WEST VIRGINIA CODE CHAPTER 5B ARTICLE 1

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§5B-1-1. Department of Commerce; office of Secretary of Department of Commerce.

(a) The Secretary of Commerce is the chief executive officer of the department. The Governor shall appoint the secretary, by and with the advice and consent of the Senate, for the term for which the Governor is elected. Any reference in this code to the Bureau of Commerce means the Department of Commerce. Any reference in this code to the Commissioner of the Department of Commerce means the Secretary of Commerce. As used in this article, "secretary" means the Secretary of Commerce and "department" means Department of Commerce.

(b) The department may receive federal funds.

(c) The secretary serves at the will and pleasure of the Governor. The annual salary of the secretary is as provided in §6-7-2a of this code.

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§5B-1-1a. Marketing and Communications Office.

(a) There is continued in the Department of Commerce the Marketing and Communications Office. The office is created to provide marketing and communications goods and services to other state agencies, departments, units of state or local government or other entity or person.

(b) The office is authorized to charge for goods and services it provides to other state agencies. The Secretary of the Department of Commerce shall approve a fee schedule determining the amounts that may be charged for goods and services provided by the office to other state agencies. At the discretion of and with the approval of the Secretary of the Department of Commerce, the office may also sell partnerships, sponsorships or advertising in its publications, events or promotions to help offset the cost of producing and distributing its products and services.

(c) All moneys collected shall be deposited in a special account in the State Treasury to be known as the Department of Commerce Marketing and Communications Operating Fund. Expenditures from the fund shall be for the operation of the office and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of article two, chapter eleven-b of this code.

(d) Any balance remaining at the end of any fiscal year shall not revert to the General Revenue Fund, but shall remain in the fund for expenditures in accordance with the purposes set forth in this section.

(e) The Department of Commerce shall develop and maintain a system of annual or more frequent performance measures useful in gauging the efficiency and effectiveness of the office's marketing and communications activities. The measures shall also reflect the office's efficiency and effectiveness with respect to commercially available marketing and communications services and any private sector benchmarks which might be identified or created. For the purposes of this section, "performance measures" means income, output, quality, self-sufficiency and outcome metrics.

(f) On January 1 of each year the Secretary of the Department of Commerce shall report to the Joint Committee on Government and Finance, the Joint Standing Committee on Finance and the Joint Commission on Economic Development on the performance of the office. This report is to include a statement of the performance measurements for the office developed by the Secretary of the Department of Commerce and an analysis of the office's performance.

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§5B-1-2. Agencies, boards, commissions, divisions, and offices comprising the Department of Commerce.

(a) The Department of Commerce consists of the following agencies, boards, commissions, divisions, and offices, including all of the allied, advisory, affiliated, or related entities, which are incorporated in and administered as part of the Department of Commerce:

(1) Division of Labor provided in §21-1-1 *et seq.* of this code, which includes the Board of Manufactured Housing Construction and Safety provided in §21-9-1 *et seq.* of this code.

(2) Office of Miners' Health, Safety and Training provided in §22A-1-1 *et seq.* of this code. The Board of Coal Mine Health and Safety and the Coal Mine Safety and Technical Review Committee provided in §22A-6-1 *et seq.* of this code are transferred to the Office of Miners' Health, Safety, and Training for purposes of administrative support and liaison with the Office of the Governor.

(3) Division of Natural Resources and Natural Resources Commission provided in §20-1-1 *et seq.* of this code;

(4) Division of Forestry provided in §19-1A-1 *et seq.* of this code;

(5) Geological and Economic Survey provided in §29-2-1 *et seq.* of this code;

(6) Workforce West Virginia provided in Chapter 21A of this code, which includes:

(A) Division of Unemployment Compensation;

(B) Division of Employment Service;

(C) Division of Workforce Development; and

(D) Division of Research, Information and Analysis; and

(7) Division of Economic Development provided in §5B-2-1 *et seq.* of this code, which includes:

(A) Office of Broadband provided for in 31G-1A-1 *et seq.*;

(B) Small Business Development Center provided for in §12-1A-1 *et seq.*;

(C) Office of Energy provided for in §5B-2F-2 of this code; and

(D) Broadband Enhancement Council provided for in §31G-1-1 *et seq.* of this code.

