WEST VIRGINIA CODE CHAPTER 55

§55-1-1. When writing required.

No action shall be brought in any of the following cases:

(a) To charge any person upon or by reason of a representation or assurance concerning the character, conduct, credit, ability, trade, or dealings of another, to the intent or purpose that such other may obtain thereby credit, money, or goods; or

(b) To charge any person upon a promise made, after full age, to pay a debt contracted during infancy; or upon a ratification after full age, of a promise or simple contract made during infancy; or

(c) To charge a personal representative upon a promise to answer any debt or damages out of his own estate; or

(d) To charge any person upon a promise to answer for the debt, default, or misdoings of another; or

(e) Upon any agreement made upon consideration of marriage; or

(f) Upon any agreement that is not to be performed within a year; or

(g) Upon any offer, agreement, representation, assurance, understanding, commitment, or contract of a bank, savings and loan association, or credit union, to extend credit or to make a loan in excess of $50,000, primarily for nonagricultural, business or commercial purposes, not including charge or credit card accounts, personal lines of credit, overdrafts, or any other consumer account: Provided, That this subsection shall not apply to any offer, agreement, representation, assurance, understanding, commitment or contract with a bank, savings and loan association or credit union in which a transaction has been completed as evidenced by a fund transfer;

Unless the offer, promise, contract, agreement, representation, assurance, or ratification, or some memorandum or note thereof, be in writing and signed by the party to be charged thereby or his agent. But the consideration need not be set forth or expressed in the writing; and it may be proved (where a consideration is necessary) by other evidence.

§55-2-1. Entry upon or recovery of lands.

No person shall make an entry on, or bring an action to recover, any land, but within ten years next after the time at which the right to make such entry or to bring such action shall have first accrued to himself or to some person through whom he claims.

§55-2-1a. Ownership or possession of surface of lands after severance of minerals not adverse to owner of minerals.

Whenever title to any minerals in land and the rights appurtenant thereto have been, or shall hereafter be, severed from title to the surface, the continuity of the possession of such minerals and the rights appurtenant thereto shall not be deemed to have been broken by such severance; and ownership or possession of the surface after severance shall not be adverse to the interests of the owner or owners of such minerals and appurtenant rights.

§55-2-2. Claim not to preserve right as to lands.

No continual or other claim upon or near any land shall preserve any right of making an entry or bringing an action.

§55-2-3. Entry upon or recovery of lands by persons under disability.

If at the time at which the right of any person to make an entry on, or bring an action to recover, any land shall have first accrued, such person was an infant or insane, then such person, or the person claiming through him may, notwithstanding such period of ten years shall have expired, make an entry on, or bring an action to recover, such land within five years next after the time at which the person to whom such right shall have first accrued as aforesaid shall have ceased to be under such disability as existed when the same so accrued, or shall have died, whichever shall first have happened.

§55-2-4. Limitations upon §55-2-3.

The preceding section is subject to these provisos: That no such entry or action shall be made or brought by any person who, at the time at which his right to make or bring the same shall have first accrued, shall be under any such disability, or by any person claiming through him but within twenty years next after the time at which such right shall have first accrued, although the person under disability at such time may have remained under the same during the whole of such twenty years, or although the term of five years from the period at which he shall have ceased to be under any such disability, or have died, shall not have expired. And when any person shall be under any such disability at the time at which his right to make an entry or bring an action shall have first accrued, and shall depart this life without having ceased to be under any such disability, no time to make an entry or to bring an action, beyond the ten years next after the right of such person shall have first accrued, or the five years next after the period of his death, shall be allowed by reason of any disability of any other person.

§55-2-5. Enforcement of liens reserved by conveyance or created by deed of trust or mortgage on real estate.

(a) Any lien reserved by any conveyance of real estate or created by any deed of trust or mortgage on real estate expires after the following periods of time, unless suit to enforce the lien is instituted prior to expiration of the time period or unless the lien is extended as specified in subsection (b) or (e) of this section:

(1) If the final maturity date of the obligation is ascertainable from the lien instrument, the lien expires five years after that date.

(2) If the final maturity date of the obligation is not ascertainable from the lien instrument, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(b) If an affidavit or extension notice executed by the secured party or beneficiary of the lien instrument or an amendment to the lien instrument executed by the grantor or mortgagor and the secured party or beneficiary is recorded prior to expiration of the original period of limitation, as specified in subsection (a) of this section, the period of limitation is extended as follows:

(1) If the final maturity date of the obligation, as extended, secured by the lien instrument is ascertainable from the affidavit, extension notice or amendment, the lien expires five years after the date of final maturity of the obligation, as extended.

(2) If the final maturity date of the obligation, as extended, secured by the lien instrument is not ascertainable from the affidavit, extension notice or amendment, the lien expires thirty-five years after the date of the lien instrument. However, if the lienholder rerecords the lien instrument prior to thirty-five years from the date of the lien instrument and includes a copy of the obligation secured by the lien so that the final maturity is ascertainable, the lien expires five years after the date of maturity.

(c) Any affidavit, extension notice or amendment filed pursuant to subsection (b) of this section after the effective date of this section, shall include, but is not limited to, the following:

(1) The unpaid balance of the debt and interest secured by the lien instrument;

(2) The final maturity date of the obligation, as extended; and

(3) The book and page of recordation of the original lien instrument.

The clerk of the county commission shall record and index any affidavit, extension notice or amendment in the same manner as the original lien instrument and shall note that filing on

the margin of the page where the original lien instrument is recorded.

(d) If the lien instrument shows that it secures an obligation payable in installments and the maturity date of the final installment of the obligation is ascertainable from the lien instrument, the time runs from the maturity date of the final installment.

(e) For purposes of this section only, a lien instrument securing an obligation which is payable on demand expresses no maturity date.

(f) Nothing in this section extinguishes any lien which was reserved or created and in effect prior to July 1, 1998. With respect to any lien reserved or created and in effect prior to July 1, 1998, the lien is valid for twenty years after its stated maturity, or if no maturity date is stated in the lien instrument, for thirty-five years after the date of the lien instrument.

(g) The periods of limitation created by this section may be extended only as provided in this section and may not be extended by any other method or by operation of law.

§55-2-6. Actions to recover on award or contract other than judgment or recognizance.

Every action to recover money, which is founded upon an award, or on any contract other than a judgment or recognizance, shall be brought within the following number of years next after the right to bring the same shall have accrued, that is to say: If the case be upon an indemnifying bond taken under any statute, or upon a bond of an executor, administrator or guardian, curator, committee, sheriff or deputy sheriff, clerk or deputy clerk, or any other fiduciary or public officer, within ten years; if it be upon any other contract in writing under seal, within ten years; if it be upon an award, or upon a contract in writing, signed by the party to be charged thereby, or by his agent, but not under seal, within ten years; and if it be upon any other contract, express or implied, within five years, unless it be an action by one party against his copartner for a settlement of the partnership accounts, or upon accounts concerning the trade or merchandise between merchant and merchant, their factors or servants, where the action of account would lie, in either of which cases the action may be brought until the expiration of five years from a cessation of the dealings in which they are interested together, but not after.

§55-2-6a. Deficiencies, injuries or wrongful death resulting from any improvements to or survey of real property; limitation of actions and suits.

No action, whether in contract or in tort, for indemnity or otherwise, nor any action for contribution or indemnity to recover damages for any deficiency in the planning, design, surveying, observation or supervision of any construction or the actual construction of any improvement to real property, or the actual surveying of real property, or, to recover damages for any injury to real or personal property, or, for an injury to a person or for bodily injury or wrongful death arising out of the defective or unsafe condition of any improvement to real property, or the survey of real property, may be brought more than ten years after the performance or furnishing of the services or construction. However, the above period is tolled according to section twenty-one of this article. The period of limitation provided in this section does not commence until the improvement to the real property, or the survey of the real property in question has been occupied or accepted by the owner of the real property, whichever occurs first.

§55-2-7. Actions on bonds of personal representatives and fiduciaries.

The right of action upon the bond of an executor, administrator, guardian, curator or committee, or of a sheriff acting as such, shall be deemed to have first accrued as follows: Upon a bond of a guardian or curator of a ward, from the time of the ward's attaining the age of eighteen years, or from the termination of the guardian's or curator's office, whichever shall happen first; and upon the bond of any personal representative of a decedent or committee of an insane person, the right of action of a person obtaining execution against such representative or committee, or to whom payment or delivery of estate in the hands of such representative or committee shall be ordered by a court acting upon his account, shall be deemed to have first accrued from the return day of such execution, or from the time of the right to require payment or delivery upon such order, whichever shall happen first. And as to any suit against such fiduciary himself or his representative, which could have been maintained if he had given no bond, there shall be no other limitation than would exist if the preceding section were not passed. Where any such fiduciary, or any other fiduciary, has settled an account under the provisions of article four, chapter forty-four of this code, a suit to hold such fiduciary or his sureties liable for any balance stated in such account to be in his hands shall be brought within ten years after the account has been confirmed. The right to recover money paid under fraud or mistake shall be deemed to accrue, both at law and in equity, at the time such fraud or mistake is discovered, or by the exercise of due diligence ought to have been discovered.

§55-2-8. Acknowledgment by new promise.

If any person against whom the right shall have so accrued on an award, or on any such contract, shall by writing signed by him or his agent promise payment of money on such award or contract, the person to whom the right shall have so accrued may maintain an action or suit for the moneys so promised within such number of years after such promise as it might originally have been maintained within upon the award or contract, and the plaintiff may either sue on such a promise, or on the original cause of action, and in the latter case, in answer to a plea under the sixth section, may, by way of replication, state such promise, and that such action was brought within such number of years thereafter; but no promise, except by writing as aforesaid, shall take any case out of the operation of the said sixth section, or deprive any party of the benefit thereof. An acknowledgment in writing as aforesaid, from which a promise of payment may be implied, shall be deemed to be such promise within the meaning of this section.

§55-2-9. Effect of acknowledgment by personal representative or joint contractor.

No acknowledgment or promise by any personal representative of a decedent, or by one of two or more joint contractors, shall charge the estate of such decedent, or charge any other of such contractors, in any case in which, but for such acknowledgment or promise, the decedent's estate or another contractor could have been protected under the sixth section of this article.

§55-2-10. Effect of devise for payment of debts.

No provision in the will of any testator devising his real estate, or any part thereof, subject to the payment of his debts, or charging the same therewith, shall prevent this article from operating against such debts, unless it plainly appear to be the testator's intent that it shall not so operate.

§55-2-11. Action or scire facias on recognizance.

Every action or scire facias upon a recognizance shall, if it be not a recognizance of bail, be commenced within ten years next after the right to bring the same shall have first accrued; and, if it be a recognizance of bail, within three years after the right to bring the same shall have first accrued.

§55-2-12. Personal actions not otherwise provided for.

Every personal action for which no limitation is otherwise prescribed shall be brought: (a) Within two years next after the right to bring the same shall have accrued, if it be for damage to property; (b) within two years next after the right to bring the same shall have accrued if it be for damages for personal injuries; and (c) within one year next after the right to bring the same shall have accrued if it be for any other matter of such nature that, in case a party die, it could not have been brought at common law by or against his personal representative.

§55-2-13. Foreign judgments and decrees.

Every action or suit upon a judgment or decree rendered in any other state or country shall be barred, if by the laws of such state or country such action or suit would there be barred, and the judgment or decree be incapable of being otherwise enforced there. And whether so barred or not, no action against a person who shall have resided in this state during the ten years next preceding such action shall be brought upon any such judgment or decree rendered more than ten years before the commencement of such action.

§55-2-14. Suit to repeal land grant.

A bill in equity to repeal, in whole or in part, any grant of land by this state or of the state of Virginia, shall be brought within ten years next after the date of such grant, and not after.

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

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

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

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

§55-2-16. Death before right to sue.

If a person die before the time at which any right mentioned in this article would have accrued to him if he had continued alive, and there be an interval of more than five years between the death of such person and the qualification of his personal representative, such personal representative shall, for the purposes of this article, be deemed to have qualified on the last day of such five years.

§55-2-17. When suit prevented by defendant; actions on foreign contracts.

Where any such right as is mentioned in this article shall accrue against a person who had before resided in this state, if such person shall, by departing without the same, or by absconding or concealing himself or by any other indirect ways or means, obstruct the prosecution of such right, or if such right has been or shall be hereafter obstructed by war, insurrection or rebellion, the time that such obstruction may have continued shall not be computed as any part of the time within which the said right might or ought to have been prosecuted. But if another person be jointly or severally liable with the person so obstructing the prosecution of such right, and no such obstruction exist as to him the exception contained in this section as to the person so absconding shall not apply to him in any action or suit brought against him to enforce such liability. And upon a contract which was made and was to be performed in another state or country, by a person who then resided therein, no action shall be maintained after the right of action thereon is barred either by the laws of such state or country or by the laws of this state.

§55-2-18. Extension of period for new action after dismissal or reversal where the action is timely filed.

(a) For a period of one year from the date of an order dismissing an action or reversing a judgment, a party may refile the action if the initial pleading was timely filed and: (i) The action was involuntarily dismissed for any reason not based upon the merits of the action; or (ii) the judgment was reversed on a ground which does not preclude a filing of new action for the same cause.

(b) For purposes of subsection (a) of this section, a dismissal not based upon the merits of the action includes, but is not limited to:

(1) A dismissal for failure to post an appropriate bond;

(2) A dismissal for loss or destruction of records in a former action; or

(3) A dismissal for failure to have process timely served, whether or not the party is notified by the court of the pending dismissal.

§55-2-19. Application of statute of limitation to state.

Every statute of limitation, unless otherwise expressly provided, shall apply to the state.

§55-2-19a. Collection of taxes due state or any subdivision thereof.

Every action or process to collect any tax (other than ad valorem tax on real or personal property and the taxes administered under the provisions of article ten, chapter eleven of this code), interest and penalty due the state or any subdivision thereof shall be brought or issued within five years next after the date on which the taxpayer is required by the statute or ordinance imposing the tax, interest and penalty to file a return and pay the tax due thereunder, unless a different limitation is specifically prescribed by such statute or ordinance. The limitation provided by this section shall likewise apply to enforcement of the lien, if any, securing the payment of such tax, interest and penalty, but shall not apply in event of fraud or in event the taxpayer wholly fails to file the return required by the statute or ordinance imposing the tax.

The official of the state or any subdivision thereof who is charged with the duty of collecting any tax, interest and penalty, the collection of which is affected by the limitation hereinbefore provided, may, before the running of the five-year period of such limitation has been completed, enter into a written agreement with the taxpayer consenting to an extension of such period for an additional period of not to exceed two years, and any action or process may be brought or issued to collect such tax, interest and penalty at any time prior to the expiration of the period so agreed upon. The period so agreed upon may be extended for additional periods not in excess of two years each by subsequent agreements in writing made before the expiration of the period previously agreed upon.

The provisions of this section as hereby amended shall apply to tax periods ending on or after July 1, 1978, and the provisions of this section as in effect prior to the enactment hereof shall apply to tax periods ending before said date.

§55-2-20. Limitations applicable to proceedings pending or rights of action accruing before effective date of code.

No action, suit, scire facias, or other proceeding, which may be pending on the day before this code takes effect, or the right to prosecute which, under the laws in force on that day, shall have accrued before that day, shall be barred by this article, any further or otherwise than as follows: The same, if pending on that day, shall be subject to such limitation as it would have been subject to if this code had not been enacted, and where not so pending, if the right to prosecute the same shall exist on that day, for a certain number of years prescribed by any statute, the same, or such other action as may be substituted therefor by this code, may be prosecuted within such time as the same might have been prosecuted if this article had not been enacted, and not after; and where not so pending, if the right to prosecute the same shall exist on that day, in the case in which no certain number of years shall have been prescribed therefor by statute, the same, or such other action as may be substituted therefor by this code, may be prosecuted within such time as the same would have to be prosecuted if the right to bring it had accrued on the next day after this code takes effect.

§55-2-21. Statutes of limitation tolled on claims assertible in civil actions when actions commence.

(a) After a civil action is commenced, the running of any statute of limitation is tolled for, and only for, the pendency of that civil action as to any claim that has been or may be asserted in the civil action by counterclaim, whether compulsory or permissive, or cross-claim : Provided, That if a permissive counterclaim would be barred but for the provisions of this section, the permissive counterclaim may be asserted only in the action tolling the statute of limitations under this section. This section shall be deemed to toll the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending.

(b) Any defendant who desires to file a third-party complaint shall have one hundred eighty days from the date of service of process of the original complaint, or the time remaining on the applicable statute of limitations, whichever is longer, to bring any third-party complaint against any non-party person or entity: Provided, That any new party brought into litigation by a third-party complaint shall be afforded, from the date of service of process of the third-party complaint, an additional 180-day period, or the remaining statute of limitations period, whichever is longer, to file any third-party complaint of its own, and any applicable statute of limitation shall be tolled during this time period.

(c) For purposes of this section, the term "third-party complaint" means a claim brought by a defendant against any person or entity that was not originally a party to the underlying civil action, where the new claim is made a part of the underlying civil action.

(d) This section tolls the running of any statute of limitation with respect to any claim for which the statute of limitation has not expired on the effective date of this section, but only for so long as the action tolling the statute of limitations is pending. This section does not limit the ability of a court to use the doctrine of equitable tolling or the discovery rule to toll the statute of limitations in any action, including any third-party complaint that would otherwise be subject to subsection (b) of this section.

§55-2-22. Effect of bankruptcy.

The running of any statute of limitation shall be tolled for any claim or cause of action for which the prosecution of the same within the period of limitation has been stayed by the provisions of the United States bankruptcy code or by an order entered in a bankruptcy proceeding pending the duration of the stay or the effective period of the order and for a period thereafter of the remaining period of limitation or for one year, whichever is longer.

§55-2A-1. "Claim" defined.

As used in this article, "claim" means any right of action which may be asserted in a civil action or proceeding and includes, but is not limited to, a right of action created by statute.

§55-2A-2. Period of limitation.

The period of limitation applicable to a claim accruing outside of this state shall be either that prescribed by the law of the place where the claim accrued or by the law of this state, whichever bars the claim.

§55-2A-3. Applicability.

The periods of limitation prescribed in this article apply only to a claim upon which action is commenced more than one year after the effective date of this article.

§55-2A-4. Construction.

This article shall be so construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§55-2A-5. Citation.

This article may be cited as the "Uniform Statute of Limitations on Foreign Claims Act."

§55-2A-6. Repeal.

All laws and parts of laws inconsistent herewith are hereby repealed one year after the effective date of this article.

§55-3-1. Issuance of summons.

If any forcible or unlawful entry be made upon any land, building, structure, or any part thereof, or if, when the entry is lawful or peaceable, the tenant shall detain the possession of any land, building, structure, or any part thereof after his right has expired, without the consent of him who is entitled to the possession, the party so turned out of possession, no matter what right or title he had thereto, or the party against whom such possession is unlawfully detained, may, within three years after such forcible or unlawful entry, or such unlawful detainer, sue out of the clerk's office of the circuit court, or of any court of record empowered to try common-law actions, of the county in which the land, building, structure, or some part thereof may be, a summons against the defendant to answer the complaint of the plaintiff that the defendant is in the possession of, and unlawfully withholds from the plaintiff, the premises in question (describing the same with convenient certainty), to the damage of the plaintiff in such sum as the plaintiff shall state; and no other declaration shall be required.

§55-3-2. Assessment of damages.

If the plaintiff file with the summons a statement of the profits and other damages which he means to demand, and the jury find in his favor, they shall at the same time assess the damages for mesne profits of the premises in suit for any period not exceeding three years previous to the commencement of the action until verdict, including any special damages properly chargeable to the defendant that the plaintiff shall have suffered from detention of the premises, and also the damages for any destruction or waste of the buildings or other property during the same time for which the defendant is chargeable.

§55-3-3. Return day and service of summons; plea; issue and trial.

The summons may be returnable to, and the case heard and determined at, any term of such court. Such summons shall be made returnable not more than ninety days after its date and shall be served at least ten days before the return day thereof. If the defendant appear, he shall plead to the summons, and his plea shall be "not guilty." Upon this issue, or upon the return of the first or any subsequent summons "executed," if the defendant fail to plead, a jury shall be impaneled to try whether he unlawfully withholds the premises in controversy and to assess the damages, if any, which the plaintiff is entitled to recover for the detention thereof. Such cause shall have precedence for trial over all other civil causes on the docket.

§55-3-4. Period of limitation; verdict and judgment.

If it appear that the plaintiff was forcibly or unlawfully turned out of the possession, or that it was unlawfully detained from him unless it also appear that the defendant has wrongfully held or detained the possession for three years before the date of the summons the verdict shall be for the plaintiff for such premises, or such part thereof as may be found to have been so held or detained, and for such damages as the plaintiff shall be entitled to recover for the detention for such premises or such part thereof. When part only of the premises is found for the plaintiff, the verdict shall describe the part so found. In such cases, judgment shall be for the plaintiff. If the verdict be for the defendant as to the whole, judgment shall be for him

§55-3-5. Judgment not a bar to action of ejectment; verdict not conclusive of facts in future action; allowance for improvements not precluded.

No such judgment shall bar any action of ejectment between the same parties nor shall any such verdict be conclusive, in any such future action, of the facts therein found; nor shall anything herein prevent a defendant from claiming and having allowed, in a proper case, allowance for improvements as provided in article five of this chapter.

§55-3-6. Equitable defenses; adverse possession.

All the provisions of sections eleven, twelve, thirteen and sixteen of article four of this chapter shall prevail, and control the respective rights of the parties, in any action brought under this article.

§55-3A-1. Petition for summary relief for wrongful occupation of residential rental property.

(a) A person desiring to remove a tenant from residential rental property may apply for relief to the magistrate court or the circuit court of the county in which the property is located, by verified petition, setting forth the following:

(1) That he or she is the owner or agent of the owner and as such has a right to recover possession of the property;

(2) A brief description of the property sufficient to identify it;

(3) That the tenant is wrongfully occupying the property in that the tenant is in arrears in the payment of rent, has breached a warranty or a leasehold covenant, or has deliberately or negligently damaged the property or knowingly permitted another person to do so, and describing the arrearage, breach, or act or omission; and

(4) A prayer for possession of the property.

(b) Upon filing the petition, the court shall schedule a hearing, which may not be less than five nor more than 10 judicial days following the filing of the petition.

(c) Immediately upon being apprised of the time and place for hearing the petitioner shall cause a notice of the hearing to be served upon the tenant in accordance with the provisions of Rule 4 of the West Virginia Rules of Civil Procedure or by certified mail, return receipt requested. The notice shall inform the tenant that any written defense to the petition may be filed and served upon the petitioner within five days of the receipt by the tenant of the notice. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his or her petition and the proof of service.

§55-3A-2. Defenses available.

In a proceeding under the provisions of this article, a tenant against whom a petition has been brought may assert any and all defenses which might be raised in an action for ejectment or an action for unlawful detainer.

§55-3A-3. Proceedings in court; final order; disposition of abandoned personal property.

(a) If at the time of the hearing there has been no appearance, answer or other responsive pleading filed by the tenant, the court shall make and enter an order granting immediate possession of the property to the landlord.

(b) In the case of a petition alleging arrearage in rent, if the tenant files an answer raising the defense of breach by the landlord of a material covenant upon which the duty to pay rent depends, the court shall proceed to a hearing on such issues.

(c) In the case of a petition alleging a breach by the tenant or damage to the property, if the tenant files an answer raising defenses to the claim or claims set forth in the petition, the court shall proceed to a hearing on such issues.

(d) Continuances of the hearing provided for in this section shall be for cause only and the judge or magistrate shall not grant a continuance to either party as a matter of right. If a continuance is granted upon request by a tenant, the tenant shall be required to pay into court any periodic rent becoming due during the period of such continuance.

(e) At the conclusion of a hearing held under the provisions of subsection (b) or (c) of this section, if the court finds that the tenant is in wrongful occupation of the rental property, the court shall make and enter an order granting immediate possession of the property to the landlord. In the case of a proceeding under subsection (a) of this section, the court may also make a written finding and include in its order such relief on the issue of arrearage in the payment of rent as the evidence may require. The court may disburse any moneys paid into court by the tenant in accordance with the provisions of this section.

(f) The court order shall specify the time when the tenant shall vacate the property, taking into consideration such factors as the nature of the property (i.e., furnished or unfurnished), the possibility of relative harm to the parties, and other material facts deemed relevant by the court in considering when the tenant might reasonably be expected to vacate the property. The order shall further provide that if the tenant continues to wrongfully occupy the property beyond such time, the sheriff shall forthwith remove the tenant, taking precautions to guard against damage to the property of the landlord and the tenant.

(g) In the event an appeal is taken and the tenant prevails upon appeal, the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession if the term of the lease has expired, absent an issue of title, retaliatory eviction, or breach of warranty. During the pendency of any such appeal, the tenant is not entitled to remain in possession of the property if the period of the tenancy has otherwise expired.

(h) When an order is issued pursuant to this section granting possession of the property to the landlord, and the tenant fails to remove all personal property by the date and time specified by the order issued pursuant to subsection (f) of this section, the landlord may:

(1) Dispose of the tenant's personal property without incurring any liability or responsibility to the tenant or any other person if the tenant informs the landlord in writing that the personal property is abandoned or if the property is garbage;

(2) Remove and store the personal property after the date and time by which the court ordered the tenant to vacate the property. The landlord may dispose of the stored personal property after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored personal property; or (ii) the costs of storage equal the value of the personal property being stored; or

(3) Leave the personal property on the property. The landlord may dispose of personal property left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord's property and has not taken possession of the personal property.

(i) Notwithstanding the provisions of subsection (h) of this section, if the personal property is worth more than $300 and was not removed from the property or place of storage within thirty days with the required fees paid as provided in subsection (h) of this section, the landlord shall store the personal property for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the personal property pays the landlord the reasonable costs of storage and removal.

§55-3B-1. Definitions.

For the purposes of this article, unless expressly stated otherwise:

(a) "Factory-built home" has the same meaning given to that term in West Virginia code section two, article fifteen, chapter thirty-seven of this code.

(b) "Factory-built home site" means a parcel of land provided for the placement of a factory-built home for occupancy as a residence whether or not in a factory-built home community. A factory-built home site is not residential rental property for the purposes of article three-a of this chapter.

(c) "Good cause" means:

(1) The tenant is in arrears in the payment of periodic payments or other charges related to the tenancy;

(2) The tenant has breached a material term of a written rental agreement or repeatedly breached other terms of a written rental agreement including those agreements required in section three, article fifteen, chapter thirty-seven of this code;

(3) Where there is no written agreement, or where the written agreement does not cover the subject matter of a warranty or leasehold covenant, the tenant breached a material term of a warranty or leasehold covenant or repeatedly breached other terms of a warranty of leasehold covenant;

(4) The tenant has deliberately or negligently damaged the property or knowingly permitted another person to do so.

(d) "Section" means a unit of a factory-built home which is transported and delivered as a whole and which contains some or all of the indoor living area.

§55-3B-2. Tenancy of factory-built home site.

(a) The tenancy of the site of a factory-built home that is comprised of one section and that is not subject to a written agreement is from month to month. The tenancy of the site of a factory-built home that is comprised of two or more sections that is not subject to a written agreement is from year to year.

(b) The tenancy of a factory-built home site that has placed on it a factory-built home that is comprised of one section, other than a camping or travel trailer, may not be terminated by the landlord until twelve months after the tenancy began except for good cause. The tenancy of a factory-built home site that has placed on it a factory-built home that is comprised of two or more sections may not be terminated by the landlord until five years after the tenancy began except for good cause. A written agreement may provide that the tenant may not terminate the tenancy for the same or greater periods of time. A written agreement may provide that the landlord may not terminate the tenancy for greater periods of time.

(c) For a month-to-month or year-to-year tenancy or a tenancy that is created by a written agreement for a definite period of time, the tenancy does not terminate at the end of the month, year or stated period of time unless either party gives timely notice as required in section three of this article. If no notice is given and if no new agreement is made, the tenancy of a factory-built home site that is comprised of one section becomes a month-to-month tenancy and the tenancy of a factory-built home that is comprised of two or more sections becomes a year-to-year tenancy.

§55-3B-3. Termination of tenancy.

(a) Except for termination for good cause, the tenancy of a factory-built home site may be terminated by either party only by giving at least three months' notice in writing to the other of his or her intention to terminate the tenancy. When such notice is to the tenant, it may be served upon the tenant or upon anyone holding under the tenant the leased premises or any part of the leased premises. When it is by the tenant, it may be served upon anyone who at the time owns the premises, in whole or in part, or the agent of the owner or according to the common law. If the termination is for good cause, no notice requirements other than those provided in sections four and six of this article may be imposed.

(b) Unless the landlord is changing the use of the site, if a tenancy is ended by the landlord at the later of its stated term or at the end of the period set out in subsection (b), section two of this article, without good cause, the owner may not prevent the sale of the factory-built home in place to another tenant who meets the standards and criteria in effect for new tenants prior to the termination of the tenancy.

§55-3B-4. Petition for summary relief for wrongful occupation of residential rental property.

(a) A person desiring to remove a tenant and factory-built home from a factory-built home site may apply for such relief to the magistrate court or the circuit court of the county in which such property is located, by verified petition, setting forth the following:

(1) That he is the owner or agent of the owner and as such has a right to evict the tenant and have the factory-built home of the tenant removed;

(2) A brief description of the factory-built home site sufficient to identify it;

(3) That the tenant is wrongfully occupying such property in that the tenant is:

(A) Holding over after having been given proper notice of termination of tenancy, whether or not the tenant has continued to pay and the landlord has accepted rent; or

(B) The landlord has good cause; and

(4) A prayer for eviction of the tenant and removal of the tenant's factory-built home.

(b) Previous to the filing of the petition the person shall request from the court the time and place at which the petitioner shall be heard. The court shall fix a time for such hearing, which time shall not be less than five nor more than ten judicial days following such request.

(c) Immediately upon being apprised of the time and place for hearing the petitioner shall cause a notice of the same to be served upon the tenant in accordance with the provisions of rule 4 of the West Virginia rules of civil procedure or by certified mail, return receipt requested. Such notice shall inform the tenant that any defense to the petition must be submitted in writing to the petitioner within five days of the receipt by the tenant of the notice and in no case later than the fifth day next preceding the date of hearing. Upon receipt of the return of service or the return receipt as the case may be, evidencing service upon the tenant, the petitioner shall file with the court his petition and such proof of service.

§55-3B-5. Defenses available.

In a proceeding under the provisions of this article, a tenant against whom a petition has been brought may assert any and all defenses which might be raised in an action for ejectment or an action for unlawful detainer or provided by this article or article fifteen, chapter thirty-seven of this code.

§55-3B-6. Proceedings in court; final order; disposition of abandoned personal property.

(a) If at the time of the hearing there has been no appearance, answer or other responsive pleading filed by the tenant, the court shall make and enter an order evicting the tenant and ordering the tenant to have the factory-built home removed.

(b) In the case of a petition alleging good cause or holding over after proper termination of a tenancy, if the tenant files an answer raising the defense of breach by the landlord of a material covenant upon which the tenant's duties depend or other defenses to the claim or claims set forth in the petition, the court shall proceed to a hearing on such issues.

(c) Continuances of the hearing provided for in this section shall be for good cause only and the judge or magistrate shall not grant a continuance to either party as a matter of right. If a continuance is granted upon request by a tenant, the tenant shall be required to pay into court any periodic rent becoming due during the period of such continuance.

(d) At the conclusion of the hearing, if the court finds that the landlord is entitled to evict the tenants and have the factory-built home of the tenants removed, the court shall make and enter an order evicting the tenants and ordering the tenants to have the factory-built home removed. In the case of a proceeding pursuant to subsection (a) of this section, the court may also make a written finding and include in its order such relief on the issue of arrearage in the payment of periodic payments or other agreed charges related to the tenancy as the evidence may require. The court may disburse any moneys paid into court by the tenant in accordance with the provisions of this section.

(e) The court order shall specify the time when the tenant shall vacate the property, taking into consideration such factors as the nature of the factory-built home, the possibility of relative harm to the parties and other material facts deemed relevant by the court in considering when the tenant might reasonably be expected to vacate the property. The court shall not order the tenant to vacate the premises in less than one month unless the tenant refuses or fails to pay rent for that period in advance as it becomes due or unless the court finds that the tenant has deliberately or negligently damaged the property or the property of other tenants or materially threatened or harmed the quiet enjoyment of the property of other tenants or neighbors or knowingly permitted another person to do so. The court shall not order the tenant to remove the factory-built home in less than three months unless the tenant refuses or fails to pay rent in advance as it becomes due for that period or unless the court finds that the presence of the factory-built home poses an imminent threat to the health or safety of other tenants or neighbors: Provided, That the court may order the home to be removed in not less than thirty days if the factory-built home is a single section and the tenant had held over after having been given notice pursuant to section three of this article. The order shall further provide that if the tenant continues to wrongfully occupy the property beyond such time or if the tenant refuses or fails to remove the factory-built home in the time required, the landlord may apply for a writ of possession and the sheriff shall forthwith remove the tenant, taking precautions to guard against damage to the property of

the landlord and the tenant.

(f) In the event an appeal is taken and the tenant prevails upon appeal, and if the term of the lease has expired and proper termination notice was given pursuant to section three of this article, absent an issue of title, retaliatory eviction or breach of warranty, the relief ordered by the appellate court shall be for monetary damages only and shall not restore the tenant to possession. During the pendency of any such appeal, if the period of the tenancy has otherwise expired and proper termination notice was given pursuant to section three of this article, the tenant is not entitled to remain in possession of the property.

(g) When an order is issued pursuant to this section evicting the tenant and ordering the tenant to remove the factory-built home and the tenant fails to remove the factory-built home by the date specified by the order issued pursuant to subsection (e) of this section, the landlord may:

(1) Dispose of the tenant's factory-built home without incurring any liability or responsibility to the tenant or any other person if the tenant informs the landlord in writing that the tenant is abandoning the factory-built home;

(2) Remove and store the factory-built home after the date and time by which the court ordered the tenant to remove the factory-built home. The landlord may sell the stored factory-built home after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored factory-built home; or (ii) the costs of storage equal the value of the factory-built home being stored; or

(3) Leave the factory-built home on the property. The landlord may sell the factory-built home left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the factory-built home on the landlord's property and has not taken possession of the factory-built home.

(h) The sale shall be conducted and the proceeds distributed pursuant to article nine, chapter forty-six of this code as if the landlord became the holder of a security interest on the day the tenant was to have the factory-built home removed from the site except that the landlord shall have first priority to recover unpaid rent and may require as a condition of the sale that the buyer post security or place in escrow the cost of moving the factory-built home from the site.

(i) When an order is issued pursuant to this section granting possession of the property to the landlord and the tenant removes the factory-built home, but fails to remove all other personal property by the date and time specified by the order issued pursuant to subsection (e) of this section, the landlord may:

(1) Dispose of the tenant's personal property without incurring any liability or responsibility

to the tenant or any other person if the tenant informs the landlord in writing that the other personal property is abandoned or if the property is garbage;

(2) Remove and store the other personal property after the date and time by which the court ordered the tenant to vacate the property. The landlord may dispose of the stored personal property after thirty days without incurring any liability or responsibility to the tenant or any other person if: (i) The tenant has not paid the reasonable costs of storage and removal to the landlord and has not taken possession of the stored personal property; or (ii) the costs of storage equal the value of the personal property being stored; or

(3) Leave the personal property on the property. The landlord may dispose of personal property left on the property after thirty days without incurring any liability or responsibility to the tenant or any other person if the tenant has not paid the landlord the reasonable costs of leaving the personal property on the landlord's property and has not taken possession of the personal property.

(j) Notwithstanding the provisions of subsections (g) and (i) of this section, if the personal property is worth more than $300 and was not removed from the property or place of storage within thirty days with the required fees paid as provided in subsection (i) of this section, or if the factory-built home was not removed within thirty days with the required fees paid as provided in subsection (g) of this section, the landlord shall store the personal property or factory-built home for up to thirty additional days if the tenant or any person holding a security interest in the abandoned personal property or factory-built home informs the landlord of their intent to remove the property: Provided, That the tenant or person holding a security interest in the personal property pays the landlord the reasonable costs of storage and removal.

§55-3B-7. Waiver.

A tenant's rights under this article may not be waived by agreement.

§55-3C-1. Short title; findings.

(a) This article shall be known and may be cited as the “Stop Squatters Act”.

(b). The Legislature finds that the right to exclude others from entering and the right to direct others to immediately vacate a person’s residential or commercial property are fundamental property rights.

§55-3C-2. Squatters defined: squatters not tenants; squatting constitutes criminal trespass; petition and eviction not appropriate remedies for squatters; remedy is arrest for trespass.

(a) "Squatter" means a person unlawfully occupying a dwelling unit or other structure who is not entitled under a rental or lease agreement or who is not authorized by the tenant or owner 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, or an owner.

(b) "Squatting" means the act of being a squatter. Squatting is synonymous with trespass, and is a criminal act under §61-3B-2 or §61-3B-3 of this Code.

(c) Squatters are not considered tenants for purposes of this code and are not entitled to eviction proceedings afforded to lawful tenants. A Court of this state shall not require the use 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.

§55-3C-3. Limited Alternative Remedy to Remove Squatter from Residential and Commercial Real Properties.

(a) A property owner or their authorized agent may request, from any law-enforcement officer having authority to act in the jurisdiction where the subject property is located, the immediate removal of any person squatting in a residential dwelling or commercial building if the following conditions are met:

(1) The requesting person is the property owner or authorized agent;

(2) The real property includes a residential dwelling or commercial building;

(3) An unauthorized person or persons are unlawfully occupying the property;

(4) The property was not open to the public at the time of entry;

(5) The property owner or their authorized agent has directed the unauthorized person(s) to leave;

(6) The unauthorized person is not current or former owners or current or former lawful tenants;

(7) The unauthorized person is not immediate family members of the property owner or tenants; and

(8) No pending litigation related to the subject property exists between the property owner and the unauthorized person(s).

(b) To request the immediate removal pursuant to this section, the property owner or authorized agent shall submit a completed and verified complaint to remove persons unlawfully occupying real property ("complaint") to a law-enforcement officer having authority to act in the jurisdiction of the subject property.

(c) Upon receipt of the complaint, the law-enforcement agency to which the complaint was submitted shall conduct preliminary fact-finding, which may include reviewing any alleged lease agreement, interviewing relevant individuals, and other relevant inquiries to ascertain the validity of the complaint. If the preliminary fact-finding indicates probable cause that the conditions outlined in subsection (a) of this section are met, then the law-enforcement agency shall serve a notice to immediately vacate upon the unlawful occupants and put the owner in possession of the real property.

(d) The law-enforcement agency is entitled to a fee for service of a notice pursuant to subsection (c) of this section. Upon serving the notice, the property owner or their authorized agent may request the law-enforcement agency to remove the unauthorized person if they do not vacate the property when ordered to do so or request that they remain at the property to ensure the safety of all parties during the removal of the person property

of the unlawful occupants.

(e) This section does not limit any other property owner rights or the authority of law-enforcement.

§55-3C-4. Criminal mischief; penalties.

(a) A person who unlawfully occupies a residential dwelling or commercial building consistent with this article and as a result of the unlawful occupation causes damage to the real property, its fixtures, or personal property of the owner in an amount less than $1,000 is guilty of a misdemeanor, and, upon conviction thereof, shall be confined in jail for a term not to exceed one year or fined not to exceed $2,500, or both fined and confined.

(b) A person who unlawfully occupies a residential dwelling or commercial building consistent with this article and as a result of the unlawful occupation causes damage to the real property, its fixtures, or personal property of the owner in an amount more than $1,000 in damages commits a felony, and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than 10 years, or in the discretion of the court be confined in jail not more than one year and fined not more than $2,500.

§55-3C-5. Making false statement to detain real property; false complaint; civil causes of action; immunity.

(a) A property owner or their authorized agent who knowingly submits a complaint pursuant to this article in bad faith is subject to criminal prosecution for false swearing, and shall indemnify the law-enforcement agency and its agents for all costs and damages which may arise from a law-enforcement officer's good faith actions pursuant to this article.

(b) A civil cause of action for wrongful removal may be brought by a person who has been removed from a property pursuant to this article, with remedies including restoration of possession, actual costs, damages, and attorney fees.

(c) In a civil action against a law-enforcement officer or law-enforcement agency based on action taken pursuant to this article, any immunity authorized by this code or other applicable authority may be asserted.

§55-3C-6. Fraudulent sale or lease of residential real property.

Any person who knowingly lists or advertises residential real property or a commercial building for sale or renting without legal title or authority is guilty of a felony and, upon conviction thereof, shall be imprisoned in the penitentiary not less than one nor more than 10 years, or, in the discretion of the court, be confined in jail not more than one year and shall be fined not more than $2,500.

§55-4-1. When ejectment a proper remedy.

The action of ejectment is retained and may be brought as heretofore, subject to the provisions hereinafter contained. It may also be brought in the same cases in which a writ of right might have been brought prior to July 1, in the year eighteen hundred and fifty, in the state of Virginia, and by any person claiming real estate in fee or for life, or for years, either as heir, devisee, purchaser, or otherwise.

§55-4-2. Venue

Every such action shall be brought in the circuit court, or any other court given by any statute concurrent jurisdiction to try actions of ejectment, of the county in which the real estate, or some part thereof, is.

§55-4-3. Interest of plaintiff.

No person shall bring such action unless he has, at the time of commencing it, a subsisting interest in the premises claimed, and a right to recover the same, or to recover the possession thereof, or some share, interest, or portion thereof.

§55-4-4. Parties defendant.

If the premises be occupied, the occupant shall be named defendant in the declaration; and whether they be occupied or not, any person exercising acts of ownership thereon, or claiming title thereto, or any interest therein, at the commencement of the action, may also be named as defendant in the declaration. If a lessee be made defendant without joining his landlord, such landlord may appear and be made defendant with, or in place of his lessee.

