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FIFTY-SIXTH DAY

Tuesday, March 3, 2020

FIFTY-SIXTH DAY

[DELEGATE HANSHAW, MR. SPEAKER, IN THE CHAIR]

The House of Delegates met at 9:00 a.m., and was called to order by the Honorable Roger Hanshaw, Speaker.

Prayer was offered and the House was led in recitation of the Pledge of Allegiance.

The Clerk proceeded to read the Journal of Monday, March 2, 2020, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Messages from the Executive

Delegate Hanshaw (Mr. Speaker) presented communications from His Excellency, the Governor, advising that on March 2, 2020, he approved **H. B. 4007, Com. Sub. for S. B. 16, Com. Sub. for S. B. 35, S. B. 300, S. B. 310, S. B. 321 and Com. Sub. for S. B. 676.**

Special Calendar

Third Reading

Com. Sub. for S. B. 125, Prohibiting victim from being subjected to certain physical examinations for sexual offenses; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 445**), and there were—yeas 85, nays none, absent and not voting 15, with the absent and not voting being as follows:

Absent and Not Voting: Bates, Byrd, Campbell, Capito, Doyle, Fleischauer, Hamrick, Higginbotham, Hornbuckle, Mandt, Porterfield, Queen, Rohrbach, Sypolt and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 125) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 446**), and there were—yeas 85, nays none, absent and not voting 15, with the absent and not voting being as follows:

Absent and Not Voting: Bates, Byrd, Campbell, Capito, Doyle, Fleischauer, Hamrick, Higginbotham, Hornbuckle, Mandt, Porterfield, Queen, Rohrbach, Sypolt and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 125) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for S. B. 144, Creating misdemeanor penalty for making materially false statement in course of misdemeanor investigation; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 447**), and there were—yeas 75, nays 23, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: S. Brown, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, McGeehan, Pethtel, Phillips, Pushkin, Pyles, Rowe, Skaff, Sponaugle, Staggers, C. Thompson, Walker, Williams and Zukoff.

Absent and Not Voting: Rohrbach and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 144) passed.

An amendment to the title of the bill, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the title to read as follows:

The Committee on Judiciary moved to amend the title to read as follows:

Com. Sub. for S. B. 144 – “A Bill to amend and reenact §61-5-17 of the Code of West Virginia, 1931, as amended, relating to precluding the charge of making a materially false statement in the investigation of a misdemeanor offense serving as the basis for a secured bond or pre-trial incarceration; establishing a criminal offense in certain circumstances for initiating a false complaint or report against a law enforcement officer, knowing the information is false; and, providing misdemeanor criminal penalties for a false report.”

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for S. B. 163, Relating to municipal or county taxation of hotel rooms booked through marketplace facilitator; on third reading, coming up in regular order, was read a third time.

Delegate C. Martin requested to be excused from voting on Com. Sub. for S. B. 163 under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 448**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: J. Jeffries, McGeehan and Paynter.

Absent and Not Voting: Rohrbach and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 163) passed.

On motion of Delegate Howell, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 163 - "A Bill to amend and reenact §7-18-3 and §7-18-4 of the Code of West Virginia, 1931, as amended, all relating to taxation of hotel rooms booked through a marketplace facilitator; defining marketplace facilitator; providing for collection and remittance of the tax imposed by any municipality or county by a marketplace facilitator; making the marketplace facilitators responsible for collection and remittance of the tax imposed by any municipality or county; requiring the marketplace facilitator to separately state the tax on all bills, invoices, accounts, books of account, and records relating to consideration paid for the occupancy or use of a hotel room; deeming all taxes collected be held in trust by the marketplace facilitator until remitted; and permitting marketplace facilitators and hotels or hotel operators to enter into agreements regarding fulfillment of the requirements of the chapter."

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for S. B. 208, Protecting consumers from unfair pricing practices during state of emergency; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 449**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: J. Jeffries, Jennings and McGeehan.

Absent and Not Voting: Rohrbach and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 208) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

S. B. 545, Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 450**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Rohrbach and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 545) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 451**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Rohrbach and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 545) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

S. B. 569, Expiring funds from various accounts to DHHR, Medical Services Program Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 452**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Boggs, Rohrbach and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 569) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 453**), and there were—yeas 55, nays 40, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Boggs, N. Brown, Graves, Rohrbach and Wilson.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the motion was rejected.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

Com. Sub. for S. B. 570, Expiring funds from State Excess Lottery Revenue Fund to DHHR, Medical Services Program Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 454**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan and Porterfield.