(b) Beginning on July 1, 2025, all employees of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, shall be exempt from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code and

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from the classified civil service system under §29-6-1 *et seq.* of this code except that:

(1) All employees of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, who are currently members of the classified civil service system shall retain their status as long as they remain in their current position, and all employees of the Department of Commerce who currently have recourse to the state grievance procedures will continue to have access to the state grievance procedures as long as they remain in their current position; and

(2) Any employee of the Department of Commerce, or agency, board, commission, division, and office listed under subsection (a) of this section, that leaves his or her position and remains an employee within the Department of Commerce shall, at that time, be transferred to the classified-exempt service system as defined in §29-6-2(g) of this code and be exempted from the state grievance procedures as set forth in §6C-2-1 *et seq.* of this code.

(c) The Secretary of the Department of Commerce shall have the authority to designate certain employees' status under the classified civil service system and grievance procedures as may be deemed necessary to comply with federal law, federal regulation, or the requirements for receipt of federal funding or assistance.

(d) Subsection (b) of this section shall not apply to:

(1) Any position appointed by the Governor; and

(2) Natural Resource Police Officers and Special Natural Resource Police Officers employed with the Division of Natural Resources who are charged with carrying out law enforcement activity, as set forth in §20-7-1 *et seq.* of this code.

(e) Nothing in this section shall exempt the Department of Commerce from the provisions of this code prohibiting nepotism, favoritism, discrimination, or unethical practices related to the promotion, transfer, layoff, removal, discipline, and compensation of state employees.

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§5B-1-3. Powers and duties of secretary, administrators, division heads and employees.

(a) The secretary controls and supervises the department and is responsible for the work of each department employee.

(b) The secretary has the power and authority specified in this article, in article two, chapter five-f of this code and as otherwise specified in this code.

(c) The secretary may assess agencies, boards, commissions, divisions and offices in the department for the payment of expenses of the office of the secretary.

(d) The secretary may employ professional staff, including, but not limited to, certified public accountants, economists and attorneys, assistants and other employees as necessary for the efficient operation of the department.

(e) The secretary and administrators, division heads and other employees of the department shall perform their duties as specified in this code and as may be prescribed by the Governor.

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§5B-1-4. Reports by secretary.

The secretary shall report annually to the Governor concerning the conduct of the department and make other reports as the Governor may require.

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§5B-1-5. Delegation of powers and duties by secretary.

The secretary may delegate his or her powers and duties to assistants and employees, but the secretary is responsible for all official acts of the department.

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§5B-1-6. Confidentiality of information.

(a) Information provided to secretary under expectation of confidentiality. -- Information that would be confidential under the laws of this state when provided to a division, agency, board, commission or office within the department is confidential when that information is provided to the secretary or an employee in the office of the secretary. The confidential information may be disclosed only: (1) To the applicable agency, board, commission or division of the department to which the information relates; or (2) in the manner authorized by provisions of this code applicable to that agency, board, commission or division. This confidentiality rule is a specific exemption from disclosure under article one, chapter twenty-nine-b of this code.

(b) Interdepartmental communication of confidential information. -- Notwithstanding any provision of this code to the contrary, information that is confidential pursuant to this code in the possession of any division, agency, board, commission or office of the department may be disclosed to the secretary or an employee in the office of the secretary. The secretary or employee shall safeguard the information and may not further disclose the information except under the same conditions, restrictions and limitations applicable to the administrator of the agency, board, commission, division or office of the department in whose hands the information is confidential. This subsection does not require disclosure of individually identifiable health care or other information that is prohibited from disclosure by federal law. This subsection is a specific exemption from the disclosure requirements of article one, chapter twenty-nine-b of this code.

