

West's Annotated Code of West Virginia \_Chapter 49. West Virginia Child Protective Services Act \_Article 2B. Duties of Secretary of Health and Human Resources for Child Welfare

W. Va. Code, Ch. 49, Art. 2B, Refs & Annos

W. Va. Code, § 49-2B-1

§ 49-2B-1. Policy and purpose

(a) It is the policy of the state to assist a child and the child's family as the basic unit of society through efforts to strengthen and preserve the family unit. In the event of a temporary or permanent absence of parents or the separation of a child from the family unit for care or treatment purposes, it is the policy of the state to assure that a child receives care and nurturing as close as possible to society's expectations of a family's care and nurturing of its child. The state has a duty to assure that proper and appropriate care is given and maintained.

(b) It is also the policy of this state to ensure that those persons and entities offering quality child care are not over-encumbered by licensure and registration requirements and that the extent of regulation of child care facilities and child placing agencies be moderately proportionate to the size of the facility.

(c) Through licensure, approval, and registration of child care, the state exercises its benevolent police power to protect the user of a service from risks against which he or she would have little or no competence for self protection. Licensure, approval, and registration processes shall, therefore, continually balance the child's rights and need for protection with the interests, rights and responsibility of the service providers.

(d) In order to carry out the above policy, the Legislature enacts this article to protect and prevent harm to children separated from their families and to enhance their continued growth and well-being while in care.

(e) The purposes of this article are:

(1) To protect the health, safety and well-being of children in substitute care by preventing improper and harmful care;

(2) To establish statewide rules for regulating programs as defined in this article;

(3) To encourage and assist in the improvement of child care programs;

(4) To ensure that persons and entities offering child care are not unduly burdened by licensure and registration requirements; and

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(5) To ensure that all child care programs be safe, reliable and geared to the ages and needs of the children they serve, meet basic health and safety standards, and employ people who have the training and experience needed to work with children.

(f) In order to carry out these purposes, the powers of the child welfare licensing board created by chapter nineteen, Acts of the Legislature, one thousand nine hundred forty-five, are hereby transferred to the commissioner of human services, along with the other powers granted by this article.

W. Va. Code, § 49-2B-2

§ 49-2B-2. Definitions

As used in this article, unless the context otherwise requires:

(a) "Approval" means a finding by the secretary that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(b) "Certificate of approval" means a statement of the secretary that a facility operated by the state has met the requirements set forth in the rules promulgated pursuant to this article.

(c) "Certificate of license" means a statement issued by the secretary 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.

(d) "Certificate of registration" means a statement issued by the secretary to a family child care home, informal family child care home or relative family child care home, upon receipt of a self-certification statement of compliance with the rules promulgated pursuant to the provisions of this article.

(e) "Child" for the purpose of residential services under this article means any person under eighteen years of age or is a transitioning adult.

(f) "Child" for the purpose of child care services means an individual who meets one of the following conditions:

(1) Is under thirteen years of age.

(2) Is thirteen to eighteen years of age and under court supervision.

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(3) Is thirteen to eighteen years of age and presenting a significant delay of at least twenty-five percent in one or more areas of development, or a six month delay in two or more areas as determined by an early intervention program, special education program or other multi-disciplinary team.

(g) "Child care" means responsibilities assumed and services performed in relation to a child's physical, emotional, psychological, social and personal needs and the consideration of the child's rights and entitlements, but does not include secure detention or incarceration under the jurisdiction of the Division of Juvenile Services, created under section two, article five-e of this chapter. It includes the provision of child care services or residential services.

(h) "Child care center" means a facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private for the care of thirteen or more children for child care services in any setting, if the facility is open for more than thirty days per year per child.

(i) "Child care services" means direct care and protection of children during a portion of a twenty-four hour day outside of the child's own home which provides experiences to children that foster their healthy development and education.