§55-4-5. How action commenced.

The action shall be commenced by the service of a declaration in which the name of the real claimant shall be inserted as plaintiff; and all the provisions of law concerning a lessor of a plaintiff shall apply to such plaintiff.

§55-4-6. Declaration.

It shall be sufficient for the plaintiff to aver in his declaration that, on some day specified therein (which shall be after his title accrued), he was possessed of the premises claimed, and that, being so possessed thereof, the defendant afterwards, on some day to be stated, entered into such premises, and that he unlawfully withholds from the plaintiff the possession thereof, or exercises acts of ownership thereon or claims title thereto some interest therein, to his damage, such sum as the plaintiff shall state. The plaintiff shall also state whether he claims in fee or for his life, or for the life of another, or for years, specifying such lives, or the duration of such terms; and when he claims an undivided share or interest, he shall state the same. The premises shall be described in the declaration with convenient certainty, so that from such description possession thereof may be delivered.

§55-4-7. Joinder of parties plaintiff.

The declaration may contain several counts, and several parties may be named as plaintiffs jointly in one count and separately in others.

§55-4-8. Service of declaration and notice; order of publication.

To such declaration there shall be subjoined a written or printed notice by the plaintiff, or his attorney, addressed to the defendant and notifying him that such declaration will be filed on some specified rule day, in the clerk's office of the court in which the action is to be prosecuted, or in such court on some day named at the next term thereof, and that if he fails to appear and plead thereto, within the time required by law, judgment will be given against him Such declaration and notice may be served in the same manner as other notices may by law be served. But if the defendant do not reside in the county where the action is brought, or cannot be found therein, such service may be made in any part of the state where he may reside or be found; and if he do not reside in the state, or cannot be found therein, so that such service cannot be made, an order of publication, as provided by law in other cases, may be awarded against him and all the laws in force in relation to judgments and decrees obtained on publication and proceedings in such cases shall be applicable to the proceedings and judgment had and rendered in such action on such publication.

§55-4-9. Rule to plead; default judgment.

Upon filing the declaration and notice, with proof of the service thereof as aforesaid, the plaintiff shall be entitled to a rule upon the defendant to appear and plead at the next rule day, if the same be filed at rules, or if filed in court, to appear and plead within such time as shall be prescribed by the court; and if the defendant fail so to appear and plead, his default shall be entered and judgment given against him

§55-4-10. Plea or demurrer; issue on plea; evidence admissible.

The defendant may demur to the declaration, as in personal actions, or plead thereto, or do both. But he shall plead the general issue only, which shall be that the defendant is not guilty of unlawfully withholding the premises claimed by the plaintiff in the declaration. Upon such plea, the defendant may give in evidence any matter which, if pleaded in the former writ of right, would have barred the action of the plaintiff.

§55-4-11. Equitable title of vendee as defense.

A vendor, or any person claiming under him shall not at law recover against a vendee, or those claiming under him lands sold by such vendor to such vendee, when there is a writing stating the purchase, and the terms thereof, signed by the vendor or his agent.

§55-4-12. Payment or performance by mortgagor as defense.

The payment of the whole sum, or the performance of the whole duty, or the accomplishment of the whole purpose, which any mortgage or trust deed may have been made to secure or effect, shall prevent the grantee or his heirs from recovering at law, by virtue of such mortgage or trust deed, property thereby conveyed, whenever the defendant would in equity be entitled to a decree revesting the legal title in him without condition.

§55-4-13. Notice of equitable defense; resort to equity not barred.

A defendant shall not be allowed to avail himself of either of the two preceding sections, unless notice in writing of such defense shall be filed with his plea. Whether he shall or shall not make or attempt such defense, he shall not be precluded from resorting to equity for any relief to which he would have been entitled, if the said sections had not been enacted.

§55-4-14. Consent rules not to be used; what plaintiff must prove generally.

The consent rules shall not be used. The plaintiff need not prove an actual entry on or possession of the premises demanded, or receipt of any profits thereof, nor any lease, entry or ouster, except as hereinafter provided. But it shall be sufficient for him to show a right to the possession of the premises at the time of the commencement of the suit.

§55-4-14a. When proof required of location of reservations or exceptions contained in instruments of title.

In any action, suit or other judicial proceeding involving the title to land embraced in the exterior boundaries of any patent, deed, or other writing, which reserves or accepts one or more parcels of land from the operation of such patent, deed or other writing, if there be no claim made by a party to the proceedings that the land in controversy, or any part thereof, lies within such reservation or exception, such patent, deed, or other writing, shall be construed, and shall have the same effect, as if it contained no such reservation or exception; and if any party to such proceeding claims that the land in controversy, or any part thereof, lies within such reservation or exception, the burden shall be upon him to prove the fact, and all land not shown by a preponderance of the evidence to lie within such reservation or exception shall be deemed to lie without the same.

This section shall apply in cases involving the right to the proceeds of any such land when condemned or sold, as well as in cases where the title to land is directly involved, and shall apply in any case in which the title to any part of the land, or its proceeds, but for this section, would or might be in the state.

§55-4-15. What plaintiff must prove against cotenant.

If the action be by one or more tenants in common, or joint tenants, or coparceners, against their cotenants, the plaintiff shall be bound to prove actual ouster or some other act amounting to a total denial of the plaintiff's right as cotenant.

§55-4-16. Extent of possession under patent, deed or other writing.

In a controversy affecting land, when a person claiming under a patent, deed or other writing shall enter upon and take possession of any part of the land in controversy under such patent, deed or other writing, for which some other person has the better title, such adversary possession under such patent, deed or other writing shall be taken and held to extend to the boundaries embraced or included by such patent, deed or other writing, unless the person having the better title shall have actual adverse possession of some part of the land embraced by such patent, deed or other writing.

§55-4-17. Verdict as to parties.

If the jury be of opinion for the plaintiffs, or any of them, the verdict shall be for the plaintiffs or such of them as appear to have the right to the possession of the premises, or any part thereof, and against such of the defendants as were in possession thereof, or exercised acts of ownership thereon, or claimed title thereto or any interest therein, at the commencement of the action. Where any plaintiff appears to have no such right, the verdict as to such plaintiff shall be for the defendants. If the action be against several defendants, and a joint possession of all be proved, and the plaintiff be entitled to a verdict, it shall be against all, whether they plead separately or jointly.

§55-4-18. Verdict as to premises.

When the right of the plaintiff is proved to all the premises claimed, the verdict shall be for the premises generally, as specified in the declaration; but if it be proved to only a part or share of the premises, the verdict shall specify such part particularly as the same is proved, and with the same certainty of description as is required in the declaration. If the verdict be for an undivided share or interest in the premises claimed, it shall specify the same; and if for an undivided share or interest of a part of the premises, it shall specify such share or interest, and describe such part as before required. The verdict shall also specify the estate found in the plaintiff, whether it be in fee or for life, stating for whose life, or whether it be a term of years, and specifying the duration of such term.

§55-4-19. Judgment; assignment of dower.

The judgment for the plaintiff shall be that he recover the possession of the premises, according to the verdict of the jury, if there be a verdict; or if the judgment be by default, or on demurrer, according to the description thereof in the declaration. If the action be brought to recover dower which has not been assigned before the commencement of such action, the court in which the judgment is rendered may have dower assigned by commissioners appointed for that purpose. If the action be against several defendants, and it appear on the trial that any of them occupy distinct parcels, in severalty or jointly, the plaintiff may recover several judgments against them for the parcels so held by one or more of the defendants separately from others. The plaintiff may recover any specific or any undivided part or share of the premises, though it be less than he claimed in the declaration.

§55-4-20. Change in plaintiff's right pending action; additional party plaintiff.

If the right or title of the plaintiff in ejectment be that of a tenant for life or for a term of years, and such right or title shall expire after the commencement of the action, but before trial, the verdict shall be according to the fact, and judgment shall be entered for his damages sustained by the withholding of the premises by the defendant; and as to the premises claimed, the judgment shall be that the defendant go thereof without day. But the right of the plaintiff to recover in the action shall not be affected or impaired by reason of any conveyance or transfer of the legal title to the premises in controversy, by or from the plaintiff to another, pending the action. And where any such conveyance or transfer is made, the person in whom the legal title to such premises is thereby vested may, at any time before trial, on motion of either party, be made a party plaintiff in the action, either with or without an amendment of the declaration, as the court may deem proper; and in such case, if the plaintiff recover, the verdict and judgment may be for all the plaintiffs, or for such of them as may be entitled to the possession of the premises at the time of the trial.

§55-4-21. Mesne profits and damages.

If the plaintiff file with his declaration a statement of the profits and other damages which he means to demand, and the jury find in his favor, they shall at the same time, unless the court otherwise order, assess the damages for mesne profits of the land for any period not exceeding five years previous to the commencement of the suit until the verdict, and also the damages for any destruction or waste of the buildings or other property during the same time for which the defendant is chargeable.

§55-4-22. How damages assessed.

If there be no issue of fact tried in the cause, and judgment is to be rendered for the plaintiff on demurrer, default, or otherwise, such damages shall be assessed by the court, unless either party shall move to have them assessed by a jury, or the court shall think proper to have them so assessed, in which case a jury shall be impaneled to assess them.

§55-4-23. Claim for improvements.

If the defendant intends to claim allowance for improvements made upon the premises by himself or those under whom he claims, he shall file with his plea, or at a subsequent time before the trial (if for good cause allowed by the court), a statement of his claim therefor, in case judgment be rendered for the plaintiff.

§55-4-24. Balance as between damages and improvements.

In such case, the damages of the plaintiff and the allowance to the defendant for improvements shall be estimated and the balance ascertained, and judgment therefor rendered, as prescribed in article five of this chapter.

§55-4-25. Postponing assessment of damages and allowance for improvements.

On motion of either party, the court may order the assessment of such damages and allowance to be postponed until after the verdict on the title is recorded.

§55-4-26. Effect of judgment.

Any such judgment in an action of ejectment shall be conclusive as to the right of the possession established in such action upon the party against whom it is rendered, and, subject to the provisions of section two, article eleven of this chapter, against all persons claiming from, through, or under such party, by title accruing after the commencement of such action, except as hereinafter mentioned.

§55-4-27. Effect of judgment as to persons under disability.

If any person against whom such judgment is rendered shall be at the time of the judgment an infant, or insane, the judgment shall be no bar to an action commenced within three years after the removal of such disability.

§55-4-28. Right to recover mesne profits and damages against person other than defendant.

Nothing in this article shall prevent the plaintiff from recovering mesne profits, or damages done to the premises, from any person other than the defendants, who may be liable to such action.

§55-4-29. Default or surrender by tenant for life.

If any tenant for life of land make default or surrender, the heirs, or those entitled to the remainder, may, before judgment, be admitted to defend their right, or after judgment may assert their right, without prejudice from such default or surrender.

§55-4-30. Right of entry not tolled by descent cast.

The right of entry on, or action for, land shall not be tolled or defeated by descent cast.

§55-4-31. Petition for ascertainment and designation of boundary line or lines of real estate.

Any person having a subsisting interest in real estate and a right to its possession, or to the possession of some share, interest or portion thereof, upon petition filed in the court which would have jurisdiction in an action of ejectment concerning such real estate, shall have the right to have ascertained and designated by the said court, the true boundary line or lines to such real estate, as to one or more of the coterminous landowners. Petitioner in his petition shall state whether his interest is in fee, for life, for a term or otherwise, and shall describe with reasonable certainty said real estate and the boundary line or lines thereof which he seeks to establish. A plat showing such real estate and boundary line or lines, filed with the petition, may serve the purposes of such description.

The petitioner shall make defendants to said petition all persons having a present interest in the boundary line or lines sought to be ascertained and designated, and the case shall be commenced by serving a copy of the petition upon the defendant or defendants. If the petition shall have been served on the defendant or defendants and filed in the clerk's office not less than thirty days preceding the first day of a term of court the case shall be matured for trial at said term. The defendant or defendants may file an answer to said petition which shall state the grounds of defense, if any, and the parties shall be deemed to be at issue, which issue shall be the true boundary line or lines of such real estate. The trial shall be conducted as other trials at law, and the same rules of evidence shall apply and the same defenses may be made as in other actions at law. A trial by jury may be waived by consent of the parties, and the case be tried by the court. Counsel for the petitioner shall have the right to open and conclude the argument. The judgment of the court shall be recorded in the law order book, and in the current deed book in the office of the clerk of the county court, and indexed in the names of the parties.

The judge of the court in term time or vacation may direct such surveys to be made as he may deem necessary. The judgment of the court, unless reversed, shall forever settle, determine, and designate the true boundary line or lines in question, and be binding upon the parties, their heirs, devisees, and assigns. The judgment may be enforced in the same manner as a judgment in an action of ejectment. A writ of error from the Supreme Court of Appeals shall lie to such judgment in like manner as in a common-law action.

In a proceeding under this section, no claim for rents, profits or damages shall be considered.

§55-4-31a. Resolution of boundary disputes; corrective deeds; petition for ascertainment and designation of boundary line or lines of real estate.

Where a survey has been made to establish the boundary to a parcel of land and there is a dispute between two or more owners of the land so surveyed as to the location of the boundary as located by such surveyor, the surveyor may make or cause to be made a review of the appropriate deeds of the parcels of land involved to determine the correct property description and location of the line.

If there is not sufficient evidence at the site of the parcels involved to ascertain the true location of the boundary line, the parties to the dispute may secure the judgment and knowledge of another licensed land surveyor or surveyors or registered professional engineer or engineers as to the true location. If an agreement is reached between all of the owners of the land involved in the dispute, then a straw deed or deed of correction shall be made, with the signatures of all parties affixed thereto.

If after the intervention of the additional surveyor, surveyors, engineer or engineers, there still exists a dispute as to the location of the boundary line, then any party may bring an action pursuant to section thirty-one of this article in the circuit court of the county where the land is located to ascertain the true location of the boundary line: Provided, That in any such action no party to such action shall be permitted to introduce into evidence any agreement with respect to the boundary dispute between two or more parties to the action if such agreement is not embodied in a corrective or straw deed executed by the parties.

Nothing in this section shall prevent or be deemed a condition precedent to the institution of an action under section thirty-one of this article.

§55-5-1. Method of asserting claim.

Any defendant against whom a decree or judgment shall be rendered for land, where no assessment of damages has been made under the preceding article, may, at any time before the execution of the decree or judgment, present a petition to the court rendering such decree or judgment, stating that he or those under whom he claims, while holding the premises under a title believed by him or them to be good, have made permanent improvements thereon, and praying that he may be allowed for the same the fair and reasonable value thereof; and thereupon the court, if satisfied of the probable truth of the allegation, shall suspend the execution of the judgment or decree, and impanel a jury to fix and assess the damages of the plaintiff (if any) and the value of the improvements (if any) so made by the defendant.

§55-5-2. Valuation of improvements made by defendant before notice of title.

If the jury be satisfied that the defendant, or those under whom he claims, made on the premises, at a time when there was reason to believe the title good under which he or they were holding such premises, permanent and valuable improvements, they shall estimate in his favor the value of such improvements as were so made before notice in writing of the title under which the plaintiff claims, as they are at the time such valuation is made.

§55-5-3. Liability of defendant for annual value of premises and damages -- Assessment of damages for plaintiff.

The jury, in fixing and assessing such value and damages, shall estimate against the defendant the annual value of such part of the premises (if any) as was improved and in a state fit and prepared for cultivation at the time he took possession thereof, and also the damages for waste or other injury to the premises committed by the defendant, and shall credit him with the value of all the improvements made thereon, but no charge shall be made against the tenant for the use of any improvements made upon the land by him or for the use of any part of the land cleared by him

§55-5-4. Same -- For what period defendant liable.

The defendant shall not be liable for such annual value or damages for any period longer than five years before the action or suit was brought, except that, if the sum allowed by the jury for the improvements exceed that allowed to the plaintiff for the annual value and damages of the premises under section three of this article, the jury may then estimate against the defendant such annual value and damages for the time he has used and occupied the same before the said five years.

§55-5-5. Verdict for balance after damages set off against improvements; entry of judgment.

After setting off the amount allowed the plaintiff (if any) against the amount allowed to the defendant for improvements (if any), the jury shall find a verdict for the plaintiff or defendant, as the case may be, and judgment or decree shall be entered therefor according to the verdict.

§55-5-6. Judgment lien.

Any such balance due to the defendant shall constitute a lien upon the land recovered by the plaintiff until the same shall be paid.

§55-5-7. Reimbursement of life tenant by remainderman or reversioner.

If the plaintiff claim only on an estate for life in the land recovered, and pay any sum allowed to the defendant for improvements, he or his personal representative may recover, at the determination of his estate, from the remainderman or reversioner, the value of such improvements, as they then exist, not exceeding the amount so paid by him and shall have a lien therefor on the premises, in like manner as if they had been mortgaged for the payment thereof, and may keep possession of such premises until it be paid.

§55-5-8. Exception as to mortgagees and trustees.

Nothing in this article, nor anything in article four of this chapter, concerning rents, profits and improvements, shall extend or apply to any suit brought by a mortgagee, or a trustee in a trust deed to secure creditors, his heirs or assigns, against a mortgagor, or grantor in such trust deed, his heirs or assigns, for the recovery of the mortgaged premises or of the land conveyed by such trust deed.

§55-5-9. Plaintiff may require his estate only to be valued -- By entry on record.

When the defendant shall claim allowance for improvements, as before provided, the plaintiff may, by an entry on the record, require that the value of his estate in the premises, without the improvements, shall also be ascertained.

§55-5-10. Same -- How estimated.

The value of the premises, in such case, shall be estimated as it would have been at the time of the inquiry, if no such improvements had been made on the premises by the tenant or any person under whom he claims, and shall be ascertained in the manner hereinbefore provided for estimating the value of improvements.

§55-5-11. Same -- Relinquishment of estate to defendant at value ascertained.

The plaintiff in such case, if judgment is rendered for him may, at any time during the same term, or before judgment or decree is rendered on the assessment of the value of the improvements, in person or by his attorney in the cause, enter on the record his election to relinquish his estate in the premises to the defendant at the value so ascertained, and the defendant shall thenceforth hold all the estate that the plaintiff had therein at the commencement of the suit, provided he pay therefor such value, with interest, in the manner in which the court may order it to be paid.

§55-5-12. Same -- Same -- How value paid; sale of land for failure to make payments; deficiency.

The payments shall be made to the plaintiff, or into court for his use, and the land shall be bound therefor, and if the defendant fail to make such payments within or at the time limited therefor, respectively, the court may order the land to be sold, and the proceeds applied to the payment of such value and interest, and the surplus, if any, to be paid to the defendant; but if the proceeds be insufficient to satisfy such value and interest, the defendant shall not be bound for the deficiency.

§55-5-13. Same -- Same -- Disposition of value when party under disability.

If the party by or for whom the land is claimed in the suit be a minor or insane, such value shall be deemed to be real estate, and be disposed of as the court may consider proper for the benefit of the persons interested therein.

§55-5-14. Same -- Same -- Eviction of defendant; recovery of amount paid.

If the defendant, or his heirs or assigns, shall, after the premises are so relinquished to him be evicted thereof by force of any better title than that of the original plaintiff, the person so evicted may recover from such plaintiff, or his representatives, the amount so paid for the premise, as so much money had and received by such plaintiff, in his lifetime, for the use of such person, with lawful interest thereon from the time of such payment.

§55-6-1. Immediate recovery of possession of personal property; notice and prejudgment hearing.

If the plaintiff in a civil action, whether in a circuit court or magistrate court, for the recovery of specific goods, chattels, or intangible personal property, shall demand immediate possession thereof, a prejudgment hearing shall be held in not less than five nor more than ten days after service upon the defendant of the summons, a verified complaint describing said personal property, and a notice of the time, place, and purpose of the prejudgment hearing. At the prejudgment hearing an inquiry shall be held to determine: (a) The nature of the right or contract under which the plaintiff claims a right to immediate possession; and (b) the nature of the defendant's right to retain possession thereof.

§55-6-2. Finding of fact by court or magistrate; bond; order for seizure.

If the court or magistrate shall conclude, upon the basis of the evidence adduced at said prejudgment hearing, that there is a substantial probability that the plaintiff will prevail upon trial of the action upon the merits, the court or magistrate may order that, upon the plaintiff's execution of a bond, with good security to be approved by the clerk of the circuit court or the magistrate and delivered to said clerk or magistrate in a penalty at least double the value of the property claimed, payable to the defendant and with condition to pay all costs and damages which may be awarded against the plaintiff, or sustained by any person by reason of said civil action and to have the property so claimed forthcoming to answer any judgment or order of the court or magistrate in said civil action, the property claimed, or any part thereof described or designated by the court or magistrate, be seized by and taken into the possession of a designated officer.

§55-6-3. Seizure of property by officer.

It shall be the duty of the officer to whom any such summons or order is delivered to proceed forthwith to execute the same; and he may, if necessary, break open and enter any house or other inclosure in which such property may be, in order to seize the same.

§55-6-4. Return of property to defendant upon execution of bond.

The defendant in any such action may have the property taken possession of by such officer, by virtue of such summons or order, returned to him at any time within three days after such taking, upon executing a bond with good security, to be approved by such officer, payable to the plaintiff, in a penalty at least double the value of such property, with condition to pay all costs and damages which may be awarded against him in such action, and all damages which may be sustained by any person by reason of the return of such property to him and to have the property forthcoming to answer any judgment or order of the court or justice respecting the same made at any time during the pendency of the action; which bond shall be delivered to such officer, and by him returned to the office of the clerk or justice who issued such summons or order. Upon the reception of such bond by the officer aforesaid, he shall forthwith return the property taken by him to the defendant; but in case no such bond be delivered to such officer within such three days, the property shall be delivered by an officer to the plaintiff.

§55-6-5. Exception to sufficiency of sureties.

Either party may, upon reasonable notice to the other, except to the sufficiency of the sureties in the bond of such other party and the court, or the judge thereof in vacation, or the justice before whom such action is pending, may, upon the hearing of such exceptions, make such order in the premises as may seem just and equitable.

§55-6-6. Verdict and judgment.

Upon the final trial of any such action, if the verdict be for the plaintiff, and he be not already in the possession of the property claimed, the judgment shall be that he recover the possession of such property, if a recovery thereof can be had; and if not, that he recover the value thereof as found by such verdict; and, in either event, that he recover the damages assessed by the jury for the detention of such property, and his costs in such action. And it shall be the duty of the jury in such cases to ascertain and assess such damages as the plaintiff has sustained by reason of the detention of such property by the defendant. If the plaintiff be already in possession of such property, the judgment shall be that he retain the possession thereof, and for damages and costs, as aforesaid. In case the verdict at such trial be for the defendant, if the plaintiff be in possession of the property claimed, the judgment shall, in like manner, ascertain and assess the damages sustained by the defendant by reason of the detention of such property by the plaintiff and also the value of such property, and judgment shall be entered upon such verdict in all respects as is provided in case the verdict be for the plaintiff. If, on an issue concerning several things in one count, no verdict be found for part of them, it shall not be error, but the plaintiff shall be barred of his title to the things omitted; and if the verdict omit price or value, the court may at any time have a jury impaneled to ascertain the same.

§55-6-7. Execution.

The execution issued in such cases shall conform in all things to the judgment entered therein.

§55-7-1. Seduction.

An action for seduction may be maintained, without any allegation of proof of the loss of the service of the female by reason of the defendant's wrongful act.

§55-7-2. Insulting words.

All words which, from their usual construction and common acceptation, are construed as insults and tend to violence and breach of the peace, shall be actionable. No demurrer shall preclude a jury from passing thereon.

§55-7-3. Unlawful seizure or attachment.

If the property be distrained for any rent not due, or attached for any rent not accruing, or taken under any attachment sued out without good cause, the owner of such property may, in an action against the party suing out the warrant of distress or attachment, recover damages for the wrongful seizure, and also, if the property be sold, for the sale thereof.

§55-7-4. Action of replevin abolished.

No action of replevin shall be hereafter brought.

§55-7-5. Action for death by wrongful act.

Whenever the death of a person shall be caused by wrongful act, neglect, or default, and the act, neglect or default is such as would (if death had not ensued) have entitled the party injured to maintain an action to recover damages in respect thereof, then, and in every such case, the person who, or the corporation which, would have been liable if death had not ensued, shall be liable to an action for damages, notwithstanding the death of the person injured, and although the death shall have been caused under such circumstances as amount in law to murder in the first or second degree, or manslaughter. No action, however, shall be maintained by the personal representative of one who, not an infant, after injury, has compromised for such injury and accepted satisfaction therefor previous to his death. Any right of action which may hereafter accrue by reason of such injury done to the person of another shall survive the death of the wrongdoer, and may be enforced against the executor or administrator, either by reviving against such personal representative a suit which may have been brought against the wrongdoer himself in his lifetime, or by bringing an original suit against his personal representative after his death, whether or not the death of the wrongdoer occurred before or after the death of the injured party.

§55-7-6. By whom action for wrongful death to be brought; amount and distribution of damages; period of limitation.

(a) Every such action shall be brought by and in the name of the personal representative of such deceased person who has been duly appointed in this state, or in any other state, territory or district of the United States, or in any foreign country, and the amount recovered in every such action shall be recovered by said personal representative and be distributed in accordance herewith. If the personal representative was duly appointed in another state, territory or district of the United States, or in any foreign country, such personal representative shall, at the time of filing of the complaint, post bond with a corporate surety thereon authorized to do business in this state, in the sum of $100, conditioned that such personal representative shall pay all costs adjudged against him or her and that he or she shall comply with the provisions of this section. The circuit court may increase or decrease the amount of said bond, for good cause.

(b) In every such action for wrongful death, the jury, or in a case tried without a jury, the court, may award such damages as to it may seem fair and just, and, may direct in what proportions the damages shall be distributed to the surviving spouse and children, including adopted children and stepchildren, brothers, sisters, parents and any persons who were financially dependent upon the decedent at the time of his or her death or would otherwise be equitably entitled to share in such distribution after making provision for those expenditures, if any, specified in subdivision (2), subsection (c) of this section. If there are no such survivors, then the damages shall be distributed in accordance with the decedent's will or, if there is no will, in accordance with the laws of descent and distribution as set forth in chapter forty-two of this code. If the jury renders only a general verdict on damages and does not provide for the distribution thereof, the court shall distribute the damages in accordance with the provisions of this subsection.

(c) (1) The verdict of the jury shall include, but may not be limited to, damages for the following: (A) Sorrow, mental anguish, and solace which may include society, companionship, comfort, guidance, kindly offices and advice of the decedent; (B) compensation for reasonably expected loss of (i) income of the decedent, and (ii) services, protection, care and assistance provided by the decedent; (C) expenses for the care, treatment and hospitalization of the decedent incident to the injury resulting in death; and (D) reasonable funeral expenses.

(2) In its verdict the jury shall set forth separately the amount of damages, if any, awarded by it for reasonable funeral, hospital, medical and said other expenses incurred as a result of the wrongful act, neglect or default of the defendant or defendants which resulted in death, and any such amount recovered for such expenses shall be so expended by the personal representative.

(d) Every such action shall be commenced within two years after the death of such deceased person, subject to the provisions of section eighteen, article two, chapter fifty-five. The provisions of this section shall not apply to actions brought for the death of any person

occurring prior to July 1, 1988.

§55-7-7. Compromise of claim for death by wrongful act.

The personal representative of the deceased may compromise any claim to damages arising under section five of this article before or after action brought. What is received by the personal representative under the compromise shall be treated as if recovered by him in an action under the section last mentioned. When the judge acts in vacation, he shall return all the papers in the case, and orders made therein, to the clerk's office of such court. The clerk shall file the papers in his office as soon as received, and forthwith enter the order in the order book on the law side of the court. Such orders, and all the proceedings in vacation, shall have the same force and effect as if made or had in term. Upon approval of the compromise, the court shall apportion and distribute such damages, or the compromise agreed upon, after making provisions for those expenditures, if any, specified in subdivision (2), subsection (c), section six of this article, in the same manner as in the cases tried without a jury.

§55-7-8. Personal injury action where injuries result in death.

Where an action is brought by a person injured for damage caused by the wrongful act, neglect or default of any person or corporation, and the person injured dies as a result thereof, the action shall not abate by reason of his or her death but, his or her death being suggested, it may be revived in the name of his or her personal representative, and the complaint shall be amended so as to conform to an action under sections five and six of this article, and the case proceeded with as if the action had been brought under said sections. Additionally a separate and distinct cause of action may be brought, and if brought, shall be joined in the same proceeding for damages incurred between the time of injury and death where not otherwise provided for in said sections five and six. In either case there shall be but one recovery for each element of damages: Provided, That nothing in this section shall be construed in derogation of the provisions of section twelve of this article.

§55-7-8a. Actions which survive; limitations; law governing such actions.

(a) In addition to the causes of action which survive at common law, causes of action for injuries to property, real or personal, injuries to the person and not resulting in death, deceit or fraud, or any violations of §46A-1-101 et. seq. of this code, also survive; and such actions may be brought notwithstanding the death of the person entitled to recover or the death of the person liable.

(b) If any action is begun during the lifetime of the injured party, and within the period of time permissible under the applicable statute of limitations as provided by §55-2-1 *et seq*. of this code and §55-2A-1 *et seq*. of this code, (either against the wrongdoer or his or her personal representative), and the injured party dies pending the action it may be revived in favor of the personal representative of the injured party and prosecuted to judgment and execution against the wrongdoer or personal representative.

(c) If the injured party dies before having begun an action and it is not at the time of his or her death barred by the applicable statute of limitations under the provisions of §55-2-1 *et seq*. of this code and §55-2A-1 *et seq*. of this code the action may be begun by the personal representative of the injured party against the wrongdoer or personal representative and prosecuted to judgment and execution against the wrongdoer or his or her personal representative. Any action shall be instituted within the same period of time that would have been applicable had the injured party not died.

(d) If an action mentioned in the subsections (a), (b) and/or (c) of this section have been begun against the wrongdoer and he or she dies during the pendency thereof, it may be revived against the personal representative of the wrongdoer and prosecuted to judgment and execution.

(e) The applicable provisions of §56-8-1 *et seq*. of this code govern the actions hereinabove mentioned, with reference to their abatement, revival, discontinuance, reinstatement, and substitution of parties.

(f) Nothing contained in this section shall be construed to extend the time within which an action for any other tort shall be brought, nor to give the right to assign a claim for a tort not otherwise assignable.

§55-7-9. Violation of statutes.

Any person injured by the violation of any statute may recover from the offender such damages as he may sustain by reason of the violation, although a penalty or forfeiture for such violation be thereby imposed, unless the same be expressly mentioned to be in lieu of such damages.

§55-7-10. Trespass abolished; trespass on the case to lie in lieu thereof.

The action of trespass is abolished. In all cases in which an action of trespass could have been maintained an action of trespass on the case shall lie.

§55-7-11. Suits against unincorporated common carriers.

Where common carriers are not incorporated, any one or more of them may be sued by his or their name or names only, to recover damages for loss of, or injury to, any parcel, package, or person; and such suit shall not abate for the want of joining any of the coproprietors, or copartners.

§55-7-11a. Settlement, release or statement within twenty days after personal injury; disavowal; certain expressions of sympathy inadmissible as evidence.

(a) If a person sustains a personal injury, no person shall within twenty days from the date of the personal injury while the injured person is either: (i) An inpatient in any hospital; or (ii) partially or totally unable to engage in his or her usual trade, profession or occupation:

(1) Negotiate or attempt to negotiate a settlement of any claim for such personal injury with or for and on behalf of the injured person;

(2) Obtain or attempt to obtain from the injured person a partial or general release of liability for such injury; or

(3) Obtain or attempt to obtain any statement, either written or oral, from the injured person for use in negotiating a settlement or obtaining a partial or general release of liability with respect to the personal injury: Provided, That nothing herein shall prohibit a person acting or intending to act for and on behalf of the injured person from obtaining any statement, oral or written, from an injured person upon the express request of the injured person.

Nothing herein shall prevent a person who may be liable for damages on account of the personal injury from making an advance payment of all or any part of his or her liability for the damages; any sum paid during the twenty days by a person liable for damages on account of the personal injury is allowed as full credit against any damages which may be finally determined to be due an injured person.

Any settlement, release of liability or statement entered into, obtained or made in violation of this section may be disavowed by the injured person at any time within one hundred eighty days from the date of the personal injury by executing a written statement of disavowal and thereupon forwarding a copy of the same to the person violating this section, in which event the settlement, release or statement may not be admissible in evidence for any purpose in any court or other proceeding relating to the personal injury, if any consideration paid for the settlement of or the general release of liability for the personal injury, at the time of the forwarding of the copy of the written statement of disavowal, is repaid or returned to the person who paid the consideration.

(b) (1) No statement, affirmation, gesture or conduct of a healthcare provider who provided healthcare services to a patient, expressing apology, sympathy, commiseration, condolence, compassion or a general sense of benevolence, to the patient, a relative of the patient or a representative of the patient and which relate to the discomfort, pain, suffering, injury or death of the patient shall be admissible as evidence of an admission of liability or as evidence of an admission against interest in any civil action brought under the provisions of article seven-b, chapter fifty-five of this code, or in any arbitration, mediation or other alternative dispute resolution proceeding related to such civil action.

(2) Terms not otherwise defined in this section have the meanings assigned to them in article

seven-b, chapter fifty-five of this code. For purposes of this section, unless the context otherwise requires, "relative" means a spouse, parent, grandparent, stepfather, stepmother, child, grandchild, brother, sister, half-brother, half-sister or spouse's parents. The term includes said relationships that are created as a result of adoption. In addition, "relative" includes any person who has a family-type relationship with a patient.

§55-7-12. Liability of one joint tort-feasor not affected by release to, or accord and satisfaction with, another.

A release to, or an accord and satisfaction with, one or more joint trespassers, or tort-feasors, shall not inure to the benefit of another such trespasser, or tort-feasor, and shall be no bar to an action or suit against such other joint trespasser, or tort-feasor, for the same cause of action to which the release or accord and satisfaction relates.

§55-7-13.

Repealed.

Acts, 2015 Reg. Sess., Ch. 59.

§55-7-13a. Modified comparative fault standard established.

(a) For purposes of this article, "comparative fault" means the degree to which the fault of a person was a proximate cause of an alleged personal injury or death or damage to property, expressed as a percentage. Fault shall be determined according to section thirteen-c of this article.

(b) In any action based on tort or any other legal theory seeking damages for personal injury, property damage, or wrongful death, recovery shall be predicated upon principles of comparative fault and the liability of each person, including plaintiffs, defendants and nonparties who proximately caused the damages, shall be allocated to each applicable person in direct proportion to that person's percentage of fault.

(c) The total of the percentages of comparative fault allocated by the trier of fact with respect to a particular incident or injury must equal either zero percent or one hundred percent.

§55-7-13b. Definitions.

As used in this article:

"Compensatory damages" means damages awarded to compensate a plaintiff for economic and noneconomic loss.

"Defendant" means, for purposes of determining an obligation to pay damages to another under this chapter, any person against whom a claim is asserted including a counter-claim defendant, cross-claim defendant or third-party defendant.

"Fault" means an act or omission of a person, which is a proximate cause of injury or death to another person or persons, damage to property, or economic injury, including, but not limited to, negligence, malpractice, strict product liability, absolute liability, liability under section two, article four, chapter twenty-three of this code or assumption of the risk.

"Plaintiff" means, for purposes of determining a right to recover under this chapter, any person asserting a claim.

§55-7-13c. Liability to be several; amount of judgment; allocation of fault.

(a) In any action for damages, the liability of each defendant for compensatory damages shall be several only and may not be joint. Each defendant shall be liable only for the amount of compensatory damages allocated to that defendant in direct proportion to that defendant's percentage of fault, and a separate judgment shall be rendered against each defendant for his or her share of that amount. However, joint liability may be imposed on two or more defendants who consciously conspire and deliberately pursue a common plan or design to commit a tortious act or omission. Any person held jointly liable under this section shall have a right of contribution from other defendants that acted in concert.

(b) To determine the amount of judgment to be entered against each defendant, the court, with regard to each defendant, shall multiply the total amount of compensatory damages recoverable by the plaintiff by the percentage of each defendant's fault and, subject to subsection (d) of this section, that amount shall be the maximum recoverable against that defendant.

(c) Any fault chargeable to the plaintiff shall not bar recovery by the plaintiff unless the plaintiff's fault is greater than the combined fault of all other persons responsible for the total amount of damages, if any, to be awarded. If the plaintiff's fault is less than the combined fault of all other persons, the plaintiff's recovery shall be reduced in proportion to the plaintiff's degree of fault.

(d) Notwithstanding subsection (b) of this section, if a plaintiff through good faith efforts is unable to collect from a liable defendant, the plaintiff may, not later than one year after judgment becomes final through lapse of time for appeal or through exhaustion of appeal, whichever occurs later, move for reallocation of any uncollectible amount among the other parties found to be liable.

(1) Upon the filing of the motion, the court shall determine whether all or part of a defendant's proportionate share of the verdict is uncollectible from that defendant and shall reallocate the uncollectible amount among the other parties found to be liable, including a plaintiff at fault, according to their percentages at fault: Provided, That the court may not reallocate to any defendant an uncollectible amount greater than that defendant's percentage of fault multiplied by the uncollectible amount: Provided, however,, That there shall be no reallocation against a defendant whose percentage of fault is equal to or less than the plaintiff's percentage of fault.

(2)If the motion is filed, the parties may conduct discovery on the issue of collectibility prior to a hearing on the motion.

(e) A party whose liability is reallocated under subsection (d) of this section is nonetheless subject to contribution and to any continuing liability to the plaintiff on the judgment.

(f) This section does not affect, impair or abrogate any right of indemnity or contribution

arising out of any contract or agreement or any right of indemnity otherwise provided by law.

(g) The fault allocated under this section to an immune defendant or a defendant whose liability is limited by law may not be allocated to any other defendant.

(h) Notwithstanding any other provision of this section to the contrary, a defendant that commits one or more of the followings acts or omissions shall be jointly and severally liable:

(1) A defendant whose conduct constitutes driving a vehicle under the influence of alcohol, a controlled substance, or any other drug or any combination thereof, as described in section two, article five, chapter seventeen-c of this code, which is a proximate cause of the damages suffered by the plaintiff;

(2) A defendant whose acts or omissions constitute criminal conduct which is a proximate cause of the damages suffered by the plaintiff; or

(3) A defendant whose conduct constitutes an illegal disposal of hazardous waste, as described in section three, article eighteen, chapter twenty-two of this code, which conduct is a proximate cause of the damages suffered by the plaintiff.

(i) This section does not apply to the following statutes:

(1) Article twelve-a, chapter twenty-nine of this code;

(2) Chapter forty-six of this code; and

(3) Article seven-b, chapter fifty-five of this code.

§55-7-13d. Determination of fault; imputed fault; when plaintiff's criminal conduct bars recovery; burden of proof; damages; stay of action; limitations; applicability; severability.

(a) *Determination of fault of parties and nonparties. —*

(1) In assessing percentages of fault, the trier of fact shall consider the fault of all persons who contributed to the alleged damages regardless of whether the person was or could have been named as a party to the suit;

(2) Fault of a nonparty shall be considered if the plaintiff entered into a settlement agreement with the nonparty or if a defending party gives notice no later than one hundred eighty days after service of process upon said defendant that a nonparty was wholly or partially at fault. Notice shall be filed with the court and served upon all parties to the action designating the nonparty and setting forth the nonparty's name and last known address, or the best identification of the nonparty which is possible under the circumstances, together with a brief statement of the basis for believing such nonparty to be at fault;

(3) In all instances where a nonparty is assessed a percentage of fault, any recovery by a plaintiff shall be reduced in proportion to the percentage of fault chargeable to such nonparty. Where a plaintiff has settled with a party or nonparty before verdict, that plaintiff's recovery will be reduced in proportion to the percentage of fault assigned to the settling party or nonparty, rather than by the amount of the nonparty's or party's settlement;

(4) Nothing in this section is meant to eliminate or diminish any defenses or immunities, which exist as of the effective date of this section, except as expressly noted herein;

(5) Assessments of percentages of fault for nonparties are used only as a vehicle for accurately determining the fault of named parties. Where fault is assessed against nonparties, findings of such fault do not subject any nonparty to liability in that or any other action, or may not be introduced as evidence of liability or for any other purpose in any other action; and

(6) In all actions involving fault of more than one person, unless otherwise agreed by all parties to the action, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, indicating the percentage of the total fault that is allocated to each party and nonparty pursuant to this article. For this purpose, the court may determine that two or more persons are to be treated as a single person.

(b) *Imputed fault. —* Nothing in this section may be construed as precluding a person from being held liable for the portion of comparative fault assessed against another person who was acting as an agent or servant of such person, or if the fault of the other person is otherwise imputed or attributed to such person by statute or common law. In any action

where any party seeks to impute fault to another, the court shall instruct the jury to answer special interrogatories or, if there is no jury, shall make findings, on the issue of imputed fault.

(c) *When plaintiff's criminal conduct bars recovery.* — In any civil action, a person or person's legal representative who asserts a claim for damages may not recover if:

(1) Such damages arise out of the person's commission, attempted commission, or immediate flight from the commission or attempted commission of a felony; and

(2) That the person's damages were suffered as a proximate result of the commission, attempted commission, or immediate flight from the commission or attempted commission of a felony.

(d) *Burden of proof.* — The burden of alleging and proving comparative fault shall be upon the person who seeks to establish such fault. The burden of alleging and proving the defense set forth in subsection (c) of this section shall be upon the person who seeks to assert such defense: *Provided*, That in any civil action in which a person has been convicted or pleaded guilty or no contest to a felony, the claim shall be dismissed if the court determines as a matter of law that the person's damages were suffered as a proximate result of the felonious conduct to which the person pleaded guilty or no contest, or upon which the person was convicted.