Absent and Not Voting: N. Brown, Rohrbach and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 570) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 455**), and there were—yeas 55, nays 42, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Miller, Pethtel, Porterfield, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Boggs, Rohrbach and Wilson.

So, two thirds of the members elected to the House of Delegates not having voted in the affirmative, the motion was rejected.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

Com. Sub. for S. B. 583, Creating program to further development of renewable energy resources; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 456**), and there were—yeas 76, nays 23, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Azinger, Bibby, N. Brown, Butler, Cadle, Dean, Fast, Foster, Hicks, D. Jeffries, J. Jeffries, Kessinger, P. Martin, Maynard, McGeehan, Paynter, Phillips, Porterfield, Rodighiero, R. Thompson, Tomblin, Toney and Waxman.

Absent and Not Voting: Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 583) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

Com. Sub. for S. B. 583 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §24-2-10, relating to creating a program to further the development of renewable energy resources and renewable energy facilities for solar energy by modifying the powers and duties of the Public Service Commission; providing for legislative findings and declarations; providing for definitions; providing for an application process and program for multiyear comprehensive renewable energy facilities for electric utilities, as defined, to plan, design, construct, purchase, own, and operate renewable energy-generating facilities, energy-storage resources, or both, under specified conditions, requirements, and limitations; providing that solar energy output is to be offered for sale or sold to residential, commercial, or industrial customers under renewable special contracts or renewable tariffs; providing for commission review and approval of said programs; allowing cost recovery for said programs; providing for requirements for said programs; providing for application requirements and contents in lieu of applications for certificates of public convenience and necessity; providing for public notice at the direction of the commission for

anticipated rates and rate increases in interested counties; providing for a hearing on applications within 90 days of notice; defining circumstances when a hearing can be waived for lack of opposition; defining a time period of 150 days within which the commission shall issue a final order after the application date; requiring the commission to find the programs as in the public interest; requiring the commission, after notice and hearing, to approve applications and allow cost recovery for just and reasonable expenditures; establishing accounting methods, practices, rates of return, calculations, dates, and procedures relevant for cost recovery; requiring a utility to place in effect commission-approved rates that include cost recovery with certain defined items; defining 'concurrent cost recovery'; requiring yearly application filings by the utility with the commission regarding cost recovery; defining when a project is to be considered used and useful; limiting cost recovery from any one customer to a maximum increase of \$1000 per month; providing for siting certificates for exempt wholesale solar generation facilities to be processed in 150 days by the Public Service Commission; providing that no provision shall displace current levels of coal-fired generation capacity; and providing for a sunset date under conditions."

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

S. B. 651, Relating to definition of "mortgage loan originator"; on third reading, coming up in regular order, was reported by the Clerk.

At the request of Delegate Summers, and by unanimous consent, the rule was suspended to permit the offering and consideration of an amendment on third reading.

An amendment sponsored by Delegate Shott was adopted, amending the bill on page three, section two, lines fifty-three and fifty-four, after the word "this", by striking out the word "section" and inserting the word "subsection" in lieu thereof.

And,

On page three, section two, line sixty-four, after the word "this", by striking out the word "section" and inserting the word "subsection" in lieu thereof.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 457**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 651) passed.

On motion of Delegate Shott, the title of the bill was amended to read as follows:

S. B. 651 - "A Bill to amend and reenact §31-17A-2 of the Code of West Virginia, 1931, as amended, relating to amending the definition of 'mortgage loan originator'; and clarifying the definition of 'mortgage loan originator' with respect to retailers of manufactured or modular homes and their employees."

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Com. Sub. for S. B. 705, Allowing military veterans with certain experience qualify for examination as electrician or plumber; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 458**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Hicks, Jennings, Miller and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 705) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

S. B. 803, Supplemental appropriation of money out of General Revenue Fund to DHHR; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 459**), and there were—yeas 91, nays 6, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Bartlett, Cadle, Fast, D. Jeffries, McGeehan and Porterfield.