(j) "Child placing agency" means a child welfare agency organized for the purpose of placing children in private family homes for foster care or for adoption. The function of a child-placing agency may include the investigation and certification of foster family homes and foster family group homes as provided in this chapter. The function of a child placing agency may also include the supervision of children who are sixteen or seventeen years old and living unlicensed residences.

(k) "Child welfare agency" means any agency or facility maintained by the state or any county or municipality thereof, or any agency or facility maintained by an individual, firm, corporation, association or organization, public or private, to receive children for care and maintenance or for placement in residential care facilities, including, without limitation, private homes, or any facility that provides care for unmarried mothers and their children: *Provided*, That the term does not include juvenile detention facilities or juvenile correctional facilities operated by or under contract with the Division of Juvenile Services, created under section two, article five-e of this chapter, nor any other facility operated by that division for the secure housing or holding of juveniles committed to its custody.

(l) "Department" means the Department of Health and Human Resources.

(m) "Facility" means a place or residence, including personnel, structures, grounds and equipment, used for the care of a child or children on a residential or other basis for any number of hours a day in any shelter or structure maintained for that purpose: *Provided*, That the term does not include any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

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(n) "Family child care home" means a facility which is used to provide nonresidential child care services for compensation in a provider's residence. The provider may care for four to six children, at one time including children who are living in the household, who are under six years of age. No more than two of the total number of children may be under twenty-four months of age.

(o) "Family child care facility" means any facility which is used to provide nonresidential child care services for compensation for seven to twelve children, including children who are living in the household, who are under six years of age. No more than four of the total number of children may be under twenty-four months of age. A facility may be in a provider's residence or a separate building.

(p) "Foster family home" means a private residence which is used for the care on a residential basis of no more than five children who are unrelated by blood, marriage or adoption to any adult member of the household.

(q) "Informal family child care" means a home that is used to provide nonresidential child care services for compensation for three (3) or fewer children, including children who are living in the household, who are under six years of age. Care is given in the provider's own home to at least one child who is not related to the caregiver.

(r) "License" means the grant of official permission to a facility to engage in an activity which would otherwise be prohibited.

(s) "Out of school time" means a child care service which offers activities to children before and after school, on school holidays, when school is closed due to emergencies, and on school calendar days set aside for teacher activities.

(t) "Registration" means the process by which a family child care home, informal family child care home or a relative family child care home self-certifies compliance with the rules promulgated pursuant to this article.

(u) "Residential services" means child care which includes the provision of nighttime shelter and the personal discipline and supervision of a child by guardians, custodians or other persons or entities on a continuing or temporary basis. It may include care and or treatment for transitioning adults: *Provided*, That the term does not include or apply to any juvenile detention facility or juvenile correctional facility operated by the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody.

(v) "Relative family child care" means a home that provides nonresidential child care services only to children related to the caregiver. The caregiver is a grandparent, great grandparent, aunt, uncle, great-aunt, great-uncle or adult sibling of the child(ren) receiving care. Care is given in the provider's home.

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(w) "Rule" means a statement issued by the secretary of the standard to be applied in the various areas of child care.

(x) "Transitioning adult" means an individual with a transfer plan to move to an adult setting who meets one of the following conditions:

(1) Is eighteen years of age but under twenty-one years of age, was in departmental custody upon reaching eighteen years of age and committed an act of delinquency before reaching eighteen years of age, remains under the jurisdiction of the juvenile court, and requires supervision and care to complete an education and or treatment program which was initiated prior to the eighteenth birthday.

(2) Is eighteen years of age but under twenty-one years of age, was adjudicated abused, neglected, or in departmental custody upon reaching eighteen years of age and enters into a contract with the department to continue in an educational, training, or treatment program which was initiated prior to the eighteenth birthday.

(y) "Secretary" means the Secretary of the Department of Health and Human Resources.

(z) "Variance" means a declaration that a rule may be accomplished in a manner different from the manner set forth in the rule.

(aa) "Waiver" means a declaration that a certain rule is inapplicable in a particular circumstance.