(e) *Damages.* — For purposes of this section, "damages" includes all damages which may be recoverable for personal injury, death, or loss of or damage to property, including those recoverable in a wrongful death action.

(f) *Stay of action.* — Any civil action in which the defense set forth in subsection (c) of this section is asserted shall be stayed by the court on the motion of the defendant during the pendency of any criminal action which forms the basis of the defense, including appeals, unless the court finds that a conviction in the criminal action would not constitute a valid defense under said subsection.

(g) *Limitations.* — Nothing in this section creates a cause of action. Nothing in this section alters, in any way, the immunity of any person as established by statute or common law.

(h) *Applicability.* — This section applies to all causes of action arising or accruing on or after the effective date of its enactment. The amendments to this section enacted during the 2016 regular session of the Legislature shall apply to all causes of action accruing on or after the effective date of those amendments.

(i) *Severability.* — The provisions of this section are severable from one another, so that if any provision of this section is held void, the remaining provisions of this section shall remain valid.

§55-7-14. Liability of visual or sound broadcasting stations for defamatory statements.

The owner, licensee or operator of a visual or sound radio broadcasting station or network of stations, and the agents or employees of any such owner, licensee or operator, shall not be liable for any damages for any defamatory statement published or uttered in or as a part of a visual or sound radio broadcast, by one other than such owner, licensee or operator, or agent or employee thereof, unless it shall be alleged and proved by the complaining party, that such owner, licensee, operator or such agent or employee, has failed to exercise due care to prevent the publication or utterance of such statement in such broadcast.

In no event, however, shall any owner, licensee or operator or the agents or employees of any such owner, licensee or operator of such a station or network of stations be held liable for any damages for any defamatory statement uttered over the facilities of such station or network by any legally qualified candidate for public office.

§55-7-15. Aid to victim of accident, emergency, or disaster; immunity from civil liability, definitions.

(a) A person, including, without limitation, trained, licensed, or certified professionals, or an entity who in good faith renders or provides emergency care, or assistance at the scene of an accident, emergency, or disaster, voluntarily and without remuneration, may not be liable for any civil damages as the result of any act or omission at the scene in rendering, or providing emergency care or assistance.

(b) For purposes of this section, the term "emergency" means any instance where a person suffers from a medical condition requiring immediate treatment due to natural causes, accident, or crime.

(c) For purposes of this section, "disaster" has the same meaning as that term is defined in §15-5-2 of this code.

§55-7-16. Immunity from liability for ski patrol rendering emergency care.

(a) A member in good standing of a national ski patrol system who, without compensation, provides emergency aid or assistance to an injured or ill person at the scene of a ski resort rescue operation, outdoor emergency rescue operation or while otherwise performing ski patrol or while transporting an injured or ill person to a place for transfer to an available emergency medical center or hospital as the result of being on ski patrol, may not be held liable for civil damages for any alleged act or omission which is claimed to have occurred during the rendering of the emergency aid or assistance. The limitation of liability established by the provisions of this section apply to acts or omissions rendered in good faith.

(b) For the purposes of this section, a national ski patrol system is a national organization whose members are volunteers and do not receive compensation and are required to obtain training in safety and emergency medical treatment.

(c) For purposes of this section, the term "compensation" does not include access to a recreational facility, complimentary lift tickets, food, lodging or other gifts or discounts that may be offered or accessible to a person.

§55-7-17. Aid by trained emergency services personnel; entities, immunity from civil liability; definitions.

(a) A person trained in a qualified program of emergency services or an entity, who voluntarily and in good faith renders or provides advice, assistance, equipment, or materials at the scene of an actual or threatened accident, emergency, or disaster, and receives no remuneration for rendering or providing the advice, assistance, equipment, or materials is not liable for any civil damages as the result of any act or omission at the scene in rendering or providing advice, assistance, equipment, or materials: *Provided*, That the exemption from liability for civil damages of this section shall be extended to any person who receives reimbursement for out-of-pocket expenses incurred in rendering or providing the advice, assistance, equipment, or materials or compensation from his or her regular employer for the time period during which he or she was actually engaged in rendering or providing advice, assistance, equipment, or materials, but is not extended to that person or an entity who by his, or her, or its act or omission caused or contributed to the cause of the actual or threatened accident, emergency, or disaster.

(b) For purposes of this section, the term "emergency" includes, without limitation, any instance where a person suffers from a medical condition requiring immediate treatment due to natural causes, accident, or crime.

(c) For purposes of this section, the term "disaster" has the same meaning as that term is defined in §15-5-2 of this code and temporally includes the imminent threat of disaster as well as its occurrence.

(d) For purposes of this section, the term “emergency services” means any mine rescue response services, hazardous substance response services, chemical substance and materials response services, hazardous waste response services and further has the meaning as the term is defined in §15-5-2 of the code.

§55-7-18. Limiting liability of home care service providers, daycare centers and residential care facilities disclosing certain employment information.

When a residential care facility required to be registered, licensed or certified under the laws of the state, a licensed day care center, or an agency providing services in the home to children or incapacitated adults is asked to provide an employment reference with respect to a named individual who provided services to children or incapacitated adults for compensation, no person shall be liable for disclosing information related to the named individual's employment history, including a subjective assessment of whether the named individual is suited to provide services to children or incapacitated adults, unless it is alleged and proven that the information disclosed was false and disclosed with knowledge that the information was false.

§55-7-18a. Employer immunity from liability; disclosure of information regarding former employees.

(a) Any employer or his or her designated agent who discloses job-related information that may be reasonably considered adverse about a former or current employee to a prospective employer of the former or current employee is presumed to be acting in good faith and is immune from civil liability for the disclosure or its consequences: Provided, That the disclosure of such information pursuant to this subsection shall be in writing and a copy of any such disclosure shall be provided to the former or current employee at the time of disclosure.

(b) For the purposes of this section, the presumption of good faith is rebutted upon a showing, by a preponderance of the evidence, that the information disclosed was:

(1) Knowingly false;

(2) Disclosed with reckless disregard for the truth;

(3) Deliberately misleading;

(4) Rendered with malicious purpose toward the former or current employee; or

(5) Disclosed in violation of a nondisclosure agreement or applicable law.

(c) For purposes of this section, "job-related information" means information concerning a person's education, training, experience, qualifications, conduct and job performance which is offered for the purpose of providing criteria to evaluate the person's suitability for employment.

(d) If an employer disclosed job-related information to a prospective employer of a former or current employee that was false or misleading, and if the current or former employee requests, then the employer shall give corrected information to every person or entity that is in the employer's records as having received the original information, with a copy thereof to the former or current employee.

§55-7-19. Liability of health care providers who render services at school athletic events; limiting liability; exceptions.

Any person licensed by, or certified or registered in, this state or another state to provide health care or professional health care services: (1) Who is in attendance at an athletic event sponsored by a public or private elementary or secondary school; and (2) who gratuitously and in good faith agrees to render emergency care or treatment to any participant during the event in connection with an emergency arising during or as the result of the event, without objection of the participant, may not be held liable for any civil damages as a result of the care or treatment, or as a result of any act or failure to act in providing or arranging further medical treatment.

(b) The limitation of liability established by the provisions of this section does not apply to acts or omissions constituting gross negligence or willful misconduct. For purposes of this section, the term “athletic event” includes scheduled practices for any athletic event.

§55-7-20. Limiting civil liability of nonprofits for arranging passage on excursion trains.

Any not for profit corporation for which one of its purposes is to arrange for persons or groups of persons to take excursions through, on, at or near places of scenic, historic or educational interest using trains, trackage or other related equipment and facilities of a regulated common carrier or governmental entity, shall not be liable for personal injury, wrongful death or property damage arising from the acts or omissions of the regulated common carrier or governmental entity so long as the role of the not for profit is limited to arranging for persons or groups of persons to participate in the excursion and providing tour information regarding the scenic, historic or educational qualities of the excursion area.

§55-7-21. Creating presumption of good faith for court-appointed licensed psychologists and psychiatrists conducting a child custody evaluation; method for assigning court and legal fees.

(a) A licensed psychologist or licensed psychiatrist who has been appointed by a court to conduct a child custody evaluation in a judicial proceeding shall be presumed to be acting in good faith if the evaluation has been conducted consistent with standards established by the American psychological association's guidelines for child custody evaluations in divorce proceedings.

(b) No complaint to a licensing or accrediting entity against a court-appointed licensed psychologist or psychiatrist relating to a child custody evaluation shall be considered if it is filed anonymously and does not include the full name, address and telephone number of the complainant.

(c) Any action filed against a licensed psychologist or licensed psychiatrist alleging tortious conduct related to evidence provided while acting as a court-appointed expert in a child custody matter shall contain a recitation of a specific allegation of breaches of American psychological association's guidelines for child custody evaluations in divorce proceedings. Failure to specifically plead such violations shall be cause for dismissal of the action.

(d) Any licensed psychologist or licensed psychiatrist who is named in a civil action as a defendant because of his or her performance of a child custody evaluation while acting as a court-appointed expert and who prevails due to a finding that he or she acted consistently with the American psychological association's guidelines shall be entitled to reimbursement of all reasonable costs and attorneys fees expended.

§55-7-22. Civil relief for persons resisting certain criminal activities.

(a) A lawful occupant within a home or other place of residence is justified in using reasonable and proportionate force, including deadly force, against an intruder or attacker to prevent a forcible entry into the home or residence or to terminate the intruder's or attacker's unlawful entry if the occupant reasonably apprehends that the intruder or attacker may kill or inflict serious bodily harm upon the occupant or others in the home or residence or if the occupant reasonably believes that the intruder or attacker intends to commit a felony in the home or residence and the occupant reasonably believes deadly force is necessary.

(b) A lawful occupant within a home or other place of residence does not have a duty to retreat from an intruder or attacker in the circumstances described in subsection (a) of this section.

(c) A person not engaged in unlawful activity who is attacked in any place he or she has a legal right to be outside of his or her home or residence may use reasonable and proportionate force against an intruder or attacker: Provided, That such person may use deadly force against an intruder or attacker in a place that is not his or her residence without a duty to retreat if the person reasonably believes that he or she or another is in imminent danger of death or serious bodily harm from which he or she or another can only be saved by the use of deadly force against the intruder or attacker.

(d) The justified use of reasonable and proportionate force under this section shall constitute a full and complete defense to any civil action brought by an intruder or attacker against a person using such force.

(e) The full and complete civil defense created by the provisions of this section is not available to a person who:

(1) Is attempting to commit, committing or escaping from the commission of a felony;

(2) Initially provokes the use of force against himself herself or another with the intent to use such force as an excuse to inflict bodily harm upon the assailant; or

(3) Otherwise initially provokes the use of force against himself herself or another, unless he or she withdraws from physical contact with the assailant and indicates clearly to the assailant that he or she desires to withdraw and terminate the use of force, but the assailant continues or resumes the use of force.

(f) The provisions of this section do not apply to the creation of a hazardous or dangerous condition on or in any real or personal property designed to prevent criminal conduct or cause injury to a person engaging in criminal conduct.

(g) Nothing in this section shall authorize or justify a person to resist or obstruct a law-enforcement officer acting in the course of his or her duty.

§55-7-23. Prescription drugs and medical devices; limiting health care providers' liability exposure.

(a) No health care provider, as defined in section two, article seven-b of this chapter, is liable to a patient or third party for injuries sustained as a result of the ingestion of a prescription drug or use of a medical device that was prescribed or used by the health care provider in accordance with instructions approved by the U. S. Food and Drug Administration regarding the dosage and administration of the drug, the indications for which the drug should be taken or device should be used, and the contraindications against taking the drug or using the device: Provided, That the provisions of this section do not apply if: (1) The health care provider had actual knowledge that the drug or device was inherently unsafe for the purpose for which it was prescribed or used; or (2) a manufacturer of the drug or device publicly announces changes in the dosage or administration of the drug or changes in contraindications against taking the drug or using the device and the health care provider fails to follow the publicly announced changes and the failure proximately caused or contributed to the plaintiff's injuries or damages.

(b) A health care provider with prescriptive authority is not liable to a patient or third party for declining to prescribe, or declining to continue to prescribe, any controlled substance to a patient which the health care provider with prescriptive authority is treating if the health care provider with prescriptive authority in the exercise of reasonable prudent judgment believes the patient is misusing the controlled substance in an abusive manner or unlawfully diverting a controlled substance legally prescribed for their use.

(c) The provisions of this section are not intended to create a new cause of action.

§55-7-24.

Repealed.

Acts, 2015 Reg. Sess., Ch. 59.

§55-7-25. Personal injury and wrongful death actions; complaint; specific amount of damages not to be stated.

In any action to recover damages for personal injury or wrongful death, no specific dollar amount or figure relating to damages being sought may be included in the complaint. However, the complaint may include a statement reciting that the amount in controversy satisfies the minimum jurisdictional amount established for filing the action. Further, and pursuant to the West Virginia Rules of Civil Procedure pertaining to discovery, any party defendant may at any time request a written statement setting forth the nature and amount of damages sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the nature and amount of damages sought within thirty days thereafter. If no response is served within thirty days after receipt of service by the plaintiff, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement upon the requesting party defendant. This section applies only to complaints filed on or after July 1, 2008.

§55-7-26. First responders who use forced entry in response to 911 call; limited immunity from civil and criminal liability.

(a) "First responder" includes: law-enforcement officers, firefighters, emergency medical services personnel and others that respond to calls for emergency medical assistance.

(b) Neither a first responder nor his or her supervisor, agency, employer or supervising entity is liable for any civil damages or criminal liability resulting from a forcible entry of a home, business or other structure if the first responder:

(1) Is responding to a documented 911 call for emergency medical assistance;

(2) Has made reasonable efforts to summon an occupant of the home, business, or structure by knocking or otherwise notifying the occupant(s) of his or her presence;

(3) Has not received a response from an occupant within a reasonable period of time; and

(4) Has a good faith belief that it is necessary to make a forcible entry for the purposes of rendering emergency medical assistance or preventing imminent bodily harm.

(c) Nothing in this section shall affect the standard of care a first responder must employ when rendering aid after gaining entry.

§55-7-27. Liability of possessor of real property for harm to a trespasser.

(a) A possessor of real property, including an owner, lessee or other lawful occupant, owes no duty of care to a trespasser except in those circumstances where a common-law right-of-action existed as of the effective date of this section, including the duty to refrain from willfully or wantonly causing the trespasser injury.

(b) A possessor of real property may use justifiable force to repel a criminal trespasser as provided by section twenty-two of this article.

(c) This section does not increase the liability of any possessor of real property and does not affect any immunities from or defenses to liability established by another section of this code or available at common law to which a possessor of real property may be entitled.

(d) The Legislature intends to codify and preserve the common law in West Virginia on the duties owed to trespassers by possessors of real property as of the effective date of this section.

§55-7-28. Limiting civil liability of a possessor of real property for injuries caused by open and obvious hazards.

(a) A possessor of real property, including an owner, lessee or other lawful occupant, owes no duty of care to protect others against dangers that are open, obvious, reasonably apparent or as well known to the person injured as they are to the owner or occupant, and shall not be held liable for civil damages for any injuries sustained as a result of such dangers.

(b) Nothing in this section creates, recognizes or ratifies a claim or cause of action of any kind.

(c) It is the intent and policy of the Legislature that this section reinstates and codifies the open and obvious hazard doctrine in actions seeking to assert liability against an owner, lessee or other lawful occupant of real property to its status prior to the decision of the West Virginia Supreme Court of Appeals in the matter of Hersh v. E-T Enterprises, Limited Partnership, 232 W. Va. 305 (2013). In its application of the doctrine, the court as a matter of law shall appropriately apply the doctrine considering the nature and severity, or lack thereof, of violations of any statute relating to a cause of action.

§55-7-29. Limitations on punitive damages.

(a) An award of punitive damages may only occur in a civil action against a defendant if a plaintiff establishes by clear and convincing evidence that the damages suffered were the result of the conduct that was carried out by the defendant with actual malice toward the plaintiff or a conscious, reckless and outrageous indifference to the health, safety and welfare of others.

(b) Any civil action tried before a jury involving punitive damages may, upon request of any defendant, be conducted in a bifurcated trial in accordance with the following guidelines:

(1) In the first stage of a bifurcated trial, the jury shall determine liability for compensatory damages and the amount of compensatory damages, if any.

(2) If the jury finds during the first stage of a bifurcated trial that a defendant is liable for compensatory damages, then the court shall determine whether sufficient evidence exists to proceed with a consideration of punitive damages.

(3) If the court finds that sufficient evidence exists to proceed with a consideration of punitive damages, the same jury shall determine if a defendant is liable for punitive damages in the second stage of a bifurcated trial and may award such damages.

(4) If the jury returns an award for punitive damages that exceeds the amounts allowed under subsection (c) of this section, the court shall reduce any such award to comply with the limitations set forth therein.

(c) The amount of punitive damages that may be awarded in a civil action may not exceed the greater of four times the amount of compensatory damages or $500,000, whichever is greater.

§55-7-30. Adequate pharmaceutical warnings; limiting civil liability for manufacturers or sellers who provide warning to a learned intermediary.

(a) A manufacturer or seller of a prescription drug or medical device may not be held liable in a product liability action for a claim based upon inadequate warning or instruction unless the claimant proves, among other elements, that:

(1) The manufacturer or seller of a prescription drug or medical device acted unreasonably in failing to provide reasonable instructions or warnings regarding foreseeable risks of harm to prescribing or other health care providers who are in a position to reduce the risks of harm in accordance with the instructions or warnings; and

(2) Failure to provide reasonable instructions or warnings was a proximate cause of harm.

(b) It is the intention of the Legislature in enacting this section to adopt and allow the development of a learned intermediary doctrine as a defense in cases based upon claims of inadequate warning or instruction for prescription drugs or medical devices.

§55-7-31. Limitation on products liability actions; innocent seller.

(a) As used in this section:

(1) "Manufacturer" means a person who designs, assembles, fabricates, produces, constructs or otherwise prepares a product or a component part of a product before the sale of the product to a user or consumer.

(2) "Person" means a natural person, partnership, firm, association or corporation.

(3) "Product" means any tangible object, article or good, including attachments, accessories and component parts.

(4) "Product liability action" means any civil action brought against a manufacturer or seller of a product, based in whole or in part on the doctrine of strict liability in tort, for or on account of personal injury, death or property damage caused by or resulting from:

(A) The manufacture, construction, design, formula, installation, preparation, assembly, testing, packaging, labeling, marketing or sale of a product;

(B) The failure to warn or protect against a danger or hazard in the use, misuse or unintended use of a product; or

(C) The failure to provide proper instructions for the use of a product.

(5) "Seller" means a wholesaler, distributor, retailer, or other individual or entity, other than a manufacturer, that is regularly engaged in the selling of a product whether the sale is for resale by the purchaser or is for use or consumption by the ultimate consumer. "Seller" includes a lessor or bailor regularly engaged in the business of the lease or bailment of the product.

(b) No product liability action shall be maintained against a seller, unless:

(1) The seller had actual knowledge of the defect in the product that was a proximate cause of the harm for which recovery is sought;

(2) The seller exercised substantial control over the aspect of the manufacture, construction, design, formula, installation, preparation, assembly, testing, labeling, warnings or instructions of the product that was a proximate cause of the harm for which recovery is sought;

(3) The seller altered, modified or installed the product after the product left the possession of the manufacturer and the alteration, modification or installation was:

(A) Not authorized or requested by the manufacturer or not performed in compliance with

the directions or specifications of the manufacturer; and

(B) A proximate cause of the harm for which recovery is sought;

(4) The seller made an express warranty regarding the product that was independent of any express warranty made by the manufacturer regarding the product, the product failed to conform to that express warranty by the seller and that failure was a proximate cause of the harm for which recovery is sought;

(5) The seller resold the product after the product's first sale for use or consumption and the product was not in substantially the same condition as it was at the time the product left the possession of the manufacturer and the changed condition of the product was a proximate cause of the harm for which recovery is sought;

(6) The seller failed to exercise reasonable and product-appropriate care in assembling, maintaining, storing, transporting or repairing the product and such failure was a proximate cause of the harm for which recovery is sought;

(7) The seller removed or failed to convey to the user or consumer of the product the manufacturer's labels, warnings or instructions and such failure was a proximate cause of the harm for which recovery is sought;

(8) The seller is a controlled subsidiary of a manufacturer, or the manufacturer is a controlled subsidiary of the seller;

(9) The seller repackages the product or has placed his or her own brand name or label on the product: Provided, That this does not include a seller, who is not otherwise a manufacturer, who:

(A) Did not exercise substantial control as described in subdivision (2) of this subsection; and

(B) Discloses the identity of the actual manufacturer of the product;

(10) The manufacturer cannot be identified, despite a good-faith exercise of due diligence, to identify the manufacturer of the product;

(11) The manufacturer is not subject to service of process under the laws of the state;

(12) The manufacturer is insolvent in that the manufacturer is unable to pay its debts as they become due in the ordinary course of business: Provided, That a manufacturer who has been judicially declared insolvent or is no longer in existence through dissolution is conclusively presumed for the purposes of this subdivision to be insolvent; or

(13) The court determines by clear and convincing evidence that the party asserting the product liability action would be unable to enforce a judgment against the product manufacturer.

(c) The provisions of this section apply to any civil action involving a product that was sold on or after the effective date of this said Enrolled House Bill 2850.

§55-7-32. Liability for employee negligence in actions involving commercial motor vehicles.

(a) As used in this section:

"Commercial motor vehicle" means as defined in §17E-1-3(7) (A), (B), and (D) of this code, and also includes a truck tractor, road tractor, trailer, semitrailer, and pole trailer as defined in §17A-1-1 of this code. For purposes of this section, "commercial motor vehicle" does not include a vehicle serving as a common carrier of passengers, a commercial motor vehicle as defined in §17E-1-3(7)(C) of this code, a school bus as defined in §17E-1-3(33) of this code, or other vehicle that is primarily engaged in transporting passengers.

"Employer defendant" means (A) the owner of a commercial motor vehicle; (B) the employer of the person operating a commercial motor vehicle; or (C) any other person or entity that owns, leases, rents, or otherwise holds or exercises legal control over a commercial motor vehicle or operator of a commercial motor vehicle.

"Operation" means driving, operating, or being in physical control of a commercial motor vehicle in any place open to the general public for purposes of vehicular traffic.

(b) In any civil action for personal injury or wrongful death involving the operation of a commercial motor vehicle requiring a commercial driver's license, the maximum amount recoverable by each person injured or killed against the employer defendant of a commercial motor vehicle as compensatory damages for noneconomic loss may not exceed $5 million for each occurrence, regardless of the number of claims or theories of liability.

(c) The limitation on noneconomic damages contained in subsection (b) of this section is not available to any employer defendant that does not have commercial motor vehicle insurance in the aggregate amount of at least $3 million for each occurrence covering the personal injury that is the subject of the action.

(d) This section does not apply if the civil action involving a commercial motor vehicle arises from an incident for which an operator or driver is found to have:

(1) At the time of the incident, operated a commercial motor vehicle with an alcohol concentration of .04 or more as defined in §17E-1-14 of this code;

(2) Following the incident, refused to submit to testing required under §17E-1-15 of this code;

(3) At the time of the incident, operated a commercial motor vehicle under the influence of any controlled substance, other drug, or inhalant substance;

(4) At the time of the incident, operated a commercial motor vehicle in excess of the hours of operation established under state or federal regulations;

(5) At the time of the incident, operated a commercial motor vehicle in willful or wanton disregard for the safety of persons or property;

(6) At the time of the incident, operated a commercial motor vehicle loaded in excess of the maximum gross vehicle weight rating established under state or federal regulations, not including when an operator or driver is legally operating the vehicle according to permit issued under §17C-17-11 of this code; or

(7) At the time of the incident, operated a commercial motor vehicle while engaging in one or more of the acts that constitute distracted driving as set forth in §17C-14-15(e) of this code.

(e) On January 1, 2026, and in each year thereafter, the limitation on compensatory damages for noneconomic loss contained in subsection (b) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed 150 percent of the amounts specified in said subsection.

(f) This section shall be effective on July 1, 2024, and shall only apply to causes of action arising after the effective date.

§55-7A-1. Legislative findings; declaration of legislative intent.

The Legislature hereby finds and declares that there are now and have been repeated and widespread acts of vandalism, willful and malicious destruction of property and other injury to persons and property occasioned by the willful, malicious and sometimes criminal acts of children under the age of eighteen years; that the great majority of such children are living with a parent or parents; that there arises or should arise out of such relationship, a responsibility to recompense persons injured by such acts of vandalism and willful and malicious injury to persons and property. Therefore, it is the intent of the Legislature to make parents responsible for the torts of their minor children by reason of the parent-child relationship, and to impose on said parent or parents for such acts of their children, who live with them and who commit acts of vandalism or willful and malicious injury to persons and property, liability in accordance with the provisions hereinafter set forth.

§55-7A-2. Parental liability for willful, malicious or criminal acts of children.

The custodial parent or parents of any minor child shall be personally liable in an amount not to exceed $5,000 for damages which are the proximate result of any one or a combination of the following acts of the minor child:

(a) The malicious and willful injury to the person of another; or

(b) The malicious and willful injury or damage to the property of another, whether the property be real, personal or mixed; or

(c) The malicious and willful setting fire to a forest or wooded area belonging to another; or

(d) The willful taking, stealing and carrying away of the property of another, with the intent to permanently deprive the owner of possession.

For purposes of this section, "custodial parent or parents" shall mean the parent or parents with whom the minor child is living, or a divorced or separated parent who does not have legal custody but who is exercising supervisory control over the minor child at the time of the minor child's act.

Persons entitled to recover damages under this article shall include, but not be limited to, the State of West Virginia, any municipal corporation, county commission and Board of Education, or other political subdivision of this state, or any person or organization of any kind or character. The action may be brought in magistrate or another court of competent jurisdiction. Recovery hereunder shall be limited to the actual damages based upon direct out-of-pocket loss, taxable court costs, and interest from date of judgment. The right of action and remedy granted herein shall be in addition to and not exclusive of any rights of action and remedies therefor against a parent or parents for the tortious acts of his or their children heretofore existing under the provisions of any law, statutory or otherwise, or now so existing independently of the provisions of this article.

The provisions of this article shall be applicable to causes of action arising on and after the effective date of reenactment of this article. Causes of actions arising before the effective date of reenactment of this article and proceedings thereon shall be governed by the previously enacted provisions of this article in force at the time the cause arose.

§55-7B-1. Legislative findings and declaration of purpose.

The Legislature finds and declares that:

The citizens of this state are entitled to the best medical care and facilities available and that health care providers offer an essential and basic service which requires that the public policy of this state encourage and facilitate the provision of such service to our citizens;

As in every human endeavor the possibility of injury or death from negligent conduct commands that protection of the public served by health care providers be recognized as an important state interest;

Our system of litigation is an essential component of this state's interest in providing adequate and reasonable compensation to those persons who suffer from injury or death as a result of professional negligence, and any limitation placed on this system must be balanced with and considerate of the need to fairly compensate patients who have been injured as a result of negligent and incompetent acts by health care providers;

Liability insurance is a key part of our system of litigation, affording compensation to the injured while fulfilling the need and fairness of spreading the cost of the risks of injury;

A further important component of these protections is the capacity and willingness of health care providers to monitor and effectively control their professional competency, so as to protect the public and ensure to the extent possible the highest quality of care;

It is the duty and responsibility of the Legislature to balance the rights of our individual citizens to adequate and reasonable compensation with the broad public interest in the provision of services by qualified health care providers and health care facilities who can themselves obtain the protection of reasonably priced and extensive liability coverage;

In recent years, the cost of insurance coverage has risen dramatically while the nature and extent of coverage has diminished, leaving the health care providers, the health care facilities and the injured without the full benefit of professional liability insurance coverage;

Many of the factors and reasons contributing to the increased cost and diminished availability of professional liability insurance arise from the historic inability of this state to effectively and fairly regulate the insurance industry so as to guarantee our citizens that rates are appropriate, that purchasers of insurance coverage are not treated arbitrarily and that rates reflect the competency and experience of the insured health care providers and health care facilities;

The unpredictable nature of traumatic injury health care services often results in a greater likelihood of unsatisfactory patient outcomes, a higher degree of patient and patient family dissatisfaction and frequent malpractice claims, creating a financial strain on the trauma care system of our state, increasing costs for all users of the trauma care system and impacting the availability of these services, requires appropriate and balanced limitations on

the rights of persons asserting claims against trauma care health care providers, this balance must guarantee availability of trauma care services while mandating that these services meet all national standards of care, to assure that our health care resources are being directed towards providing the best trauma care available;

The cost of liability insurance coverage has continued to rise dramatically, resulting in the state's loss and threatened loss of physicians, which, together with other costs and taxation incurred by health care providers in this state, have created a competitive disadvantage in attracting and retaining qualified physicians and other health care providers;

Medical liability issues have reached critical proportions for the state's long-term health care facilities, as: (1) Medical liability insurance premiums for nursing homes in West Virginia continue to increase and the number of claims per bed has increased significantly; (2) the cost to the state Medicaid program as a result of such higher premiums has grown considerably in this period; (3) current medical liability premium costs for some nursing homes constitute a significant percentage of the amount of coverage; (4) these high costs are leading some facilities to consider dropping medical liability insurance coverage altogether; and (5) the medical liability insurance crisis for nursing homes may soon result in a reduction of the number of beds available to citizens in need of long-term care; and

The modernization and structure of the health care delivery system necessitate an update of provisions of this article in order to facilitate and continue the objectives of this article which are to control the increase in the cost of liability insurance and to maintain access to affordable health care services for our citizens.

Therefore, the purpose of this article is to provide a comprehensive resolution of the matters and factors which the Legislature finds must be addressed to accomplish the goals set forth in this section. In so doing, the Legislature has determined that reforms in the common law and statutory rights of our citizens must be enacted together as necessary and mutual ingredients of the appropriate legislative response relating to:

(1) Compensation for injury and death;

(2) The regulation of rate making and other practices by the liability insurance industry, including the formation of a physicians' mutual insurance company and establishment of a fund to assure adequate compensation to victims of malpractice; and

(3) The authority of medical licensing boards to effectively regulate and discipline the health care providers under such board.

§55-7B-2. Definitions.

For the purposes of this article, the following words shall have the meanings ascribed to them in this section unless the context clearly indicates a different meaning:

(a) "Board" means the State Board of Risk and Insurance Management.

(b) "Collateral source" means a source of benefits or advantages for economic loss that the claimant has received from:

(1) Any federal or state act, public program, or insurance which provides payments for medical expenses, disability benefits, including workers' compensation benefits, or other similar benefits. Benefits payable under the Social Security Act and Medicare are not considered payments from collateral sources except for social security disability benefits directly attributable to the medical injury in question;

(2) Any contract or agreement of any group, organization, partnership, or corporation to provide, pay for, or reimburse the cost of medical, hospital, dental, nursing, rehabilitation, therapy or other health care services, or provide similar benefits, but excluding any amount that a group, organization, partnership, corporation, or health care provider agrees to reduce, discount, or write off of a medical bill;

(3) Any group accident, sickness, or income disability insurance, any casualty or property insurance, including automobile and homeowners' insurance, which provides medical benefits, income replacement, or disability coverage, or any other similar insurance benefits, except life insurance, to the extent that someone other than the insured, including the insured's employer, has paid all or part of the premium or made an economic contribution on behalf of the plaintiff; or

(4) Any contractual or voluntary wage continuation plan provided by an employer or otherwise or any other system intended to provide wages during a period of disability.

(c) "Consumer Price Index" means the most recent Consumer Price Index for All Consumers published by the United States Department of Labor.

(d) "Emergency condition" means any acute traumatic injury or acute medical condition which, according to standardized criteria for triage, involves a significant risk of death or the precipitation of significant complications or disabilities, impairment of bodily functions or, with respect to a pregnant woman, a significant risk to the health of the unborn child.

(e) "Health care" means:

(1) Any act, service, or treatment provided under, pursuant to, or in the furtherance of a physician's plan of care, a health care facility's plan of care, medical diagnosis, or treatment;

(2) Any act, service, or treatment performed or furnished, or which should have been

performed or furnished, by any health care provider or person supervised by or acting under the direction of a health care provider or licensed professional for, to, or on behalf of a patient during the patient's medical care, treatment, or confinement, including, but not limited to, staffing, medical transport, custodial care, or basic care, infection control, positioning, hydration, nutrition, and similar patient services; and

(3) The process employed by health care providers and health care facilities for the appointment, employment, contracting, credentialing, privileging, and supervision of health care providers.

(f) "Health care facility" means any clinic, hospital, pharmacy, nursing home, assisted living facility, residential care community, end-stage renal disease facility, home health agency, child welfare agency, group residential facility, behavioral health care facility or comprehensive community mental health center, intellectual/developmental disability center or program, or other ambulatory health care facility, in and licensed, regulated, or certified by the State of West Virginia under state or federal law and any state-operated institution or clinic providing health care and any related entity to the health care facility.

(g) "Health care provider" means a person, partnership, corporation, professional limited liability company, health care facility, entity, or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, physician assistant, advanced practice registered nurse, hospital, health care facility, dentist, registered or licensed practical nurse, optometrist, podiatrist, chiropractor, physical therapist, speech-language pathologist, audiologist, occupational therapist, psychologist, pharmacist, technician, certified nursing assistant, emergency medical service personnel, emergency medical services authority or agency, any person supervised by or acting under the direction of a licensed professional, any person taking actions or providing service or treatment pursuant to or in furtherance of a physician's plan of care, a health care facility's plan of care, medical diagnosis or treatment; or an officer, employee, or agent of a health care provider acting in the course and scope of the officer's, employee's or agent's employment.

(h) "Injury" or "Medical injury" means injury or death to a patient arising or resulting from the rendering of or failure to render health care.

(i) "Medical professional liability" means any liability for damages resulting from the death or injury of a person for any tort or breach of contract based on health care services rendered, or which should have been rendered, by a health care provider or health care facility to a patient. It also means other claims that may be contemporaneous to or related to the alleged tort or breach of contract or otherwise provided, all in the context of rendering health care services.

(j) "Medical professional liability insurance" means a contract of insurance or any actuarially sound self-funding program that pays for the legal liability of a health care facility or health care provider arising from a claim of medical professional liability. In order to qualify as

medical professional liability insurance for purposes of this article, a self-funding program for an individual physician must meet the requirements and minimum standards set forth in §55-7B-12 of this code.

(k) “Noneconomic loss” means losses, including, but not limited to, pain, suffering, mental anguish, and grief.

(l) “Occurrence” means any and all injuries to a patient arising from health care rendered by a health care facility or a health care provider and includes any continuing, additional, or follow-up care provided to that patient for reasons relating to the original health care provided, regardless if the injuries arise during a single date or multiple dates of treatment, single or multiple patient encounters, or a single admission or a series of admissions.

(m) “Patient” means a natural person who receives or should have received health care from a licensed health care provider under a contract, expressed or implied.

(n) “Plaintiff” means a patient or representative of a patient who brings an action for medical professional liability under this article.

(o) “Related entity” means any corporation, foundation, partnership, joint venture, professional limited liability company, limited liability company, trust, affiliate, or other entity under common control or ownership, whether directly or indirectly, partially or completely, legally, beneficially, or constructively, with a health care provider or health care facility; or which owns directly, indirectly, beneficially, or constructively any part of a health care provider or health care facility.

(p) “Representative” means the spouse, parent, guardian, trustee, attorney, or other legal agent of another.

§55-7B-3. Elements of proof.

(a) The following are necessary elements of proof that an injury or death resulted from the failure of a health care provider to follow the accepted standard of care:

(1) The health care provider failed to exercise that degree of care, skill and learning required or expected of a reasonable, prudent health care provider in the profession or class to which the health care provider belongs acting in the same or similar circumstances; and

(2) Such failure was a proximate cause of the injury or death.

(b) If the plaintiff proceeds on the "loss of chance" theory, i.e., that the health care provider's failure to follow the accepted standard of care deprived the patient of a chance of recovery or increased the risk of harm to the patient which was a substantial factor in bringing about the ultimate injury to the patient, the plaintiff must also prove, to a reasonable degree of medical probability, that following the accepted standard of care would have resulted in a greater than twenty-five percent chance that the patient would have had an improved recovery or would have survived.

§55-7B-4. Health care injuries; limitations of actions; exceptions; venue.

(a) A cause of action for medical injury to a person alleging medical professional liability against a health care provider, except a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, arises as of the date of medical injury, except as provided in subsection (c) of this section, and must be commenced within two years of the date of such injury or death, or within two years of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such medical injury, whichever last occurs: *Provided*, That in no event shall any such action be commenced more than 10 years after the date of medical injury.

(b) A cause of action for medical injury to a person alleging medical professional liability against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees arises as of the date of medical injury, except as provided in subsection (c) of this section, and must be commenced within one year of the date of such medical injury, or within one year of the date when such person discovers, or with the exercise of reasonable diligence, should have discovered such injury or death, whichever last occurs: *Provided*, That in no event shall any such action be commenced more than 10 years after the date of medical injury. With the amendments to this subsection enacted in the regular session of the Legislature, 2022, that intends to reinstate and codify a one-year statute of limitations for any cause of action for medical injury resulting in injury or death to a person alleging medical professional liability against a nursing home, assisted living facility, their related entities or employees or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees.

(c) A cause of action for injury to a minor, brought by or on behalf of a minor who was under the age of 10 years at the time of such injury, shall be commenced within two years of the date of such injury, or prior to the minor's 12th birthday, whichever provides the longer period.

(d) The periods of limitation set forth in this section shall be tolled for any period during which the health care provider or its representative has committed fraud or collusion by concealing or misrepresenting material facts about the injury.

(e) Any medical professional liability action against a nursing home, assisted living facility, related entity or employee, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees shall be brought in the circuit court of the county in which the nursing home, assisted living facility, or acute care hospital providing intermediate care or skilled nursing care, at which the alleged act of medical professional liability occurred is located, unless otherwise agreed upon by the nursing home, assisted living facility, related entity, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care, and the plaintiff. Nothing in this subsection shall prohibit a party from removing the action to federal court.

§55-7B-5. Health care actions; complaint; specific amount of damages not to be stated; limitation on bad faith claims; filing of first party bad faith claims; when plaintiff's criminal conduct bars recovery.

(a) In any medical professional liability action against a health care provider no specific dollar amount or figure may be included in the complaint, but the complaint may include a statement reciting that the minimum jurisdictional amount established for filing the action is satisfied. However, any party defendant may at any time request a written statement setting forth the nature and amount of damages being sought. The request shall be served upon the plaintiff who shall serve a responsive statement as to the damages sought within thirty days thereafter. If no response is served within the thirty days, the party defendant requesting the statement may petition the court in which the action is pending to order the plaintiff to serve a responsive statement.

(b) Notwithstanding any other provision of law, absent privity of contract, no plaintiff who files a medical professional liability action against a health care provider may file an independent cause of action against any insurer of the health care provider alleging the insurer has violated the provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code. Insofar as the provisions of section three of said article prohibit the conduct defined in subdivision (9), section four of said article, no plaintiff who files a medical professional liability action against a health care provider may file an independent cause of action against any insurer of the health care provider alleging the insurer has violated the provisions of section three of said article.

(c) No health care provider may file a cause of action against his or her insurer alleging the insurer has violated the provisions of subdivision (9), section four, article eleven, chapter thirty-three of this code until the jury has rendered a verdict in the underlying medical professional liability action or the case has otherwise been dismissed, resolved or disposed of.

(d) No action related to the prescription or dispensation of controlled substances may be maintained against a health care provider pursuant to this article by or on behalf of a person whose damages arise as a proximate result of a violation of the Uniform Controlled Substances Act, as set forth in chapter sixty-a of this code, the commission of a felony, a violent crime which is a misdemeanor, or any other state or federal law related to controlled substances: *Provided*, That an action may be maintained pursuant to this article if the plaintiff alleges and proves by a preponderance of the evidence that the health care provider dispensed or prescribed a controlled substance or substances in violation of state or federal law, and that such prescription or dispensation in violation of state or federal law was a proximate cause of the injury or death.

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

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

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

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

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

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

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

(c) Notwithstanding any provision of this code, if a claimant or his or her counsel believes

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

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

(e) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, if a claimant or his or her counsel has insufficient time to obtain a screening certificate of merit prior to the expiration of the applicable statute of limitations, the claimant shall comply with the provisions of subsection (b) of this section except that the claimant or his or her counsel shall furnish the health care provider with a statement of intent to provide a screening certificate of merit within 120 days of the date the health care provider receives the notice of claim.

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

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

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

governing mediation prior to the filing of a complaint. If mediation is conducted, the claimant may depose the health care provider before mediation or take the testimony of the health care provider during the mediation.

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

(2) In medical professional liability actions against a nursing home, assisted living facility, their related entities or employees, or a distinct part of an acute care hospital providing intermediate care or skilled nursing care or its employees, except as otherwise provided in this subsection, any statute of limitations applicable to a cause of action against a health care provider upon whom notice was served for alleged medical professional liability shall be tolled 120 days from the date of mail of a notice of claim to 30 days following receipt of a response to the notice of claim, 30 days from the date a response to the notice of claim would be due, or 30 days from the receipt by the claimant of written notice from the mediator that the mediation has not resulted in a settlement of the alleged claim and that mediation is concluded, whichever last occurs.

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

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

§55-7B-6a. Access to medical records.

(a) Within thirty days of the filing of an answer by a defendant in a medical professional liability action or, if there are multiple defendants, within thirty days following the filing of the last answer, the plaintiff shall provide each defendant and each defendant shall provide the plaintiff with access, as if a request had been made for production of documents pursuant to rule 34 of the rules of civil procedure, to all medical records pertaining to the alleged act or acts of medical professional liability which: (1) Are reasonably related to the plaintiff's claim; and (2) are in the party's control. The plaintiff shall also provide releases for such other medical records known to the plaintiff but not under his or her control but which relate to the plaintiff's claim. If the action is one alleging wrongful death, the records shall be for the deceased except inasmuch as the plaintiff alleges injury to himself or herself.