(c) The provisions of this section:

(1) Apply only to information that is actually disclosed by a division, agency, board, commission or office within a department to the secretary, or an employee in the office of the secretary, of that department;

(2) Do not authorize disclosure or exempt from the provisions of article one, chapter twenty-nine-b of this code any confidential information of a division, agency, board, commission or office within a department to any person or entity other than the secretary, or an employee in the office of the secretary, of that department;

(3) Apply only to disclosure between a division, agency, board, commission or office within a department and the secretary, or an employee in the office of the secretary, of that department.

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§5B-1-7. Right of appeal from interference with functioning of agency.

Any governmental entity may appeal to the Governor for review upon a showing that application of the secretary's authority may interfere with the successful functioning of that entity. The Governor's decision controls on appeal.

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§5B-1-8. Financial assistance for small businesses during state of emergency.

(a) The Department of Commerce is authorized to make short-term, low-interest loans available to small businesses located in counties listed in a state declaration of a state of emergency. The purpose of these loans is to mitigate the effects of business losses resulting from the conditions giving rise to the state of emergency where other forms of compensation or relief are not available.

(b) For purposes of this section, an eligible, small business means a business with less than seventy-five full-time or full-time equivalent employees, operating lawfully within this state and in compliance with the state's tax, unemployment compensation and workers' compensation laws, and which meets the criteria specified by the Department of Commerce by rule for issuance of a loan.

(c) The loan program provided by this section shall only be available when the Governor makes a written finding, following a declaration of a state of emergency by either the Governor or the Legislature, that a substantial portion of small businesses within the relevant counties require emergency financial assistance and authorizes the Department of Commerce to issue loans through this program: Provided, That the authorization also identify an appropriate source of funding for the loans.

(d) Following the Governor's finding and authorization, an eligible, small business may make application for an emergency assistance loan at any time within the duration of a state of emergency, declared pursuant section six, article five, chapter fifteen of this code, and up to ninety days after the termination of the state of emergency. The application shall be made to the division or office designated by the Secretary of Commerce to administer the loan program. Only one loan will be permitted to a business for losses arising out of a declared state of emergency and shall only be available to a business that is located within a county identified in the declaration of the state of emergency. Eligibility provisions of this subsection may apply to any state of emergency, declared by the Governor or the Legislature, that is in effect upon the effective date of this section, but in no event shall loans be made for business losses incurred or originating prior to January 1, 2014.

(e) The source of principal for any loan provided under this section shall be from funds appropriated to the Civil Contingent Fund or from any other appropriation designated for or applicable to the purpose of providing state of emergency loans to small businesses. The principal amount of any loan provided under this section shall not exceed $20,000 and the interest rate of the loan shall be fixed at a rate equal to half of the federal prime interest rate published at the time of execution of a written agreement between the agency and the loan recipient. The period of duration for loans shall be not more than twenty-four months. The provision of loans is subject to the availability of funds and shall not exceed an aggregate amount of $2 million per declared state of emergency, unless a greater amount is authorized by subsequent appropriation of the Legislature.

(f) Payments of interest on loans provided pursuant to this section shall be credited to the

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general fund of the state. Payments of principal shall be credited back to the source of funding, or if the source of funding has expired, to the general revenue fund of the state.

(g) Loans will only be provided upon execution of a written agreement with the Department of Commerce, or with the authorized designee of the Secretary of Commerce. The duty to repay the principal and pay the interest constitutes a debt to the state. The Secretary of Commerce or his or her designated representative is authorized to enforce, by any legal means, the provisions of the written agreement and to pursue collection of any and all amounts due under the terms of the written agreement and any costs to the state for the collection.

(h) Following the effective date of this section, the Secretary of Commerce shall designate an office or division within the Department of Commerce to administer the loan program and shall, acting through the designated office or division, promulgate emergency rules and propose corresponding legislative rules for consideration and authorization by the legislature to describe and delineate the manner in which application for loans will be submitted and reviewed, the criteria for approval of loan applications, including, but not limited to, the credit history of the applicant, required security and other provisions necessary for the efficient administration of this program.