W. Va. Code, § 49-2B-3

§ 49-2B-3. Licensure, certification, approval and registration requirements

Effective: June 11, 2010

(a) Any person, corporation or child welfare agency, other than a state agency, which operates a residential child care center shall obtain a license from the department.

(b) Any residential child care facility, day care center or any child-placing agency operated by the state shall obtain approval of its operations from the secretary: *Provided*, That this requirement does not apply to any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody. The facilities and placing agencies shall maintain the same standards of care applicable to licensed facilities, centers or placing agencies of the same category.

(c) Any family day care facility which operates in this state, including family day care facilities approved by the department for receipt of funding, shall obtain a statement of certification from the department.

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(d) Every family day care home which operates in this state, including family day care homes approved by the department for receipt of funding, shall obtain a certificate of registration from the department.

(e) This section does not apply to:

(1) A kindergarten, preschool or school education program which is operated by a public school or which is accredited by the state Department of Education, or any other kindergarten, preschool or school programs which operate with sessions not exceeding four hours per day for any child;

(2) An individual or facility which offers occasional care of children for brief periods while parents are shopping, engaging in recreational activities, attending religious services or engaging in other business or personal affairs;

(3) Summer recreation camps operated for children attending sessions for periods not exceeding thirty days;

(4) Hospitals or other medical facilities which are primarily used for temporary residential care of children for treatment, convalescence or testing;

(5) Persons providing family day care solely for children related to them;

(6) Any juvenile detention facility or juvenile correctional facility operated by or under contract with the Division of Juvenile Services, created pursuant to section two, article five-e of this chapter, for the secure housing or holding of juveniles committed to its custody;

(7) Any out-of-school time program that has been awarded a grant by the West Virginia Department of Education to provide out-of-school time programs to kindergarten through twelfth grade students when the program is monitored by the West Virginia Department of Education; or

(8) Any out-of-school time program serving children six years of age or older and meets all of the following requirements, or is an out-of-school time program that is affiliated and in good standing with a national Congressionally chartered organization and meets all of the following requirements:

(i) The program is located in a facility that meets all fire and health codes;

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(ii) The program performs background checks on all volunteers and staff;

(iii) The program's primary source of funding is not from fees for service; and,

(iv) The program has a formalized monitoring system in place.

(f) The secretary is authorized to issue an emergency rule relating to conducting a survey of existing facilities in this state in which children reside on a temporary basis in order to ascertain whether they should be subject to licensing under this article or applicable licensing provisions relating to behavioral health treatment providers.

(g) Any informal family child care home or relative family child care home may voluntarily register and obtain a certificate of registration from the department.

(h) All facilities or programs that provide out-of-school time care shall register with the department upon commencement of operations and on an annual basis thereafter. The department shall obtain information such as the name of the facility or program, the description of the services provided and any other information relevant to the determination by the department as to whether the facility or program meets the criteria for exemption under this section.

(i) Any child care service that is licensed or receives a certificate of registration shall have a written plan for evacuation in the event of fire, natural disaster or other threatening situation that may pose a health or safety hazard to the children in the child care service.

(1) The plan shall include, but not be limited to:

(A) A designated relocation site and evacuation;

(B) Procedures for notifying parents of the relocation and ensuring family reunification;

(C) Procedures to address the needs of individual children including children with special needs;

(D) Instructions relating to the training of staff or the reassignment of staff duties, as appropriate;

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(E) Coordination with local emergency management officials; and

(F) A program to ensure that appropriate staff are familiar with the components of the plan.

(2) A child care service shall update the evacuation plan by December 31, of each year. If a child care service fails to update the plan, no action shall be taken against the child care service's license or registration until notice is provided and the child care service is given thirty days after the receipt of notice to provide an updated plan.

(3) A child care service shall retain an updated copy of the plan for evacuation and shall provide notice of the plan and notification that a copy of the plan will be provided upon request to any parent, custodian or guardian of each child at the time of the child's enrollment in the child care service and when the plan is updated.