(b) Upon receipt and review of the records referred to in subsection (a) of this section, any party may make a written request to any other party for medical records of the plaintiff or the deceased related to his or her medical care and which are reasonably related to the plaintiff's claim. Such request shall be specific as to the type of record requested and shall be accompanied by a brief statement as to why its disclosure would be relevant to preparation of a claim or of a defense. The party receiving the request shall provide access to any such records under his or her control or a release for medical records for such records not under his or her control unless the party receiving the request believes that the records requested are not reasonably related to the claim.

(c) If a party receives a request for existing records he or she believes are not reasonably related to the claim, he or she shall provide written notice to the requesting party of the existence of such records and schedule a hearing before the court to determine whether access should be provided.

(d) If a party has reasonable cause to believe that medical records reasonably related to the claim of medical negligence exist and access have not been provided or a release has not been provided therefor, he or she shall give written notice thereof to the party upon whom the request is made, and if said records are not received within fourteen days of the written notice, obtain a hearing on the matter before the court.

(e) In the event a hearing is required pursuant to the provisions of subsection (c) or (d) of this section, the court at the conclusion thereof shall make a finding as to the reasonableness of the parties' request for or refusal to provide records and may assess costs pursuant to the rules of civil procedure.

§55-7B-6b. Expedited resolution of cases against health care providers; time frames.

(a) In each professional liability action filed against a health care provider, the court shall convene a mandatory status conference within sixty days after the appearance of the defendant. It shall be the duty of the defendant to schedule the conference with the court upon proper notice to the plaintiff.

(b) During the status conference the parties shall inform the court as to the status of the action, the identification of contested facts and issues, the progress of discovery and the time necessary to complete discovery. The plaintiff shall advise the court whether the plaintiff intends to proceed without an expert, whether the expert who signed the screening certificate of merit will testify upon trial or whether additional experts will be offered by plaintiff. The court shall determine whether the plaintiff may proceed without an expert or otherwise establish dates for the disclosure of expert witnesses by both the plaintiff and all defendants. The court shall also order the parties to participate in mandatory mediation. The mediation shall be conducted pursuant to the provisions of trial court rule 25.

(c) Absent an order expressly setting forth reasons why the interests of justice would otherwise be served, the court shall enter a scheduling order which sets a trial date within twenty-four months from the date the defendant made an appearance, or if there is more than one defendant, twenty-four months from the date the last defendant makes an appearance in the proceeding. The trial date shall be adhered to unless, for good cause shown, the court enters an order continuing the trial date.

(d) The court may order a summary jury trial of the case if all parties represent a case is ready for trial and jointly move the court for a summary jury trial, as provided in section six-c of this article.

(e) Counsel and parties are subject to sanctions for failures and lack of preparation specified in rule 16(f) of the rules of civil procedure respecting pretrial conferences or orders and are subject to the payment of reasonable expenses, including attorneys fees, for failure to participate in good faith in the development and submission of a proposed discovery plan as required by the rules of civil procedure.

(f) In the event that the court determines prior to trial that either party is presenting or relying upon a frivolous or dilatory claim or defense, for which there is no reasonable basis in fact or at law, the court may direct in any final judgment the payment to the prevailing party of reasonable litigation expenses, including deposition and subpoena expenses, travel expenses incurred by the party, and such other expenses necessary to the maintenance of the action, excluding attorney's fees and expenses.

§55-7B-6c. Summary jury trial.

(a) The court must determine the date of the summary jury trial, the length of presentations by counsel, and the length of deliberations by the jury, so that the proceeding can be completed in no more than one day.

(b) Unless the court orders otherwise, the parties or representatives of the parties must be present at the summary jury trial.

(c) The trial shall be conducted before a six-member jury selected from the regular jury panel. The court shall conduct a brief voir dire of the panel, and each party may exercise two challenges. No alternate jurors will be impaneled.

(d) All evidence shall be presented by the attorneys for the parties. The attorneys may summarize, quote from, and comment on pleadings, depositions, or other discovery requests and responses, exhibits and statements of potential witnesses. No potential testimony of a witness may be referred to unless the reference is based on: (i) The product of discovery procedures; (ii) a written sworn statement of the witness; or (iii) an affidavit of counsel stating that although an affidavit of the witness is not available and cannot be obtained by the exercise of reasonable diligence, the witness would be called at trial and counsel has been told the substance of the testimony of the witness. The substance of the witness' testimony must also be included in the affidavit of counsel.

(e) Unless the court orders otherwise, presentations shall be limited to one hour for each party. In the case of multiple parties represented by separate counsel, the court shall make a reasonable adjustment of the time allowed.

(f) Opposing counsel may object during the course of a presentation if the presentation violates the provisions of subsection (d) of this section or goes beyond the limits of propriety in statements as to evidence or other comments.

(g) Following the presentations by counsel, the court shall give an abbreviated set of instructions to the jury on the applicable law. The jury will be encouraged to return a verdict that represents a unanimous verdict of the jurors. If after a reasonable time a unanimous verdict is not possible, the jury shall be directed to return a special verdict consisting of an anonymous statement of each juror's finding on liability and damages. Following the verdict, the court may invite, but may not require, the jurors to informally discuss the case with the attorneys and the parties.

(h) Unless the court orders otherwise, the proceedings will not be recorded. However, a party may arrange for recording at its own expense. Statements in briefs or summaries submitted in connection with the summary jury trial and statements by counsel at trial are not admissible in any evidentiary proceeding. The summary jury trial verdict is not admissible in any evidentiary proceeding.

(i) Within thirty days following the jury verdict, each party must file a notice setting forth whether the party intends to accept the summary jury trial verdict or whether the party rejects the summary jury trial verdict and desires to proceed to trial. If all parties accept the summary jury trial verdict, the verdict will be deemed a final determination on the merits and judgment may be entered on the verdict by the court. If a verdict is rendered upon the subsequent trial of the case which is not more than twenty percent more favorable to a party who rejected the summary jury trial verdict and indicated a desire to proceed to trial, the rejecting party is liable for the costs incurred by the other party or parties subsequent to the summary jury trial, in a similar manner as is provided in rule 68(c) of the rules of civil procedure when a claimant rejects an offer of judgment, and is liable for attorneys' fees incurred after the summary jury trial.

§55-7B-6d.

Repealed.

Acts, 2014 Reg. Sess., Ch. 99.

§55-7B-7. Testimony of expert witness on standard of care.

(a) The applicable standard of care and a defendant's failure to meet the standard of care, if at issue, shall be established in medical professional liability cases by the plaintiff by testimony of one or more knowledgeable, competent expert witnesses if required by the court. A proposed expert witness may only be found competent to testify if the foundation for his or her testimony is first laid establishing that: (1) The opinion is actually held by the expert witness; (2) the opinion can be testified to with reasonable medical probability; (3) the expert witness possesses professional knowledge and expertise coupled with knowledge of the applicable standard of care to which his or her expert opinion testimony is addressed; (4) the expert witness's opinion is grounded on scientifically valid peer-reviewed studies if available; (5) the expert witness maintains a current license to practice medicine with the appropriate licensing authority of any state of the United States: Provided, That the expert witness's license has not been revoked or suspended in the past year in any state; and (6) the expert witness is engaged or qualified in a medical field in which the practitioner has experience and/or training in diagnosing or treating injuries or conditions similar to those of the patient. If the witness meets all of these qualifications and devoted, at the time of the medical injury, sixty percent of his or her professional time annually to the active clinical practice in his or her medical field or specialty, or to teaching in his or her medical field or speciality in an accredited university, there shall be a rebuttable presumption that the witness is qualified as an expert. The parties shall have the opportunity to impeach any witness's qualifications as an expert. Financial records of an expert witness are not discoverable or relevant to prove the amount of time the expert witness spends in active practice or teaching in his or her medical field unless good cause can be shown to the court.

(b) Nothing contained in this section limits a trial court's discretion to determine the competency or lack of competency of a witness on a ground not specifically enumerated in this section.

§55-7B-7a. Admissibility and use of certain information.

(a) In an action brought, there is a rebuttable presumption that the following information may not be introduced unless it applies specifically to the injured person or it involves substantially similar conduct that occurred within one year of the particular incident involved:

(1) A state or federal survey, audit, review or other report of a health care provider or health care facility;

(2) Disciplinary actions against a health care provider's license, registration or certification;

(3) An accreditation report of a health care provider or health care facility; and

(4) An assessment of a civil or criminal penalty.

(b) In any action brought alleging inappropriate staffing or inadequate supervision, if the health care facility or health care provider demonstrates compliance with the minimum staffing requirements under state law, the health care facility or health care provider is entitled to a rebuttable presumption that appropriate staffing and adequate supervision of patients to prevent accidents were provided, and the jury shall be instructed accordingly.

(c) In any action brought alleging inappropriate staffing or inadequate supervision, if staffing is less than the minimum staffing requirements under state law, then there is a rebuttable presumption that there was inadequate supervision of patients and that inadequate staffing or inadequate supervision was a contributing cause of the patient's fall and injuries or death arising therefrom, and the jury shall be instructed accordingly.

(d) Information under this section may only be introduced in a proceeding if it is otherwise admissible under the West Virginia Rules of Evidence.

§55-7B-8. Limit on liability for noneconomic loss.

(a) In any professional liability action brought against a health care provider pursuant to this article, the maximum amount recoverable as compensatory damages for noneconomic loss may not exceed $250,000 for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, except as provided in subsection (b) of this section.

(b) The plaintiff may recover compensatory damages for noneconomic loss in excess of the limitation described in subsection (a) of this section, but not in excess of $500,000 for each occurrence, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees, where the damages for noneconomic losses suffered by the plaintiff were for: (1) Wrongful death; (2) permanent and substantial physical deformity, loss of use of a limb or loss of a bodily organ system; or (3) permanent physical or mental functional injury that permanently prevents the injured person from being able to independently care for himself or herself and perform life-sustaining activities.

(c) On January 1, 2004, and in each year thereafter, the limitation for compensatory damages contained in subsections (a) and (b) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed one hundred fifty percent of the amounts specified in said subsections. (d) The limitations on noneconomic damages contained in subsections (a), (b), (c) and (e) of this section are not available to any defendant in an action pursuant to this article which does not have medical professional liability insurance in the aggregate amount of at least $1 million for each occurrence covering the medical injury which is the subject of the action.

(e) If subsection (a) or (b) of this section, as enacted during the 2003 regular session of the Legislature, or the application thereof to any person or circumstance, is found by a court of law to be unconstitutional or otherwise invalid, the maximum amount recoverable as damages for noneconomic loss in a professional liability action brought against a health care provider under this article shall thereafter not exceed $1 million.

§55-7B-9. Several liability.

(a) In the trial of a medical professional liability action under this article involving multiple defendants, the trier of fact shall report its findings on a form provided by the court which contains each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties to the action, the jury shall be instructed to answer special interrogatories, or the court, acting without a jury, shall make findings as to:

(1) The total amount of compensatory damages recoverable by the plaintiff;

(2) The portion of the damages that represents damages for noneconomic loss;

(3) The portion of the damages that represents damages for each category of economic loss;

(4) The percentage of fault, if any, attributable to each plaintiff; and

(5) The percentage of fault, if any, attributable to each of the defendants.

(b) The trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff arising out of the same medical injury.

(c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.

(d) To determine the amount of judgment to be entered against each defendant, the court shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted verdict by the amount of any pre-verdict settlement arising out of the same medical injury. The court shall then, with regard to each defendant, multiply the total amount of damages remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum recoverable against the defendant. To determine the amount of judgment to be entered against each defendant when there is no preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a of this article, multiply the total amount of damages remaining with any prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum amount recoverable damages against each defendant.

(e) When any defendant's percentage of the verdict exceeds the remaining amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for the defendant's pro rata share of the remainder of the verdict as calculated by the court from the remaining defendants to the action. The plaintiff's total award may never exceed the jury's verdict less any statutory or court-ordered reductions.

(f) Nothing in this section is meant to eliminate or diminish any defenses or immunities which exist as of the effective date of this section, except as expressly noted in this section.

(g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault attributed by the trier of fact to any person acting as the health care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable to the health care provider under claims of vicarious liability. A health care provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least $1 million for each occurrence.

§55-7B-9a. Reduction in compensatory damages for economic losses for payments from collateral sources for the same injury.

(a) In any action arising after the effective date of this section, a defendant who has been found liable to the plaintiff for damages for medical care, rehabilitation services, lost earnings or other economic losses may present to the court, after the trier of fact has rendered a verdict, but before entry of judgment, evidence of payments the plaintiff has received for the same injury from collateral sources.

(b) In a hearing held pursuant to subsection (a) of this section, the defendant may present evidence of future payments from collateral sources if the court determines that:

(1) There is a preexisting contractual or statutory obligation on the collateral source to pay the benefits;

(2) The benefits, to a reasonable degree of certainty, will be paid to the plaintiff for expenses the trier of fact has determined the plaintiff will incur in the future; and

(3) The amount of the future expenses is readily reducible to a sum certain.

(c) In a hearing held pursuant to subsection (a) of this section, the plaintiff may present evidence of the value of payments or contributions he or she has made to secure the right to the benefits paid by the collateral source.

(d) After hearing the evidence presented by the parties, the court shall make the following findings of fact:

(1) The total amount of damages for economic loss found by the trier of fact;

(2) The total amount of damages for each category of economic loss found by the trier of fact;

(3) The total amount of allowable collateral source payments received or to be received by the plaintiff for the medical injury which was the subject of the verdict in each category of economic loss; and

(4) The total amount of any premiums or contributions paid by the plaintiff in exchange for the collateral source payments in each category of economic loss found by the trier of fact.

(e) The court shall subtract the total premiums the plaintiff was found to have paid in each category of economic loss from the total collateral source benefits the plaintiff received with regard to that category of economic loss to arrive at the net amount of collateral source payments.

(f) The court shall then subtract the net amount of collateral source payments received or to be received by the plaintiff in each category of economic loss from the total amount of

damages awarded the plaintiff by the trier of fact for that category of economic loss to arrive at the adjusted verdict.

(g) The court may not reduce the verdict rendered by the trier of fact in any category of economic loss to reflect:

(1) Amounts paid to or on behalf of the plaintiff which the collateral source has a right to recover from the plaintiff through subrogation, lien or reimbursement;

(2) Amounts in excess of benefits actually paid or to be paid on behalf of the plaintiff by a collateral source in a category of economic loss;

(3) The proceeds of any individual disability or income replacement insurance paid for entirely by the plaintiff;

(4) The assets of the plaintiff or the members of the plaintiff's immediate family; or

(5) A settlement between the plaintiff and another tortfeasor.

(h) After determining the amount of the adjusted verdict, the court shall enter judgment in accordance with the provisions of section nine of this article.

§55-7B-9b. Limitations on third-party claims.

An action may not be maintained against a health care provider pursuant to this article by or on behalf of a third-party nonpatient for rendering or failing to render health care services to a patient whose subsequent act is a proximate cause of injury or death to the third party unless the health care provider rendered or failed to render health care services in willful and wanton or reckless disregard of a foreseeable risk of harm to third persons. Nothing in this section shall be construed to prevent the personal representative of a deceased patient from maintaining a wrongful death action on behalf of such patient pursuant to article seven of this chapter or to prevent a derivative claim for loss of consortium arising from injury or death to the patient arising from the negligence of a health care provider within the meaning of this article.

§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.

(a) In any action brought under this article for injury to or death of a patient as a result of health care services or assistance rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility designated by the Office of Emergency Medical Services as a trauma center, including health care services or assistance rendered in good faith by a licensed emergency medical services authority or agency, certified emergency medical service personnel or an employee of a licensed emergency medical services authority or agency, the total amount of civil damages recoverable may not exceed $500,000, for each occurrence, exclusive of interest computed from the date of judgment, and regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(b) On January 1, 2016, and in each year thereafter, the limitation on the total amount of civil damages contained in subsection (a) of this section shall increase to account for inflation as determined by the Consumer Price Index published by the United States Department of Labor: *Provided*, That increases on the limitation of damages shall not exceed one hundred fifty percent of the amounts specified in said subsection.

(c) Beginning July 1, 2016, a plaintiff who, as a result of an injury suffered prior to or after said date, suffers or has suffered economic damages, as determined by the trier of fact or the agreement of the parties, in excess of the limitation of liability in section (a) of this section and for whom recovery from the Patient Injury Compensation Fund is precluded pursuant to section one, article twelve-d, chapter twenty-nine of this code may recover additional economic damages of up to $1 million. This amount is not subject to the adjustment for inflation set forth in subsection (b) of this section.

(d) The limitation of liability in subsection (a) of this section also applies to any act or omission of a health care provider in rendering continued care or assistance in the event that surgery is required as a result of the emergency condition within a reasonable time after the patient's condition is stabilized.

(e) The limitation on liability provided under subsection (a) of this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient's condition is stabilized and the patient is capable of receiving medical treatment as a nonemergency patient; or

(2) Is unrelated to the original emergency condition.

(f) In the event that: (1) A physician provides follow-up care to a patient to whom the physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical condition arises during the course of the follow-up care that is directly related to the original emergency condition for which care or assistance was rendered pursuant to said

subsection, there is rebuttable presumption that the medical condition was the result of the original emergency condition and that the limitation on liability provided by said subsection applies with respect to that medical condition.

(g) There is a rebuttable presumption that a medical condition which arises in the course of follow-up care provided by the designated trauma center health care provider who rendered good faith care or assistance for the original emergency condition is directly related to the original emergency condition where the follow-up care is provided within a reasonable time after the patient's admission to the designated trauma center.

(h) The limitation on liability provided under subsection (a) of this section does not apply where health care or assistance for the emergency condition is rendered:

(1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

(2) In clear violation of established written protocols for triage and emergency health care procedures developed by the Office of Emergency Medical Services in accordance with subsection (e) of this section. In the event that the Office of Emergency Medical Services has not developed a written triage or emergency medical protocol by the effective date of this section, the limitation on liability provided under subsection (a) of this section does not apply where health care or assistance is rendered under this section in violation of nationally recognized standards for triage and emergency health care procedures.

(i) The Office of Emergency Medical Services shall, prior to the effective date of this section, develop a written protocol specifying recognized and accepted standards for triage and emergency health care procedures for treatment of emergency conditions necessitating admission of the patient to a designated trauma center.

(j) In its discretion, the Office of Emergency Medical Services may grant provisional trauma center status for a period of up to one year to a health care facility applying for designated trauma center status. A facility given provisional trauma center status is eligible for the limitation on liability provided in subsection (i) of this section. If, at the end of the provisional period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility is no longer eligible for the limitation on liability provided in subsection (a) of this section.

(k) The Commissioner of the Bureau for Public Health may grant an applicant for designated trauma center status a one-time only extension of provisional trauma center status, upon submission by the facility of a written request for extension, accompanied by a detailed explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the end of the six-month period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility no longer has the protection of the limitation on liability provided in subsection (a) of this section.

(l) If the Office of Emergency Medical Services determines that a health care facility no

longer meets the requirements for a designated trauma center, it shall revoke the designation, at which time the limitation on liability established by subsection (a) of this section ceases to apply to that health care facility for services or treatment rendered thereafter.

(m) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this section, governing the criteria for designation of a facility as a trauma center or provisional trauma center and implementation of a statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the Department of Health to file, on or before July 1, 2003, emergency rules specifying the criteria for designation of a facility as a trauma center or provisional trauma center in accordance with nationally accepted and recognized standards and governing the implementation of a statewide trauma/emergency care system. The rules governing the statewide trauma/emergency care system shall include, but not be limited to:

(1) System design, organizational structure and operation, including integration with the existing emergency medical services system;

(2) Regulation of facility designation, categorization and credentialing, including the establishment and collection of reasonable fees for designation; and

(3) System accountability, including medical review and audit to assure system quality. Any medical review committees established to assure system quality shall include all levels of care, including emergency medical service providers, and both the review committees and the providers shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

§55-7B-9d. Adjustment of verdict for past medical expenses.

A verdict for past medical expenses is limited to:

(1) The total amount of past medical expenses paid by or on behalf of the plaintiff; and

(2) The total amount of past medical expenses incurred but not paid by or on behalf of the plaintiff for which the plaintiff or another person on behalf of the plaintiff is obligated to pay.

§55-7B-10. Effective date; applicability of provisions.

(a) The provisions of House Bill 149, enacted during the first extraordinary session of the Legislature, 1986, shall be effective at the same time that the provisions of Enrolled Senate Bill 714, enacted during the regular session of the Legislature, 1986, become effective, and the provisions of said House Bill 149 shall be deemed to amend the provisions of Enrolled Senate Bill 714. The provisions of this article shall not apply to injuries which occur before the effective date of said Enrolled Senate Bill 714.

The amendments to this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, apply to all causes of action alleging medical professional liability which are filed on or after March 1, 2002.

The amendments to this article provided in Enrolled Committee Substitute for House Bill 2122 during the regular session of the Legislature, 2003, apply to all causes of action alleging medical professional liability which are filed on or after July 1, 2003.

(b) The amendments to this article provided in Enrolled Committee Substitute for Senate Bill 6 during the regular session of the Legislature, 2015, apply to all causes of action alleging medical professional liability which are filed on or after July 1, 2015.

(c) The amendments to this article provided in Enrolled Committee Substitute for Senate Bill 338 during the regular session of the Legislature, 2017, apply to all causes of action alleging medical professional liability which arise or accrue on or after July 1, 2017.

§55-7B-11. Severability.

(a) If any provision of this article as enacted during the first extraordinary session of the Legislature, 1986, in House Bill 149, or as enacted during the regular session of the Legislature, 1986, in Senate Bill 714, or as enacted during the regular session of the Legislature, 2015, or in Senate Bill 338, as enacted during the regular session of the Legislature, 2017, or the application thereof to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end, the provisions of this article are declared to be severable.

(b) If any provision of the amendments to section five of this article, any provision of section six-d of this article or any provision of the amendments to section eleven, article six, chapter fifty-six of this code as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, is held invalid, or the application thereof to any person is held invalid, then, notwithstanding any other provision of law, every other provision of said House Bill 601 shall be deemed invalid and of no further force and effect.

(c) If any provision of the amendments to section six or ten of this article or any provision of section six-a, six-b or six-c of this article as provided in House Bill 601, enacted during the sixth extraordinary session of the Legislature, 2001, is held invalid, the invalidity does not affect other provisions or applications of this article, and to this end, such provisions are deemed severable.

§55-7B-12. Self-funding program; requirements; minimum standards.

(a) An irrevocable trust may be established by or for the benefit of the physician and funded by conveyance to the trustee of the sum of not less than $1 million, in cash or cash equivalents, subject to disbursement and replenishment from time to time, as described in this section, and exclusive of funds needed for maintenance, administration, legal defense and all other costs.

(b) A physician who has established a trust pursuant to this section may subsequently terminate the trust and elect to acquire coverage from a commercial medical professional liability insurance carrier. The assets of the trust may not be distributed to the physician settlor until the costs associated with the administration of the trust have been satisfied and the trustee receives certification that the physician has acquired medical professional liability insurance tail coverage or prior acts coverage, whichever is applicable. The tail coverage or prior acts coverage must cover the time period from the establishment of the trust to the effective date of the newly acquired medical professional liability insurance coverage or twelve years, whichever is shorter.

(c) For a period of not less than the applicable statute of limitations for medical professional liability, a physician who has established an actuarially sound physician self-funding insurance program under this section and has such a program in effect at the time of retirement shall, following his or her retirement, either maintain the trust in effect at funding levels required by this section, or purchase and maintain in force and effect tail insurance as required by article twenty-d, chapter thirty-three of this code.

(d) The trustee for the trust must be an independent professional, bank or other qualified institutional fiduciary. The trustee has all necessary and appropriate powers to fulfill the purposes of the trust, including, but not limited to, the powers to:

(1) Disburse funds for the maintenance and administration of the trust, and for defense costs, judgments, arbitration indemnity awards and settlements;

(2) Hire an actuary who is a member of the Casualty Actuarial Society and experienced in medical professional liability protection programs to provide a periodic opinion, but not less frequently than annually, as to the actuarial soundness of the fund, a copy of which opinion shall be provided upon request to any facility where the physician maintains clinical privileges;

(3) Hire a qualified, third-party claims manager experienced in handling medical professional liability claims, with the power and authority to set reserves and administer and oversee the defense of all claims; and

(4) Require that the physician replenish the trust so as to maintain at all times a funding level of no less than $1 million or such greater amount as set forth in the most current actuarial opinion as described in subdivision (2) of this subsection, exclusive of funds needed

for maintenance, administration, defense or other costs.

(e) The trustee, acting directly or through its hired professionals, as appropriate, shall periodically, but not less frequently than annually, evaluate and set required trust funding levels for the trust; make assessments against the physician for payments into the trust in order to replenish and maintain the trust at levels required by this subsection and required to render the trust actuarially sound from time to time; and otherwise take such actions as may appear necessary, desirable or appropriate to fulfill the purposes and integrity of the trust. Should the physician fail to timely meet any of the requests or requirements of the trustee with regard to funding of the trust or otherwise, or should the trust at any time fail to meet all the requirements of this subsection, thereupon the trust arrangement will conclusively no longer qualify under this article as an actuarially sound self-funding program: Provided, That all assets of the trust at the time of any such disqualifying event or circumstance will remain trust assets and may not be distributed to the physician settlor of the trust until the latter of the date on which any and all medical professional liability claims asserted or pending against the physician at the time of such disqualifying event or circumstance or within the applicable statute of limitations for medical malpractice liability thereafter have been finally adjudicated or otherwise resolved and fully satisfied to the extent of trust assets available for such purpose.

(f) In the event that more than one claim arises within the period since the last annual evaluation, a new evaluation will be performed within sixty days or at the time of the next annual audit, whichever is shorter, in order to evaluate the trust and replenish funds to ensure that its assets total not less than $1 million, or such other amount that is actuarially determined necessary to satisfy the aggregate outstanding claims, whichever is greater, exclusive of funds needed for maintenance, administration, legal defense or other costs.

§55-7C-1. Findings and declaration of public purpose.

The Legislature hereby finds and declares that the citizens of this state have been and should continue to be well served by those serving without compensation on various boards, commissions, committees, agencies and other organizations of the state, and its political subdivisions, of nonprofit corporations and other organizations engaged in religious, charitable, cultural, benevolent, educational and scientific endeavors, child placement or child care, or indigent or elderly care, and of organizations that advocate the interests of their members with respect to the trades, industries and businesses of the state; that in recent years, the cost of insurance coverage for such persons has risen dramatically while the nature and extent of coverage has diminished; that in order to enable persons to willingly serve as qualified directors, as hereinafter defined, the Legislature must provide those qualified directors with limited immunity from civil liability; and that the enactment of this article serves a necessary public purpose. This article is enacted in view of these findings and shall be liberally construed in the light thereof.

§55-7C-2. Definitions.

For purposes of this article, unless a different meaning plainly is required:

(1) "Managerial function" means the act or acts of a qualified director, whereby such qualified director, through direction, regulation or administration, exercises government, control, or superintendence of the affairs of a volunteer organization or entity. Managerial functions shall include ministerial acts and acts involving the exercise of discretion and judgment, but shall not include the physical or manual handling or use of tangible property, including, but not limited to, motor vehicles, or the direct guidance or supervision of persons.

(2) "Nonprofit hospital" means a nonprofit organization, the principal purpose or function of which is the providing of medical or hospital care, and includes general, tuberculosis, and other types of hospitals, and related facilities, such as laboratories, outpatient departments, nurses' home facilities, extended care facilities, facilities related to programs for home health services, self-care units, and central service facilities, operated in connection with hospitals, and also includes education or training facilities for health professional personnel operated as an integral part of a hospital and medical research organizations directly engaged in the continuous active conduct of medical research in conjunction with a hospital, but does not include any hospital furnishing primarily domiciliary care.

(3) "Qualified director" means an individual who serves without compensation for personal services as an officer, member or director of a board, commission, committee, agency or other nonprofit organization which is a volunteer organization or entity. For purposes of this article, "compensation" does not include reimbursement for expenses, incidental meals, lodging or other accommodations, and does not include per diem compensation fixed by statute.

(4) "Volunteer organization or entity" means:

(A) The state or any political subdivision or subdivisions thereof;

(B) Nonprofit corporations as defined in section six, article one, chapter thirty-one of this code, and other nonprofit organizations, which such corporations or organizations provide or promote:

(i) Religion;

(ii) Charity;

(iii) Music, art or other literary or cultural activities;

(iv) Benevolence;

(v) Child placement or child care;

(vi) Indigent or elderly care;

(vii) Education;

(viii) Scientific activity;

(ix) Community or economic development;

(x) Recreation;

(xi) Maintenance and repair of community owned real property or of real property maintained by a homeowners' association;

(xii) Legal services for the indigent;

(xiii) Conservation of natural resources or animal habitat; or

(xiv) Firefighting services and other public safety services.

(C) Any organization that acts as an advocate for its members and that has as its members individuals or organizations that are:

(i) Members of a particular trade or industry; or

(ii) Members of the business community; or

(iii) Members of armed services veteran associations.

"Volunteer organization or entity" shall not include a nonprofit hospital which maintains one hundred fifty or more beds for hospitalization of the sick or injured.

§55-7C-3. Limited civil liability of qualified directors.

(a) Notwithstanding any other provision of this code, a qualified director is not personally liable for negligence, either through act or omission, or whether actual or imputed, in the performance of managerial functions performed on behalf of a volunteer organization or entity: Provided, That this section shall not exempt a qualified director from liability when he or she is found to be grossly negligent in the performance of his or her duties.

(b) Notwithstanding any other provision of this code to the contrary, a qualified director is not personally liable for the torts of a volunteer organization or entity, or the torts of the agents or employees of a volunteer organization or entity, unless he or she approved of, ratified, directed, sanctioned, or participated in the wrongful acts.

(c) Nothing in this section relieves a volunteer organization or entity from imputed liability for the negligent acts of a qualified director committed within the scope of the qualified director's duties. Nothing in this article shall be construed as a grant of immunity to any person who, through his or her operation of a motor vehicle, causes any injury or damage to another person.

§55-7C-4. Applicability of provisions.

The provisions of this article shall not apply to any cause of action arising before July 1, 1988.

§55-7D-1. Legislative findings.

The Legislature finds that wholesale and retail food distributors, shipping terminals and other establishments across the state are disposing of food that could be made available to those in need. However, many potential food donors are discouraged from donating this food because of potential liability. The United States Congress has recognized the need to encourage food distributors to make otherwise disposed-of food products available to those in need and has adopted Title 42 United States Code §1791 entitled the "Bill Emerson Good Samaritan Food Donation Act." This federal law encourages state and local governments to enact good samaritan or donor liability limitation laws to encourage private cooperative efforts to provide food for hungry people within their respective jurisdictions. The Legislature finds that this is a worthy goal, and therefore it is appropriate for the state to encourage participation in food donation programs by providing a statutory framework to protect food donators from liability for their good faith efforts.

§55-7D-2. Definitions.

As used in this section:

(a) "Apparently fit grocery product" means a grocery product that meets all quality and labeling standards imposed by federal, state and local laws and regulations even though the product may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions.

(b) "Apparently wholesome food" means food that meets all quality and labeling standards imposed by federal, state and local laws and regulations even though the food may not be readily marketable due to appearance, age, freshness, grade, size, surplus or other conditions.

(c) "Donate" means to give without requiring anything of monetary value from the recipient, except that the term includes donations by one nonprofit organization to another nonprofit organization, notwithstanding that the donor organization has charged a nominal fee to the donee organization, if the ultimate recipient or user is not required to give anything of monetary value.

(d) "Food" means any raw, cooked, processed or prepared edible substance, ice, beverage or ingredient used or intended for use, in whole or in part, for human consumption.

(e) "Gleaner" means a person who harvests a donated agricultural crop for free distribution to the needy or for donation to a nonprofit organization for ultimate distribution to the needy.

(f) "Grocery product" means a nonfood grocery product, including disposable paper or plastic products, household cleaning supplies, laundry detergent or other household item.

(g) "Gross negligence" means voluntary and conscious conduct, including a failure to act, by a person who, at the time of the conduct, knew that the conduct was likely to be harmful to the health or well-being of another person.

(h) "Intentional misconduct" means conduct by a person with knowledge, at the time of the conduct, that the conduct is harmful to the health or well-being of another person.

(i) "Nonprofit organization" means an incorporated or unincorporated entity that:

(1) Is operating for religious, charitable or educational purposes; and

(2) Does not provide net earnings to or operate in any other manner that inures to the benefit of, any officer, employee or shareholder of the entity.

(j) "Person" means an individual, corporation, partnership, organization, association or governmental entity, including a retail grocer, wholesaler, hotel, motel, manufacturer,

restaurant, caterer, farmer, nonprofit food distributor or hospital. In the case of a corporation, partnership, organization, association or governmental entity, the term includes an officer, director, partner, deacon, trustee, council member or other elected or appointed individual responsible for the governance of the entity.

§55-7D-3. Limiting liability of persons or corporations who donate food or grocery products; exceptions.

(a) A person or gleaner is not subject to civil liability or criminal liability arising from the nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery product which the person or gleaner donates in good faith to a nonprofit organization for ultimate distribution without profit or gain to needy individuals: Provided, That this limitation on liability does not apply to an injury to or the death of an ultimate user or recipient of the food or grocery product which results from an act or omission of the person or gleaner which constitutes gross negligence or intentional misconduct.

(b) A nonprofit organization is not subject to civil liability or criminal liability arising from the nature, age, packaging or condition of apparently wholesome food or an apparently fit grocery product which the nonprofit organization received as a donation in good faith from a person or gleaner for ultimate distribution without profit or gain to needy individuals: Provided, That this limitation on liability does not apply to an injury to or the death of an ultimate user or recipient of the food or grocery product which results from an act or omission of the nonprofit organization which constitutes gross negligence or intentional misconduct.

§55-7D-4. Limitation of liability for landowners or occupiers who allow collection or gleaning of donations; exceptions.

Any person who is a landowner or occupier and who allows the collection or gleaning of donations on his or her property by gleaners or representatives of a nonprofit organization, whether paid or unpaid, for ultimate donation without profit or gain to needy individuals is not subject to civil liability or criminal liability that arises due to the injury or death of the gleaner or representative while engaged in collecting or gleaning on the property: Provided, That this limitation on liability does not apply to an injury or death that results from an act or omission of the landowner or occupier which constitutes gross negligence or intentional misconduct.

§55-7D-5. Construction.

Nothing in this article shall be construed to supersede state or local health regulations, nor to restrict the state department of health or any county or municipal health officer to regulate, inspect or ban the use of any donated food for human consumption.

§55-7E-1. Definitions.

In this article:

(a) "Back pay" means the wages that an employee would have earned, had the employee not suffered from an adverse employment action, from the time of the adverse employment action through the time of trial.

(b) "Front pay" means the wages that an employee would have earned, had the employee not suffered from an adverse employment action, from the time of trial through a future date.

§55-7E-2. Legislative findings and declaration of purpose.

(a) The Legislature finds that:

(1) Employees of this state are entitled to be free from unlawful discrimination, wrongful discharge and unlawful retaliation in the workplace. Employers are often confronted with difficult choices in the hiring, discipline, promotion, layoff and discharge of employees.

(2) The citizens and employers of this state are entitled to a legal system that provides adequate and reasonable compensation to those persons who have been subjected to unlawful employment actions, a legal system that is fair, predictable in its outcomes, and a legal system that functions within the mainstream of American jurisprudence.

(3) The goal of compensation remedies in employment law cases is to make the victim of unlawful workplace actions whole, including back pay; reinstatement or some amount of front pay in lieu of reinstatement; and under certain statutes, attorney's fees for the successful plaintiff.

(4) In West Virginia, the amount of damages recently awarded in statutory and common law employment cases have been inconsistent with established federal law and the law of surrounding states. This lack of uniformity in the law puts our state and its businesses at a competitive disadvantage.

(b) The purpose of this article is to provide a framework for adequate and reasonable compensation to those persons who have been subjected to an unlawful employment action, but to ensure that compensation does not far exceed the goal of making a wronged employee whole.

§55-7E-3. Statutory or common law employment claims; duty to mitigate damages.

(a) In any employment law cause of action against a current or former employer, regardless of whether the cause of action arises from a statutory right created by the Legislature or a cause of action arising under the common law of West Virginia, the plaintiff has an affirmative duty to mitigate past and future lost wages, regardless of whether the plaintiff can prove the defendant employer acted with malice or malicious intent, or in willful disregard of the plaintiff's rights. The malice exception to the duty to mitigate damages is abolished. Unmitigated or flat back pay and front pay awards are not an available remedy. Any award of back pay or front pay by a commission, court or jury shall be reduced by the amount of interim earnings or the amount earnable with reasonable diligence by the plaintiff. It is the defendant's burden to prove the lack of reasonable diligence.

(b) In any employment law claim or cause of action, the trial court shall make a preliminary ruling on the appropriateness of the remedy of reinstatement versus front pay if such remedies are sought by the plaintiff. If front pay is determined to be the appropriate remedy, the amount of front pay, if any, to be awarded shall be an issue for the trial judge to decide.

§55-7F-1. Short title.

This article shall be known and may be cited as the Asbestos Bankruptcy Trust Claims Transparency Act.

§55-7F-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) The United States Supreme Court in Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 598 (1997) described the asbestos litigation as a crisis;

(2) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(3) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(4) Scores of trusts have been established in asbestos-related bankruptcy proceedings to form a multibillion dollar asbestos bankruptcy trust compensation system outside of the tort system, and new asbestos trusts continue to be formed;

(5) Asbestos claimants often seek compensation for alleged asbestos-related conditions from solvent defendants in civil actions and from trusts or claims facilities formed in asbestos bankruptcy proceedings;

(6) There is limited coordination and transparency between these two paths to recovery;

(7) An absence of transparency between the asbestos bankruptcy trust claim system and the civil court systems has resulted in the suppression of evidence in asbestos actions and potential fraud;

(8) West Virginia's Mass Litigation Panel has previously entered cases management orders that apply substantive transparency provisions requiring plaintiffs to disclose, among other things, any claims that may exist against asbestos bankruptcy trusts; and

(9) It is in the interest of justice that there be transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation.

(b) It is the purpose of this article to:

(1) Provide transparency for claims made in the asbestos bankruptcy trust claim system and for claims made in civil asbestos litigation; and

(2) Reduce the opportunity for fraud or suppression of evidence in asbestos actions.

§55-7F-3. Definitions.

For the purpose of this article:

(1) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law or for veterans' benefits as defined by article seven-f of this chapter.

(2) "Asbestos trust" means a government-approved or court-approved trust, qualified settlement fund, compensation fund or claims facility created as a result of an administrative or legal action, a court-approved bankruptcy, or pursuant to 11 U. S. C. §524(g) or 11 U. S. C. §1121(a) or other applicable provision of law, that is intended to provide compensation to claimants arising out of, based on or related to the health effects of exposure to asbestos.

(3) "Plaintiff" means a person asserting an asbestos action, a decedent if the action is brought through or on behalf of an estate, or a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(4) "Trust claims materials" means a final executed proof of claim and all other documents and information related to a claim against an asbestos trust, including claims forms and supplementary materials, affidavits, depositions and trial testimony, work history, medical and health records, documents reflecting the status of a claim against an asbestos trust, and if the asbestos trust claim has settled, all documents relating to the settlement of the asbestos trust claim.

(5) "Trust governance documents" means all documents that relate to eligibility and payment levels, including claims payment matrices, trust distribution procedures or plans for reorganization, for an asbestos trust.

§55-7F-4. Required disclosures by plaintiff.

(a) For each asbestos action filed in this state, the plaintiff shall provide all parties with a sworn statement identifying all asbestos trust claims that have been filed by the plaintiff or by anyone on the plaintiff's behalf, including claims with respect to asbestos-related conditions other than those that are the basis for the asbestos action or that potentially could be filed by the plaintiff against an asbestos trust. The sworn statement shall be provided no later than one hundred twenty days prior to the date set for trial for the asbestos action. For each asbestos trust claim or potential asbestos trust claim identified in the sworn statement, the statement shall include the name, address and contact information for the asbestos trust, the amount claimed or to be claimed by the plaintiff, the date the plaintiff filed the claim, the disposition of the claim and whether there has been a request to defer, delay, suspend or toll the claim. The sworn statement shall include an attestation from the plaintiff, under penalties of perjury, that the sworn statement is complete and is based on a good faith investigation of all potential claims against asbestos trusts.

(b) The plaintiff shall make available to all parties all trust claims materials for each asbestos trust claim that has been filed by the plaintiff or by anyone on the plaintiff's behalf against an asbestos trust, including any asbestos-related disease.

(c) The plaintiff shall supplement the information and materials provided pursuant to this section within ninety days after the plaintiff files an additional asbestos trust claim, supplements an existing asbestos trust claim or receives additional information or materials related to any claim or potential claim against an asbestos trust.

(d) Failure by the plaintiff to make available to all parties all trust claims materials as required by this article shall constitute grounds for the court to extend the trial date in an asbestos action.

§55-7F-5. Discovery; use of materials.

(a) Trust claims materials and trust governance documents are presumed to be relevant and authentic and are admissible in evidence. No claims of privilege apply to any trust claims materials or trust governance documents.

(b) A defendant in an asbestos action may seek discovery from an asbestos trust. The plaintiff may not claim privilege or confidentiality to bar discovery and shall provide consent or other expression of permission that may be required by the asbestos trust to release information and materials sought by a defendant.

§55-7F-6. Scheduling trial; stay of action.

(a) A court shall stay an asbestos action if the court finds that the plaintiff has failed to make the disclosures required under section four of this article within one hundred twenty days prior to the trial date.

