposed under §16-27B-14 of this code.

§16-27B-16. Administrative procedure and judicial review.

(a) In any proceeding for the denial of an application for license or for revocation, suspension, or modification or a license, the department shall provide to the applicant or licensee an opportunity for a hearing on the record.

(b) Whenever the department finds that an emergency exists requiring immediate action to protect the environment and the public health and safety, the department may, without notice or hearing, issue a regulation or order reciting the existence of such emergency and requiring that such action be taken as is necessary to meet the emergency. Notwithstanding any provision of this article, such regulation or order shall be effective immediately. Any person to whom such regulation or order is directed shall comply therewith immediately, but on application to the department shall be afforded a hearing within five business days. On the basis of such hearing, the emergency regulation or order shall be continued, modified, or revoked within 30 days after such hearing.

(c) Any final department action or order entered in any proceeding under subsections (a) or (b) of this section shall be subject to appeal to the Board of Review, set forth in §16B-2-2 of this code, within 30 days after receipt of written notice of a final action or order. The provisions of §29A-5-1 *et seq.* of this code shall apply to such appeals.

CHAPTER 36

(H. B. 226 - By Delegates Hanshaw (Mr. Speaker) and Hornbuckle)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage.]
[Approved by the Governor on October 16, 2024.]

AN ACT to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-21-26, providing for a child and dependent care credit against the personal income tax in the amount of 50 percent of the allowed federal tax credit provided under 26 U.S.C. § 21; and specifying retrospective effect.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-26 – Child and dependent care credit.

For tax years beginning on and after January 1, 2024, a person who is allowed a federal tax credit for child and dependent care pursuant to 26 U.S.C. § 21 is also allowed a nonrefundable credit against the tax imposed by §11-21-1 *et seq* of this code. The amount of the credit allowed to the person claiming the credit under this section is 50 percent of the federal child and dependent care tax credit allowed to the person under the provisions of 26 U.S.C. § 21. This section shall have retrospective effect to apply to taxable years beginning on and after January 1, 2024.

CHAPTER 37

(S. B. 2033 - By Senators Blair (Mr. President) and Woelfel)

[By Request of the Executive]

[Passed October 8, 2024; in effect from passage]
[Approved by the Governor on October 16, 2024.]

AN ACT to amend and reenact §11-21-4h of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §11-21-4i, all relating to personal income tax; modifying the effective date of future personal income tax reductions; providing for reduced graduated income tax rates; reducing the rate of tax on certain composite returns; reducing the rate of withholding tax on nonresident income; reducing the rate of withholding tax on the nonresident sale of real estate; reducing the rate of withholding on lottery winnings; applying reduced rates beginning on and after January 1, 2025; providing for contingent additional future reductions in the personal income tax rates when certain criteria have been met; making technical corrections; and providing effective dates.

Be it enacted by the Legislature of West Virginia:

ARTICLE 21. PERSONAL INCOME TAX.

§11-21-4h. Future personal income tax reductions.

(a) For the purposes of this section, the terms defined in this section have the meanings ascribed to them unless a different meaning is clearly required by the context in which the term is used:

(1) "Adjusted consumer price ratio" means the fiscal year consumer price index divided by the base year consumer price index.

(2) "Adjusted general revenue fund collections" means all net general revenue fund collections minus the net general revenue fund collections related to the imposition of the taxes imposed under the provisions of §11-13A-1, *et seq.* of this code.

(3) "Base year revenues" means actual general revenue fund collections for 2019 fiscal year, which is $4,293,884,754

(4) "Base year consumer price index" means a 12-month average of the not seasonally adjusted Consumer Price Index for all urban consumers for the months between July 2018 and June 2019.

(5) "Excess fiscal year general revenue fund collections" means the positive difference from subtracting the inflation adjusted base year revenues from the adjusted general revenue fund collections from the immediately preceding fiscal year.

(6) "Fiscal year consumer price index" means a 12-month average of the not seasonally adjusted Consumer Price Index for all urban consumers for the months between July and June of the immediately preceding fiscal year.

(7) "Inflation adjusted base year revenues" means the base year general revenue fund collections multiplied by the adjusted consumer price ratio.

(b) *Future personal income tax rate reductions*. — Beginning on August 15, 2025, and every August 15 thereafter, the Secretary of Revenue will determine whether the total fiscal year adjusted general revenue fund collections from the immediately preceding fiscal year are in excess of the inflation adjusted base year revenues. If the total fiscal year adjusted general revenue fund collections from the immediately preceding fiscal year are in excess of the inflation adjusted base year revenues, then there will be a reduction in the personal income tax rates as determined under this section beginning the second taxable year following the determination.