(4) All child care centers and family child care facilities shall provide the plan and each updated copy of the plan to the Director of the Office of Emergency Services in the county where the center or facility is located.

**W. Va. Code, § 49-2B-4**

**§ 49-2B-4. Rules**

(a) The secretary shall promulgate rules in accordance with the provisions of chapter twenty-nine-a of this code regarding the licensure, approval, certification and registration of child care facilities and the implementation of the provisions of this article. The rules shall provide at a minimum the requirement that every residential child care facility shall be subject to an annual time study regarding the quantification of staff supervision time at each facility. Every residential child care facility shall participate in the time study at the request of the department.

(b) The secretary shall review the rules promulgated pursuant to the provisions of this article at least once every five years, making revisions when necessary or convenient: *Provided*, That on or before the first day of September, two thousand six, the department shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code that amends and replaces licensing requirements for group residential programs for children, 78 CSR 3, and child placing agencies for children, 78 CSR 2: *Provided, however*, That on or before the first day of July, two thousand six, the department shall promulgate emergency rules pursuant to the provisions of article three, chapter twenty-nine-a of this code that creates requirements for informal family child care homes and relative family child care homes that voluntarily register with the department. All individuals, facilities, entities, programs, agencies or family child care homes subject to said emergency rules shall have one hundred eighty days to come into compliance after promulgation of such rules.

**W. Va. Code, § 49-2B-5**

**§ 49-2B-5. Penalties; injunctions**

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(a) Any individual or corporation which operates a child welfare agency, residential facility or child care center without a license when a license is required is guilty of a misdemeanor and, upon conviction thereof, shall be punished by imprisonment in jail not exceeding one year, or a fine of not more than five hundred dollars, or both fined and imprisoned.

(b) Any family child care facility which operates without a license when a license is required is guilty of a misdemeanor and, upon conviction thereof, shall be punished by a fine of not more than five hundred dollars.

(c) Where a violation of this article or a rule promulgated by the secretary may result in serious harm to children under care, the secretary may seek injunctive relief against any person, corporation, child welfare agency, child placing agency, child care center, family child care facility, family child care home or governmental official through proceedings instituted by the attorney general, or the appropriate county prosecuting attorney, in the circuit court of Kanawha County or in the circuit court of any county where the children are residing or may be found.

**W. Va. Code, § 49-2B-6**

**§ 49-2B-6. Conditions of licensure, approval and registration**

(a) A license or approval is effective for a period up to two years from the date of issuance, unless revoked or modified to provisional status based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this article. The license or approval shall be reinstated upon application to the secretary and a determination of compliance.

(b) An initial six-month license or approval shall be issued to an applicant establishing a new service found to be in compliance on initial review with regard to policy, procedure, organization, risk management, human resources, service environment and record keeping regulations.

(c) A provisional license or approval may be issued when a licensee is not in compliance with this rule but does not pose a significant risk to the rights, well-being, health and safety of a consumer. It shall expire not more than six months from date of issuance, and not be consecutively reissued unless the provisional recommendation is that of the State Fire Marshal.

(d) A renewal license or approval may be issued of any duration up to two years at the discretion of the secretary. In the event a renewal license is not issued, the facility must make discharge plans for residents and cease operation within thirty days of the expiration of the license.

(e) A certificate of registration is effective for a period up to two years from the date of issuance, unless revoked based on evidence of a failure to comply with the provisions of this article or any rules promulgated pursuant to this

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article. The certificate of registration shall be reinstated upon application to the secretary, including a statement of assurance of continued compliance with the rules promulgated pursuant to this article.

(f) The license, approval or registration issued under this article is not transferable and applies only to the facility and its location stated in the application. The license, registration or approval shall be publicly displayed: *Provided*, That foster and adoptive family homes, informal family child care homes and relative family child care homes shall be required to display registration certificates of registration or approval upon request rather than by posting.

(g) Provisional certificates of registration may be issued to family child care homes.