Absent and Not Voting: Boggs, Hicks and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 803) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 460**), and there were—yeas 90, nays 7, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Bartlett, Cadle, Fast, Jennings, P. Martin, McGeehan and Porterfield.

Absent and Not Voting: Boggs, Hicks and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 803) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

S. B. 804, Supplemental appropriation of moneys from Treasury to PSC, Consumer Advocate Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 461**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Boggs, Hicks and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 804) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 462**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Boggs, Hicks and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 804) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

S. B. 805, Supplemental appropriation of moneys from Treasury to WV Commuter Rail Access Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 463**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: J. Jeffries, McGeehan, Paynter and Toney.

Absent and Not Voting: Hicks and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 805) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 464**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Hicks and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 805) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

S. B. 806, Supplemental appropriation out of federal funds in Treasury to DOT; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 465**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 806) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 466**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 806) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

S. B. 812, Supplemental appropriation from Lottery Net Profits to Bureau of Senior Services; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 467**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan and Porterfield.

Absent and Not Voting: Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 812) passed.

Delegate Summers moved that the bill take effect from its passage.

On this question, the yeas and nays were taken (**Roll No. 468**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: McGeehan and Porterfield.

Absent and Not Voting: Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 812) takes effect from its passage.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

Second Reading

Com. Sub. for S. B. 136, Prohibiting certain misleading lawsuit advertising practices; on second reading, coming up in regular order, was read a second time.

An amendment recommended by the Committee on the Judiciary, was reported by the Clerk, on page one, following the enacting clause, by striking the remainder of the bill and inserting in lieu thereof the following:

“ARTICLE 28. PREVENTION OF DECEPTIVE LAWSUIT ADVERTISING AND SOLICITATION PRACTICES REGARDING THE USE OF MEDICATIONS.”

§47-28-1. Short title.

This article may be known and cited as the Prevention of Deceptive Lawsuit Advertising and Solicitation Practices Regarding the Use of Medications Act.

§47-28-2. Definitions.

As used in this article:

(1) ‘Legal advertisement’ means a solicitation for legal services regarding the use of medications through television, radio, newspaper or other periodical, outdoor display, or other written, electronic, or recorded communications wherein the advertisement solicits clients or potential clients for legal services.

(2) ‘Person’ means an individual or entity, including, but not limited to: (i) Attorneys; (ii) law firms; or (iii) third parties who solicit potential clients on behalf of attorneys or law firms, which pays for or authorizes a legal advertisement that solicits potential clients for attorneys or law firms under this article.

(3) ‘Protected health information’ has the meaning given such term in 45 C.F.R. 106.103 (2013).

(4) ‘Solicit’ means an offer to provide legal services regarding the use of medications by written, recorded, or electronic communication or by in-person, telephone, or real-time electronic contact.

§47-28-3. Deceptive legal advertising practices.

(a) *Specifically prohibited legal advertising practices.* — A person engages in an unfair or deceptive act or practice if, in a legal advertisement, the person does any of the following:

(1) Fails to contain the statement: ‘This is a paid advertisement for legal services.’;

(2) Presents a legal advertisement as a ‘consumer medical alert’, ‘health alert’, ‘consumer alert’, ‘public service health announcement’, or substantially similar phrase suggesting to a reasonable recipient that the advertisement is offering professional, medical, or government agency advice about pharmaceuticals or medical devices rather than legal services;

(3) Displays the logo of a federal or state government agency in a manner that suggests affiliation with the sponsorship of that agency;

(4) Uses the word 'recall' when referring to a product that has not been recalled by a government agency or through an agreement between a manufacturer and government agency;

(5) Fails to identify the sponsor of the legal advertisement; or

(6) Fails to indicate the identity of the attorney or law firm that will represent clients, or how potential clients or cases will be referred to attorneys or law firms that will represent clients if the sponsor of the legal advertisement may not represent persons responding to the advertisement.

(b) Disclosures and warnings for protection of patients. —

(1) A legal advertisement soliciting clients for legal services in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration shall include the following warning: 'Do not stop taking a prescribed medication without first consulting with your doctor. Discontinuing a prescribed medication without your doctor's advice can result in injury or death.'

(2) A legal advertisement soliciting clients for legal services in connection with a prescription drug or medical device approved by the U.S. Food and Drug Administration shall disclose that the subject of the legal advertisement remains approved by the U.S. Food and Drug Administration, unless the product has been recalled or withdrawn.