(c) *Determination of rate*. — In order to determine the amount of a personal income tax reduction, the excess fiscal year general

revenue fund collections will be divided by the amount of the immediately preceding fiscal year's total personal income tax collections for all funds and will be rounded down to the nearest whole percentage. The amount of the percentage of reduction will be applied equally across the tax rates applicable in the tax year immediately preceding the rate reduction: *Provided*, That reduction in personal income tax rates may not result in an amount larger than a 10% reduction in the rates set forth in §11-21-4e of this code.

(d) *Certification of reduction*. – The Secretary of Revenue and the State Auditor will certify to the Tax Commissioner that a rate change is required under this section as soon as possible after August 15 so that the Tax Commissioner may notify taxpayers of any change in personal income tax rates. The certification will provide base year revenues, the total fiscal year general revenue fund collections from the immediately preceding fiscal year, the base year consumer price index, the fiscal year consumer price index, the adjusted consumer price ratio, the amount of inflation adjusted base year revenues, the amount of excess fiscal year general revenue fund collections and the amount of the immediately preceding fiscal year's total personal income tax collections for all funds.

(e) *Applicability of this section*. — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply for all taxable years beginning on and after January 1, 2026, and shall be in lieu of the rates of tax specified in §11-21-4i of this code.

(f) *Annual Reports*. — The Tax Commissioner shall prepare an annual report to the Joint Committee on Government and Finance detailing any relevant modifications to the personal income tax.

(g) *Rulemaking.* — Notwithstanding any provision of this code to the contrary, the Tax Commissioner may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code explaining and implementing this section.

§11-21-4i. Rate of tax — Taxable years beginning on and after January 1, 2025.

(a) *Rate of tax on individuals (except married individuals filing separate returns), individuals filing joint returns, heads of households, and estates and trusts.* — The tax imposed by §11-21-3 of this code on the West Virginia taxable income of every individual (except married individuals filing separate returns); every individual who is a head of a household in the determination of his or her federal income tax for the taxable year; every husband and wife who file a joint return under this article; every individual who is entitled to file his or her federal income tax return for the taxable year as a surviving spouse; and every estate and trust (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code) shall be determined in accordance with the following table:

If the West Virginia taxable income is:	The tax is:
Not over $10,000	2.22% of the taxable income
Over $10,000 but not over $25,000	$222 plus 2.96% of excess over $10,000
Over $25,000 but not over $40,000	$666 plus 3.33% of excess over $25,000
Over $40,000 but not over $60,000	$1,165.50 plus 4.44% of excess over $40,000
Over $60,000	$2,053.50 plus 4.82% of excess over $60,000

(b) Rate of tax on married individuals filing separate returns. — In the case of husband and wife filing separate returns under this article for the taxable year, the tax imposed by §11-21-3 of this code on the West Virginia taxable income of each spouse shall be determined in accordance with the following table:

If the West Virginia taxable

income is:	The tax is:
Not over $5,000	2.22% of the taxable income
Over $5,000 but not over $12,500	$111 plus 2.96% of excess over $5,000
Over $12,500 but not over $20,000	$333 plus 3.33% of excess over $12,500
Over $20,000 but not over $30,000	$582.75 plus 4.44% of excess over $20,000
Over $30,000	$1,026.75 plus 4.82% of excess over $30,000

(c) *Rate of tax on non-grantor trusts administered by licensed private trust companies.* – In the case of non-grantor trusts administered by licensed private trust companies created pursuant to §31I-1-1 *et seq.* of this code, there is no tax imposed by §11-21-3 of this code.

(d) *Effect of rates on Nonresident Composite and Withholding Obligations* — Notwithstanding any provision of this article to the contrary, for taxable years beginning on and after the date specified in subsection (e) of this section, whenever the words "six and one-half percent" appear in §11-21-51a, §11-21-71a, §11-21-71b, or §11-21-77 of this code, with relation to a tax return of, or the tax rate imposed on income of individuals, individuals filing joint returns, heads of households, and estates and trusts (except non-grantor trusts administered by licensed private trust companies created pursuant to the provisions of §31I-1-1 *et seq.* of this code), the stated percentage shall be changed to 4.82%.

(e) *Applicability of this section.* — The provisions of this section shall be applicable in determining the rates of tax imposed by this article and shall apply for all taxable years beginning on and after January 1, 2025, and shall be in lieu of the rates of tax

specified in §11-21-4g of this code and as those rates were modified by the application of §11-21-4h of this code in 2024.

(f) *Applicability of §11-21-4h of this code*. – The Legislature finds that in August 2024, the Tax Commissioner issued an administrative notice reducing the tax rates imposed by §11-21-4g of this code for all taxable years beginning on and after January 1, 2025, pursuant to application of §11-21-4h of this code. The Legislature intends that the provisions of the enactment of this section in 2024 supersede the tax rates set forth in §11-21-4g of this code and set forth in the administrative notice. It is the further intent of the Legislature that §11-21-4h of this code continue in full force and effect as amended.