(h) The secretary, as a condition of issuing a license, registration or approval, may:

(1) Limit the age, sex or type of problems of children allowed admission to a particular facility;

(2) Prohibit intake of any children; or

(3) Reduce the number of children which the agency, facility or home operated by the agency is licensed, approved, certified or registered to receive.

**W. Va. Code, § 49-2B-7**

**§ 49-2B-7. Waivers and variances to rules**

Waivers or variances of rules may be granted by the secretary if the health, safety or well-being of a child would not be endangered thereby. The secretary shall promulgate by rule criteria and procedures for the granting of waivers or variances so that uniform practices may be maintained throughout the state.

**W. Va. Code, § 49-2B-8**

**§ 49-2B-8. Application for license or approval**

**Effective: June 3, 2010**

(a) Any person or corporation or any governmental agency intending to act as a child welfare agency shall apply for a license, approval or registration certificate to operate child care facilities regulated by this article. Applications for licensure, approval or registration shall be made separately for each child care facility to be licensed, approved, certified or registered.

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(b) The secretary shall prescribe forms and reasonable application procedures including, but not limited to, fingerprinting of applicants and other persons responsible for the care of children for submission to the State Police and, if necessary, to the Federal Bureau of Investigation for criminal history record checks.

(c) Before issuing a license, or approval, the secretary shall investigate the facility, program and persons responsible for the care of children. The investigation shall include, but not be limited to, review of resource need, reputation, character and purposes of applicants, a check of personnel criminal records, if any, and personnel medical records, the financial records of applicants, review of the facilities emergency evacuation plan and consideration of the proposed plan for child care from intake to discharge.

(d) Before a home registration is granted, the secretary shall make inquiry as to the facility, program and persons responsible for the care of children. The inquiry shall include self-certification by the prospective home of compliance with standards including, but not limited to:

(1) Physical and mental health of persons present in the home while children are in care;

(2) Criminal and child abuse or neglect history of persons present in the home while children are in care;

(3) Discipline;

(4) Fire and environmental safety;

(5) Equipment and program for the children in care;

(6) Health, sanitation and nutrition.

(e) Further inquiry and investigation may be made as the secretary may direct.

(f) The secretary shall make a decision on each application within sixty days of its receipt and shall provide to unsuccessful applicants written reasons for the decision.

**W. Va. Code, § 49-2B-9**

**§ 49-2B-9. Supervision and consultation required**

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(a) The secretary shall provide supervision to ascertain compliance with the rules promulgated pursuant to this article through regular monitoring, visits to facilities, documentation, evaluation and reporting. The secretary shall be responsible for training and education, within fiscal limitations, specifically for the improvement of care in family child care homes and facilities. The secretary shall consult with applicants, the personnel of child welfare agencies, and children under care to assure the highest quality child care possible.

(b) The Director of the Department of Health and the State Fire Marshal shall cooperate with the secretary in the administration of the provisions of this article by providing such reports and assistance as may be requested by the secretary.

**W. Va. Code, § 49-2B-10**

**§ 49-2B-10. Investigative authority**

(a) The secretary shall enforce the provisions of this article.

(b) An on-site evaluation of every facility regulated pursuant to this article, except registered family child care homes, informal family child care and relative family child care homes shall be conducted no less than once per year by announced or unannounced visits.

(c) A random sample of not less than five percent of the total number of registered family child care homes, informal family child care homes and relative family child care homes shall be monitored annually through on-site evaluations.

(d) The secretary shall have access to the premises, personnel, children in care and records of each facility subject to inspection, including, but not limited to, case records, corporate and financial records and board minutes. Applicants for licenses, approvals, and certificates of registration shall consent to reasonable on-site administrative inspections, made with or without prior notice, as a condition of licensing, approval, or registration.

(e) When a complaint is received by the secretary alleging violations of licensure, approval, or registration requirements, the secretary shall investigate the allegations. The secretary may notify the facility's director before or after a complaint is investigated and shall cause a written report of the results of the investigation to be made.