(i) When the Governor authorizes the Department of Commerce to issue loans hereunder following the declaration of a state of emergency, the Secretary of Commerce shall make a report to the Joint Committee on Government and Finance at the conclusion of each fiscal year in which the loan program is in effect and loans are outstanding, regarding the number of businesses that have applied for loans, the number of loans approved, the amounts awarded, the number of employees affected thereby and a financial statement including the balance of funds available and the aggregate amount of principal and interest outstanding and due to the state.

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§5B-1-9. Authority to assist qualifying tourism development projects and tourism development expansion projects; legislative findings.

(a) The Department of Commerce may assist qualifying tourism development projects and tourism development expansion projects by approved companies pursuant to §5B-2E-1 *et seq.* of this code which are located in, or partially in, municipalities with a population of 2,000 or less, effective as of the effective date of the most recent census, as specified in §8-1-4 of this code relating to the creation of tourism development districts.

(b) The Legislature finds and declares that the general welfare and material well-being of the citizens of the state depend, in large measure, upon the development and expansion of tourism in the state, and that, beyond the creation and expansion of tourism development projects and tourism development expansion projects, it is in the best interest of the state to induce and assist in tourism development in small municipalities through the creation of tourism development districts, in order to advance the public purposes of relieving unemployment by preserving and creating jobs, and preserving and creating new and greater sources of revenues for the support of public services provided by the state and local government; and that tourism development districts are of paramount importance to the state and its economy and for the state's contribution to the national economy.

It is the intent of the Legislature to occupy the whole field of the creation and regulation of tourism development districts. The stated purpose of this section is to promote uniform and consistent application of the act within the state.

(c) This section prohibits:

(1) Certain municipalities, whether by ordinance, resolution, administrative act, or otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules which limit, in any way, the creation of, and acquisition, construction, equipping, development, expansion, and operation of any tourism development project or tourism development expansion project in a tourism development district; and

(2) Certain municipalities from imposing or enforcing local laws and ordinances concerning the creation or regulation of any tourism development district and any tourism development project or tourism development expansion project therein.

(d) Any developer or owner of a tourism development project or tourism development expansion project which has been determined by the West Virginia Development Office, pursuant to §5B-2E-1 *et seq.* of this code, to be an approved company and which has entered into an agreement with the development office pursuant to §5B-2E-6 of this code to provide the approved company with a credit against the West Virginia consumers sales and service tax imposed by §11-15-1 *et seq.* of this code may apply to the development office for designation of a tourism development district encompassing the area where the tourism development project or the tourism development expansion project is to be acquired, constructed, equipped, developed, expanded, and operated: *Provided,* That notwithstanding

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any provision of §5B-2E-5(c)(2) of this code to the contrary, only tourism development projects and tourism development expansion projects with aggregate projected costs of construction, reconstruction, restoration, rehabilitation, or upgrading of not less than $25 million shall be eligible for designation as a tourism development district.

(e) Applicants for the creation of a tourism development district shall demonstrate that the district, when designated, will create significant economic development activity:

(1) Applicants shall submit a development plan that provides specific details on proposed financial investment, direct and indirect jobs to be created, and the viability of the proposed tourism development district; and

(2) The applicant shall own, control, or have the right of use to all real property within the proposed tourism development district and shall provide evidence of such ownership, control, or right of use in the application to the development office.

(f) The proposed district shall be entirely or partially within the corporate limits of a municipality which has a population of 2,000 or less as of the effective date of the most recent census, as specified in §8-1-4 of this code.

(g) All costs for the application shall be borne by the applicant.

(h) The application submitted by the applicant to the development office pursuant to §5B-2E-1 *et seq.* of this code may be considered by the development office to be sufficient to meet some of the requirements of this section.

(i) The decision of the development office to designate a tourism development district shall be final.

(j) The total number of approved tourism development districts may not exceed five. When the total number of designated tourism development districts equals five, no further designations may be approved by the development office.