(b) If, in the disclosures required by section four of this article, a plaintiff identifies a potential asbestos trust claim, the judge shall have the discretion to stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials for the claim. The plaintiff shall also state whether there has been a request to defer, delay, suspend or toll the claim against the asbestos trust.

§55-7F-7. Identification of additional or alternative asbestos trusts by defendant.

(a) Not less than ninety days before trial, if a defendant identifies an asbestos trust claim not previously identified by the plaintiff that the defendant reasonably believes the plaintiff can file, the defendant shall meet and confer with plaintiff to discuss why defendant believes plaintiff has an additional asbestos trust claim, and thereafter the defendant may move the court for an order to require the plaintiff to file the asbestos trust claim. The defendant shall produce or describe the documentation it possesses or is aware of in support of the motion.

(b) Within ten days of receiving the defendant's motion under subsection (a) of this section, the plaintiff shall, for each asbestos trust claim identified by the defendant, make one of the following responses:

(1) File the asbestos trust claim;

(2) File a written response with the court setting forth the reasons why there is insufficient evidence for the plaintiff to file the asbestos trust claim; or

(3) File a written response with the court requesting a determination that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the trust.

(c) (1) If the court determines that there is a sufficient basis for the plaintiff to file the asbestos trust claim identified by a defendant, the court shall order the plaintiff to file the asbestos trust claim and shall stay the asbestos action until the plaintiff files the asbestos trust claim and provides all parties with all trust claims materials no later than thirty days before trial.

(2) If the court determines that the plaintiff's expenses or attorney's fees and expenses to prepare and file the asbestos trust claim identified in the defendant's motion exceed the plaintiff's reasonably anticipated recovery from the asbestos trust, the court shall stay the asbestos action until the plaintiff files with the court and provides all parties with a verified statement of the plaintiff's history of exposure, usage or other connection to asbestos covered by the asbestos trust.

(d) Not less than thirty days prior to trial in an asbestos action, the court shall enter into the record a trust claims document that identifies each claim the plaintiff has made against an asbestos trust.

§55-7F-8. Valuation of asbestos trust claims; judicial notice.

(a) If a plaintiff proceeds to trial in an asbestos action before an asbestos trust claim is resolved, the filing of the asbestos trust claim may be considered as relevant and admissible evidence.

(b) Trust claim materials that are sufficient to entitle a claim to consideration for payment under the applicable trust governance documents may be sufficient to support a jury finding that the plaintiff may have been exposed to products for which the asbestos trust was established to provide compensation and that such exposure may be a substantial factor in causing the plaintiff's injury that is at issue in the asbestos action.

§55-7F-9. Setoff; credit.

In any asbestos action in which damages are awarded, a defendant is entitled to a setoff or credit in the amount of the valuation established under the applicable trust governance documents, including payment percentages for asbestos trust claims pending at trial and any amount the plaintiff has been awarded from an asbestos trust claim that has been identified at the time of trial. If multiple defendants are found liable for damages, the court shall distribute the amount of setoff or credit proportionally between the defendants, according to the liability of each defendant.

§55-7F-10. Failure to provide information; sanctions.

A plaintiff who fails to provide all of the information required under this article is subject to sanctions as provided in the West Virginia Rules of Civil Procedure and any other relief for the defendants that the court considers just and proper.

§55-7F-11. Application.

The provisions of this article apply to all asbestos actions filed on or after the effective date of this article.

§55-7G-1. Short title.

This article shall be known and may be cited as the Asbestos and Silica Claims Priorities Act.

§55-7G-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) Asbestos is a mineral that was widely used prior to the 1980s for insulation, fireproofing and other purposes;

(2) Millions of American workers and others were exposed to asbestos, especially during and after World War II and prior to the promulgation of regulations by the Occupational Safety and Health Administration in the early 1970s;

(3) Exposure to asbestos has been associated with various types of cancer, including mesothelioma and lung cancer, as well as nonmalignant conditions such as asbestosis and diffuse pleural thickening;

(4) Diseases caused by asbestos often have long latency periods;

(5) Although the use of asbestos has dramatically declined since the 1970s and workplace exposures have been regulated since 1971 by the Occupational Safety and Health Administration, past exposures will continue to result in significant claims of death and disability as a result of such exposure;

(6) Over the years, West Virginia courts have been deluged with asbestos lawsuits;

(7) The United States Supreme Court in Amchem Prods., Inc. v. Windsor, 521 U.S. 591, 598 (1997), described the asbestos litigation as a crisis;

(8) Lawyer-sponsored x-ray screenings have been used to amass large numbers of claims by unimpaired plaintiffs;

(9) One of the country's most prolific B-readers was a doctor from West Virginia;

(10) Approximately one hundred employers have declared bankruptcy at least partially due to asbestos-related liability;

(11) These bankruptcies have resulted in a search for more solvent companies, resulting in over eight thousand five hundred companies being named as asbestos defendants nationally and many in West Virginia, including many small- and medium-sized companies, in industries that cover eighty-five percent of the United States economy;

(12) Silica is a naturally occurring mineral as the earth's crust is over ninety percent silica, and crystalline silica dust is the basic component of sand, quartz and granite;

(13) Silica-related illness, including silicosis, can develop from the prolonged inhalation of respirable silica particles;

(14) Silica claims, like asbestos claims, have involved individuals with no demonstrable physical impairment, and plaintiffs have been identified through the use of for-profit, screening companies;

(15) Silica screening processes have been found subject to substantial abuse and potential fraud;

(16) The cost of compensating plaintiffs who have no present asbestos-related or silica-related physical impairment, and the cost of litigating their claims, jeopardizes the ability of defendants to compensate people with cancer and other serious asbestos-related diseases and adversely affects defendant companies;

(17) Concerns about statutes of limitations and available funds can prompt unimpaired asbestos and silica claimants to bring lawsuits in order to protect against losing their rights to future compensation should they become impaired;

(18) Trial consolidations, joinders and similar trial procedures used by some courts to handle asbestos and silica cases can undermine the appropriate functioning of the courts, deny due process to plaintiffs and defendants and encourage the filing of cases by unimpaired asbestos and silica plaintiffs; and

(19) The public interest requires giving priority to the claims of exposed individuals who are sick in order to help preserve, now and for the future, defendants' ability to compensate people who develop cancer and other serious asbestos-related diseases, as well as silica-related injuries, and to safeguard the jobs, benefits and savings of workers in West Virginia and the well-being of the West Virginia economy.

(b) It is the purpose of this article to:

(1) Give priority to asbestos and silica claimants who can demonstrate actual physical impairment caused by exposure to asbestos or silica;

(2) Toll the running of the statutes of limitations for persons who have been exposed to asbestos or to silica but who have no present physical impairment caused by such exposure;

(3) Enhance the ability of the courts to supervise and manage asbestos and silica cases;

(4) Reduce the opportunity for fraud in asbestos and silica litigation; and

(5) Conserve the defendants' resources to allow compensation to present and future claimants with physical impairment caused by exposure to asbestos or silica.

§55-7G-3. Definitions.

For the purpose of this article:

(1) "AMA Guides to the Evaluation of Permanent Impairment" means the American Medical Association's Guides to the Evaluation of Permanent Impairment in effect at the time of the performance of any examination or test on the exposed person required under this article.

(2) "Asbestos" means chrysotile, amosite, crocidolite, tremolite asbestos, anthophyllite asbestos, actinolite asbestos, asbestiform winchite, asbestiform richterite, asbestiform amphibole minerals and any of these minerals that have been chemically treated or altered, including all minerals defined as asbestos in 29 C. F. R. §1910 at the time an asbestos action is filed.

(3) "Asbestos action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to asbestos, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to asbestos or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law or for veterans' benefits.

(4) "Asbestosis" means bilateral diffuse interstitial fibrosis of the lungs caused by inhalation of asbestos fibers.

(5) "Board-certified in internal medicine" means a physician who is certified by the American Board of Internal Medicine or the American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(6) "Board-certified in occupational medicine" means a physician who is certified in the subspecialty of occupational medicine by the American Board of Preventive Medicine or the American Osteopathic Board of Preventive Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(7) "Board-certified in pathology" means a physician who holds primary certification in anatomic pathology or clinical pathology from the American Board of Pathology or the American Osteopathic Board of Pathology, whose certification was current at the time of the performance of any examination and rendition of any report required by this act, and whose professional practice is principally in the field of pathology and involves regular evaluation of pathology materials obtained from surgical or postmortem specimens.

(8) "Board-certified in pulmonary medicine" means a physician who is certified in the subspecialty of pulmonary medicine by the American Board of Internal Medicine or the

American Osteopathic Board of Internal Medicine and whose certification was current at the time of the performance of any examination and rendition of any report required by this article.

(9) "Certified B-reader" means an individual who has qualified as a National Institute for Occupational Safety and Health (NIOSH) "final" or "B-reader" of x-rays under 42 C. F. R. §37.51(b), whose certification was current at the time of any readings required under this article, and whose B-reads comply with the NIOSH B-Reader's Code of Ethics, Issues in Classification of Chest Radiographs and Classification of Chest Radiographs in Contested Proceedings.

(10) "Chest x-ray" means chest films taken in accordance with all applicable state and federal regulatory standards and taken in the posterior-anterior view.

(11) "DLCO" means diffusing capacity of the lung for carbon monoxide, which is the measurement of carbon monoxide transfer from inspired gas to pulmonary capillary blood.

(12) "Exposed person" means a person whose exposure to asbestos or silica or to asbestos-containing or silica-containing products is the basis for an asbestos or silica action.

(13) "FEV1" means forced expiratory volume in the first second, which is the maximal volume of air expelled in one second during performance of simple spirometric tests.

(14) "FEV1/FVC" means the ratio between the actual values for FEV1 over FVC.

(15) "FVC" means forced vital capacity, which is the maximal volume of air expired with maximum effort from a position of full inspiration.

(16) "ILO" system and "ILO scale" mean the radiological ratings and system for the classification of chest x-rays of the International Labor Office provided in Guidelines for the Use of ILO International Classification of Radiographs of Pneumoconioses in effect on the day any x-rays of the exposed person were reviewed by a certified B-reader.

(17) "Nonmalignant condition" means any condition that can be caused by asbestos or silica other than a diagnosed cancer.

(18) "Official statements of the American Thoracic Society" means lung function testing standards set forth in statements from the American Thoracic Society including standardizations of spirometry, standardizations of lung volume testing, standardizations of diffusion capacity testing or single-breath determination of carbon monoxide uptake in the lung and interpretive strategies for lung function tests, which are in effect on the day of the pulmonary function testing of the exposed person.

(19) "Pathological evidence of asbestosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates a pattern of peribronchiolar or parenchymal scarring in the presence

of characteristic asbestos bodies graded 1(B) or higher under the criteria published in Asbestos-Associated Diseases, 106 Archive of Pathology and Laboratory Medicine 11, Appendix 3 (October 8, 1982), or grade one or higher in Pathology of Asbestosis, 134 Archive of Pathology and Laboratory Medicine 462-80 (March 2010) (Tables 2 and 3), or as amended at the time of the exam, and there is no other more likely explanation for the presence of the fibrosis.

(20) "Pathological evidence of silicosis" means a statement by a board-certified pathologist that more than one representative section of lung tissue uninvolved with any other disease process demonstrates complicated silicosis with characteristic confluent silicotic nodules or lesions equal to or greater than one centimeter and birefringent crystals or other demonstration of crystal structures consistent with silica (well-organized concentric whorls of collagen surrounded by inflammatory cells) in the lung parenchyma and no other more likely explanation for the presence of the fibrosis exists, or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(21) "Plaintiff" means a person asserting an asbestos or silica action, a decedent if the action is brought through or on behalf of an estate, and a parent or guardian if the action is brought through or on behalf of a minor or incompetent.

(22) "Plethysmography or body (BOX) plethysmography" means the test for determining lung volume in which the exposed person is enclosed in a chamber equipped to measure pressure, flow or volume change.

(23) "Predicted lower limit of normal" means any test value is the calculated standard convention lying at the fifth percentile, below the upper ninety-five percent of the reference population, based on age, height and gender, according to the recommendations by the American Thoracic Society and as referenced in the applicable AMA Guides to the Evaluation of Permanent Impairment, primarily National Health and Nutrition Examination Survey (NHANES) predicted values, or as amended.

(24) "Pulmonary function test" means spirometry, lung volume testing and diffusion capacity testing, including appropriate measurements, quality control data and graphs, performed in accordance with the methods of calibration and techniques provided in the applicable AMA Guides to the Evaluation of Permanent Impairment and all standards provided in the Official Statements of the American Thoracic Society in effect on the day pulmonary function testing of the exposed person was conducted.

(25) "Qualified physician" means a board-certified internist, pathologist, pulmonary specialist or specialist in occupational and environmental medicine, as may be appropriate to the actual diagnostic specialty in question, that meets all of the following requirements:

(A) The physician has conducted a physical examination of the exposed person and has taken or has directed to be taken under his or her supervision, direction and control, a detailed

occupational, exposure, medical, smoking and social history from the exposed person, or the physician has reviewed the pathology material and has taken or has directed to be taken under his or her supervision, direction and control, a detailed history from the person most knowledgeable about the information forming the basis of the asbestos or silica action;

(B) The physician has treated or is treating the exposed person, and has or had a doctor-patient relationship with the exposed person at the time of the physical examination or, in the case of a board-certified pathologist, examined tissue samples or pathological slides of the exposed person;

(C) The physician prepared or directly supervised the preparation and final review of any medical report under this article; and

(D) The physician has not relied on any examinations, tests, radiographs, reports or opinions of any doctor, clinic, laboratory or testing company that performed an examination, test, radiograph or screening of the exposed person in violation of any law, regulation, licensing requirement or medical code of practice of the state in which the examination, test or screening.

(26) "Radiological evidence of asbestosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral small, irregular opacities (s, t or u) occurring primarily in the lower lung zones graded by a certified B-reader as at least 1/0 on the ILO scale.

(27) "Radiological evidence of diffuse bilateral pleural thickening" means a quality 1 or 2 chest x-ray under the ILO system, showing diffuse bilateral pleural thickening of at least b2 on the ILO scale and blunting of at least one costophrenic angle as classified by a certified B-reader.

(28) "Radiological evidence of silicosis" means a quality 1 or 2 chest x-ray under the ILO system, showing bilateral predominantly nodular or rounded opacities (p, q or r) occurring in the lung fields graded by a certified B-reader as at least 1/0 on the ILO scale or A, B or C sized opacities representing complicated silicosis or acute silicosis with characteristic pulmonary edema, interstitial inflammation, and the accumulation within the alveoli of proteinaceous fluid rich in surfactant.

(29) "Silica" means a respirable crystalline form of silicon dioxide, including quartz, cristobalite and tridymite.

(30) "Silica action" means a claim for damages or other civil or equitable relief presented in a civil action arising out of, based on or related to the health effects of exposure to silica, including loss of consortium, wrongful death, mental or emotional injury, risk or fear of disease or other injury, costs of medical monitoring or surveillance and any other derivative claim made by or on behalf of a person exposed to silica or a representative, spouse, parent, child or other relative of that person. The term does not include a claim for compensatory benefits pursuant to workers' compensation law, veterans' benefits or claims brought by a

person as a subrogee by virtue of the payment of benefits under a workers' compensation law. The term does not include any administrative claim or civil action related to coal workers' pnuemoconiosis.

(31) "Silicosis" means simple silicosis, acute silicosis, accelerated silicosis or chronic silicosis caused by the inhalation of respirable silica. "Silicosis" does not mean coal workers' pnuemoconiosis.

(32) "Spirometry" means a test of air capacity of the lung through a spirometer to measure the volume of air inspired and expired.

(33) "Supporting test results" means copies of the following documents and images:

(A) Pulmonary function tests, including printouts of the flow volume loops, volume time curves, DLCO graphs, lung volume tests and graphs, quality control data and other pertinent data for all trials and all other elements required to demonstrate compliance with the equipment, quality, interpretation and reporting standards set forth herein;

(B) B-reading and B-reader reports;

(C) Reports of x-ray examinations;

(D) Diagnostic imaging of the chest;

(E) Pathology reports; and

(F) All other tests reviewed by the diagnosing physician or a qualified physician in reaching the physician's conclusions.

(34) "Timed gas dilution" means a method for measuring total lung capacity in which the subject breathes into a spirometer containing a known concentration of an inert and insoluble gas for a specific time, and the concentration of that inert and insoluble gas in the lung is compared to the concentration of that type of gas in the spirometer.

(35) "Total lung capacity" means the volume of gas contained in the lungs at the end of a maximal inspiration.

(36) "Veterans' benefits" means a program for benefits in connection with military service administered by the Veterans' Administration under Title 38 of the United States Code.

(37) "Workers' compensation law" means a law relating to a program administered by the United States or a state to provide benefits, funded by a responsible employer or its insurance carrier, for occupational diseases or injuries or for disability or death caused by occupational diseases or injuries. The term includes the Longshore and Harbor Workers' Compensation Act, 33 U. S. C. §§901 et seq., and the Federal Employees' Compensation Act, Chapter 81 of Title 5 of the United States Code, but does not include the Federal Employers'

Liability Act of April 22, 1908, 45 U. S. C. §§51 et seq.

§55-7G-4. Filing claims; establishment of a prima facie case; additional required information for claims; individual actions to be filed.

(a) A plaintiff in an asbestos or silica action alleging a nonmalignant condition shall file within ninety days of filing the complaint or other initial pleading a detailed narrative medical report and diagnosis, signed by a qualified physician and accompanied by supporting test results, constituting prima facie evidence that the exposed person meets the requirements of this article. The report shall not be prepared by a lawyer or person working for or on behalf of a lawyer or law firm.

(b) A defendant in an asbestos or silica action shall be afforded a reasonable opportunity before trial to challenge the adequacy of the prima facie evidence that the exposed person meets the requirements of this article. An asbestos or silica action shall be dismissed without prejudice upon a finding that the exposed person has failed to make the prima facie showing required by this article.

(c) A plaintiff in an asbestos or silica action filed prior to the effective date of the amendments to this article enacted during the 2021 regular session of the Legislature shall also include an information form with the complaint for nonmalignant conditions containing all of the following:

(1) The name, address, date of birth, social security number, marital status, occupation and employer of the exposed person and any person through which the exposed person alleges exposure;

(2) The plaintiff's relationship to the exposed person or the person through which the exposure is alleged;

(3) To the best of the plaintiff's ability, the location and manner of each alleged exposure, including the specific location and manner of exposure for any person through which the exposed person alleges exposure, the beginning and ending dates of each alleged exposure and the identity of the manufacturer of the specific asbestos or silica product for each exposure when this information is reasonably available;

(4) The identity of the defendant or defendants against whom the plaintiff asserts a claim;

(5) The specific asbestos-related or silica-related disease claimed to exist; and

(6) Any supporting documentation relating to subdivisions (3), (4) and (5) of this subsection.

(d) For any asbestos or silica action filed on or after the amendments to this article enacted during the 2021 regular session of the Legislature, a plaintiff shall file within 60 days of filing any complaint a sworn information form that specifies the evidence that provides the basis for each claim against each defendant. The sworn information form shall include all of the following with specificity:

(1) The name, address, date of birth, marital status, occupation, smoking history, current and past worksites, and current and past employers of the exposed person, and any person through which the exposed person alleges exposure;

(2) Each person through whom the exposed person was exposed to asbestos or silica and the exposed person's relationship to each such person;

(3) Each asbestos-containing or silica-containing product to which the person was exposed and each physical location at which the person was exposed to asbestos or silica, or the other person was exposed if exposure was through another person;

(4) The identity of the manufacturer or seller of the specific asbestos or silica product for each exposure;

(5) The specific location and manner of each exposure, including for any person through whom the exposed person was exposed;

(6) The beginning and ending dates of each exposure and the frequency of the exposure, including for any person through whom the exposed person was exposed;

(7) The specific asbestos-related or silica-related disease claimed to exist; and

(8) Any supporting documentation relating to the information required under this section.

(e) Plaintiffs have a continuing duty to supplement the information that is required to be disclosed in this section.

(f) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to any defendant whose product or premises is not identified in the required disclosures set forth in subsection (d) of this section.

(g) The court, on motion by a defendant, shall dismiss a plaintiff's asbestos or silica action without prejudice as to all defendants if plaintiff fails to comply with the requirements of subsection (d) this section.

(h) Asbestos and silica actions must be individually filed. No asbestos or silica action filed on or after the effective date of this article shall be permitted on behalf of a group or class of plaintiffs.

§55-7G-5. Elements of proof for asbestos actions alleging a nonmalignant asbestos-related condition.

(a) No asbestos action related to an alleged nonmalignant asbestos-related condition may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment for which asbestos exposure was a substantial contributing factor. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of asbestosis or radiological evidence of diffuse bilateral pleural thickening or a high-resolution computed tomography scan showing evidence of asbestosis or diffuse pleural thickening;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all of the exposed person's principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including asbestos fibers or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration, and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems of the exposed person and their most probable cause;

(4) Evidence verifying that at least fifteen years have elapsed between the exposed person's date of first exposure to asbestos and the date of diagnosis;

(5) Evidence from a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, from the person's medical records, that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated;

(6) Evidence that asbestosis or diffuse bilateral pleural thickening, rather than chronic obstructive pulmonary disease, is a substantial factor to the exposed person's physical impairment, based on a determination the exposed person has:

(A) Forced vital capacity below the predicted lower limit of normal and FEV1/FVC ratio (using actual values) at or above the predicted lower limit of normal;

(B) Total lung capacity, by plethysmography or timed gas dilution, below the predicted lower limit of normal; or

(C) A chest x-ray showing bilateral small, irregular opacities (s, t or u) graded by a certified B-reader as at least 2/1 on the ILO scale; and

(7) The specific conclusion of the qualified physician signing the report that exposure to asbestos was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion that the medical findings and impairment are consistent with or compatible with exposure to asbestos, or words to that effect, do not satisfy the requirements of this subdivision.

(b) If the alleged nonmalignant asbestos-related condition is a result of an exposed person living with or having extended contact with another exposed person who, if the asbestos action had been filed by the other exposed person would have met the requirements of subdivision (2), subsection (a) of this section, and the exposed person alleges extended contact with the other exposed person during the relevant time period, the detailed narrative medical report and diagnosis shall include all of the information required by subsection (a) of this section, except that the exposure history required under subdivision (2), subsection (a) of this section shall describe the exposed person's history of exposure to the other exposed person.

§55-7G-6. Elements of proof for silica actions alleging silicosis.

No silica action related to alleged silicosis may be brought or maintained in the absence of prima facie evidence that the exposed person has a physical impairment as a result of silicosis. The plaintiff shall make a prima facie showing of claim for each defendant and include a detailed narrative medical report and diagnosis signed under oath by a qualified physician that includes all of the following:

(1) Radiological or pathological evidence of silicosis or a high-resolution computed tomography scan showing evidence of silicosis;

(2) A detailed occupational and exposure history from the exposed person or, if that person is deceased, from the person most knowledgeable about the exposures that form the basis of the action, including identification of all principal places of employment and exposures to airborne contaminants and whether each place of employment involved exposures to airborne contaminants, including silica or other disease causing dusts or fumes, that may cause pulmonary impairment and the nature, duration and level of any exposure;

(3) A detailed medical, social and smoking history from the exposed person or, if that person is deceased, from the person most knowledgeable, including a thorough review of the past and present medical problems and their most probable cause;

(4) Evidence that a sufficient latency period has elapsed between the exposed person's date of first exposure to silica and the day of diagnosis;

(5) Evidence based upon a personal medical examination and pulmonary function testing of the exposed person or, if the exposed person is deceased, based upon the person's medical records, demonstrating that the exposed person has or the deceased person had a permanent respiratory impairment rating of at least Class 2 as defined by and evaluated pursuant to the AMA's Guides to the Evaluation of Permanent Impairment or reported significant changes year to year in lung function for FVC, FEV1 or DLCO as defined by the American Thoracic Society's Interpretative Strategies for Lung Function Tests, 26 European Respiratory Journal 948-68, 961-62, Table 12 (2005) and as updated; and

(6) The specific conclusion of the qualified physician signing the report that exposure to silica was a substantial contributing factor to the exposed person's physical impairment and not more probably the result of other causes. An opinion stating that the medical findings and impairment are consistent with or compatible with exposure to silica, or words to that effect, do not satisfy the requirements of this subdivision.

§55-7G-7. Evidence of physical impairment.

Evidence relating to physical impairment, including pulmonary function testing and diffusing studies, offered in any action governed by this article or article seven-e of this chapter, shall:

(1) Comply with the quality controls, equipment requirements, methods of calibration and techniques set forth in the AMA's Guides to the Evaluation of Permanent Impairment and all standards set forth in the Official Statements of the American Thoracic Society which are in effect on the date of any examination or pulmonary function testing of the exposed person required by this article;

(2) Not be obtained and may not be based on testing or examinations that violate any law, regulation, licensing requirement, or medical code of practice of the state in which the examination, test, or screening was conducted, or of this state; and

(3) Not be obtained under the condition that the plaintiff or exposed person retains the legal services of the attorney or law firm sponsoring the examination, test or screening.

§55-7G-8. Procedures.

(a) Evidence relating to the prima facie showings required under this article shall not create any presumption that the exposed person has an asbestos-related or silica-related injury or impairment and shall not be conclusive as to the liability of any defendant.

(b) No evidence shall be offered at trial, and the jury shall not be informed of:

(1) The grant or denial of a motion to dismiss an asbestos or silica action under the provisions of this article; or

(2) The provisions of this article with respect to what constitutes a prima facie showing of asbestos or silica-related impairment.

(c) Until a court enters an order determining that the exposed person has established prima facie evidence of impairment, no asbestos or silica action shall be subject to discovery, except discovery related to establishing or challenging the prima facie evidence or by order of the trial court upon motion of one of the parties and for good cause shown.

(d) Consolidation of cases. --

(1) A court may consolidate for trial any number and type of nonmalignant asbestos or silica actions with the consent of all the parties. In the absence of such consent, the court may consolidate for trial only asbestos or silica actions relating to the exposed person and members of that person's household.

(2) No class action or any other form of mass aggregation relating to more than one exposed person and members of that person's household shall be permitted.

(3) The provisions of this subsection do not preclude consolidation of cases by court order for pretrial or discovery purposes.

§55-7G-9. Statute of limitations; two-disease rule.

(a) With respect to an asbestos or silica action not barred by limitations as of this article's effective date, an exposed person's cause of action shall not accrue, nor shall the running of limitations commence, prior to the earlier of the date:

(1) The exposed person received a medical diagnosis of an asbestos-related impairment or silica-related impairment;

(2) The exposed person discovered facts that would have led a reasonable person to obtain a medical diagnosis with respect to the existence of an asbestos-related impairment or silica-related impairment; or

(3) The date of death of the exposed person having an asbestos-related or silica-related impairment.

(b) Nothing in this section shall be construed to revive or extend limitations with respect to any claim for asbestos-related impairment or silica-related impairment that was otherwise time-barred on the effective date of this article.

(c) Nothing in this section shall be construed so as to adversely affect, impair, limit, modify, or nullify any settlement or other agreements with respect to an asbestos or silica action entered into prior to the effective date of this article.

(d) An asbestos or silica action arising out of a nonmalignant condition shall be a distinct cause of action from an action for an asbestos-related or silica-related cancer. Where otherwise permitted under state law, no damages shall be awarded for fear or increased risk of future disease in an asbestos or silica action.

(e) Notwithstanding the provisions of this section, a plaintiff in an asbestos or silica action may not bring an action against the manufacturers of mining equipment used underground when the exclusive use of asbestos in the equipment was as a result of specific requirements under 30 CFR Part 18 or, as to the use of silica, the design was as specified in 30 CFR Part 33 when the equipment was originally manufactured, based on any theory or doctrine, except within the applicable limitations period and, in any event, within 12 years from the date of first sale, lease, or delivery of possession by the manufacturers or 10 years from the date of first sale, lease, or delivery of possession to its initial user, consumer, or other non-seller, whichever period expires earlier, unless the manufacturers of equipment used in coal mining have expressly warranted or promised the product for a longer period and the action is brought within that period. This subsection does not apply to the use of brakes and any brake material.

§55-7G-10. Application.

This article shall apply to all asbestos actions and silica actions filed on or after the effective date of this article.

§55-7H-1. Findings and declaration of public purpose.

The Legislature finds and declares:

That the citizens of this state have been and should continue to be well served by physicians and dentists educated and trained at the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry;

That the state's medical and dental schools play a vital role in ensuring an adequate supply of qualified and trained physicians throughout the state;

That the education, training and research provided at the state's medical and dental schools and state medical school are an essential governmental function in which the state has a substantial and compelling interest;

That the provision of clinical services to patients by faculty members,, residents, fellows and students of the state's medical and dental schools and state medical school, is an inseparable component of the aforementioned education, training and research;

That the provision of the clinical services significantly contributes to the ongoing quality, effectiveness and scope of the state's health care delivery system;

That the provision of the clinical services also raises the public profile and reputation of the respective institutions both regionally and nationally, thereby facilitating the recruitment of talented faculty, residents, fellows and students to their programs of study;

That the provision of the clinical services generates additional revenues needed to fund faculty salaries and other costs associated with the overall operation of the state medical school and state's medical and dental schools;

That the continued availability of the revenues to the state medical school and state's medical and dental schools is necessary to their ongoing operation and delivery of the benefits described above;

That the continued availability of the revenues is compromised by the cost of medical professional liability insurance, the cost of defending medical professional liability claims, and the cost of compensating patients who suffer medical injury or death;

That the state concurrently has an interest in providing a system that makes available adequate and fair compensation to those individual patients who suffer medical injury or death;

That it is the duty and responsibility of the Legislature to balance the rights of individual patients to obtain adequate and fair compensation, with the substantial and compelling state interests set forth herein supporting the need for a financially viable system of medical and

dental schools;

That, in balancing these important state interests, the Legislature acknowledges the sovereign immunity set forth in the West Virginia Constitution under Article VI, Section 35, to prevent the diversion of state moneys from legislatively appropriated purposes;

That, in conjunction with the provision of clinical services to patients by faculty members, , residents, fellows and students of the state's medical and dental schools, or state medical school, it is a common practice both here and in other states to create one or more clinical practice plans as nonprofit corporations;

That the clinical practice plans, among other things, administratively support clinical activities by holding real and personal property, offering personnel and financial management, providing billing and collection for services rendered, and disbursing excess revenues back to the respective medical and dental schools;

That the clinical practice plans become integrated with their respective state medical school and state's medical and dental schools and exclusively serve the interests of these schools and their faculty;

That any moneys the clinical practice plans expend for the defense, settlement, and satisfaction of medical professional liability claims inevitably result in a shortfall of funds available to the medical and dental schools for faculty compensation and other operational purposes, thereby undermining the sovereign immunity otherwise granted to state institutions by the West Virginia Constitution;

That it is therefore reasonable and appropriate for the Legislature to provide immunity from civil liability to clinical practice plans and their respective directors, officers, employees and agents given the substantial and compelling state interests being served; and

That it is further reasonable and appropriate to require the state's medical and dental schools to maintain a level of medical professional liability insurance to adequately and fairly compensate patients who suffer medical injuries or death.

§55-7H-2. Definitions.

For purposes of this article:

(1) "Clinical practice plan" means any of the nonprofit corporations that are operated to assist the state medical school and state's medical and dental schools in providing clinical services to patients and which are controlled by governing boards all the voting members of which are faculty members or university officials. Clinical practice plans as defined herein shall be considered agents of the state.

(2) "Contractor" means an independent contractor, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code, who is acting within the scope of his or her authority for a state medical school, state's medical and dental schools, or a clinical practice plan, and is a member of the faculty of a state's medical and dental schools or state medical school.

(3) "Employee" means a director, officer, employee, agent or servant, whether compensated or not, who is licensed as a health care professional under chapter thirty of this code and who is acting within the scope of his or her authority or employment for a state's medical and dental schools, a state medical school or a clinical practice plan.

(4) "Health care" means any act or treatment performed or furnished, or which should have been performed or furnished, by any director, officer, employee, agent or contractor of a state medical school, state's medical and dental schools, or a clinical practice plan for, to or on behalf of a patient during the patient's medical care, treatment or confinement.

(5) "Medical injury" means injury or death to a patient arising or resulting from the rendering or failure to render health care.

(6) "Medical professional liability insurance" means a contract of insurance, or any self-insurance retention program established under the provisions of section ten, article five, chapter eighteen-b of this code, that pays for the legal liability arising from a medical injury.

(7) "Patient" means a natural person who receives or should have received health care from a director, officer, employee, agent or contractor of a state medical school, state's medical and dental schools, or a clinical practice plan under a contract, express or implied.

(8) "Scope of authority or employment" means performance by a director, officer, employee, agent or contractor acting in good faith within the duties of his or her office, employment or contract with a state medical school, state's medical and dental schools, or a clinical practice plan, but does not include corruption or fraud.

(9) "State's medical and dental schools" or "state medical school" means the Marshall University School of Medicine, the West Virginia School of Osteopathic Medicine, the West Virginia University School of Medicine and the West Virginia University School of Dentistry.

§55-7H-3. Immunity for clinical practice plans and their directors, officers, employees, agents and contractors.

Notwithstanding any other provision of this code, all clinical practice plans, and all employees and contractors of a state's medical and dental schools, state medical school or a clinical practice plan, are only liable up to the limits of insurance coverage procured through the State Board of Risk and Insurance Management in accordance with section four, article seven-e, chapter fifty-five of the code, arising from a medical injury to a patient, including death resulting, in whole or in part, from the medical injury, either through act or omission, or whether actual or imputed, while acting within the scope of their authority or employment for a state's medical and dental schools, state medical school or a clinical practice plan. The provisions of this article apply to the acts and omissions of all full-time, part-time, visiting and volunteer directors, officers, faculty members, residents, fellows, students, employees, agents and contractors of a state's medical and dental schools, state medical school or a clinical practice plan, regardless of whether the persons are engaged in teaching, research, clinical, administrative or other duties giving rise to the medical injury, regardless of whether the activities were being performed on behalf of a state's medical and dental schools, state medical school or on behalf of a clinical practice plan and regardless of where the duties were being carried out at the time of the medical injury.

§55-7H-4. Medical professional liability insurance for state's medical and dental schools and state medical schools.

The State Board of Risk and Insurance Management shall provide medical professional liability insurance to all of the state's medical and dental schools, state medical school, all of their clinical practice plans and all of their directors, officers, employees, agents and contractors in an amount to be determined by the State Board of Risk and Insurance Management, but in no event less than $1.5 million for each occurrence after July 1, 2015, to increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, up to $2 million for each occurrence. The clinical practice plans shall pay for this insurance. The provision of professional liability insurance is not a waiver of immunity that any of the foregoing entities or persons may have pursuant to this article or under any other law. Any judgment obtained for a medical injury to a patient as a result of health care performed or furnished, or which should have been performed or furnished, by any employee or contractor of a state's medical and dental school, state medical school or clinical practice plan shall not exceed the limits of medical professional liability insurance coverage provided by the State Board of Risk and Insurance Management pursuant to this section.

§55-7H-5. Applicability of provisions.

The provisions of this article are applicable prospectively to all claims that occur and are commenced on or after July 1, 2015.

§55-7H-6. Construction.

The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in article seven-b of this chapter.

§55-7I-1. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) Asbestos-related claims threaten the continued viability of uniquely situated companies that have never manufactured, sold or distributed asbestos or asbestos products and are liable only as successor corporations.

(2) The viability of these businesses is threatened due solely to their status as successor corporations by merger or consolidation based on actions taken prior to the May 13, 1968, American Conference of Governmental Industrial Hygienists change in the recommended, longstanding threshold workplace-exposure limit for asbestos.

(3) More than twenty other states have enacted legislation similar to this article to provide limits on asbestos-related liabilities for innocent successors.

(4) The public interest as a whole is best served by providing relief to innocent successors so that they may remain viable.

(b) The purpose of this article is to limit the cumulative recovery by all asbestos claimants from innocent successors.

§55-7I-2. Definitions.

As used in this article:

(1) “Asbestos claim” means any claim, wherever or whenever made, for damages, losses, indemnification, contribution or other relief arising out of, based on, or in any way related to asbestos, including:

(A) Property damage caused by the installation, presence or removal of asbestos;

(B) The health effects of exposure to asbestos, including any claim for:

(i) Personal injury or death;

(ii) Mental or emotional injury;

(iii) Risk of disease or other injury; or

(iv) The costs of medical monitoring or surveillance; and

(C) Any claim made by or on behalf of any person exposed to asbestos, or a representative, spouse, parent, child or other relative of the person.

(2) “Corporation” means a corporation for profit, including:

(A) A domestic corporation organized under the laws of this state; or

(B) A foreign corporation organized under laws other than the laws of this state.

(3) “Successor asbestos-related liabilities” means any liabilities, whether known or unknown, asserted or unasserted, absolute or contingent, accrued or unaccrued, liquidated or unliquidated, or due or to become due, that are related in any way to asbestos claims that were assumed or incurred by a corporation as a result of or in connection with a merger or consolidation, or the plan of merger or consolidation related to the merger or consolidation, with or into another corporation or that are related in any way to asbestos claims based on the exercise of control or the ownership of stock of the corporation before the merger or consolidation. The term includes liabilities that, after the time of the merger or consolidation for which the fair market value of total gross assets is determined under section five of this article, were or are paid or otherwise discharged, or committed to be paid or otherwise discharged, by or on behalf of the corporation, or by a successor of the corporation, or by or on behalf of a transferor, in connection with settlements, judgments or other discharges in this state or another jurisdiction.

(4) “Successor” means a corporation that assumes or incurs, or has assumed or incurred, successor asbestos-related liabilities.

(5) “Transferor” means a corporation from which successor asbestos-related liabilities are or were assumed or incurred.

§55-7I-3. Applicability.

(a) The limitations in section four of this article shall apply to a domestic corporation or a foreign corporation that has had a certificate of authority to transact business in this state or has done business in this state and that is a successor which became a successor prior to May 13, 1968, or which is any of that successor corporation's successors, but in the latter case only to the extent of the limitation of liability applied under subsection (b), section four of this article and subject also to the limitations found in this article, including those in subsection (b) of this section.

(b) The limitations in section four of this article shall not apply to:

(1) Workers' compensation benefits paid by or on behalf of an employer to an employee under the provisions of chapter twenty-three of this code or a comparable workers' compensation law of another jurisdiction;

(2) Any claim against a corporation that does not constitute a successor asbestos-related liability;

(3) An insurance corporation;

(4) Any obligation under the National Labor Relations Act, 29 U. S. C. Section 151, et seq., as amended, or under any collective bargaining agreement;

(5) A successor that, after a merger or consolidation, continued in the business of mining asbestos or in the business of selling or distributing asbestos fibers or in the business of manufacturing, distributing, removing or installing asbestos-containing products which were the same or substantially the same as those products previously manufactured, distributed, removed or installed by the transferor;

(6) A contractual obligation existing as of the effective date of this article that was entered into with claimants or potential claimants or their counsel and which resolves asbestos claims or potential asbestos claims;

(7) Any claim made against the estate of a debtor in a bankruptcy proceeding commenced prior to the effective date of this article, under the United States Bankruptcy Code, 11 U. S. C. Section 101, et seq., by or against such debtor, or against a bankruptcy trust established under 11 U. S. C. Section 524(g) or similar provision of the United States Code in such a bankruptcy; and

(8) A successor asbestos-related liability arising under common law or statute for premises liability, or a cause of action for premises liability, as applicable, but only if the successor owned or controlled the premise or premises at issue after the merger or consolidation.

§55-7I-4. Limitations on successor asbestos-related liabilities.

(a) Except as further limited in subsection (b) of this section, the cumulative successor asbestos-related liabilities of a corporation are limited to the fair market value of the total gross assets of the transferor determined as of the time of the merger or consolidation. The corporation does not have any responsibility for successor asbestos-related liabilities in excess of this limitation.

(b) If the transferor had assumed or incurred successor asbestos-related liabilities in connection with a prior merger or consolidation with a prior transferor, then the fair market value of the total assets of the prior transferor, determined as of the time of such earlier merger or consolidation, shall be substituted for the limitation set forth in subsection (a) of this section, for purposes of determining the limitation of liability of a corporation.

§55-7I-5. Establishing fair market value of total gross assets.

(a) A corporation may establish the fair market value of total gross assets for the purpose of the limitations under section four of this article through any method reasonable under the circumstances, including:

(1) By reference to the going concern value of the assets or to the purchase price attributable to or paid for the assets in an arms-length transaction; or

(2) In the absence of other readily available information from which the fair market value can be determined, by reference to the value of the assets recorded on a balance sheet.

(b) Total gross assets include intangible assets.

(c) Total gross assets include the aggregate coverage under any applicable liability insurance that was issued to the transferor whose assets are being valued for purposes of this section and which insurance has been collected or is collectible to cover successor asbestos-related liabilities (except compensation for liabilities arising from workers' exposure to asbestos solely during the course of their employment by the transferor). A settlement of a dispute concerning such insurance coverage entered into by a transferor or successor with the insurers of the transferor 10 years or more before the enactment of this article shall be determinative of the aggregate coverage of such liability insurance to be included in the calculation of the transferor's total gross assets.

(d) The fair market value of total gross assets shall reflect no deduction for any liabilities arising from any asbestos claim.

§55-7I-6. Adjustment.

(a) Except as provided in subsections (b), (c) and (d) of this section, the fair market value of total gross assets at the time of the merger or consolidation increases annually at a rate equal to the sum of:

(1) The prime rate as listed in the first edition of the Wall Street Journal published for each calendar year since the merger or consolidation; and

(2) One percent.

(b) The rate found in subsection (a) of this section is not compounded.

(c) The adjustment of the fair market value of total gross assets continues as provided in subsection (a) of this section until the date the adjusted value is exceeded by the cumulative amounts of successor asbestos-related liabilities paid or committed to be paid by or on behalf of the corporation or a predecessor, or by or on behalf of a transferor, after the time of the merger or consolidation for which the fair market value of total gross assets is determined.