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2024

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
4026	179	4838	245	5117	200
4086	180	4845	87	5122	73
4110	181	4850	257	5128	231
4190	238	4860	111	5151	49
4233	217	4863	112	5153	163
4252	94	4874	150	5157	261
4274	149	4880	258	5158	116
4297	60	4882	161	5162	171
4305	158	4883	207	5170	100
4350	124	4911	6	5175	201
4376	218	4919	162	5178	189
4399	86	4933	167	5188	74
4431	219	4940	251	5213	190
4552	125	4945	113	5232	269
4594	166	4951	114	5238	191
4667	220	4967	130	5252	247
4700	139	4971	259	5261	262
4709	108	4975	48	5262	248
4721	199	4976	151	5267	75
4756	221	4984	53	5268	134
4768	159	4986	115	5273	224
4782	268	4998	88	5294	9
4786	168	4999	95	5295	10
4793	8	5006	131	5298	126
4801	230	5013	132	5317	192
4809	169	5017	222	5326	202
4812	72	5019	188	5332	241
4814	160	5024	260	5347	225
4822	99	5045	133	5348	271
4829	244	5056	246	5349	7
4830	109	5057	170	5395	79
4832	110	5084	223	5405	249
4837	44	5091	89	5430	80

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2024

HOUSE BILLS
-Continued-

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
5432	152	5561	135	5650	250
5435	164	5569	203	5662	91
5510	90	5582	204	5668	140
5514	117	5583	242	5690	43
5520	50	5594	153	5696	195
5540	118	5617	240		
5549	61	5632	205		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2024

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2	172	370	206	548	76
17	173	378	209	551	67
31	174	400	239	557	233
36	175	428	2	568	105
50	176	429	185	574	12
60	177	430	54	578	84
142	45	438	196	583	1
146	101	439	210	587	234
147	267	445	211	600	235
148	193	451	64	602	106
149	62	452	127	603	128
159	119	453	142	605	144
164	81	461	97	606	194
166	120	462	252	607	68
170	270	466	104	610	129
171	63	475	212	613	137
172	102	477	213	623	122
173	184	482	143	624	123
190	82	483	253	628	51
200	11	487	243	631	215
217	141	503	154	632	183
222	265	504	83	643	13
240	136	507	52	644	14
261	266	529	155	649	77
262	46	530	65	650	15
269	57	533	214	652	16
280	103	539	232	653	17
300	208	540	59	656	18
318	92	542	121	657	19
325	93	543	156	658	20
331	226	544	66	661	21
354	96	547	178	663	22

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Regular Session, 2024

SENATE BILLS
-Continued-

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
665	23	708	36	826	227
667	197	709	37	827	186
668	58	710	38	834	187
679	3	712	236	837	78
681	157	730	69	841	264
687	182	732	237	844	146
690	4	751	138	850	56
695	24	752	5	858	255
696	25	755	216	864	228
697	26	768	47	865	147
698	27	778	85	866	229
699	28	782	70	868	39
700	29	786	198	871	40
701	30	790	145	872	71
702	31	802	55	873	256
703	32	803	254	874	263
704	33	806	107	875	148
705	34	820	165	876	41
707	35	824	98	877	42

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2024

House Bills = 4 Digits Senate Bills = 1-3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	583	33	704	65	530
2	428	34	705	66	544
3	679	35	707	67	551
4	690	36	708	68	607
5	752	37	709	69	730
6	4911	38	710	70	782
7	5349	39	868	71	872
8	4793	40	871	72	4812
9	5294	41	876	73	5122
10	5295	42	877	74	5188
11	200	43	5690	75	5267
12	574	44	4837	76	548
13	643	45	142	77	649
14	644	46	262	78	837
15	650	47	768	79	5395
16	652	48	4975	80	5430
17	653	49	5151	81	164
18	656	50	5520	82	190
19	657	51	628	83	504
20	658	52	507	84	578
21	661	53	4984	85	778
22	663	54	430	86	4399
23	665	55	802	87	4845
24	695	56	850	88	4998
25	696	57	269	89	5091
26	697	58	668	90	5510
27	698	59	540	91	5662
28	699	60	4297	92	318
29	700	61	5549	93	325
30	701	62	149	94	4252
31	702	63	171	95	4999
32	703	64	451	96	354