(k) Each tourism development district shall terminate by operation of law 99 years from the date approved by the development office, unless a shorter time period for termination is agreed to by the applicant and the development office. The development office may terminate a tourism development district if the development office determines that the tourism development project or tourism development expansion project has been abandoned or ceased operations for five consecutive years.

(l) In accordance with subsections (b) and (c) of this section, and notwithstanding any provision of this code to the contrary, or any municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to the Municipal Home Rule Program under §8-1-5a of this code, designated tourism development districts, and the tourism development projects or tourism development expansion projects therein, may not be subject to the following:

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(1) Municipal zoning, historic preservation, horticultural, noise, viewshed, lighting, development, or land use ordinances, restrictions, limitations, or approvals;

(2) Municipal regulation of the sale of alcoholic liquor, nonintoxicating beer, or wine for consumption within the tourism development district;

(3) Municipal building permitting, inspection, or code enforcement;

(4) Municipal license requirements;

(5) The legal jurisdiction of the municipality in which the tourism development district is entirely or partially located, except as specifically provided in this article;

(6) The implementation of any tax, fee, or charge by the municipality, except as specifically provided in this section; or

(7) Any requirement under state law for the consent or approval of the municipality in which the tourism development district is entirely or partially located of any state or county action pursuant to this code, specifically including, but not limited to, §7-11B-1 *et seq.* of this code, for formal consent of the governing body of a municipality for county or state action regarding the establishment of tax increment financing development or redevelopment districts or the approval of tax increment financing development or redevelopment plans.

(m) Notwithstanding the creation of the tourism development district, the owner, operator, or manager, as applicable, and all concessions and licensees thereof, of the tourism development project or tourism development expansion project located therein shall:

(1) Pay business and occupation tax, if applicable, pursuant to §8-13-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(2) Collect and remit municipal sales and service tax and municipal use tax, if applicable, pursuant to §8-1-5a, §8-13C-4, and §8-13C-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(3) Pay ad valorem real and personal property tax pursuant to the same millage rates as any other business or commercial venture located within the municipality;

(4) Collect and remit hotel occupancy tax, if applicable, to the municipality or county in accordance with §7-18-1 of this code;

(5) Pay all municipal service fees enacted pursuant to §8-13-13 of this code, including, but not limited to, fire, police, sanitation, or city service fees;

(6) Pay all municipal utility rates, fees, and charges for utilities used or consumed during construction and operation of premises within the tourism development district, including,

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but not limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided,* That (i) The rates, fees, and charges for such services shall be based on the cost of providing such service and the municipality shall enter into a contract for each such service with the developer and any contracts for water service or sewer service with the municipality shall be subject to review and approval by the Public Service Commission of West Virginia; and (ii) the developer shall only be required to pay any capacity improvement fee or impact fee to the extent that capital additions, betterments, and improvements must be designed, acquired, constructed, and equipped by the municipality to provide such service to the project and any such capacity improvement fee or impact fee for water or sewer service shall be subject to review and approval by the Public Service Commission of West Virginia;

(7) Comply with state laws, regulations, and licensure requirements concerning state control of alcoholic liquors pursuant to chapter 60 of this code and control of nonintoxicating beer pursuant to §11-16-1 *et seq.* of this code;

(8) Be entitled to municipal police protection and municipal fire protection, if available, in the same manner as any other business or commercial venture located within the municipality;

(9) Design, acquire, construct, and equip the tourism development project or the tourism development expansion project pursuant to the State Building Code in accordance with §8-12-13 of this code and corresponding State Rule 87 CSR 4; and

(10) Provide for inspection of the design, acquisition, construction, and equipping, and any subsequent expansion of the tourism development project or the tourism development expansion project pursuant to standards approved by the West Virginia Development Office.

(n) The West Virginia Department of Transportation may take actions necessary in support of the development of any tourism development project or tourism development expansion project in a tourism development district specifically, including, but not limited to, the development or improvement of such highways, roads, thoroughfares, and sidewalks within the municipality in which the tourism development district is partially or entirely located.