(d) No adjustment of the fair market value of total gross assets shall be applied to any liability insurance otherwise included in the definition of total gross assets by subsection (c), section five of this article.

§55-7I-7. Scope of article; application.

(a) This article shall be liberally construed with regard to successors.

(b) This article applies to all asbestos claims filed against a successor on or after the effective date of this article.

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

(a) Any elderly person, protected person, or incapacitated adult against whom an act of financial exploitation has been committed may bring an action under this article against any person who has committed an act of financial exploitation against him or her by filing a civil complaint for financial exploitation, a petition for a financial exploitation protective order, or both.

(b) For the purposes of this article:

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

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

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

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

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

(d) An action for a financial exploitation protective order brought under this section is commenced by the filing of a verified petition. Temporary relief may be granted without notice to the person alleged to be engaging in financial exploitation and without that person being present: *Provided*, That notice shall be provided to the person alleged to be engaging in financial exploitation as soon as practicable, and that no final relief may be granted on the petition without a full, adversarial evidentiary hearing on the merits before the court.

(e) If a magistrate court grants the petition for a financial exploitation protective order and issues a temporary financial exploitation protective order, the magistrate court shall immediately transfer the matter to the circuit court of the county in which the petition was

filed. Upon receipt of the notice of transfer from the magistrate court, the circuit court shall set the matter for a review hearing within 20 days. Any review hearing shall be a full, adversarial evidentiary hearing on the merits before the court. After a hearing, the circuit court may issue a permanent protective order containing any relief the circuit court determines necessary to protect the alleged victim if the court finds by a preponderance of the evidence that:

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

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

(3) The respondent consents to entry of the permanent protective order.

(f) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

§55-7J-2. Restriction of defenses, standing alone, based on legal relationship.

Notwithstanding any provision of this code to the contrary, acting in a position of trust and confidence, including, but not limited to, as guardian, conservator, trustee or attorney for or holding power of attorney for an elderly person, protected person or incapacitated adult shall not, standing alone, constitute a defense to an action brought under this article.

§55-7J-3. Court authorized remedies.

(a) In an action brought against a person under this article upon a finding that an elderly person, protected person or incapacitated adult has been financially exploited, the court may order:

(1) The return of property or assets improperly obtained, controlled or used; and

(2) An award of actual damages to the person who brought the action for any damages incurred or for the value of the property or assets lost as a result of the violation or violations of this article.

(b) In addition to the remedies provided in subsection (a) of this section, a court may order the following:

(1) For violations committed by a person who is not in a position of trust and confidence, payment of two times the amount of damages incurred or value of property or assets lost; and

(2) For violations committed by a person in a position of trust and confidence, payment of treble damages.

§55-7J-4. Attorneys' fees; court costs and burden of proof; statute of limitations.

(a) The court may award reasonable attorneys' fees and costs to a person that brings an action under this article and prevails.

(b) The standard of proof in proving that a person committed financial exploitation in an action pursuant to this article is a preponderance of the evidence.

(c) An action under this article shall be brought within two years from the date of the violation or from the date of discovery, whichever is later in time.

§55-7J-5. Action to freeze assets; burden of proof; options the court may exercise.

(a) An elderly person, protected person, or incapacitated adult may bring an action to enjoin the alleged commission of financial exploitation and may petition the court to freeze the assets of the person allegedly committing the financial exploitation in an amount equal to, but not greater than, the alleged value of lost property or assets for purposes of restoring to the victim the value of the lost property or assets. The burden of proof required to freeze the assets of a person allegedly committing financial exploitation shall be a preponderance of the evidence. Upon a finding that the elderly person, protected person, or incapacitated adult has been formally exploited, the court may:

(1) Grant injunctive relief;

(2) Order the violator to place in escrow an amount of money equivalent to the value of the misappropriated assets for distribution to the aggrieved elderly person, protected person, or incapacitated adult;

(3) Order the violator to return to the elderly person, protected person, or incapacitated person any real or personal property which was misappropriated;

(4) Provide for the appointment of a receiver; or

(5) Order any combination or all of the above.

(b) In any action under §55-7J-1 *et seq*. of this code, the court may void or limit the application of contracts or clauses resulting from the financial exploitation.

(c) In any civil action brought under this article, upon the filing of the complaint or on the appearance of any defendant, claimant, or other party, or at any later time, the court may require the plaintiff, defendant, claimant, or other party or parties to post security, or additional security, in a sum the court directs to pay all costs, expenses, and disbursements that are awarded against that party or that the party may be directed to pay by any interlocutory order, by the final judgment or after appeal.

(d) An order entered under this section shall state that a violation of the order may result in criminal prosecution under §61-2-29b of this code and state the penalties therefor.

§55-7J-6. Penalty for violation of injunction; retention of jurisdiction.

Any person who violates the terms of an order issued under this article shall be subject to proceeding for contempt of court. The court issuing the injunction may retain jurisdiction if, in its discretion, it determines that to do so is in the best interest of the elderly person, protected person, or incapacitated adult. If the court determines that an injunction issued under §55-7J-5 of this code has been violated, the court may award reasonable costs to the party asserting that a violation has occurred.

§55-7K-1. Limiting civil liability for certain behavioral health facilities and residential recovery facilities providing crisis stabilization services and/or drug and alcohol detoxification services, substance use disorder services, and/or drug overdose services on a short-term basis.

Notwithstanding any other provision of this code, no behavioral health facility that is licensed in this state, another state, or operated by the state, or one of its political subdivisions, and no residential recovery facility certified by or meeting the standards of a national certifying body, nor any of their directors, officers, employees, and agents shall be liable for injury or civil damages related to the provision of short-term crisis stabilization and/or drug and alcohol detoxification services, substance use disorder services, drug overdose services, and/or withdrawal services to the extent the injury or damages arise from an individual's refusal of services, election to discontinue services, failure to follow the orders or instructions of a facility, voluntary departure, elopement, or abandonment from a facility, with or without notice to others, so long as the services are offered in good faith, the facility does not require payment from the individual receiving the services, and the injury or damages are not proximately caused by the gross negligence or willful or wanton misconduct of the facility, or its directors, officers, employees, or agents.

§55-7K-2. Applicability of provisions.

(a) The provisions of this article are applicable to all causes of action accruing on or after July 1, 2018.

(b) The provisions of this article operate in addition to, and not in derogation of, any of the provisions contained in §55-7B-1 et seq. of this code.

§55-8-1. Jurisdiction in proceedings on penal bonds.

Where the proceeding before a court is on a penal bond, with condition for the payment of money, or for the performance or forbearance of any other act or thing, the jurisdiction shall be determined as if the undertaking to pay such money, or to do or forbear the doing of such other act or thing, had been without a penalty.

§55-8-2. Action of debt or assumpsit on note or writing; action of debt for any past-due installment.

An action of debt or assumpsit may be maintained on any note or writing, whether sealed or not, by which there is a promise, undertaking, or obligation to pay money, if the same be signed by the party who is to be charged thereby, or his agent. And an action of debt may also be maintained on any such note or writing for any past-due installment of a debt payable in installments, although other installments thereof be not due.

§55-8-3. Action of assumpsit for breach of contract.

An action of assumpsit shall lie in all cases to recover damages for the breach of any contract, express or implied, and, if in writing, whether under seal or not.

§55-8-4. General issue in debt or assumpsit on sealed instrument.

The general issue in an action of debt on a sealed instrument shall be nil debet, and in an action of assumpsit on such instrument it shall be non assumpsit. It shall not be necessary in either case to plead non est factum, but any evidence admissible under a plea of non est factum may be given under the general issue, provided there be filed with such plea of the general issue the affidavit required by section forty-six, article four, chapter fifty-six of this code.

§55-8-5. Validity of writing payable to person dead at time of execution.

A bond, note or other writing to a person or persons who, or some of whom, are dead at the time of its execution, shall be as valid as if such person or persons were then alive, and may be proceeded on in the same manner as if it had been executed in the lifetime of such person or persons and such person or persons had died after its execution.

§55-8-6. Liability of personal representative of deceased joint judgment debtor, obligor, promissor or partner.

The representative of one bound with another, either jointly or as a partner, by judgment, bond, note or otherwise, for the payment of a debt, or the performance or forbearance of an act, or for any other thing, and dying in the lifetime of the latter, may be charged in the same manner as such representative might have been charged, if those bound jointly or as partners had been bound severally as well as jointly, otherwise than as partners.

§55-8-7. Action against makers, drawers, endorsers, acceptors, assignors or absolute guarantors.

(a) The holder of any note, check, draft, bill of exchange or other instrument of any character, whether negotiable or not or any person entitled to judgment for money on contract, in any action at law or proceeding by notice for judgment on motion thereon, may join all or any intermediate number of the persons liable by virtue thereof, whether makers, drawers, endorsers, acceptors, assignors, or absolute guarantors, or may proceed against each separately, although the promise of the makers, or the obligations of the persons otherwise liable, may be joint or several, or joint and several. If notice or other process is not served upon all persons proceeded against, judgment may nevertheless be given against those liable who have been served as provided by law with notice or other process. These actions or proceedings by notice may be had from time to time in the same or any other court until judgment is obtained against every person liable or his personal representative. However, plaintiff shall have satisfaction of but one of two or more judgments rendered on the same demand.

(b) In any action at law, whether in circuit court or magistrate court, on a note or contract, express or implied, for the payment of money, if: (1) The plaintiff files with the complaint an affidavit made by the plaintiff or an agent, stating therein to the best of the affiant's belief the amount of the plaintiff's claim, that the amount is justly due, and the time from which plaintiff claims interest; and (2) a copy of the affidavit together with a copy of any account filed with the complaint is served upon the defendant, the plaintiff is entitled to a judgment on the affidavit and statement of account without further evidence unless the defendant files an answer denying the claim or otherwise makes an appearance before the court denying that the plaintiff is entitled to recover from the defendant on the claim. The affidavit must show the calculation of the amount sought. The calculation is to also include an itemization of the principal and any interest, insurance or other charges of the original obligation. The calculation is also to include an itemization of all credits to the original obligation including credits to principal, interest, insurance, any other charges, rebates of unearned interest, rebates of insurance, rebates of other charges and proceeds of sale of all collateral. If the defendant's pleading or affidavit admits that the plaintiff is entitled to recover from the defendant a sum certain less than that stated in the affidavit filed by the plaintiff, judgment may be taken by the plaintiff for the sum so admitted to be due and the case will be tried as to the residue.

§55-8-8. Joinder of personal representative of decedent as defendant in action under §55-8-7; judgment to affect only estate of decedent.

In every action or motion in which a decedent, if living, could be joined as defendant with another or others under section seven of this article, his personal representative may be joined with him or them, or with the personal representative of any one or more of them. In every such case in which a judgment is rendered against a personal representative, alone or jointly with another or others, such judgment, as to such representative, shall affect only the estate of his decedent, and shall, as to such estate, have the same force and effect as if rendered in an action in which such representative is sued alone. But nothing in this section shall prevent a plaintiff, at his election, from proceeding separately against the representative of any decedent.

§55-8-9. Action by assignee in own name; defenses and setoff; joinder of claims.

The assignee of any bond, note, account, or writing, not negotiable, or other chose in action arising out of contract or injury to personal or real property, may maintain thereupon any action in his own name, without the addition of "assignee," which the original obligee, promisee, payee, contracting party, or owner of such chose in action might have brought; but shall allow all just defenses and sets-off, not only against himself but against the assignor, before the defendant had notice of the assignment. In every such action the plaintiff may unite claims payable to him individually with those payable to him as such assignee, provided it be otherwise proper to join them. But nothing in this section shall be construed to make assignable any right of action not otherwise assignable.

§55-8-10. Assignee entitled to recover from assignor; defenses allowed.

Any assignee mentioned in section nine of this article may recover from any assignor of such writing, whether joined as defendants under section seven of this article, or proceeded against separately, but a remote assignor shall have the benefit of the same defenses as if the suit had been instituted by his immediate assignee.

§55-8-11. Limitation on jurisdiction of equity as to suit by assignee.

A court of equity shall not have jurisdiction of a suit upon a bond, note, or writing, by an assignee or holder thereof, unless it appear that the plaintiff had not an adequate remedy thereon at law.

§55-8-12. Third party may sue on covenant or promise made for his sole benefit.

If a covenant or promise be made for the sole benefit of a person with whom it is not made, or with whom it is made jointly with others, such person may maintain, in his own name, any action thereon which he might maintain in case it had been made with him only, and the consideration had moved from him to the party making such covenant or promise.

§55-8-13. Action of account.

An action of account may be maintained against the personal representative of any guardian or receiver; and also by one joint tenant, tenant in common, or coparcener or his personal representative against the other, or against the personal representative of the other, for receiving more than his just share or proportion.

§55-8-14. Agreements to indemnify against sole negligence of the indemnitee, his agents or employees against public policy; no action maintainable thereon; exceptions.

A covenant, promise, agreement or understanding in or in connection with or collateral to a contract or agreement entered into on or after the effective date of this section, relative to the construction, alteration, repair, addition to, subtraction from, improvement to or maintenance of any building, highway, road, railroad, water, sewer, electrical or gas distribution system, excavation or other structure, project, development or improvement attached to real estate, including moving and demolition in connection therewith, purporting to indemnify against liability for damages arising out of bodily injury to persons or damage to property caused by or resulting from the sole negligence of the indemnitee, his agents or employees is against public policy and is void and unenforceable and no action shall be maintained thereon.

This section does not apply to construction bonds or insurance contracts or agreements.

§55-8-15. Choice of law for computer information agreements.

A choice of law provision in a computer information agreement which provides that the contract is to be interpreted pursuant to the laws of a state that has enacted uniform computer information transactions act, as proposed by the national conference of commissioners on uniform state laws, or any substantially similar law, is voidable and the agreement shall be interpreted pursuant to the laws of this state if the party against whom enforcement of the choice of law provision is sought is a resident of this state or has its principal place of business located in this state. For purposes of this section, a "computer information agreement" means an agreement that would be governed by the uniform computer transactions act or substantially similar law as enacted in the state specified in the choice of law provision if that state's laws were applied to the agreement.

§55-8-16. Choice of law in product liability actions.

(a) It is public policy of this state that, in determining the law applicable to a product liability claim brought by a nonresident of this state against the manufacturer or distributor of a prescription drug or other product, all liability claims at issue shall be governed solely by the product liability law of the place of injury ("lex loci delicti").

(b) The amendments to this section enacted in 2015 shall be applicable prospectively to all civil actions commenced on or after July 1, 2015.

§55-9-1. Gaming contracts void.

Every contract, conveyance, or assurance, of which the consideration, or any part thereof, is money, property, or other thing won or bet at any game, sport, pastime, or wager, or money lent or advanced at the time of any gaming, betting, or wagering, to be used in being so bet or wagered (when the person lending or advancing it knows that it is to be so used) shall be void as between the parties thereto, and as to all persons except such as hold or claim under them in good faith, for value, and without notice of the illegality of the consideration.

§55-9-2. Recovery of money or property lost in gaming.

If any person shall lose to another within twenty-four hours $10 or more, or property of that value, and shall pay or deliver the same, or any part thereof, such loser may recover back from the winner the money or property, or in lieu of the property the value thereof, so lost, by suit in court, or before a justice, according to the amount or value, brought within three months after such payment or delivery. The loser may so recover from the winner, notwithstanding the payment or delivery was to the winner's indorsee, assignee, or transferee. But nothing in this section shall be so construed as to permit a recovery of such property, or its value, from any person (or those claiming under him) other than the winner, when such person has paid value for such property without notice of illegal consideration under which the winner derived his claim of title.

§55-9-3. Recovery of gaming losses by bill in equity; repayment discharges winner from punishment.

Such loser may file a bill in equity against such winner, who shall answer the same, and upon discovery and repayment or redelivery of the money or property so won, or its value, such winner shall be discharged from any forfeiture or punishment which he may have incurred for winning the same.

§55-10-1. Short title.

This article may be cited as the Revised Uniform Arbitration Act.

§55-10-2. Declaration of public policy; legislative findings.

The Legislature finds that:

(1) Arbitration, as a form of alternative dispute resolution, offers in many instances a more efficient and cost-effective alternative to court litigation.

(2) The United States has a well-established federal policy in favor of arbitral dispute resolution, as identified both by the Federal Arbitration Act, 9 U.S.C. §1, et seq., and the decisions of the Supreme Court of the United States.

(3) Arbitration already provides participants with many of the same procedural rights and safeguards as traditional litigation, and ensuring that those rights and safeguards are guaranteed to participants will ensure that arbitration remains a fair and viable alternative to court litigation and guarantee that no party to an arbitration agreement is unfairly prejudiced by agreeing to an arbitration agreement or provision.

§55-10-3. Definitions.

In this article:

"Arbitration organization" means an association, agency, board, commission or other entity that is neutral and initiates, sponsors or administers an arbitration proceeding or is involved in the appointment of an arbitrator.

"Arbitrator" means an individual appointed to render an award, alone or with others, in a controversy that is subject to an agreement to arbitrate.

"Court" means a circuit court in this state.

"Knowledge" means actual knowledge.

"Person" means an individual, corporation, business trust, estate, trust, partnership, limited liability company, association, joint venture or government; governmental subdivision, agency or instrumentality; public corporation; or any other legal or commercial entity.

"Record" means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

§55-10-4. Notice.

(a) Except as otherwise provided in this article, a person gives notice to another person by taking action that is reasonably necessary to inform the other person in ordinary course, whether or not the other person acquires knowledge of the notice.

(b) A person has notice if the person has knowledge of the notice or has received notice.

(c) A person receives notice when it comes to the person's attention or the notice is delivered at the person's place of residence or place of business or at another location held out by the person as a place of delivery of such communications.

§55-10-5. When article applies.

(a) This article governs an agreement to arbitrate made on or after July 1, 2015.

(b) This article governs an agreement to arbitrate made before July 1, 2015, if all the parties to the agreement or to the arbitration proceeding so agree in a record. Such record may be made at any point and, for the mutual covenants contained therein, no additional consideration is required by either party.

(c) Any agreement to arbitrate renewed of continued on or after July 1, 2015, shall be governed by this agreement and, for the mutual covenants contained therein, no additional consideration is required by either party.

§55-10-6. Effect of agreement to arbitrate; nonwaivable provisions.

(a) Except as otherwise provided in subsections (b) and (c) of this section, a party to an agreement to arbitrate or to an arbitration proceeding may waive or the parties may vary the effect of the requirements of this article to the extent permitted by law.

(b) Before a controversy arises that is subject to an agreement to arbitrate, a party to the agreement may not:

(1) Waive or agree to vary the effect of the requirements of sections seven, eight, ten, nineteen, twenty-eight or thirty of this article;

(2) Agree to unreasonably restrict the right under section eleven of this article to notice of the initiation of an arbitration proceeding;

(3) Agree to unreasonably restrict the right under section fourteen of this article to disclosure of any facts by a neutral arbitrator; or

(4) Waive the right under section eighteen of this article of a party to an agreement to arbitrate to be represented by a lawyer at any proceeding or hearing under this article, but an employer and a labor organization may waive the right to representation by a lawyer in a labor arbitration.

(c) A party to an agreement to arbitrate or arbitration proceeding may not waive, or the parties may not vary the effect of, the requirements of this section or sections five, nine, sixteen, twenty, twenty-two, twenty-four, twenty-five, twenty-six, twenty-seven, thirty-one, thirty-two or thirty-three of this article.

§55-10-7. Application for judicial relief.

(a) Except as otherwise provided in section thirty of this article, an application for judicial relief under this article must be made by motion to a West Virginia circuit court as specified in section twenty-nine of this article and heard in accordance with the rules of civil procedure governing motions.

(b) Unless a civil action involving the agreement to arbitrate is pending, notice of an initial motion to the court under this article must be served in the manner provided by law for the service of a summons in a civil action. Otherwise, notice of the motion must be given in the manner provided by the rules of civil procedure for serving motions in pending cases.

§55-10-8. Validity of agreement to arbitrate.

(a) An agreement contained in a record to submit to arbitration any existing or subsequent controversy arising between the parties to the agreement is valid, enforceable and irrevocable except upon a ground that exists at law or in equity for the revocation of a contract.

(b) The court shall decide whether an agreement to arbitrate exists or a controversy is subject to an agreement to arbitrate.

(c) An arbitrator shall decide whether a condition precedent to arbitration has been fulfilled and whether a contract containing a valid agreement to arbitrate is enforceable: Provided, That the decision as to whether the arbitration agreement is enforceable shall be made by a court of competent jurisdiction, if requested by any party to the arbitration or agreement, pursuant to section nine of this article.

(d) If a party to a judicial proceeding challenges the existence of, or claims that a controversy is not subject to, an agreement to arbitrate, the arbitration proceeding may continue pending final resolution of the issue by the court, unless the court otherwise orders.

§55-10-9. Motion to compel or stay arbitration.

(a) On motion of a person showing an agreement to arbitrate and alleging another person's refusal to arbitrate pursuant to the agreement:

(1) If the refusing party does not appear or does not oppose the motion, the court shall order the parties to arbitrate; and

(2) If the refusing party opposes the motion, the court shall proceed summarily to decide the issue and order the parties to arbitrate unless it finds that there is no enforceable agreement to arbitrate.

(b) On motion of a person alleging that an arbitration proceeding has been initiated or threatened but that there is no agreement to arbitrate, the court shall proceed summarily to decide the issue. If the court finds that there is an enforceable agreement to arbitrate, it shall order the parties to arbitrate.

(c) If the court finds that there is no enforceable agreement, it may not, pursuant to subsection (a) or (b) of this section, order the parties to arbitrate.

(d) The court may not refuse to order arbitration because the claim subject to arbitration lacks merit or grounds for the claim have not been established.

(e) If a proceeding involving a claim referable to arbitration under an alleged agreement to arbitrate is pending in court, a motion under this section must be made in that court. Otherwise a motion under this section may be made in any court as provided in section twenty-nine of this article.

(f) If a party makes a motion to the court to order arbitration, the court on just terms shall stay any judicial proceeding that involves a claim alleged to be subject to the arbitration until the court renders a final decision under this section.

(g) If the court orders arbitration, the court on just terms shall stay any judicial proceeding that involves a claim subject to the arbitration. If a claim subject to the arbitration is severable, the court may limit the stay to that claim.

§55-10-10. Provisional remedies.

(a) Before an arbitrator is appointed and is authorized and able to act, the court, upon motion of a party to an arbitration proceeding and for good cause shown, may enter an order for provisional remedies to protect the effectiveness of the arbitration proceeding to the same extent and under the same conditions as if the controversy were the subject of a civil action.

(b) After an arbitrator is appointed and is authorized and able to act:

(1) The arbitrator may issue such orders for provisional remedies, including interim awards, as the arbitrator finds necessary to protect the effectiveness of the arbitration proceeding and to promote the fair and expeditious resolution of the controversy to the same extent and under the same conditions as if the controversy were the subject of a civil action; and

(2) A party to an arbitration proceeding may move the court for a provisional remedy only if the matter is urgent and the arbitrator is not able to act timely or the arbitrator cannot provide an adequate remedy.

(c) A party does not waive a right of arbitration by making a motion under subsection (a) or (b) of this section.

§55-10-11. Initiation of arbitration.

(a) A person initiates an arbitration proceeding by giving notice in a record to the other parties to the agreement to arbitrate in the agreed manner between the parties or, in the absence of agreement, by certified or registered mail, return receipt requested and obtained, or by service as authorized for the commencement of a civil action. The notice must describe the nature of the controversy and the remedy sought.

(b) Unless a person objects for lack or insufficiency of notice under section seventeen of this article not later than the beginning of the arbitration hearing, the person by appearing at the hearing waives any objection to lack of or insufficiency of notice.

§55-10-12. Consolidation of separate arbitration proceedings.

(a) Except as otherwise provided in subsection (c) of this section, upon motion of a party to an agreement to arbitrate or to an arbitration proceeding, the court may order consolidation of separate arbitration proceedings as to all or some of the claims if:

(1) There are separate agreements to arbitrate or separate arbitration proceedings between the same persons or one of them is a party to a separate agreement to arbitrate or a separate arbitration proceeding with a third person;

(2) The claims subject to the agreements to arbitrate arise in substantial part from the same transaction or series of related transactions;

(3) The existence of a common issue of law or fact creates the possibility of conflicting decisions in the separate arbitration proceedings; and

(4) Prejudice resulting from a failure to consolidate is not outweighed by the risk of undue delay or prejudice to the rights of or hardship to parties opposing consolidation.

(b) The court may order consolidation of separate arbitration proceedings as to some claims and allow other claims to be resolved in separate arbitration proceedings.

(c) The court may not order consolidation of the claims of a party to an agreement to arbitrate if the agreement prohibits consolidation.

§55-10-13. Appointment of arbitrator; service as a neutral arbitrator.

(a) If the parties to an agreement to arbitrate agree on a method for appointing an arbitrator, that method must be followed, unless the method fails. If the parties have not agreed on a method, the agreed method fails or an arbitrator appointed fails or is unable to act and a successor has not been appointed, the court, on motion of a party to the arbitration proceeding, shall appoint the arbitrator. An arbitrator so appointed has all the powers of an arbitrator designated in the agreement to arbitrate or appointed pursuant to the agreed method.

(b) An individual who has a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party may not serve as an arbitrator required by an agreement to be neutral.

§55-10-14. Disclosure by arbitrator.

(a) Before accepting appointment, an individual who is requested to serve as an arbitrator, after making a reasonable inquiry, shall disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any known facts that a reasonable person would consider likely to affect the impartiality of the arbitrator in the arbitration proceeding, including:

(1) A financial or personal interest in the outcome of the arbitration proceeding; and

(2) An existing or past relationship with any of the parties to the agreement to arbitrate or the arbitration proceeding, their counsel or representatives, a witness or another arbitrator.

(b) An arbitrator has a continuing obligation to disclose to all parties to the agreement to arbitrate and arbitration proceeding and to any other arbitrators any facts that the arbitrator learns after accepting appointment which a reasonable person would consider likely to affect the impartiality of the arbitrator.

(c) If an arbitrator discloses a fact required by subsection (a) or (b) of this section to be disclosed and a party timely objects to the appointment or continued service of the arbitrator based upon the fact disclosed, the objection may be a ground under section twenty-five of this article for vacating an award made by the arbitrator.

(d) If the arbitrator did not disclose a fact as required by subsection (a) or (b) of this section, upon timely objection by a party, the court, under section twenty-five of this article, may vacate an award.

(e) An arbitrator appointed as a neutral arbitrator who does not disclose a known, direct and material interest in the outcome of the arbitration proceeding or a known, existing and substantial relationship with a party is presumed to act with evident partiality under section twenty-five of this article.

(f) If the parties to an arbitration proceeding agree to the procedures of an arbitration organization or any other procedures for challenges to arbitrators before an award is made, substantial compliance with those procedures is a condition precedent to a motion to vacate an award on that ground under section twenty-five of this article.

§55-10-15. Action by majority.

If there is more than one arbitrator, the powers of an arbitrator must be exercised by a majority of the arbitrators, but all of them shall conduct the hearing under section seventeen of this article.

§55-10-16. Immunity of arbitrator; competency to testify; attorney's fees and costs.

(a) An arbitrator or an arbitration organization acting in that capacity is immune from civil liability to the same extent as a judge of a court of this state acting in a judicial capacity.

(b) The immunity afforded by this section supplements any immunity under other law.

(c) The failure of an arbitrator to make a disclosure required by section fourteen of this article does not cause any loss of immunity under this section.

(d) In a judicial, administrative or similar proceeding, an arbitrator or representative of an arbitration organization is not competent to testify, and may not be required to produce records as to any statement, conduct, decision or ruling occurring during the arbitration proceeding, to the same extent as a judge of a court of this state acting in a judicial capacity. This subsection does not apply:

(1) To the extent necessary to determine the claim of an arbitrator, arbitration organization or representative of the arbitration organization against a party to the arbitration proceeding; or

(2) To a hearing on a motion to vacate an award under section twenty-five of this article if the moving party establishes prima facie that a ground for vacating the award exists.

(e) If a person commences a civil action against an arbitrator, arbitration organization or representative of an arbitration organization arising from the services of the arbitrator, organization or representative or if a person seeks to compel an arbitrator or a representative of an arbitration organization to testify or produce records in violation of subsection (d) of this section, and the court decides that the arbitrator, arbitration organization or representative of an arbitration organization is immune from civil liability or that the arbitrator or representative of the organization is not competent to testify, the court shall award to the arbitrator, organization or representative reasonable attorneys' fees and other reasonable expenses of litigation.

§55-10-17. Arbitration process.

(a) An arbitrator may conduct an arbitration in such manner as the arbitrator considers appropriate for a fair and expeditious disposition of the proceeding. The authority conferred upon the arbitrator includes the power to hold conferences with the parties to the arbitration proceeding before the hearing and, among other matters, determine the admissibility, relevance, materiality and weight of any evidence.

(b) An arbitrator may decide a request for summary disposition of a claim or particular issue:

(1) If all interested parties agree; or

(2) Upon request of one party to the arbitration proceeding if that party gives notice to all other parties to the proceeding, and the other parties have a reasonable opportunity to respond.

(c) If an arbitrator orders a hearing, the arbitrator shall set a time and place and give notice of the hearing not less than five days before the hearing begins. Unless a party to the arbitration proceeding makes an objection to lack or insufficiency of notice not later than the beginning of the hearing, the party's appearance at the hearing waives the objection. Upon request of a party to the arbitration proceeding and for good cause shown, or upon the arbitrator's own initiative, the arbitrator may adjourn the hearing, from time to time, as necessary but may not postpone the hearing to a time later than that fixed by the agreement to arbitrate for making the award unless the parties to the arbitration proceeding consent to a later date. The arbitrator may hear and decide the controversy upon the evidence produced although a party who was duly notified of the arbitration proceeding did not appear. The court, on request, may direct the arbitrator to conduct the hearing promptly and render a timely decision.

(d) At a hearing under subsection (c) of this section, a party to the arbitration proceeding has a right to be heard, to present evidence material to the controversy and to cross examine witnesses appearing at the hearing.

(e) If an arbitrator ceases or is unable to act during the arbitration proceeding, a replacement arbitrator must be appointed in accordance with section thirteen of this article to continue the proceeding and to resolve the controversy.

§55-10-18. Representation by lawyer.

A party to an arbitration proceeding may be represented by a lawyer licensed to practice law in the State of West Virginia.

§55-10-19. Witnesses; subpoenas; depositions; discovery.

(a) An arbitrator may issue a subpoena for the attendance of a witness and for the production of records and other evidence at any hearing and may administer oaths. A subpoena must be served in the manner for service of subpoenas in a civil action and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner for enforcement of subpoenas in a civil action.

(b) In order to make the proceedings fair, expeditious and cost effective, upon request of a party to or a witness in an arbitration proceeding, an arbitrator may permit a deposition of any witness to be taken for use as evidence at the hearing, including a witness who cannot be subpoenaed for or is unable to attend a hearing. The arbitrator shall determine the conditions under which the deposition is taken.

(c) An arbitrator may permit such discovery as the arbitrator decides is appropriate in the circumstances, taking into account the needs of the parties to the arbitration proceeding and other affected persons and the desirability of making the proceeding fair, expeditious and cost effective.

(d) If an arbitrator permits discovery under subsection (c) of this section, the arbitrator may order a party to the arbitration proceeding to comply with the arbitrator's discovery-related orders, issue subpoenas for the attendance of a witness and for the production of records and other evidence at a discovery proceeding and take action against a noncomplying party to the extent a court could if the controversy were the subject of a civil action in this state.

(e) An arbitrator may issue a protective order to prevent the disclosure of privileged information, confidential information, trade secrets and other information protected from disclosure to the extent a court could if the controversy were the subject of a civil action in this state.

(f) All laws compelling a person under subpoena to testify and all fees for attending a judicial proceeding, a deposition or a discovery proceeding as a witness apply to an arbitration proceeding as if the controversy were the subject of a civil action in this state.

(g) The court may enforce a subpoena or discovery-related order for the attendance of a witness within this state and for the production of records and other evidence issued by an arbitrator in connection with an arbitration proceeding in another state upon conditions determined by the court so as to make the arbitration proceeding fair, expeditious and cost effective. A subpoena or discovery-related order issued by an arbitrator in another state must be served in the manner provided by law for service of subpoenas in a civil action in this state and, upon motion to the court by a party to the arbitration proceeding or the arbitrator, enforced in the manner provided by law for enforcement of subpoenas in a civil action in this state.

§55-10-20. Judicial enforcement of preaward ruling by arbitrator.

If an arbitrator makes a preaward ruling in favor of a party to the arbitration proceeding, the party may request the arbitrator to incorporate the ruling into an award under section twenty-one of this article. A prevailing party may make a motion to the court for an expedited order to confirm the award under section twenty-four of this article, in which case the court shall summarily decide the motion. The court shall issue an order to confirm the award unless the court vacates, modifies or corrects the award under section twenty-five or twenty-six of this article.

§55-10-21. Award.

(a) An arbitrator shall make a record of an award. Such record should set forth findings of fact and conclusions of law that support the award. The record must be signed or otherwise authenticated by any arbitrator who concurs with the award. The arbitrator or the arbitration organization shall give notice of the award, including a copy of the award, to each party to the arbitration proceeding.

(b) An award must be made within the time specified by the agreement to arbitrate or, if not specified therein, within the time ordered by the court. The court may extend, or the parties to the arbitration proceeding may agree in a record to extend, the time. The court or the parties may do so within or after the time specified or ordered. A party waives any objection that an award was not timely made unless the party gives notice of the objection to the arbitrator before receiving notice of the award.

(c) This section does not apply to an arbitration conducted or administered by a self-regulatory organization as defined by the Securities Exchange Act of 1934 (15 U. S.C. §78C), the Commodity Exchange Act (7 U. S. C. §1, et seq.) or regulations adopted under those acts.

§55-10-22. Change of award by arbitrator.

(a) On motion to an arbitrator by a party to an arbitration proceeding, the arbitrator may modify or correct an award:

(1) Upon a ground stated in section twenty-six of this article;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(b) A motion under subsection (a) of this section must be made and notice given to all parties within twenty days after the moving party receives notice of the award.

(c) A party to the arbitration proceeding must give notice of any objection to the motion within ten days after receipt of the notice.

(d) If a motion to the court is pending under section twenty-four, twenty-five or twenty-six of this article, the court may submit the claim to the arbitrator to consider whether to modify or correct the award:

(1) Upon a ground stated in section twenty-four of this article;

(2) Because the arbitrator has not made a final and definite award upon a claim submitted by the parties to the arbitration proceeding; or

(3) To clarify the award.

(e) An award modified or corrected pursuant to this section is subject to sections twenty-one, twenty-four, twenty-five and twenty-six of this article.

§55-10-23. Remedies; fees and expenses of arbitration proceeding.

(a) An arbitrator may award punitive damages or other exemplary relief if such an award is authorized by law in a civil action involving the same claim and the evidence produced at the hearing justifies the award under the legal standards otherwise applicable to the claim.

(b) An arbitrator may award reasonable attorney's fees and other reasonable expenses of arbitration if such an award is authorized by law in a civil action involving the same claim or by the agreement of the parties to the arbitration proceeding.

(c) As to all remedies other than those authorized by subsections (a) and (b) of this section, an arbitrator may order such remedies as the arbitrator considers just and appropriate under the circumstances of the arbitration proceeding. The fact that such a remedy could not or would not be granted by the court is not a ground for refusing to confirm an award under section twenty-four of this article or for vacating an award under section twenty-three of this article.

(d) An arbitrator's award shall provide for the payment of expenses and fees, together with other expenses to be split among the parties, as provided by the parties' agreement or the rules of the arbitration organization.

(e) If an arbitrator awards punitive damages or other exemplary relief under subsection (a) of this section, the arbitrator shall specify in the award the basis in fact justifying and the basis in law authorizing the award and state separately the amount of the punitive damages or other exemplary relief.

§55-10-24. Confirmation of award.

After a party to an arbitration proceeding receives notice of an award, the party may make a motion to the court for an order confirming the award at which time the court shall issue a confirming order unless the award is modified or corrected pursuant to section twenty-two or twenty-six of this article or is vacated pursuant to section twenty-five of this article.

§55-10-25. Vacating award.

(a) Upon motion to the court by a party to an arbitration proceeding, the court shall vacate an award made in the arbitration proceeding if:

(1) The award was procured by corruption, fraud or other undue means;

(2) There was:

(A) Evident partiality by an arbitrator appointed as a neutral arbitrator;

(B) Corruption by an arbitrator; or

(C) Misconduct by an arbitrator prejudicing the rights of a party to the arbitration proceeding;

(3) An arbitrator refused to postpone the hearing upon showing of sufficient cause for postponement, refused to consider evidence material to the controversy or otherwise conducted the hearing contrary to section seventeen of this article, so as to prejudice substantially the rights of a party to the arbitration proceeding;

(4) An arbitrator exceeded the arbitrator's powers;

(5) There was no agreement to arbitrate, unless the person participated in the arbitration proceeding without raising the objection under section seventeen of this article not later than the beginning of the arbitration hearing; or

(6) The arbitration was conducted without proper notice of the initiation of an arbitration as required in section nine so as to prejudice substantially the rights of a party to the arbitration proceeding.

(b) A motion under this section must be filed within ninety days after the moving party receives notice of the award pursuant to section twenty-one of this article or within ninety days after the moving party receives notice of a modified or corrected award pursuant to section twenty-two of this article, unless the moving party alleges that the award was procured by corruption, fraud or other undue means, in which case the motion must be made within ninety days after the ground is known or by the exercise of reasonable care would have been known by the moving party.

(c) If the court vacates an award on a ground other than that set forth in subdivision (5), subsection (a) of this section, it may order a rehearing. If the award is vacated on a ground stated in subdivision (1) or (2), subsection (a) of this section, the rehearing must be before a new arbitrator. If the award is vacated on a ground stated in subdivision (3), (4) or (6), subsection (a) of this section, the rehearing may be before the arbitrator who made the award or the arbitrator's successor. The arbitrator must render the decision in the rehearing within the same time as that provided in section twenty-one of this article for an award.

(d) If the court denies a motion to vacate an award, it shall confirm the award unless a motion to modify or correct the award is pending.

§55-10-26. Modification or correction of award.

(a) Upon motion made within ninety days after the moving party receives notice of the award pursuant to section nineteen of this article or within ninety days after the moving party receives notice of a modified or corrected award pursuant to section twenty-two of this article, the court shall modify or correct the award if:

(1) There was an evident mathematical miscalculation or an evident mistake in the description of a person, thing or property referred to in the award;

(2) The arbitrator has made an award on a claim not submitted to the arbitrator and the award may be corrected without affecting the merits of the decision upon the claims submitted; or

(3) The award is imperfect in a matter of form not affecting the merits of the decision on the claims submitted.

(b) If a motion made under subsection (a) of this section is granted, the court shall modify or correct and confirm the award as modified or corrected. Otherwise, unless a motion to vacate is pending, the court shall confirm the award.

(c) A motion to modify or correct an award pursuant to this section may be joined with a motion to vacate the award.

§55-10-27. Judgment on award; attorneys' fees and litigation expenses.

(a) Upon granting an order confirming, vacating without directing a rehearing, modifying or correcting an award, the court shall enter a judgment in conformity therewith. The judgment may be recorded, docketed and enforced as any other judgment in a civil action.

(b) A court may allow reasonable costs of the motion and subsequent judicial proceedings.

(c) On application of a prevailing party to a contested judicial proceeding under section twenty-four, twenty-five or twenty-six of this article, the court may add reasonable attorneys' fees and other reasonable expenses of litigation incurred in a judicial proceeding after the award is made to a judgment confirming, vacating without directing a rehearing, modifying or correcting an award.

§55-10-28. Jurisdiction.

(a) A court of this state having jurisdiction over the controversy and the parties may enforce an agreement to arbitrate.

(b) An agreement to arbitrate providing for arbitration in this state confers exclusive jurisdiction on the court to enter judgment on an award under this article.

§55-10-29. Venue.

A motion pursuant to section seven of this article must be made in the circuit court of the county in which the agreement to arbitrate specifies the arbitration hearing is to be held or, if the hearing has been held, in the circuit court of the county in which it was held. Otherwise, the motion may be made in the court of any county in which an adverse party resides or has a place of business or, if no adverse party has a residence or place of business in this state, in the circuit court of Kanawha County, West Virginia. All subsequent motions must be made in the court hearing the initial motion unless the court otherwise directs.

§55-10-30. Appeals.

(a) An appeal may be taken from:

(1) An order denying a motion to compel arbitration;

(2) An order granting or denying a motion to compel arbitration issued in an action filed pursuant to the provisions of chapter forty-six-a of this code;

(3) An order granting a motion to stay arbitration;

(4) An order confirming or denying confirmation of an award;

(5) An order modifying or correcting an award;

(6) An order vacating an award without directing a rehearing; or

(7) A final judgment entered pursuant to this article.

(b) An appeal under this section must be taken as from an order or a judgment in a civil action.

§55-10-31. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§55-10-32. Electronic Signatures in Global and National Commerce Act.

The provisions of this article governing the legal effect, validity or enforceability of electronic records or signatures, and of contracts performed with the use of such records or signatures, shall conform to the requirements of Section 102 of the Electronic Signatures in Global and National Commerce Act, Pub. L. No. 106-229, 114 Stat. 464 (2000).

§55-10-33. Savings clause.

This article does not affect an action or proceeding commenced or right accrued before this article takes effect.

§55-11-1. Lis pendens record.

There shall be kept in the office of the clerk of the county court of each county of this state a book to be called the "lis pendens record," which shall be a public record.

§55-11-2. Notice of lis pendens; recordation and indexing thereof.