(f) The secretary may enter any unlicensed, unregistered or unapproved child care facility or personal residence for which there is probable cause to believe that the facility or residence is operating in violation of this article. Such entries shall be made with a law-enforcement officer present. The secretary may enter upon the premises of any unregistered residence only after two attempts by the secretary to bring this facility into compliance.

**W. Va. Code, § 49-2B-11**

**§ 49-2B-11. Revocation; provisional licensure and approval**

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(a) The secretary may revoke or make provisional the licensure registration of any home facility or child welfare agency regulated pursuant to this article if a facility materially violates any provision of this article, or any terms or conditions of the license, registration or approval issued, or fails to maintain established requirements of child care: *Provided*, That the provisions of this section shall not apply to family child care homes.

(b) The secretary may revoke the certificate of registration of any family child care home if a facility materially violates any provision of this article, or any terms or conditions of the registration certificate issued, or fails to maintain established requirements of child care.

**W. Va. Code, § 49-2B-12**

**§ 49-2B-12. Closing of facilities by the secretary; placement of children**

When the secretary finds that the operation of a facility constitutes an immediate danger of serious harm to children served by the facility, the secretary shall issue an order of closure terminating operation of the facility. When necessary, the secretary shall place or direct the placement of the children in a residential facility which has been closed into appropriate facilities. A facility closed by the secretary may not operate pending administrative or judicial review without court order.

**W. Va. Code, § 49-2B-13**

**§ 49-2B-13. Administrative and judicial review**

Any person, corporation, governmental official or child welfare agency, aggrieved by a decision of the secretary made pursuant to the provisions of this article may contest the decision upon making a request for a hearing by the secretary within thirty days of receipt of notice of the decision. Administrative and judicial review shall be made in accordance with the provisions of article five, chapter twenty-nine-a of this code. Any decision issued by the secretary may be made effective from the date of issuance. Immediate relief therefrom may be obtained upon a showing of good cause made by verified petition to the circuit court of Kanawha County or the circuit court of any county where the affected facility or child welfare agency may be located. The dependency of administrative or judicial review shall not prevent the secretary from obtaining injunctive relief pursuant to section five of this article.

**W. Va. Code, § 49-2B-14**

**§ 49-2B-14. Annual reports; directory; licensing reports and recommendations**

(a) The secretary shall submit on or before the first day of January of each year a report to the Governor, and upon request to members of the Legislature, concerning the regulation of child welfare agencies, child placing agencies, child care centers, family child care facilities, family child care homes, informal family child care homes, relative family child care homes and child care facilities during the year. The report shall include, but not be limited to, data on the number of children and staff at each facility (except family child care, informal family child care homes and relative family child care), applications received, types of licenses, approvals and registrations granted, denied, made

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provisional or revoked and any injunctions obtained or facility closures ordered.

(b) The secretary also shall compile annually a directory of licensed, certified and approved child care providers including a brief description of their program and facilities, the program's capacity and a general profile of children served. A listing of family child care homes shall also be compiled annually.

(c) Licensing reports and recommendations for licensure which are a part of the yearly review of each licensed facility shall be sent to the facility director. Copies shall be available to the public upon written request to the secretary.

**W. Va. Code, § 49-2B-15**

**§ 49-2B-15. Education of the public**

The secretary shall provide ongoing education of the public in regard to the requirements of this article through the use of mass media and other methods as are deemed appropriate and within fiscal limitations.

**W. Va. Code, § 49-2B-16**

**§ 49-2B-16. Implementation of the Integrated Pest Management Program**

By the fifteenth day of August, one thousand nine hundred ninety-five, the secretary shall implement the Integrated Pest Management Program promulgated under rules by the Department of Agriculture under authority of section four, article sixteen-a, chapter nineteen of this code.

**W. Va. Code, § 49-2B-17**

**§ 49-2B-17. Repealed by Acts 2006, c. 31, eff. 90 days after March 11, 2006**