(o) Failure of the Legislature to renew the Tourism Development Act, §5B-2E-1 *et seq.* of this code, may not, in any way, modify or alter the designation and vested rights of any tourism development district created prior to the failure of the Legislature to renew the Tourism Development Act and any such tourism development district shall continue to exist beyond the termination of the Tourism Development Act.

(p) The development office shall propose rules for legislative approval in accordance with §29A-3-1 *et seq*. of this code to implement this section, and the rules shall include, but not be limited to:

(1) The application and timeline process;

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(2) A nonbinding review of the existing planning and zoning ordinances of any municipality in which the tourism development district is located;

(3) Notice provisions;

(4) The method and timeline for receiving statements of support or opposition from any municipality within or partially within the tourism development district;

(5) Additional application consideration criteria; and

(6) Application fees sufficient to cover the costs of consideration of an application.

(q) The development office shall promulgate emergency rules pursuant to §29A-3-15 of this code by July 1, 2020, to facilitate the implementation of this section.

(r) Pursuant to §2-2-10 of this code, if any provision of this section or the application thereof to any person or circumstance is held unconstitutional or invalid, the unconstitutionality or invalidity shall not affect other provisions or applications of this section, and to this end the provisions of this section are declared to be severable.

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§5B-1-10. West Virginia Health Care Workforce Sustainability Study.

(a) As used in this section, the following words and terms have the following meanings:

(1) "Continuum of Care" means the following health care providers or facilities, singularly or consecutively, that provide care for an individual:

(A) Assisted Living residence, as regulated and defined by §16-5D-1 *et seq.* of this code;

(B) Behavioral Health service, as defined by §16-2D-2(7) of this code;

(C) Hospice, as regulated and defined by §16-5I-1 *et seq.* of this code;

(D) Hospitals, as regulated and defined by §16-5B-1 *et seq.* of this code;

(E) Home Health agency, as regulated and defined by §16-2C-1 *et seq.* of this code;

(F) Skilled Nursing Facility/Nursing Home, as regulated and defined by §16-5C-1 *et seq.* of this code; and

(G) Emergency Medical Service Agency, as defined by §16-4C-1 *et seq.* of this code.

(2) "Department" means the Department of Commerce, including any and all agencies 11 within the Department of Commerce.

(3) "Direct-care status" means health care providers that for the majority of time deliver care or services to individuals in such a manner that the provider could be personally identifiable by the recipient of services.

(4) "Entity" means an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers.

(5) "Government agency" means any state, county, municipal, or local public agency, board, committee, or division, including educational, vocational, and technical schools.

(6) "Health care facility" means a publicly or privately owned facility, agency, or entity that offers or provides health services, whether a for-profit or nonprofit entity and whether or not licensed, or required to be licensed, in whole or in part.

(7) "Health care provider" means a person authorized by law to provide professional health services in this state to an individual.

(8) "Health services" means clinically related preventive, diagnostic, treatment, or rehabilitative services.

(9) "Indirect-care status" means health care providers that for the majority of time perform managerial or administrative functions and are not in direct contact with consumers of care.

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(10) “New graduate employee” means a health care provider within 18 months of graduation from a program qualifying the individual as a health care provider.

(11) “Private third-party” means an individual, partnership, corporation, or other legal entity that employs or plans to employ skilled workers in the workforce or that teaches, trains, certifies, or provides licensure for individuals in the workforce.

(12) “Report” means the report required to be completed and issued by the Secretary pursuant to this article.

(13) “Secretary” means the Secretary of the Department of Commerce.

(14) “Separations” means the number of full-time or part-time employees leaving an entity voluntarily or involuntarily excluding per diem, contract, agency, or traveling health care professionals.

(15) “Workforce” means an individual employed by an entity within the continuum of care.

(b) On or before February 1, 2021, the Secretary shall research, survey, study, and issue a public report on the existing workforce in the continuum of care, as well as the anticipated future workforce needs over the next 15 years.