Whenever any person shall commence a suit, action, attachment, or other proceeding, whether at law or in equity, to enforce any lien upon, right to, or interest in designated real estate, the pendency of such suit, action, attachment or other proceeding shall not operate as constructive notice thereof to any pendente lite purchaser or encumbrancer of such real estate for a valuable consideration and without notice, until such person shall file for recordation with the clerk of the county court of each county where the real estate sought to be affected is situated, a memorandum or notice of the pendency of such suit, action, attachment or other proceeding, stating the title of the cause, the court in which it is pending, the names of all the parties to such proceeding, a description of the real estate to be affected, the nature of the lien, right or interest sought to be enforced against the same, and name of the person whose estate therein is intended to be affected: Provided, however, That where the lien, right or interest asserted is based upon a judgment, decree, claim, contract or other instrument which has been docketed or recorded according to law in the office of the clerk of the county court of the county wherein the real estate is situated, and has thus become a matter of public record, the failure to file the notice herein mentioned shall not operate to defeat the enforcement of such lien, right or interest in the real estate as against such pendente lite purchaser or encumbrancer.

The clerk of every such county court shall, without delay, record such memorandum or notice in the "lis pendens record," note upon the record the day and hour when such notice was filed for recordation, and index the same in the names of the parties.

§55-11-3. Limitations on notice of lis pendens.

Constructive notice of the pendency of a suit, action, attachment or other proceeding, arising from the filing for recordation of a notice or memorandum in accordance with the provisions of section two of this article, shall continue to operate as constructive notice thereof to any pendente lite purchaser or encumbrancer of the real estate affected, for a period of ten years next after the date when such notice was filed for recordation. Where constructive notice arises as aforesaid, that notice may be renewed or extended for additional ten year periods by the filing for recordation, as provided in section two of this article, a similar memorandum or notice of lis pendens within ten years from the date of recordation of the last such memorandum or notice.

§55-12-1. Order for sale of property; terms; sale by special commissioner or receiver; bond; deposit of proceeds; penalties.

A court, in a suit properly pending therein, may make a decree or order for the sale of property in any part of the state, and may direct the sale to be for cash, or on such credit and terms as it may deem best; and it may appoint a special commissioner or special receiver to make such sale. Every special commissioner or special receiver appointed under this section shall be a resident of the State of West Virginia, and he shall make no sale and shall receive no money under a decree or order until he give a bond with approved security before the said court or its clerk, conditioned as the law requires for the faithful accounting therefor and with the further condition that he will deposit in his name as such special commissioner or special receiver all moneys received by him as such special commissioner or special receiver in one or more banks in the county in which the suit or cause is properly instituted, and will not remove the same therefrom without the order or decree of distribution of the presiding judge; and any special commissioner or special receiver violating the conditions of his bond or the provisions of this section by making a sale or receiving money before executing bond as aforesaid, or failing to deposit the money in one or more banks in the county in which the suit or cause is properly instituted as aforesaid, or failing to keep the same therein subject to a decree of distribution, shall be guilty of a misdemeanor and, shall be punished by a fine of not less than $25 nor more than $100 and may be imprisoned in the county jail for a term not to exceed ten days.

§55-12-2. Notice of sale; contents; publication.

Whenever a court shall decree the sale of real estate, if it appear to the court that such real estate is of the value of $500 or more, it shall prescribe in the decree that such sale shall be advertised in a newspaper by the commissioner or person appointed to make the sale. It shall always be advertised as a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and the publication area for such publication shall be the county where the real estate to be sold is situate. In the advertisement the commissioner shall state the time, terms and place of sale, together with a description of the property to be sold: Provided, That nothing herein shall be construed to limit the power of the court to direct sales of lands to be advertised in newspapers where the value may be less than $500.

§55-12-3. Certificate as to bond to be appended to notice of sale; effect thereof.

Every notice of such sale shall have appended to it the certificate of such clerk that bond and security has been given by the commissioner or special receiver as required by law. When such certificate shall have been published (or posted, when the notice is posted in lieu of publication) with an advertisement of the sale of property, or when such bond shall have been given prior to a sale not publicly advertised, any person purchasing such property in pursuance of such advertisement, or in pursuance of the decree or order of sale, shall be relieved of all liability for the purchase money, or any part thereof, which he may pay to any commissioner or special receiver as to whom a proper certificate shall have been appended to such advertisement, or who shall have given the bond aforesaid.

§55-12-4. Report of sale.

The said special commissioner or special receiver shall, after the last payment required by said decree of sale or decree confirming said sale is made, make report to the court in writing, at the next term of the court thereafter, showing how the proceeds of said sale have been applied by him which report shall be approved and entered of record in the chancery order book and filed with the papers in the cause. If from any cause said report showing a final settlement cannot be made within the time aforesaid, the court may enter an order extending the time for a final report to be made. If said commissioner or special receiver fail to make such report, as aforesaid, he shall be deemed guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than $50 nor more than $500.

§55-12-5. When sheriff to execute decree or order of sale.

Where no special commissioner or special receiver is appointed for the purpose, a decree or order of court for the sale of property shall be executed by the sheriff who attends such court, unless the place of sale be out of his county, in which case the sale shall be by the sheriff of the county wherein the place of sale is. Any sheriff or other officer receiving money under any order or decree shall pay the same and account therefor as the court may order; and if he fail so to do, he and the sureties in his official bond shall be liable therefor.

§55-12-6. Rate of commission for services of special commissioner.

For the services of commissioners or officers under any decree or order for a sale, including the collection and paying over of the proceeds, there shall not be allowed any greater commission than five percent of the amount received by them, unless the court otherwise order. And if a sale be made by one commissioner or officer and the proceeds be collected by another, the court under whose decree or order they acted shall apportion the commission between them as may be just.

§55-12-7. Appointment of commissioner to execute deed; effect of execution.

A court of law or equity, in a suit in which it is proper to decree or order the execution of any deed or writing, may appoint a commissioner to execute the same; and the execution thereof shall be as valid to pass, release, or extinguish the right, title and interest of the party on whose behalf it is executed, as if such party had been at the time capable in law of executing the same and had executed it.

§55-12-8. Title of purchaser not affected by reversal of decree of sale; restitution of proceeds.

If a sale of property be made under a decree or order of a court, and such sale be confirmed, though such decree or order be afterwards reversed or set aside, the title of the purchaser at such sale shall not be affected thereby; but there may be restitution of the proceeds of sale to those entitled.

§55-12A-1. Legislative intent.

It is the intent of the Legislature, in empowering the circuit courts of the state, as provided by this article, to facilitate development of coal, oil, gas, and other minerals, as part of the public policy of the state, by removing certain barriers to such development caused by interests in minerals owned by unknown or missing owners or by abandoning owners.

§55-12A-2. Definitions.

As used in this article, the following definitions shall apply:

(1) "Abandoning owner" means any person, vested with title to any interest in minerals, who is proved to have abandoned the interest, that is, to have relinquished any right to possess or enjoy the interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person.

(2) "Development of the minerals" or "mineral development" means (a) mining coal by any method, or (b) drilling for and producing oil or gas by conventional techniques, or by enhanced recovery by injection of fluids of any kind into the producing formation, or (c) utilization of a gas-bearing formation as an underground gas storage reservoir within the meaning of article nine, chapter twenty-two of this code, or (d) production of other minerals by any method.

(3) "Interest in minerals" means any interest, real or personal, in coal, oil, gas or any other mineral, for which interest the property taxes are not delinquent as of the date of the filing of a petition under this article.

(4) "Surface owner" means any person vested with any interest in fee in the surface estate overlying the particular minerals sought to be developed under this article. A surface owner's rights under this article shall be subject to any deed of trust or other security instrument, lien, surface lease, easement or other nonpossessory interest in the surface owned by any other person; but such persons other than the surface owner shall have no right to notice and no standing to appear and be heard hereunder.

(5) "Unknown or missing owner" means any person, vested with title to any interest in minerals, whose present identity or location cannot be determined from the records of the clerk of the county commission, the sheriff, the assessor and the clerk of the circuit court in the county in which the interest is located or by diligent inquiry in the vicinity of the owner's last known place of residence, and shall include such owner's heirs, successors and assigns not known to be alive.

§55-12A-3. Jurisdiction of the circuit court.

The circuit court of the county wherein the minerals sought to be leased, or the major portion thereof, are situated shall have jurisdiction of the proceedings authorized by this article.

§55-12A-4. When court may appoint special commissioner; persons authorized to institute proceedings.

(a) If the title to any mineral interest is vested in an unknown or missing owner or an abandoning owner and it is proved that the development of the minerals would be advantageous to a prudent owner, and if it appears that the development of the minerals furthers the public policy stated in section one of this article, the circuit court of the county having jurisdiction under section three of this article shall have the power to appoint a special commissioner and authorize the special commissioner to sell, execute and deliver a valid lease of the mineral interest on terms and conditions customary in the area for the mineral interest to be leased. The lease shall continue in full force and effect so long as there are operations under its terms unless the lease has previously expired by its own terms.

(b) A petition to the circuit court for the appointment of a special commissioner may be instituted by any person who is:

(1) Vested with an interest in fee in the surface estate overlying the particular minerals sought to be developed; or

(2) Vested with an interest in fee in the particular minerals sought to be developed; or

(3) The lessee or the assignee or successor to the lessee, under a valid and subsisting mineral lease, the lessor of which is a person entitled to file a petition by reason of subdivision (2) of this subsection.

§55-12A-5. Persons to be joined as defendants; contents of verified petition; notice; guardian ad litem.

(a) The person filing a petition under this article shall join as defendants to the action all unknown or missing owners or abandoning owners having record title to the particular minerals sought to be developed, and the unknown heirs, successors and assigns of all such owners not known to be alive. All persons not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the mineral interests sought to be leased, shall be fully bound by the proceedings hereunder.

(b) The petition shall be verified. It shall contain allegations of the facts showing (1) the entitlement of the petitioner to file the petition, (2) an identification of the defendants and the mineral interest of each as far as practical under the circumstances, (3) a description of the tract of land which is the subject of the petition, (4) the interest in the particular minerals sought to be developed, (5) the nature of the proposed development of the minerals, (6) the efforts to locate unknown or missing owners, if any, (7) the relinquishment by abandoning owners, if any, of any right to possess or enjoy their interest with the expressed intention of terminating ownership of the interest, but without vesting the ownership in any other person, (8) such other information known to the petitioner which might be helpful in identifying or locating the present owners thereof, and, as exhibits to the petition, (9) a certified copy of the most recent recorded instrument embracing the interest to be leased, (10) such additional instruments as are necessary to show the vesting of title to the minerals in the last record owner thereof, and (11) a certified copy of any competing lease or easement of record, that is to say, a lease or easement from landowners who are not defendants, embracing all or part of the tract of land which is the subject of the petition, for any mineral development by the lessee or easement owner of record of the minerals sought by the petition; and the petition may contain allegations of the facts showing that (12) mineral development would be advantageous to the defendants and would further the public policy stated in section one of this article; and the prayer shall be for the court to order the sale of a lease covering the subject mineral interest under section six of this article, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest for seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest.

(c) If personal service of process is possible, it shall be made as provided by the West Virginia rules of civil procedure. In addition, immediately upon the filing of the petition, the petitioner shall (1) publish a Class III legal advertisement in compliance with the provisions of article three, chapter fifty-nine of this code, and (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county wherein the mineral estate or the larger portion thereof lies. Both the advertisement and the lis pendens notice shall set forth (1) the names of the petitioner and the defendants, as they are known

to be by the exercise of reasonable diligence by the petitioner, and their last known addresses, (2) the date and record data of the instrument or other conveyance which immediately created the mineral interest, (3) an adequate description of the land as contained therein, (4) the source of title of the last known owners of the mineral interests, and (5) a statement that the action is brought for the purpose of authorizing the execution and delivery of a valid and present mineral lease for development of the particular minerals described in the petition, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest within seven years after the date of the lease, for the court to order a conveyance of the defendant's mineral interest under section seven of this article, subject to the lease, to the owner of the surface overlying the mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there be such, of all named defendants. In addition, the court may in its discretion order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown or missing owners.

(d) The circuit court shall appoint a guardian ad litem for any unknown or missing owner or abandoning owner and their unknown heirs, successors and assigns not known to be alive. The compensation and expenses of the guardian ad litem shall be fixed by the court and paid by the petitioner under terms ordered by the court.

§55-12A-6. Appointment of a special commissioner; sale of lease; special commissioner's report; when court not to authorize lease; investment of lease proceeds; search for owner; period during which unknown or missing owner or abandoning owner may establish identity and title.

(a) If upon presentation to the court of the petition, and the failure of the named defendants or their heirs, successors and assigns to answer the petition and deny material allegations in the complaint within the time to answer under the West Virginia rules of civil procedure, the court may accept the allegations of the verified petition, excluding allegations made upon information and belief, as prima facie proof of the facts alleged; and if it further appears to the court that (1) the petitioner has met the requirements for a lease under this article, including the evidentiary requirements of section five-b and the notice requirements of section five-c, (2) a diligent effort has been made to identify and locate the present unknown or missing owners and abandoning owners, and (3) the mineral development sought in the petition would be advantageous to the defendants and would further the public policy stated in section one of this article, the court shall appoint a special commissioner therefor and authorize the special commissioner to sell, execute and deliver a valid lease covering the mineral interests in and underlying the lands for the particular mineral development sought in the petition: Provided, That no order authorizing the special commissioner to sell, execute or deliver a lease of said mineral interest, shall be entered sooner than six months following filing of the petition, and the court may in its discretion direct the petitioner to make further efforts to locate the missing or unknown owners or abandoning owners.

(b) Should the court appoint a special commissioner pursuant to subsection (a) of this section, the order of the court shall also (1) require the special commissioner to give a bond in favor of the owners of the mineral interest which is to be leased in a specified amount, (2) provide for all of the rental, royalty, and other provisions of the lease which the special commissioner is authorized to make, except for the initial monetary consideration for the sale of the lease, (3) specify whether the special commissioner's sale of the lease shall be public or private, (4) if the order provides for a public sale, determine the notice to be given, and (5) direct that the special commissioner be paid compensation and expenses, including the bond expense, as provided in section eight of this article in an amount agreed upon by the special commissioner and the petitioner; but if no agreement is made within thirty days after the special commissioner is appointed, then the court shall fix the compensation and expenses. The sale shall be for a monetary consideration payable on confirmation of sale. No appraisal shall be required.

(c) The special commissioner shall proceed in compliance with the provisions of the order to sell the lease authorized thereby; and if two or more persons offer to purchase the lease, the sale shall be made to the offeror whose offer is deemed most beneficial to the unknown or missing owner or abandoning owner, and most consistent with the public policy stated in section one of this article. After making the sale, the special commissioner shall make a report thereof to the court. Upon filing the report, the court may hear evidence as to whether or not the sale price and the provisions of the lease are reasonable; and if the court

is satisfied with the sale price and the provisions of the lease, the sale of the lease shall be confirmed by the court, whereupon the lease shall be executed, acknowledged and delivered by the special commissioner.

(d) The court shall not authorize a special commissioner's lease of the mineral interest of any owner whose identity and whereabouts is known, or can be ascertained by diligent inquiry, or is discovered as a result of the action brought hereunder, unless such owner is proved to be an abandoning owner who fails to answer the subject petition, notice having been given as provided in section five of this article.

(e) Any person purporting to be the unknown or missing owner or an abandoning owner, or any heir, successor or assign of an unknown or missing owner or abandoning owner, may appear as a matter of right at any time prior to the entry of judgment confirming the special commissioner's lease, for the purpose of establishing his title to a mineral interest. If the appearing owner's claim is established to the satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest at plaintiff's cost.

(f) The lessee shall promptly deliver the sale consideration and subsequent proceeds, if any, from the lease to the special receiver of the court, who shall hold and invest the same for the use and benefit of the unknown or missing owners or abandoning owners. The court, upon its own motion or upon motion of the special receiver, may at any time authorize the special receiver to expend an amount not to exceed ten percent of the funds collected by the special receiver for the purpose of instituting a search for the unknown or missing owners.

(g) Within seven years after the date of the special commissioner's lease, any unknown or missing owner or abandoning owner of a mineral interest leased hereunder may file a motion with the court to reopen the action, and may thereupon present such proof as the court may deem necessary to establish the movant's identity and title to the mineral interest or any part thereof. If the court finds that the identity and interest of the movant has been established, and that the movant has manifested a desire to obtain the benefits of the proceeds resulting from the lease, the court shall enter an order (1) documenting the movant's title, (2) assigning all future attributable proceeds to the movant and (3) directing the special receiver to pay over the funds then held attributable to the movant's interests. The circuit clerk of the court shall file and record a certified copy of the order with the clerk of the county commission of each county wherein such land is; and from the time of recordation, the movant shall be deemed the owner of the mineral interest specified in the order.

§55-12A-7. When special commissioner may convey title in mineral interest to surface owner; form of deed; final report of special Commissioner; unknown owners; transfer of funds; rulemaking.

(a) (1) If an owner of any mineral interest leased under section six of this article remains unknown or missing, or does not disavow the abandonment, for a period of seven years from the date of the special commissioner's lease, the special or general receiver shall report the same to the court, whereupon the court shall enter an order naming those who then appear to be surface owners as additional parties and giving notice to them, pursuant to the West Virginia rules of civil procedure, of an opportunity to appear and present proof of ownership in fee of the surface estate. Upon a finding by the court of the present ownership in fee of the surface estate, the court shall (i) order the special Commissioner to convey to the proven surface owner, subject to the special commissioner's lease, the mineral interest specified in the motion, by a deed substantially in the form specified in subsection (b) of this section and (ii) order the special or general receiver to pay to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 the funds which have accrued to the credit of the mineral interests specified in the motion to the date of his or her report after payment of all allowable fees, expenses and court costs, including special Commissioner's fees paid or to be paid in amounts determined by the court. After the date of the special Commissioner's deed, the surface owner grantee shall be entitled to receive all proceeds under the lease attributable to the mineral interests specified in the deed.

(2) If the boundaries of the mineral tract subject to the special Commissioner's lease encompass two or more surface tracts, a separate deed shall be made for the mineral interest underlying each surface tract. If a surface tract is owned by more than one person, the deed respecting that surface tract shall convey the mineral interest according to the surface estate and interest of each surface owner.

(b) The special Commissioner's deed may be made in the following form, or to the same effect:

This deed, made the _____day of _____, 19___, between
_____, special Commissioner, grantor, and
_____, grantee,

Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an order of the circuit court of _____ county, West Virginia, entered on the _____day of _____, 19___, in civil action no. _____ therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the special commissioner's lease mentioned below, and further subject to all other liens and encumbrances of record, that certain mineral interest in _____ county, West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order); and being (here specify "all" or "a portion") of the

mineral interest described in that certain special commissioner's lease dated _____, 19___, of record in the office of the clerk of _____ county, in _____book_____, at page ____.

Witness the following signature.

_____

Special Commissioner

(c) Upon the delivery of the deed or deeds and the payment or payments as directed in subsection (a) of this section, the special commissioner shall make a final report to the court; and upon approval thereof, the court shall order the discharge of the special commissioner's bond.

(d) Prior to the delivery of the special commissioner's deed, no deed or will from a surface owner to another shall sever ownership of the surface as such from ownership of any benefits under this article. The provisions of any deed or will granting or reserving an interest purporting to create such a severance shall be void.

(e) The amendments to this section made during the 2020 regular session of the Legislature which provided for certain accumulated proceeds to be payable to the Oil and Gas Reclamation Fund, shall take effect July 1, 2020, and any funds shall be transferred that have been unclaimed for seven years or more after the date of the special Commissioner's lease whether or not the special Commissioner's lease was signed before or after the effective date of the amendments to this section.

(f) The Department of Environmental Protection may propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to carry out the provisions of this section relating to transfer of funds to the Oil and Gas Reclamation Fund.

§55-12A-8. Petitioner's attorneys' fees, expenses and court costs.

All of the petitioner's attorneys' fees, expenses and court costs incident to the original proceedings authorized under this article shall be paid by the lessee, if a lease is executed pursuant hereto, and by the petitioner if for any reason no lease is executed. After the date of the special commissioner's lease, all expenses and court costs shall be paid out of funds in the hands of the special receiver to the extent such funds are available.

§55-12A-9. Limitation of action by unknown or missing owner or abandoning owner.

After the expiration of seven years from the date of the special commissioner's lease, no action may be brought by any unknown or missing owner or abandoning owner or any heir, successor or assign thereof either to recover any past or future proceeds accrued or to be accrued from the lease herein authorized, or to recover any right, title or interest in and to the mineral interest subject to the lease.

§55-12A-10. Severability.

If any part of this article is adjudged to be unconstitutional or invalid, such invalidation shall not affect the validity of the remaining parts of this article; and to this end, the provisions of this article are hereby declared to be severable.

§55-13-1. Power of courts to declare rights, status and other legal relations; objections; form and effect of declaration.

Courts of record within their respective jurisdictions shall have power to declare rights, status and other legal relations whether or not further relief is or could be claimed. No action or proceeding shall be open to objection on the ground that a declaratory judgment or decree is prayed for. The declaration may be either affirmative or negative in form and effect; and such declarations shall have the force and effect of a final judgment or decree.

§55-13-2. Who may have determination and obtain declaration.

Any person interested under a deed, will, written contract, or other writings constituting a contract, or whose rights, status or other legal relations are affected by a statute, municipal ordinance, contract or franchise, may have determined any question of construction or validity arising under the instrument, statute, ordinance, contract or franchise and obtain a declaration of rights, status or other legal relations thereunder.

§55-13-3. Construction of contract before or after breach.

A contract may be construed either before or after there has been a breach thereof.

§55-13-4. Declaration concerning trusts and estates.

Any person interested as or through an executor, administrator, trustee, guardian or other fiduciary, creditor, devisee, legatee, heir, next of kin or cestui que trust, in the administration of a trust, or of the estate of a decedent, an infant, lunatic or insolvent, may have a declaration of rights or legal relations in respect thereto:

(a) To ascertain any class of creditors, devisees, legatees, heirs, next of kin or others; or

(b) To direct the executors, administrators, or trustees to do or abstain from doing any particular act in their fiduciary capacity; or

(c) To determine any question arising in the administration of the estate or trust, including questions of construction of wills and other writings.

§55-13-5. No restriction on powers conferred by §55-13-1.

The enumeration in sections two, three, and four does not limit or restrict the exercise of the general powers conferred in section one, in any proceeding where declaratory relief is sought, in which a judgment or decree will terminate the controversy or remove an uncertainty.

§55-13-6. When court may refuse judgment.

The court may refuse to render or enter a declaratory judgment or decree where such judgment or decree, if rendered or entered, would not terminate the uncertainty or controversy giving rise to the proceeding.

§55-13-7. Review.

All orders, judgments and decrees under this article may be reviewed as other orders, judgments and decrees.

§55-13-8. Further relief.

Further relief based on a declaratory judgment or decree may be granted whenever necessary or proper. The application therefor shall be by petition to a court having jurisdiction to grant the relief. If the application be deemed sufficient, the court shall, on reasonable notice, require any adverse party whose rights have been adjudicated by the declaratory judgment or decree, to show cause why further relief should not be granted forthwith.

§55-13-9. Trial and determination of issues of fact.

When a proceeding under this article involves the determination of an issue of fact, such issue may be tried and determined in the same manner as issues of fact are tried and determined in other civil actions in the court in which the proceeding is pending.

§55-13-10. Costs.

In any proceeding under this article the court may make such award of costs as may seem equitable and just.

§55-13-11. Parties.

When declaratory relief is sought, all persons shall be made parties who have or claim any interest which would be affected by the declaration, and no declaration shall prejudice the rights of persons not parties to the proceeding. In any proceeding which involves the validity of a municipal ordinance or franchise, such municipality shall be made a party, and shall be entitled to be heard, and if the statute, ordinance or franchise is alleged to be unconstitutional, the Attorney General of the state shall also be served with a copy of the proceeding and be entitled to be heard.

§55-13-12. Article remedial; liberal construction and administration thereof.

This article is declared to be remedial; its purpose is to settle and to afford relief from uncertainty and insecurity with respect to rights, status and other legal relations; and is to be liberally construed and administered.

§55-13-13. "Person" defined.

The word "person," wherever used in this article, shall be construed to mean any person, partnership, joint-stock company, unincorporated association or society, or municipal or other corporation of any character whatsoever.

§55-13-14. Severability.

The several sections and provisions of this article, except sections one and two, are hereby declared independent and severable, and the invalidity, if any, of any part or feature thereof shall not affect or render the remainder of the article invalid or inoperative.

§55-13-15. Interpretation and construction of article.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of the states which enact it, and to harmonize, as far as possible, with federal laws and regulations on the subject of declaratory judgments and decrees.

§55-13-16. Citation of article.

This article may be cited as the "Uniform Declaratory Judgments Act."

§55-14-1. Definitions.

In this article "foreign judgment" means any judgment, decree or order of a court of the United States or of any other court which is entitled to full faith and credit in this state.

§55-14-2. Filing and status of foreign judgments.

A copy of any foreign judgment authenticated in accordance with an act of Congress or the statutes of this state may be filed in the office of the clerk of any circuit court of this state. The clerk shall treat the foreign judgment in the same manner as a judgment of any circuit court of this state. A judgment so filed has the same effect and is subject to the same procedures, defenses and proceedings for reopening, vacating or staying as a judgment of a circuit court of this state and may be enforced or satisfied in like manner: Provided, That notwithstanding any other provision of this article to the contrary, a citizen of this state shall be entitled to the same exemption from execution, attachment or seizure and sale as a citizen of the state where the original judgment was entered. A debt collector seeking to enforce a foreign judgment in this state shall ensure that any suggestee execution or other legal process seeking to seize property of a debtor pursuant to a foreign judgment shall clearly state, on the face of the petition or other filing, any property exempt in the state in which the original judgment was entered and it shall specify that the property is exempt from execution, attachment or seizure and sale in this state. Any person seeking to enforce a foreign judgment in this state who violates any provision of this section shall be liable to the person against whom the judgment is sought to be enforced for actual damages and, in addition thereto, shall be liable to such person for a penalty in an amount not more than $1,000. Any person seeking to enforce a foreign judgment in this state who willfully violates any provision of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 or confined in jail not more than one year, or both fined and confined.

§55-14-3. Notice of filing.

(a) At the time of the filing of the foreign judgment, the judgment creditor or his lawyer shall make and file with the clerk of the circuit court an affidavit setting forth the name and last known post-office address of the judgment debtor and the judgment creditor.

(b) Promptly upon the filing of the foreign judgment and the affidavit, the clerk shall mail notice of the filing of the foreign judgment to the judgment debtor at the address given and shall make a note of the mailing in the docket. The notice shall include the name and post-office address of the judgment creditor and the judgment creditor's lawyer, if any, in this state. In addition, the judgment creditor may mail a notice of the filing of the judgment to the judgment debtor and may file proof of mailing with the clerk. Lack of mailing notice of filing by the clerk shall not affect the enforcement proceedings if proof of mailing by the judgment creditor has been filed.

(c) No execution or other process for enforcement of a foreign judgment filed hereunder may issue until thirty days after the date the judgment is filed.

§55-14-4. Stay.

(a) If the judgment debtor shows the circuit court that an appeal from the foreign judgment is pending or will be taken, or that a stay of execution has been granted, the court shall stay enforcement of the foreign judgment until the appeal is concluded, the time for appeal expires or the stay of execution expires or is vacated, upon proof that the judgment debtor has furnished the security for the satisfaction of the judgment required by the state in which it was rendered.

(b) If the judgment debtor shows the circuit court any ground upon which enforcement of a judgment of any court of this state would be stayed, the court shall stay enforcement of the foreign judgment for an appropriate period, upon requiring the same security for satisfaction of the judgment which is required in this state.

§55-14-5. Fees.

Fees for filing, docketing, transcription or other enforcement proceedings shall be as provided for in section eleven, article one, chapter fifty-nine of this code.

§55-14-6. Optional procedure.

The right of a judgment creditor to bring an action to enforce his judgment instead of proceeding under this article remains unimpaired.

§55-14-7. Uniformity of interpretation.

This article shall be so interpreted and construed as to effectuate its general purpose to make uniform the law of those states which enact it.

§55-14-8. Short title.

This article may be cited as the "Uniform Enforcement of Foreign Judgments Act."

§55-15-1.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§55-15-2.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§55-15-3.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§55-15-4.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§55-15-5.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§55-15-6.

Repealed.

Acts, 2015 Reg. Sess., Ch. 53.

§55-16-1. Civil remedy for making, drawing, issuing, uttering or delivery of worthless check, draft or order.

(a) As used in this section, "check" means a draft or other written order payable on demand and drawn on a bank or depository.

(b) If the maker or drawer of a check: (1) Draws, makes, utters, or issues and delivers to another a check drawn on a bank or depository that refuses to honor it because the maker or drawer does not have sufficient funds with which to pay the check on deposit in or credit with the bank or depository upon presentation; and (2) knowingly fails to pay the amount of the check in cash to the payee, within thirty days following written demand, the payee has a cause of action against the drawer or maker.

(c) In an action under this section, the payee may be awarded:

(1) The face amount of the check, less any money received by the payee in partial payment of the debt of the check;

(2) Damages of $500 or the face amount of the check, whichever is less; and

(3) Reasonable costs incurred in filing the action.

(d) In an action under this section, the court or jury may waive all or part of the damages or fees authorized by subdivision (2), subsection (c) of this section upon a finding that the defendant's failure to satisfy the dishonored check was due to the defendant's recent discharge from his or her employment, personal or family illness, or personal or family catastrophic loss.

(e) The written demand required in subsection (a) of this section shall:

(1) Describe the check and the circumstances of its dishonor;

(2) Contain a demand for payment and a notice of intent to

file suit for damages under this section if payment is not received within thirty days; and

(3) Be delivered by personal service, certified mail or regular mail to the defendant at his or her last known address: Provided, That service by regular mail shall be supported by either a post-marked certificate of mailing or a notarized affidavit of service.

(f) It is an affirmative defense to any claim under this section that:

(1) Full satisfaction of the amount of the check was made before the beginning of the action; or

(2) The bank or depository erred in dishonoring the check.

(g) No action may be brought pursuant to both this section and sections thirty-nine-a through thirty-nine-h, article three, chapter sixty-one of this code on the same check.

§55-17-1. Findings; purpose.

(a) The Legislature finds that there are numerous actions, suits and proceedings filed against state government agencies and officials that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In these actions, the Legislature is not directly involved as a party. The Legislature is not a proper party to these actions because of an extensive structure of Constitutional protections established to safeguard the prerogatives of the legislative branch under our governmental system of checks and balances. Government agencies and their officials require more notice of these actions and time to respond to them and the Legislature requires more timely information regarding these actions, all in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by clarifying that no government agency may be subject to awards of punitive damages in any judicial proceeding.

(b) The Legislature further finds that there are numerous actions, suits and proceedings filed on behalf of the State of West Virginia or a government agency thereof, that may affect the public interest. Depending upon the outcome, this type of litigation may have significant consequences that can only be addressed by subsequent legislative action. In such litigation, the Governor, Department of Administration and the Legislature may not be directly involved as parties. Additionally, the Governor, Department of Administration and the Legislature need advance notice of potential moneys that may become available as a result of seizure or forfeiture of assets under state or federal criminal law. The Governor, Department of Administration and the Legislature require more timely information regarding these actions in order to protect the public interest. The Legislature further finds that protection of the public interest is best served by requiring notice to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates of any action brought on behalf of the state or a government agency thereof, which may result in a judgment, award or settlement and when the state or a government agency thereof, becomes eligible for moneys from state or federal seizure or forfeiture of assets in criminal cases.

(c) It is the purpose of this article to establish procedures to be followed in certain civil actions filed on behalf of or against state government agencies and their officials.

§55-17-2. Definitions.

For the purposes of this section:

(1) "Action" means a proceeding instituted against a governmental agency in a circuit court or in the Supreme Court of Appeals, except actions instituted pursuant to statutory provisions that authorize a specific procedure for appeal or similar method of obtaining relief from the ruling of an administrative agency and actions instituted to appeal or otherwise seek relief from a criminal conviction, including, but not limited to, actions to obtain habeas corpus relief.

(2) "Government agency" means a Constitutional officer or other public official named as a defendant or respondent in his or her official capacity, or a department, division, bureau, board, commission or other agency or instrumentality within the executive branch of state government that has the capacity to sue or be sued;

(3) "Judgment" means a judgment, order or decree of a court which would:

(A) Require or otherwise mandate an expansion of, increase in, or addition to the services, duties or responsibilities of a government agency;

(B) Require or otherwise mandate an increase in the expenditures of a government agency above the level of expenditures approved or authorized before the entry of the proposed judgment;

(C) Require or otherwise mandate the employment or other hiring of, or the contracting with, personnel or other entities by a government agency in addition to the personnel or other entities employed or otherwise hired by, or contracted with or by the government agency;

(D) Require or otherwise mandate payment of a claim based upon a breach of contract by a government agency; or

(E) Declare an act of the Legislature unconstitutional and, therefore, unenforceable.

§55-17-3. Preliminary procedures; service on Attorney General; notice to the Legislature.

(a)(1) Notwithstanding any provision of law to the contrary, at least 30 days prior to the institution of an action against a governmental agency, the complaining party or parties shall provide the chief officer of the governmental agency and the Attorney General written notice, by certified mail, return receipt requested, of the alleged claim and the relief desired. Upon receipt, the chief officer of the governmental agency shall immediately forward a copy of the notice to the President of the Senate and the Speaker of the House of Delegates. The provisions of this subdivision do not apply in actions seeking injunctive relief where the court finds that irreparable harm would have occurred if the institution of the action was delayed by the provisions of this subsection.

(2) The written notice to the chief officer of the governmental agency and the Attorney General required by subdivision (1) of this subsection is considered to be provided on the date of mailing of the notice by certified mail, return receipt requested. If the written notice is provided to the chief officer of the governmental agency as required by subdivision (1) of this subsection, any applicable statute of limitations is tolled for 30 days from the date the notice is provided and, if received by the governmental agency as evidenced by the return receipt of the certified mail, for 30 days from the date of the returned receipt.

(3) A copy of any complaint filed in an action as defined in §55-17-2 of this code shall be served on the Attorney General.

(b) (1) Notwithstanding any procedural rule or any provision of this code to the contrary in an action instituted against a governmental agency that seeks a judgment, as defined in §55-17-2 of this code, the chief officer of the governmental agency which is named a party to the action shall, upon receipt of service, immediately give written notice thereof, together with a copy of the complaint filed, to the President of the Senate and the Speaker of the House of Delegates.

(2) Upon request, the chief officer of the governmental agency shall furnish the President of the Senate and Speaker of the House with copies of pleadings filed and discovery produced in the proceeding and other documents, information, and periodic reports relating to the proceeding as may be requested.

(3) The chief officer of a governmental agency who fails without good cause to comply with the provisions of this subsection is guilty of misfeasance. This subsection does not require a notice or report to the President of the Senate and the Speaker of the House that no action has been instituted or is pending against a governmental agency during a specified period.

(c) The requirements for notice and delivery of pleadings and other documents to the President of the Senate or Speaker of the House of Delegates pursuant to the provisions of this section do not constitute a waiver of any constitutional immunity or protection that proscribes or limits actions, suits, or proceedings against the Legislature or the State of

West Virginia.

(d) The exercise of authority granted by the provisions of this section does not subject the Legislature or any member of the Legislature to any terms of a judgment.

(e) If 90 days elapse after service of notice required by subsection (a) of this section has been effected and action has not been instituted, then the notice shall be considered to have expired, and before an action may be instituted, the complaining party or parties must provide new notice as required by subsection (a) of this section which shall be accompanied by a second or subsequent notice fee of $250 to the attorney general and by a second or subsequent notice fee of $250 to the chief officer of the governmental agency: *Provided*, That no further tolling of any applicable statute of limitations shall occur during any second or subsequent notice.

§55-17-3a. Legislature and its presiding officers never to be named as parties to a civil action in court.

(a) Article V of the Constitution of West Virginia provides that the legislative, executive, and judicial departments of the government of West Virginia shall be separate and distinct, so that neither shall exercise the powers properly belonging to either of the others.

(b) It is an unconstitutional violation of the separation of powers mandated by Article V of the Constitution of West Virginia for:

(1) Any court of this state to issue a writ of mandamus, a writ of prohibition, or an injunction against the Legislature; or

(2) Any person to name the Legislature or the presiding officers thereof, in any action challenging the constitutionality of a statute.

(c) Pursuant to the separation of powers required by Article V of the West Virginia Constitution, if any suit is filed seeking relief under subdivision (1), subsection (a) of this section, or if any suit is filed naming the legislature, or the presiding officers thereof, in violation of the provisions of subdivision (2), subsection (a) of this section, the court must, upon motion, summarily dismiss the action, or dismiss the parties improperly joined.

(c) This section shall be applied retrospectively and retroactively to all actions pending at the time of the enactment of this section.

§55-17-4. Procedures pending action.

Notwithstanding any other provisions of law to the contrary:

(1) A government agency shall be allowed sixty days to serve an answer to a complaint or petition for which a summons has been issued and served upon a government agency;

(2) Judgment by default may not be entered against a government agency in an action as defined in section two of this article unless the court, after a hearing on a motion for default judgment, finds that the government agency clearly intends to fail to appear, plead or otherwise defend in the action; and

(3) No government agency may be ordered to pay punitive damages in any action.

§55-17-5. Notice of settlement, seizure or forfeiture.

(a) So that the Governor, the Department of Administration and the Legislature may be aware of potential awards, the person or entity bringing any action on behalf of the State of West Virginia, or a government agency thereof, which could result in settlement or judgment shall upon commencement of the action and prior to entering into any settlement agreement which directs how the money should be expended, notify and provide copies of pleadings and related documents to the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates.

(b) When a government agency becomes aware that moneys may be available to them from a state or federal seizure or forfeiture in a criminal case they shall notify the Governor, the Secretary of the Department of Administration, the President of the Senate and the Speaker of the House of Delegates: Provided, That the total value of the assets to be seized or forfeited exceeds two hundred and $50,000.

§55-17-6. Construction of article.

(a) It is the express intent of the Legislature that the provisions of this article be liberally construed to effectuate the public policy set forth in section one of this article.

(b) The provisions of this article may not be construed to impose any liability upon a state agency from which the agency is otherwise immune.

§55-18-1. Legislative declarations and purpose.

The Legislature hereby finds and declares:

(a) The lawful design, marketing, manufacture or sale of firearms or ammunition to the public is not an unreasonably dangerous activity and does not constitute a nuisance per se;(b) To the extent the Constitution of this state and the United States protect citizens' rights to keep and bear arms, the Legislature finds and declares that it is within the strict prerogative of its own authority, and not the authority of any county or municipality, to determine whether any manufacturer, dealer or seller of firearms has engaged in any act or omission that would create a cognizable action for damages, injunction or otherwise.

§55-18-2. Authority to bring suit against manufacturers, sellers, trade associations or dealers of firearms.

The authority to bring suit and the right to recover against any firearms or ammunition manufacturer, seller, trade association or dealer of firearms by or on behalf of any county or municipality in this state for damages, abatement or injunctive relief resulting from or relating to the design, manufacture, marketing, or sale of firearms or ammunition to the public is reserved exclusively to the state: Provided, That nothing contained in this article may prohibit a county or municipality from bringing an action for breach of contract or warranty as to firearms or ammunition purchased by the county or municipality.

§55-19-1. Short title.

This article shall be known and may be cited as the COVID-19 Jobs Protection Act.

§55-19-2. Findings and purpose.

(a) The West Virginia Legislature finds that:

(1) The novel coronavirus, also known as COVID-19, has been deemed a pandemic and the President of the United States has declared a national emergency.

(2) The Governor issued a State of Preparedness on March 4, 2020, to allow agencies to coordinate and create necessary measures to prepare for COVID-19.

(3) The Governor proclaimed a State of Emergency on March 16, 2020, finding that the COVID-19 pandemic constitutes a disaster under §15-5-2 of this code.

(4) To protect public health, safety, and welfare, all nonessential businesses were directed to cease all activities except for minimum basic operations in the state.

(5) To protect public health, safety, and welfare, and to ensure the health care system is capable of serving all citizens in need, especially those at high risk and vulnerable to COVID-19, all West Virginia residents were directed to stay at home unless performing an essential activity.

(6) Health care providers have operated with shortages of medical personnel, equipment, and supplies while responding to COVID-19 and were prohibited by Executive Order No. 16-20 from engaging in elective medical procedures.

(7) There is a critical need for personal protective equipment, such as masks, respirators, ventilators, and other medical equipment and products designed to guard against or treat COVID-19.

(8) Manufacturers have substantially increased production of essential products and have made products outside their ordinary course of business to aid in response to COVID-19.

(9) West Virginia is reopening its businesses, including restaurants, retail stores, office buildings, fitness centers, hotels, hair and nail salons, and barber shops, as well as religious institutions.

(10) Lawsuits are being filed across the country against health care providers and health care facilities associated with care provided during the COVID-19 pandemic and illness of health care workers due to exposure to COVID-19 while providing essential medical care, and against businesses seeking damages associated with a person’s exposure to COVID-19.

(11) The threat of liability poses an obstacle to efforts to reopen and rebuild the West Virginia economy and to continue to provide medical care to impacted West Virginians.

(12) The diagnosis and treatment of COVID-19 has rapidly evolved from largely unchartered, experimental, and anecdotal observations and interventions, without the opportunity for the

medical community to develop definitive evidence-based medical guidelines, making it difficult, if not impossible, to identify and establish applicable standards of care by which the acts or omissions of health care providers can fairly and objectively be measured.

(b) It is the purpose of this article to:

(1) Eliminate the liability of the citizens of West Virginia and all persons including individuals, health care providers, health care facilities, institutions of higher education, businesses, manufacturers, and all persons whomsoever, and to preclude all suits and claims against any persons for loss, damages, personal injuries, or death arising from COVID-19.

(2) Provide assurances to businesses that reopening will not expose them to liability for a person’s exposure to COVID-19.