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2024
-Continued-

House Bills = 4 Digits Senate Bills = 1-3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
97	461	128	603	159	4768
98	824	129	610	160	4814
99	4822	130	4967	161	4882
100	5170	131	5006	162	4919
101	146	132	5013	163	5153
102	172	133	5045	164	5435
103	280	134	5268	165	820
104	466	135	5561	166	4594
105	568	136	240	167	4933
106	602	137	613	168	4786
107	806	138	751	169	4809
108	4709	139	4700	170	5057
109	4830	140	5668	171	5162
110	4832	141	217	172	2
111	4860	142	453	173	17
112	4863	143	482	174	31
113	4945	144	605	175	36
114	4951	145	790	176	50
115	4986	146	844	177	60
116	5158	147	865	178	547
117	5514	148	875	179	4026
118	5540	149	4274	180	4086
119	159	150	4874	181	4110
120	166	151	4976	182	687
121	542	152	5432	183	632
122	623	153	5594	184	173
123	624	154	503	185	429
124	4350	155	529	186	827
125	4552	156	543	187	834
126	5298	157	681	188	5019
127	452	158	4305	189	5178

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Regular Session, 2024
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House Bills = 4 Digits Senate Bills = 1-3 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
190	5213	218	4376	246	5056
191	5238	219	4431	247	5252
192	5317	220	4667	248	5262
193	148	221	4756	249	5405
194	606	222	5017	250	5650
195	5696	223	5084	251	4940
196	438	224	5273	252	462
197	667	225	5347	253	483
198	786	226	331	254	803
199	4721	227	826	255	858
200	5117	228	864	256	873
201	5175	229	866	257	4850
202	5326	230	4801	258	4880
203	5569	231	5128	259	4971
204	5582	232	539	260	5024
205	5632	233	557	261	5157
206	370	234	587	262	5261
207	4883	235	600	263	874
208	300	236	712	264	841
209	378	237	732	265	222
210	439	238	4190	266	261
211	445	239	400	267	147
212	475	240	5617	268	4782
213	477	241	5332	269	5232
214	533	242	5583	270	170
215	631	243	487	271	5348
216	755	244	4829		
217	4233	245	4838		

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2024

HOUSE BILLS

Bill No.	Chapter
113	14

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

First Extraordinary Session, 2024

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
1001	1	1006	6	1011	11
1002	2	1007	7	1012	12
1003	3	1008	8	1014	13
1004	4	1009	9	1015	15
1005	5	1010	10		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

First Extraordinary Session, 2024

House Bills = 3 Digits Senate Bills = 4 Digits

Chapter	Bill No.	Chapter	Bill No.	Chapter	Bill No.
1	1001	6	1006	11	1011
2	1002	7	1007	12	1012
3	1003	8	1008	13	1014
4	1004	9	1009	14	113
5	1005	10	1010	15	1015

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2024

HOUSE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
201	1	208	35	218	14
202	2	211	8	219	15
203	3	212	9	226	36
204	4	213	10	227	34
205	5	214	11	230	16
206	6	215	12	244	33
207	7	216	13	245	17

DISPOSITION OF BILLS ENACTED

The first column gives the number of the bill and the second column gives the chapter assigned to it.

Second Extraordinary Session, 2024

SENATE BILLS

Bill No.	Chapter	Bill No.	Chapter	Bill No.	Chapter
2009	18	2028	32	2036	27
2010	19	2031	24	2037	28
2020	20	2032	25	2038	29
2021	21	2033	37	2039	30
2022	22	2034	26		
2024	23	2035	31		

DISPOSITION OF BILLS ENACTED

The first column gives the chapter assigned and the second column gives the bill number.

Second Extraordinary Session, 2024

House Bills = 3 Digits Senate Bills = 4 Digits

Chapter	Bill No.	Bill No.	Chapter	Bill No.	Chapter
1	201	14	218	27	2036
2	202	15	219	28	2037
3	203	16	230	29	2038
4	204	17	245	30	2039
5	205	18	2009	31	2035
6	206	19	2010	32	2028
7	207	20	2020	33	244
8	211	21	2021	34	227
9	212	22	2022	35	208
10	213	23	2024	36	226
11	214	24	2031	37	2033
12	215	25	2032		
13	216	26	2034		

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Regular Session, 2024

January 10, 2024 - March 9, 2024

CODE AMENDED:

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*Indicates new chapter, article or section.

CODE AMENDED (Continued):

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CODE AMENDED (Continued):

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*Indicates new chapter, article or section.

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*Indicates new chapter, article or section.

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*Indicates new chapter, article or section.

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CODE AMENDED (Continued):

CODE REPEALED:

TAX CREDIT FOR EMPLOYING FORMER EMPLOYEES OF COLIN ANDERSON CENTER WHO LOST THEIR JOBS DUE TO THE CLOSURE OF COLIN ANDERSON CENTER

CODE REPEALED:

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*Indicates new chapter, article or section.

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