(c) In addition to being made publicly available, the completed report shall be provided to the Legislative Oversight Commission on Health and Human Resources Accountability (LOCHHRA), created pursuant to §16-29E-1 *et seq.* of this code.

(d) In order to create the report required in this section in the most cost-effective and efficient manner, the Secretary may seek or obtain grants to facilitate the research, survey, and study; may enter into agreements with other governmental agencies, committees, research divisions, including educational institutions, for the collection and analysis of information; and may contract with private persons or companies: *Provided,* That any and all agreements, grants, or contracts for the assistance or sharing of information shall include confidentiality provisions consistent with the provisions of this section.

(e) The findings in the report shall summarize the data collected utilizing the categories and professions contained in this section. In presenting the findings, the report shall also break down its summaries on a statewide, regional, and county basis.

(f) The report, or any other disclosure of collected data, shall not identify specific entities, providers, or facilities, nor make specific correlation between an entity, provider, or facility and the workforce numbers at that entity, provider, or facility.

(g) To facilitate the timely collection and accuracy of data, the department is expressly authorized to seek, and specifically request, information from any entity, government agency, health care provider, health care facility, or private third-party: *Provided,* That the department shall only request information reasonably designed to elicit the information that

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is sought by this section, and in a manner intended to minimize obstruction to the requested entities providing necessary health services. Any entity, government agency, heath care provider, health care facility, or private third-party in receipt of a survey or request for information from the department shall comply with the request and provide any and all requested information pertinent to the research, survey, and study.

(h) The department shall research, survey, and study the following aspects of the continuum of care workforce:

(1) The number of individuals employed;

(2) The number of full-time and part-time individuals so employed;

(3) The number of contract, agency, or traveling nurse or specialists utilized;

(4) The number of vacancies;

(5) The number of employee separations;

(6) The number of new graduate employee separations;

(7) The average number of patients/residents treated at each entity;

(8) The overall number of individuals licensed, certified, or registered by the state to work in the health care continuum;

(9) The current rate of licensure, certification, or registration by the state to work in the health care continuum;

(10) The anticipated growth in the number of individuals that will be licensed, certified, or registered in the state to work in the continuum of care over the next 15 years;

(11) The availability of classes or courses offered by secondary, vocational, technical, community, and higher education schools or institutions to train those necessitating licensure, certification, or registration to work in the health care continuum; and

(12) The average number of graduates per year in those classes or courses offered to train those necessitating licensure, certification, or registration to work in the health care continuum.

(i) In collecting and reporting the data, the department shall utilize, at a minimum, the following categories and professions within the continuum of care:

(1) Categories of entities:

(i) Assisted Living;

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(ii) Behavioral Health;

(iii) Hospice;

(iv) Hospital;

(v) Home Health;

(vi) Skilled Nursing Facility/Nursing Home; and

(vii) Emergency Medical Service Agency.

(2) Job Professions delineated by direct-care or indirect-care status:

(i) Physician (M.D./D.O.) by specialty;

(ii) Physician Assistant;

(iii) Advanced Practice Registered Nurse by role and certification;

(iv) Registered Nurse;

(v) Licensed Professional Nurse;

(vi) Nurse Aide;

(vii) Medical Assistant;

(viii) Dietician;

(ix) Social Worker;

(x) Physical Therapist;

(xi) Physical Therapy Assistant;

(xii) Occupational Therapist;

(xiii) Occupational Therapy Assistant;

(xiv) Speech Therapist;

(xv) Respiratory Therapist;

(xvi) Psychologist;

(xvii) MDS/coding specialist;

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(xviii) Pharmacist;

(xix) Pharmacy Technician;

(xx) Radiologic Technologist; and

(xxi) Emergency Medical Service Personnel.

(j) Any material, data, or other writing made or received by the department for the purpose of conducting the research, survey, study, or report, is deemed to be confidential trade secrets which are exempt from disclosure under the provisions of §29B-1-4 of this code.

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