§55-19-3. Definitions.

For the purposes of this article:

(1) "Arising from COVID-19" means any act from which loss, damage, physical injury, or death is caused by a natural, direct, and uninterrupted consequence of the actual, alleged, or possible exposure to, or contraction of, COVID-19, including services, treatment, or other actions in response to COVID-19, and without which such loss, damage, physical injury, or death would not have occurred, including, but not limited to:

(A) Implementing policies and procedures designed to prevent or minimize the spread of COVID-19;

(B) Testing;

(C) Monitoring, collecting, reporting, tracking, tracing, disclosing, or investigating COVID-19 exposure or other COVID-19-related information;

(D) Using, designing, manufacturing, providing, donating, or servicing precautionary, diagnostic, collection, or other health equipment or supplies, such as personal protective equipment;

(E) Closing or partially closing to prevent or minimize the spread of COVID-19;

(F) Delaying or modifying the schedule or performance of any medical procedure;

(G) Providing services or products in response to government appeal or repurposing operations to address an urgent need for personal protective equipment, sanitation products, or other products necessary to protect the public;

(H) Providing services or products as an essential business, health care facility, health care provider, first responder, or institution of higher education; or

(I) Actions taken in response to federal, state, or local orders, recommendations, or guidelines lawfully set forth in response to COVID-19.

(2) "COVID-19" and "coronavirus" means the novel coronavirus identified as SARS-CoV-2, the disease caused by the novel coronavirus SARS-CoV-2 or a virus mutating therefrom, and conditions associated with the disease.

(3) "COVID-19 Care" means services provided by a health care facility or health care provider, regardless of location and whether or not those services were provided in-person or through telehealth or telemedicine, that relate to the testing for, diagnosis, prevention, or treatment of COVID-19, or the assessment, treatment, or care of an individual with a confirmed or suspected case of COVID-19.

(4) "COVID-19 emergency" means the State of Emergency declared by the Governor of the State of West Virginia by proclamation on March 16, 2020, and any subsequent orders or amendments thereto.

(5) "Essential business" means a person or entity that is:

(A) An essential business or operation as specified by Executive Order No. 9-20 on March 23, 2020, and any subsequent orders or amendments thereto; or

(B) Within an essential critical infrastructure sector as defined by the United States Department of Homeland Security.

(6) "First responder" means a person who performs one or more "emergency services" as that term is defined in §15-5-2 of this code. "First responder" also includes any other person authorized by executive order who will be deployed in response to the COVID-19 pandemic.

(7) "Health care" means any act, service, or treatment as defined by §55-7B-2 of this code.

(8) "Health care facility" means a facility as defined by §55-7B-2 of this code and any other facility authorized to provide health care or vaccinations in response to the COVID-19 emergency, including, but not limited to, a personal attendant agency.

(9) "Health care provider" means a person, partnership, corporation, professional limited liability company, health care facility, entity, or institution as defined by §55-7B-2 of this code, whether paid or unpaid, including persons engaged in telemedicine or telehealth; and any person authorized to provide health care in response to the COVID-19 emergency, including, but not limited to personal attendants and the employer, employees or agents of a health care provider who provide, arrange for, and assist with the delivery of health care, including those whose licensing requirements were modified through executive order.

(10) "Impacted care" means care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider that impacted the health care facility or health care provider’s response to, or as a result of, COVID-19 or the COVID-19 emergency: *Provided*, That this provision does not prohibit claims that may otherwise be brought pursuant to §55-7B-1 *et seq*. of this code so long as such claims for loss, damage, physical injury, or death are unrelated to COVID-19 or the COVID-19 emergency and the care provided. If the issue of impacted care is raised by a defendant under §55-19-4 of this code, the circuit court shall, upon motion by the defendant, stay the proceedings, including any discovery proceedings, and, as soon as practicable, hold a hearing to determine whether the care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider was related to COVID-19 or the COVID-19 emergency. If the circuit court determines that the care offered, delayed, postponed, or otherwise adversely affected at a health care facility or from a health care provider was related to COVID-19 or the COVID-19 emergency and the care provided, then the cause of action shall be dismissed under §55-19-4 of this code.

(11) "Person" means an individual, partnership, corporation, association, state, county, or local governmental entity, or other entity, including, but not limited to, a school, a college or university, an institution of higher education, religious organization, or nonprofit charitable organization. "Person" includes an employee, agent, or independent contractor of the person, regardless of whether the individual is a paid or an unpaid volunteer.

(12) "Personal protective equipment" means coveralls, face shields, gloves, gowns, masks, respirators, or other equipment designed to protect the wearer or other persons from the spread of infection or illness.

(13) "Physical injury" means actual bodily harm, sickness, or disease.

(14) "Public health guidance" means written guidance related to COVID-19 issued by the Centers for Disease Control and Prevention, Occupational Safety & Health Administration of the United States Department of Labor, Office of the Governor, West Virginia Department of Health, or any other state, federal, county, or local government agency.

(15) "Qualified product" means personal protective equipment used to protect the wearer from COVID-19 or prevent the spread of COVID-19; medical devices, equipment, and supplies used to treat COVID-19 including products that are used or modified for an unapproved use to treat COVID-19 or prevent the spread of COVID-19; medical devices, equipment, or supplies utilized outside of the product’s normal use to treat COVID-19 or to prevent the spread of COVID-19; medications used to treat COVID-19 including medications prescribed or dispensed for off-label use to attempt to combat COVID-19; tests to diagnose or determine immunity to COVID-19; and components of qualified products.

(16) "Volunteer" means any person or entity that makes a facility, product, or service available to support a state, county, or local response to COVID-19.

§55-19-4. Claims arising from the COVID-19 pandemic.

Notwithstanding any law to the contrary, except as provided by this article, there is no claim against any person, essential business, business, entity, health care facility, health care provider, first responder, or volunteer for loss, damage, physical injury, or death arising from COVID-19, from COVID-19 care, or from impacted care.

§55-19-5. Products made, sold, and donated in response to COVID-19.

(a) Any person that designs, manufactures, labels, sells, distributes, or donates a qualified product in response to COVID-19 that is utilized by any person, essential business, government entity, business entity, health care facility, health care provider, first responder, or volunteer shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the product's manufacturing or design, or a failure to provide proper instructions or sufficient warnings.

(b) Any person that designs, manufactures, labels, sells, distributes, or donates household disinfecting or cleaning supplies or personal protective equipment in response to COVID-19 that does not make such products in the ordinary course of the person's business shall not be liable in a civil action alleging personal injury, death, or property damage caused by or resulting from the product's manufacturing or design, or a failure to provide proper instructions or sufficient warnings.

(c) The limitations on liability provided in this section shall not apply to any person, or any employee or agent thereof, that:

(1) Had actual knowledge of a defect in the product when put to the use for which the product was manufactured, sold, distributed, or donated; and acted with conscious, reckless, and outrageous indifference to a substantial and unnecessary risk that the product would cause serious injury to others; or

(2) Acted with actual malice.

(d) Any action under subsection (c) of this section must be brought not later than one year after the date of personal injury, death, or property damage.

§55-19-6. Workers' compensation.

Notwithstanding the provisions of this article and the further provisions of §23-4-2 of this code which permits the filing of a civil cause of action against an employer for damages in excess of benefits received or receivable in a workers' compensation claim, if it is determined that the employer acted with deliberate intention, when a claim for workers' compensation benefits is awarded to an employee pursuant to §23-1-1 *et seq*. of this code for a work-related injury, disease, or death caused by or arising from COVID-19 in the course of and resulting from covered employment, such claim for workers' compensation benefits shall be the sole and exclusive remedy for such injury, disease, or death and the immunity from suit provided under §23-2-6 and §23-2-6a of this code shall be and remain in full force and effect.

§55-19-7. Exception.

Excluding the provisions of §55-19-5 and §55-19-6 of this code, the limitations on liability provided in this article shall not apply to any person, or employee or agent thereof, who engaged in intentional conduct with actual malice.

§55-19-8. Severability.

If any provision of this act or the application thereof to any person or circumstance is held invalid, the invalidity shall not affect other provisions or applications of this act, and to this end the provisions of this act are declared to be severable.

§55-19-9. Application.

(a) This article shall be effective retroactively from January 1, 2020, and applies to any cause of action accruing on or after that date.

(b) Nothing in this article shall be construed to create a new cause of action or expand any liability otherwise imposed, limit any defense, or affect the applicability of any law that affords greater protections to defendants that are provided in this article.

(c) Nothing in this article shall be construed to affect any duties, rights, benefits, or any other term or condition arising from a contractual relationship.

§55-20-1. Short title.

This article shall be known and may be cited as the Uniform Civil Remedies for Unauthorized Disclosure of Intimate Images Act.

§55-20-2. Definitions.

For the purposes of this article:

(1) “Child” means an unemancipated individual who is less than 18 years of age.

(2) “Consent” means affirmative, conscious, and voluntary authorization by an individual with legal capacity to give authorization.

(3) “Depicted individual” means the individual whose body is shown, in whole or in part, in an intimate image.

(4) “Disclosure” means transfer, publication, or distribution to another person.

(5) “Harm” means physical harm, economic harm, and emotional distress whether, or not accompanied by physical or economic harm.

(6) “Identifiable” means recognizable by a person other than the depicted individual:

(A) From an intimate image itself; or

(B) From an intimate image and identifying characteristic displayed in connection with the intimate image.

(7) “Identifying characteristic” means information that may be used to identify a depicted individual.

(8) “Individual” means a human being.

(9) “Intimate image” means a photograph, film, video recording, or other similar medium that shows:

(A) The uncovered genitals, pubic area, anus, or female post-pubescent nipple of a depicted individual; or

(B) A depicted individual engaging in or being subjected to sexual conduct.

(10) “Parent” means an individual recognized as a parent under the laws of this state other than this article.

(11) “Person” means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

(12) “Private” means:

(A) Created or obtained under circumstances in which the depicted individual had a reasonable expectation of privacy; or

(B) Made accessible through theft, bribery, extortion, fraud, false pretenses, voyeurism, or exceeding authorized access to an account, message, file, device, resource, or property.

(13) “Sexual conduct” means any act set forth below but is not limited to this list:

(A) Masturbation;

(B) Genital, anal, or oral sex;

(C) Sexual penetration of, or with, an object;

(D) Bestiality; or

(E) The transfer of semen onto a depicted individual.

§55-20-3. Civil action.

(a) Except as otherwise provided in §55-20-4 of this code, a depicted individual who is identifiable and who suffers harm from a person's intentional disclosure or threatened disclosure of an intimate image that was private without the depicted individual's consent has a cause of action against the person if the person knew or acted with reckless disregard for whether:

(1) The depicted individual did not consent to the disclosure;

(2) The intimate image was private; and

(3) The depicted individual was identifiable.

(b) The following conduct by a depicted individual does not establish, by itself, that the individual consented to the disclosure of the intimate image which is the subject of an action under this article or that the individual lacked a reasonable expectation of privacy:

(1) Consent to creation of the image; or

(2) Previous consensual disclosure of the image.

(c) A depicted individual who does not consent to the sexual conduct or uncovering of the part of the body in an intimate image of the individual retains a reasonable expectation of privacy even if the image was created when the individual was in a public place.

§55-20-4. Exceptions to liability.

(a) A person is not liable under this article if the person proves the disclosure of, or threat to disclose, an intimate image was:

(1) Made in good faith:

(A) To law enforcement;

(B) For a legal proceeding; or

(C) For medical education or treatment.

(2) Made in good faith in the reporting or investigation of:

(A) Unlawful conduct; or

(B) Unsolicited and unwelcome conduct.

(3) Related to a matter of public concern or public interest; or

(4) Reasonably intended to assist the depicted individual.

(b) Subject to this section, a defendant who is a parent, legal guardian, or individual with legal custody of a child is not liable under this article for a disclosure or threatened disclosure of an intimate image, as defined in this article, of the child.

(c) If a defendant asserts an exception to liability under §55-20-4(b) of this code, the exception does not apply if the plaintiff proves the disclosure was:

(1) Prohibited by law other than this article; or

(2) Made for the purpose of sexual arousal, sexual gratification, humiliation, degradation, or monetary or commercial gain.

(d) Disclosure of, or threat to disclose, an intimate image is not a matter of public concern or public interest solely because the depicted individual is a public figure.

§55-20-5. Plaintiff's privacy.

In an action under this article, a plaintiff may file a motion to seal with the initial pleading or any other motion as necessary to protect the identity and privacy of the plaintiff. The court may make further orders as necessary to protect the identity and privacy of a plaintiff.

§55-20-6. Remedies.

(a) In an action under this article, a prevailing plaintiff may recover:

(1) The greater of:

(A) Economic and noneconomic damages proximately caused by the defendant's disclosure or threatened disclosure, including damages for emotional distress, whether or not accompanied by other damages; or

(B) Statutory damages not to exceed $10,000 against each defendant found liable under this article for all disclosure and threatened disclosures by the defendant of which the plaintiff knew or reasonably should have known when filing the action or which became known during the pendency of the action. In determining the amount, if any, of statutory damages under §55-20-6(a)(1)(B) of this code, consideration shall be given to the age of the parties at the time of disclosure or threatened disclosure, the number of disclosures or threatened disclosures made by the defendant, the breadth of distribution of the image by the defendant, and other exacerbating or mitigating factors;

(2) An amount equal to any monetary gain made by the defendant from disclosure of the intimate image; and

(3) Punitive damages as allowed under the law of this state other than this article.

(b) In an action under this article, the court may award a prevailing plaintiff:

(1) Reasonable attorney's fees and costs; and

(2) Additional relief, including injunctive relief.

§55-20-7. Statute of limitations.

(a) Any action under this article for:

(1) An unauthorized disclosure may not be brought later than four years from the date:

(A) The disclosure was discovered; or

(B) Should have been discovered with the exercise of reasonable diligence.

(2) A threat to disclose may not be brought later than four years from the date of the threat to disclose.

(b) Except as otherwise provided in §55-20-7(c) of this code, this section is subject to the tolling of statutes of this state.

(c) In an action under §55-20-3(a) of this code by a depicted individual who was a minor on the date of the disclosure or threat to disclose, the time specified in §55-20-7(a) of this code does not begin to run until the depicted individual attains the age of majority.

§55-20-8. Construction.

(a) This article shall be construed to be consistent with the Communications Decency Act of 1996, 47 U.S.C., Section 230.

(b) This article may not be construed to alter the law of this state on sovereign immunity.

§55-20-9. Uniformity of application and construction.

In applying and construing this act, consideration must be given to the need to promote uniformity of the law with respect to this subject matter among states that enact it.

§55-20-10. Effective date.

This article shall apply to any cause of action, subject to this article, accruing on, or after, the effective date of the article.

§55-21-1. Short title.

This article may be cited as the Uniform Commercial Real Estate Receivership Act.

§55-21-2. Definitions.

When used in this article, the following words have the meanings specified in this section:

“Affiliate” means:

(1) With respect to an individual:

(A) A spouse, companion, or domestic partner of the individual;

(B) A lineal ancestor or descendant, whether by blood or adoption, of:

(i) The individual; or

(ii) A spouse, companion, or domestic partner of the individual;

(C) A spouse, companion, or domestic partner of an ancestor or descendant described in clause (ii);

(D) A sibling, aunt, uncle, great aunt, great uncle, first cousin, niece, nephew, grandniece, or grandnephew of the individual, whether related by the whole or the half blood or adoption, or a companion of any of them; or

(E) Any other individual occupying the residence of the individual; and

(2) With respect to a person other than an individual:

(A) Another person that directly or indirectly controls, is controlled by, or is under common control with the person;

(B) An officer, director, manager, member, partner, employee, or trustee, or another fiduciary of the person; or

(C) A spouse, companion, or domestic partner of an individual, or any other individual occupying the residence of, an individual described in paragraph (A) or (B).

“Court” means a circuit court.

“Executory contract” means a contract, including a lease, under which each party has an unperformed obligation and the failure of a party to complete performance would constitute a material breach.

“Governmental unit” means an office, department, division, bureau, board, commission, or other agency of this state or a subdivision of this state.

“Lien” means an interest in property which secures payment or performance of an obligation.

"Mortgage" means a record, however denominated, that creates or provides for a consensual lien on real property or rents, even if it also creates or provides for a lien on personal property.

"Mortgagee" means a person entitled to enforce an obligation secured by a mortgage.

"Mortgagor" means a person that grants a mortgage or a successor in ownership of the real property described in the mortgage.

"Owner" means the person for whose property a receiver is appointed.

"Person" means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, or instrumentality, or other legal entity.

"Proceeds" means the following property:

(1) Whatever is acquired on the sale, lease, license, exchange, or other disposition of receivership property;

(2) Whatever is collected on, or distributed on account of, receivership property;

(3) Rights arising out of receivership property;

(4) To the extent of the value of receivership property, claims arising out of the loss, nonconformity, or interference with the use of, defects or infringement of rights in, or damage to the property; or

(5) To the extent of the value of receivership property and to the extent payable to the owner or mortgagee, insurance payable by reason of the loss or nonconformity of, defects or infringement of rights in, or damage to the property.

"Property" means all of a person's right, title, and interest, both legal and equitable, in real and personal property, tangible and intangible, wherever located and however acquired. The term includes proceeds, products, offspring, rents, or profits of or from the property.

"Receiver" means a person appointed by the court as the court's agent, and subject to the court's direction, to take possession of, manage, and, if authorized by this article or court order, transfer, sell, lease, license, exchange, collect, or otherwise dispose of receivership property.

"Receivership" means a proceeding in which a receiver is appointed.

"Receivership property" means the property of an owner which is described in the order appointing a receiver or a subsequent order. The term includes any proceeds, products, offspring, rents, or profits of or from the property.

"Record", used as a noun, means information that is inscribed on a tangible medium or that is stored on an electronic or other medium and is retrievable in perceivable form.

"Rents" means:

(1) Sums payable for the right to possess or occupy, or for the actual possession or occupation of, real property of another person;

(2) Sums payable to a mortgagor under a policy of rental-interruption insurance covering real property;

(3) Claims arising out of a default in the payment of sums payable for the right to possess or occupy real property of another person;

(4) Sums payable to terminate an agreement to possess or occupy real property of another person;

(5) Sums payable to a mortgagor for payment, or for reimbursement of expenses incurred in owning, operating, and maintaining real property, or constructing or installing improvements on real property; or

(6) Other sums payable under an agreement relating to the real property of another person which constitute rents under law of this state other than this article.

"Secured obligation" means an obligation the payment or performance of which is secured by a security agreement.

"Security agreement" means an agreement that creates, or provides for, a lien.

"Sign" means, with present intent to authenticate or adopt a record:

(1) To execute or adopt a tangible symbol; or

(2) To attach to, or logically associate with, the record an electronic sound, symbol, or process.

"State" means a state of the United States, the District of Columbia, Puerto Rico, the United States Virgin Islands, or any territory or insular possession subject to the jurisdiction of the United States.

§55-21-3. Notice and opportunity for hearing.

(a) Except as otherwise provided in subsection (b) of this section, the court may issue an order under this article only after notice and opportunity for a hearing appropriate in the circumstances.

(b) The court may issue an order under this article:

(1) Without prior notice if the circumstances require issuance of an order before notice is given;

(2) After notice, and without a prior hearing, if the circumstances require issuance of an order before a hearing is held; or

(3) After notice, and without a hearing, if no interested party timely requests a hearing.

§55-21-4. Scope; exclusions.

(a) Except as otherwise provided in subsection (b) or (c) of this section, this article applies to a receivership for an interest in real property and any personal property related to or used in operating the real property.

(b) This article does not apply to a receivership for an interest in real property improved by one to four dwelling units unless:

(1) The interest is used for agricultural, commercial, industrial, or mineral-extraction purposes, other than incidental uses by an owner occupying the property as the owner's primary residence;

(2) The interest secures an obligation incurred at a time when the property was used or planned for use for agricultural, commercial, industrial, or mineral-extraction purposes;

(3) The owner planned or is planning to develop the property into one or more dwelling units to be sold or leased in the ordinary course of the owner's business; or

(4) The owner is collecting or has the right to collect rents or other income from the property from a person other than an affiliate of the owner.

(c) This article does not apply to a receivership authorized by law of this state other than this article in which the receiver is a governmental unit or an individual acting in an official capacity on behalf of the unit except to the extent provided by that law.

(d) This article does not limit the authority of a court to appoint a receiver under law of this state other than this article.

(e) Unless displaced by a particular provision of this article, the principles of law and equity supplement this article.

§55-21-5. Power of court.

The court that appoints a receiver under this article has exclusive jurisdiction to direct the receiver and determine any controversy related to the receivership or receivership property and all such orders shall have statewide effect.

§55-21-6. Appointment of receiver.

(a) The court may appoint a receiver:

(1) Before judgment, to protect a party that demonstrates an apparent right, title, or interest in real property that is the subject of the action, if the property or its revenue-producing potential:

(A) Is being subjected to or is in danger of waste, loss, dissipation, or impairment; or

(B) Has been or is about to be the subject of a voidable transaction;

(2) After judgment:

(A) To carry the judgment into effect; or

(B) To preserve nonexempt real property pending appeal or when an execution has been returned unsatisfied and the owner refuses to apply the property in satisfaction of the judgment; or

(3) In an action in which a receiver for real property may be appointed on equitable grounds.

(b) In connection with the foreclosure or other enforcement of a mortgage, the court may appoint a receiver for the mortgaged property if:

(1) Appointment is necessary to protect the property from waste, loss, transfer, dissipation, or impairment;

(2) The mortgagor agreed in a signed record to appointment of a receiver on default;

(3) The owner agreed, after default and in a signed record, to appointment of a receiver;

(4) The property and any other collateral held by the mortgagee are not sufficient to satisfy the secured obligation;

(5) The owner fails to turn over to the mortgagee proceeds or rents the mortgagee was entitled to collect; or

(6) The holder of a subordinate lien obtains appointment of a receiver for the property.

(c) The court may condition appointment of a receiver without prior notice under §55-21-3(b)(1) of this code or without a prior hearing under §55-21-3(b)(2) of this code on the giving of security by the person seeking the appointment for the payment of damages, reasonable attorney's fees, and costs incurred or suffered by any person if the court later concludes that the appointment was not justified. If the court later concludes that the appointment was justified, the court shall release the security.

§55-21-7. Disqualification from appointment as receiver; disclosure of interest.

(a) The court may not appoint a person as receiver unless the person submits to the court a statement under penalty of perjury that the person is not disqualified.

(b) Except as otherwise provided in subsection (c) of this section, a person is disqualified from appointment as receiver if the person:

(1) Is an affiliate of a party;

(2) Has an interest materially adverse to an interest of a party;

(3) Has a material financial interest in the outcome of the action, other than compensation the court may allow the receiver;

(4) Has a debtor-creditor relationship with a party; or

(5) Holds an equity interest in a party, other than a noncontrolling interest in a publicly-traded company.

(c) A person is not disqualified from appointment as receiver solely because the person:

(1) Was appointed receiver or is owed compensation in an unrelated matter involving a party or was engaged by a party in a matter unrelated to the receivership;

(2) Is an individual obligated to a party on a debt that is not in default and was incurred primarily for personal, family, or household purposes; or

(3) Maintains with a party a deposit account as defined in §46-9-102(a)(29) of this code.

(d) A person seeking appointment of a receiver may nominate a person to serve as receiver, but the court is not bound by the nomination.

§55-21-8. Bond; alternative security.

(a) Except as otherwise provided in subsection (b) of this section, a receiver shall post with the court a bond that:

(1) Is conditioned on the faithful discharge of the receiver's duties;

(2) Has one or more sureties approved by the court;

(3) Is in an amount the court specifies; and

(4) Is effective as of the date of the receiver's appointment.

(b) The court may approve the posting by a receiver with the court of alternative security, such as a letter of credit or deposit of funds. The receiver may not use receivership property as alternative security. Interest that accrues on deposited funds must be paid to the receiver on the receiver's discharge.

(c) The court may authorize a receiver to act before the receiver posts the bond or alternative security required by this section.

(d) A claim against a receiver's bond or alternative security must be made not later than one-year after the date the receiver is discharged.

§55-21-9. Status of receiver as lien creditor.

On appointment of a receiver, the receiver has the status of a lien creditor under:

(1) Section §46-9-101 *et seq*. of this code as to receivership property that is personal property or fixtures; and

(2) Chapter 38 of this code as to receivership property that is real property.

§55-21-10. Security agreement covering after-acquired property.

Except as otherwise provided by law of this state other than this article, property that a receiver or owner acquires after appointment of the receiver is subject to a security agreement entered into before the appointment to the same extent as if the court had not appointed the receiver.

§55-21-11. Collection and turnover of receivership property.

(a) Unless the court orders otherwise, on demand by a receiver:

(1) A person that owes a debt that is receivership property and is matured or payable on demand or on order shall pay the debt to or on the order of the receiver, except to the extent the debt is subject to setoff or recoupment; and

(2) Subject to subsection (c) of this section, a person that has possession, custody, or control of receivership property shall turn the property over to the receiver.

(b) A person that has notice of the appointment of a receiver and owes a debt that is receivership property may not satisfy the debt by payment to the owner.

(c) If a creditor has possession, custody, or control of receivership property and the validity, perfection, or priority of the creditor's lien on the property depends on the creditor's possession, custody, or control, the creditor may retain possession, custody, or control until the court orders adequate protection of the creditor's lien.

(d) Unless a bona fide dispute exists about a receiver's right to possession, custody, or control of receivership property, the court may sanction as civil contempt a person's failure to turn the property over when required by this section.

§55-21-12. Powers and duties of receiver.

(a) Except as limited by court order or law of this state other than this article, a receiver may:

(1) Collect, control, manage, conserve, and protect receivership property;

(2) Operate a business constituting receivership property, including preservation, use, sale, lease, license, exchange, collection, or disposition of the property in the ordinary course of business;

(3) In the ordinary course of business, incur unsecured debt and pay expenses incidental to the receiver's preservation, use, sale, lease, license, exchange, collection, or disposition of receivership property;

(4) Assert a right, claim, cause of action, or defense of the owner which relates to receivership property;

(5) Seek and obtain instruction from the court concerning receivership property, exercise of the receiver's powers, and performance of the receiver's duties;

(6) By subpoena, compel a person to submit to examination under oath, or to produce and permit inspection and copying of designated records or tangible things, with respect to receivership property or any other matter that may affect administration of the receivership;

(7) Engage a professional as provided in §55-21-15 of this code;

(8) Apply to a court of another state for appointment as ancillary receiver with respect to receivership property located in that state; and

(9) Exercise any power conferred by court order, this article, or law of this state other than this article.

(b) With court approval, a receiver may:

(1) Incur debt for the use or benefit of receivership property other than in the ordinary course of business;

(2) Make improvements to receivership property;

(3) Use or transfer receivership property other than in the ordinary course of business as provided in §55-21-16 of this code;

(4) Adopt or reject an executory contract of the owner as provided in §55-21-17 of this code;

(5) Pay compensation to the receiver as provided in §55-21-21 of this code, and to each professional engaged by the receiver as provided in §55-21-15 of this code;

(6) Recommend allowance or disallowance of a claim of a creditor as provided in §55-21-20 of this code; and

(7) Make a distribution of receivership property as provided in §55-21-20 of this code.

(c) A receiver shall:

(1) Prepare and retain appropriate business records, including a record of each receipt, disbursement, and disposition of receivership property;

(2) Account for receivership property, including the proceeds of a sale, lease, license, exchange, collection, or other disposition of the property;

(3) File a copy of the order appointing the receiver with the county clerk of the appropriate county and, if a legal description of the real property is not included in the order, the legal description;

(4) Disclose to the court any fact arising during the receivership which would disqualify the receiver under §55-21-7 of this code; and

(5) Perform any duty imposed by court order, this article, or law of this state other than this article.

(d) The powers and duties of a receiver may be expanded, modified, or limited by court order.

§55-21-13. Duties of owner.

(a) An owner shall:

(1) Assist and cooperate with the receiver in the administration of the receivership and the discharge of the receiver's duties;

(2) Preserve and turn over to the receiver all receivership property in the owner's possession, custody, or control;

(3) Identify all records and other information relating to the receivership property, including a password, authorization, or other information needed to obtain or maintain access to or control of the receivership property, and make available to the receiver the records and information in the owner's possession, custody, or control;

(4) On subpoena, submit to examination under oath by the receiver concerning the acts, conduct, property, liabilities, and financial condition of the owner or any matter relating to the receivership property or the receivership; and

(5) Perform any duty imposed by court order, this article, or law of this state other than this article.

(b) If an owner is a person other than an individual, this section applies to each officer, director, manager, member, partner, trustee, or other person exercising or having the power to exercise control over the affairs of the owner.

(c) If a person knowingly fails to perform a duty imposed by this section, the court may:

(1) Award the receiver actual damages caused by the person's failure, reasonable attorney's fees, and costs; and

(2) Sanction the failure as civil contempt.

§55-21-14. Stay of other actions; injunction.

(a) Except as otherwise provided in subsection (d) of this section or ordered by the court, an order appointing a receiver operates as a stay, applicable to all persons, of an act, action, or proceeding:

(1) To obtain possession of, exercise control over, or enforce a judgment against receivership property; and

(2) To enforce a lien against receivership property to the extent the lien secures a claim against the owner which arose before entry of the order.

(b) Except as otherwise provided in subsection (d) of this section, the court may enjoin an act, action, or proceeding against or relating to receivership property if the injunction is necessary to protect the property or facilitate administration of the receivership.

(c) A person whose act, action, or proceeding is stayed or enjoined under this section may apply to the court for relief from the stay or injunction for cause.

(d) An order under subsection (a) or (b) of this section does not operate as a stay or injunction of:

(1) An act, action, or proceeding to foreclose or otherwise enforce a mortgage by the person seeking appointment of the receiver;

(2) An act, action, or proceeding to perfect, or maintain or continue the perfection of, an interest in receivership property;

(3) Commencement or continuation of a criminal proceeding;

(4) Commencement or continuation of an action or proceeding, or enforcement of a judgment other than a money judgment in an action or proceeding, by a governmental unit to enforce its police or regulatory power; or

(5) Establishment by a governmental unit of a tax liability against the owner or receivership property or an appeal of the liability.

(e) The court may void an act that violates a stay or injunction under this section.

(f) If a person knowingly violates a stay or injunction under this section, the court may:

(1) Award actual damages caused by the violation, reasonable attorney’s fees, and costs; and

(2) Sanction the violation as civil contempt.

§55-21-15. Engagement and compensation of professional.

(a) With court approval, a receiver may engage an attorney, accountant, appraiser, auctioneer, broker, or other professional to assist the receiver in performing a duty or exercising a power of the receiver. The receiver shall disclose to the court:

(1) The identity and qualifications of the professional;

(2) The scope and nature of the proposed engagement;

(3) Any potential conflict of interest; and

(4) The proposed compensation.

(b) A person is not disqualified from engagement under this section solely because of the person's engagement by, representation of, or other relationship with the receiver, a creditor, or a party. This article does not prevent the receiver from serving in the receivership as an attorney, accountant, auctioneer, or broker when authorized by law.

(c) A receiver or professional engaged under subsection (a) of this section shall file with the court an itemized statement of the time spent, work performed, and billing rate of each person that performed the work and an itemized list of expenses. The receiver shall pay the amount approved by the court.

§55-21-16. Use or transfer of receivership property not in ordinary course of business.

(a) In this section, "good faith" means honesty in fact and the observance of reasonable commercial standards of fair dealing.

(b) With court approval, a receiver may use receivership property other than in the ordinary course of business.

(c) With court approval, a receiver may transfer receivership property, other than in the ordinary course of business, by sale, lease, license, exchange, or other disposition. Unless the agreement of sale provides otherwise, a sale under this section is free and clear of a lien of the person that obtained appointment of the receiver, any subordinate lien, and any right of redemption, but is subject to a senior lien.

(d) A lien on receivership property which is extinguished by a transfer under subsection (c) of this section attaches to the proceeds of the transfer with the same validity, perfection, and priority the lien had on the property immediately before the transfer, even if the proceeds are not sufficient to satisfy all obligations secured by the lien.

(e) A transfer under subsection (c) of this section may occur by means other than a public auction sale. A creditor holding a valid lien on the property to be transferred may purchase the property and offset against the purchase price part or all of the allowed amount secured by the lien, if the creditor tenders funds sufficient to satisfy in full the reasonable expenses of transfer and the obligation secured by any senior lien extinguished by the transfer.

(f) A reversal or modification of an order approving a transfer under subsection (c) of this section does not affect the validity of the transfer to a person that acquired the property in good faith or revive against the person any lien extinguished by the transfer, whether the person knew before the transfer of the request for reversal or modification, unless the court stayed the order before the transfer.

§55-21-17. Executory contract.

(a) In this section, "executory contract" has the same meaning as "timesharing plan" as defined in §36-9-4 of this code.

(b) Except as otherwise provided in subsection (h) of this section, with court approval, a receiver may adopt or reject an executory contract of the owner relating to receivership property. The court may condition the receiver's adoption and continued performance of the contract on terms appropriate under the circumstances. If the receiver does not request court approval to adopt or reject the contract within a reasonable time after the receiver's appointment, the receiver is deemed to have rejected the contract.

(c) A receiver's performance of an executory contract before court approval under subsection (b) of this section of its adoption or rejection is not an adoption of the contract and does not preclude the receiver from seeking approval to reject the contract.

(d) A provision in an executory contract which requires or permits a forfeiture, modification, or termination of the contract because of the appointment of a receiver or the financial condition of the owner does not affect a receiver's power under subsection (b) of this section to adopt the contract.

(e) A receiver's right to possess or use receivership property pursuant to an executory contract terminates on rejection of the contract under subsection (b) of this section. Rejection is a breach of the contract effective immediately before appointment of the receiver. A claim for damages for rejection of the contract must be submitted by the later of:

(1) The time set for submitting a claim in the receivership; or

(2) Thirty days after the court approves the rejection.

(f) If at the time a receiver is appointed, the owner has the right to assign an executory contract relating to receivership property under law of this state other than this article, the receiver may assign the contract with court approval.

(g) If a receiver rejects, under subsection (b) of this section, an executory contract for the sale of receivership property that is real property in possession of the purchaser or a real-property timeshare interest, the purchaser may:

(1) Treat the rejection as a termination of the contract, and in that case the purchaser has a lien on the property for the recovery of any part of the purchase price the purchaser paid; or

(2) Retain the purchaser's right to possession under the contract, and in that case the purchaser shall continue to perform all obligations arising under the contract and may offset any damages caused by nonperformance of an obligation of the owner after the date of the rejection, but the purchaser has no right or claim against other receivership property or the receiver on account of the damages.

(h) A receiver may not reject an unexpired lease of real property under which the owner is the landlord if:

(1) The tenant occupies the leased premises as the tenant's primary residence;

(2) The receiver was appointed at the request of a person other than a mortgagee; or

(3) The receiver was appointed at the request of a mortgagee and:

(A) The lease is superior to the lien of the mortgage;

(B) The tenant has an enforceable agreement with the mortgagee or the holder of a senior lien under which the tenant's occupancy will not be disturbed as long as the tenant performs its obligations under the lease;

(C) The mortgagee has consented to the lease, either in a signed record or by its failure timely to object that the lease violated the mortgage; or

(D) The terms of the lease were commercially reasonable at the time the lease was agreed to and the tenant did not know or have reason to know that the lease violated the mortgage.

§55-21-18. Defenses and immunities of receiver.

(a) A receiver is entitled to all defenses and immunities provided by law of this state other than this article for an act or omission within the scope of the receiver's appointment.

(b) A receiver may be sued personally for an act or omission in administering receivership property only with approval of the court that appointed the receiver.

§55-21-19. Interim report of receiver.

A receiver may file or, if ordered by the court, shall file an interim report that includes:

(1) The activities of the receiver since appointment or a previous report;

(2) Receipts and disbursements, including a payment made or proposed to be made to a professional engaged by the receiver;

(3) Receipts and dispositions of receivership property;

(4) Fees and expenses of the receiver and, if not filed separately, a request for approval of payment of the fees and expenses; and

(5) Any other information required by the court.

§55-21-20. Notice of appointment; claim against receivership; distribution to creditors.

(a) Except as otherwise provided in subsection (f) of this section, a receiver shall give notice of appointment of the receiver to creditors of the owner by:

(1) Deposit for delivery through first-class mail or other commercially reasonable delivery method to the last-known address of each creditor; and

(2) Publication as directed by the court.

(b) Except as otherwise provided in subsection (f) of this section, the notice required by subsection (a) of this section must specify the date by which each creditor holding a claim against the owner which arose before appointment of the receiver must submit the claim to the receiver. The date specified must be at least 90 days after the later of notice under subsection (a)(1) or last publication under subsection (a)(2) of this section. The court may extend the period for submitting the claim. Unless the court orders otherwise, a claim that is not submitted timely is not entitled to a distribution from the receivership.

(c) A claim submitted by a creditor under this section must:

(1) State the name and address of the creditor;

(2) State the amount and basis of the claim;

(3) Identify any property securing the claim;

(4) Be signed by the creditor under penalty of perjury; and

(5) Include a copy of any record on which the claim is based.

(d) An assignment by a creditor of a claim against the owner is effective against the receiver only if the assignee gives timely notice of the assignment to the receiver in a signed record.

(e) At any time before entry of an order approving a receiver's final report, the receiver may file with the court an objection to a claim of a creditor, stating the basis for the objection. The court shall allow or disallow the claim according to law of this state other than this article.

(f) If the court concludes that receivership property is likely to be insufficient to satisfy claims of each creditor holding a perfected lien on the property, the court may order that:

(1) The receiver need not give notice under subsection (a) of the appointment to all creditors of the owner, but only such creditors as the court directs; and

(2) Unsecured creditors need not submit claims under this section.

(g) Subject to §55-21-21 of this code:

(1) A distribution of receivership property to a creditor holding a perfected lien on the property must be made in accordance with the creditor's priority under law of this state other than this article; and

(2) A distribution of receivership property to a creditor with an allowed unsecured claim must be made as the court directs according to law of this state other than this article.

§55-21-21. Fees and expenses.

(a) The court may award a receiver from receivership property the reasonable and necessary fees and expenses of performing the duties of the receiver and exercising the powers of the receiver.

(b) The court may order one or more of the following to pay the reasonable and necessary fees and expenses of the receivership, including reasonable attorney's fees and costs:

(1) A person that requested the appointment of the receiver, if the receivership does not produce sufficient funds to pay the fees and expenses; or

(2) A person whose conduct justified or would have justified the appointment of the receiver under §55-21-6(a)(1) of this code.

§55-21-22. Removal of receiver; replacement; termination of receivership.

(a) The court may remove a receiver for cause.

(b) The court shall replace a receiver that dies, resigns, or is removed.

(c) If the court finds that a receiver that resigns or is removed, or the representative of a receiver that is deceased, has accounted fully for and turned over to the successor receiver all receivership property and has filed a report of all receipts and disbursements during the service of the replaced receiver, the replaced receiver is discharged.

(d) The court may discharge a receiver and terminate the court's administration of the receivership property if the court finds that appointment of the receiver was improvident or that the circumstances no longer warrant continuation of the receivership. If the court finds that the appointment was sought wrongfully or in bad faith, the court may assess against the person that sought the appointment:

(1) The fees and expenses of the receivership, including reasonable attorney's fees and costs; and

(2) Actual damages caused by the appointment, including reasonable attorney's fees and costs.

§55-21-23. Final report of receiver; discharge.

(a) On completion of a receiver's duties, the receiver shall file a final report including:

(1) A description of the activities of the receiver in the conduct of the receivership;

(2) A list of receivership property at the commencement of the receivership and any receivership property received during the receivership;

(3) A list of disbursements, including payments to professionals engaged by the receiver;

(4) A list of dispositions of receivership property;

(5) A list of distributions made or proposed to be made from the receivership for creditor claims;

(6) If not filed separately, a request for approval of the payment of fees and expenses of the receiver; and

(7) Any other information required by the court.

(b) If the court approves a final report filed under subsection (a) and the receiver distributes all receivership property, the receiver is discharged.

§55-21-24. Receivership in another state; ancillary proceeding.

(a) The court may appoint a receiver appointed in another state, or that person's nominee, as an ancillary receiver with respect to property located in this state or subject to the jurisdiction of the court for which a receiver could be appointed under this article, if:

(1) The person or nominee would be eligible to serve as receiver under the provisions of §55-21-7 of this code; and

(2) The appointment furthers the person's possession, custody, control, or disposition of property subject to the receivership in the other state.

(b) The court may issue an order that gives effect to an order entered in another state appointing or directing a receiver.

(c) Unless the court orders otherwise, an ancillary receiver appointed under subsection (a) has the rights, powers, and duties of a receiver appointed under this article.

§55-21-25. Effect of enforcement by mortgagee.

(a) A request by a mortgagee for appointment of a receiver, the appointment of a receiver, or application by a mortgagee of receivership property or proceeds to the secured obligation does not:

(1) Make the mortgagee a mortgagee in possession of the real property;

(2) Make the mortgagee an agent of the owner;

(3) Constitute an election of remedies that precludes a later action to enforce the secured obligation;

(4) Make the secured obligation unenforceable;

(5) Limit any right available to the mortgagee with respect to the secured obligation; or

(6) Except as otherwise provided in subsection (b), bar a deficiency judgment pursuant to law of this state other than this article governing or relating to a deficiency judgment.

(b) If a receiver sells receivership property that pursuant to §55-10-16(c) of this code is free and clear of a lien, the ability of a creditor to enforce an obligation that had been secured by the lien is subject to law of this state other than this article relating to a deficiency judgment.

§55-21-26. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§55-21-27. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. § 7001 *et seq*. of this code, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. § 7001(c) of this code, or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U.S.C. § 7003(b) of this code.

§55-21-28. Transition.

This article does not apply to a receivership for which the receiver was appointed before the effective date of this article.