(c) Appearance of required statements, disclosures, and warnings. — Any words or statements required by this section to appear in an advertisement must be presented clearly and conspicuously.

(1) Written disclosures shall be clearly legible and, if televised or displayed electronically, shall be displayed for a sufficient time to enable the viewer to easily see and fully read the disclosure or disclaimer.

(2) Spoken disclosures shall be plainly audible and clearly intelligible.

(d) A person who willfully and knowingly violates this section engages in an unfair and deceptive act or practice in violation of §46A-6-1 et seq. of this code.

§47-28-4. Wrongful use or disclosure of protected health information for solicitation of legal services regarding the use of medications.

(a) Use or disclosure of protected health information for legal solicitation. — A person shall not use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for legal services regarding the use of medications.

(b) Enforcement. —

(1) A violation of this section is a violation of West Virginia's health privacy laws or §46A-6-101 et seq. of this code.

(2) In addition to any other remedy provided by law, a person who willfully and knowingly violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

(c) Construction. — This section does not apply to the use or disclosure of protected health information to an individual's legal representative, in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law.

(d) Nothing in this section creates or implies liability on behalf of a broadcaster who holds a license for over-the-air terrestrial broadcasting from the federal communications commission, or against a cable operator as defined in 47 U.S.C. §522(5).

§47-28-5. Authority of judiciary or State Bar to regulate practice of law.

This article does not limit or otherwise affect the authority of the judiciary or the Lawyer Disciplinary Board to regulate the practice of law, enforce the West Virginia Rules of Professional Conduct, or discipline persons admitted to the bar.”

Delegates Byrd and Fluharty moved to amend the Judiciary Committee amendment on page one, section two, lines six through nine, by striking out the definition of ‘Person’ and inserting in lieu thereof, the following:

(2) ‘Person’ means an individual or entity, including, but not limited to attorneys, law firms, medical providers, pharmaceutical companies or third parties who solicit potential clients on behalf of attorneys, law firms or healthcare providers or pharmaceutical companies that advertise a health care product, which pays for or authorizes an advertisement that solicits potential clients, patients or customers under this article.”

On page one, section two, line twelve, following the words “provide legal”, by inserting the words “or health care”.

And,

On pages three and four, by striking out section four in its entirety, and inserting in lieu thereof, the following:

“§47-28-4. Wrongful use or disclosure of protected health information for solicitation of legal or healthcare services regarding the use of medications.

(a) (1) Use or disclosure of protected health information for a solicitation. — A person shall not use, cause to be used, obtain, sell, transfer, or disclose to another person without written authorization protected health information for the purpose of soliciting an individual for legal or health care service regarding the use of medications.

(2) Disclosure of health risks for use of any medical products in a solicitation. — No person may advertise a healthcare product that is subject to a federal Food and Drug Administration recall or safety alert, unless the advertisement discloses that the product is or subject to that recall or safety alert.

(b) Enforcement. —

(1) A violation of this section is a violation of West Virginia’s health privacy laws or §46A-6-101 et seq. of this code.

(2) In addition to any other remedy provided by law, a person who willfully and knowingly violates this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$5,000 or confined in jail not more than one year, or both fined and confined.

(c) Construction. — This section does not apply to the use or disclosure of protected health information to an individual’s legal representative, in the course of any judicial or administrative proceeding, or as otherwise permitted or required by law.

(e) Nothing in this section creates or implies liability on behalf of a broadcaster who holds a license for over-the-air terrestrial broadcasting from the federal communications commission, or against a cable operator as defined in 47 U.S.C. §522(5)."

Delegate Shott arose and inquired of the Chair regarding the germaneness of the amendment to the amendment.

The Speaker ruled that since the committee amendment expands the scope of the bill, the amendment to the amendment would be germane to the committee amendment.

On the adoption of the amendment to the amendment, the yeas and nays were demanded, which demand was sustained.

The yeas and nays having been ordered, they were taken (**Roll No. 469**), and there were—yeas 48, nays 51, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fast, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Kump, Lavender-Bowe, Longstreth, Lovejoy, C. Martin, P. Martin, Miley, Miller, Paynter, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaugle, Staggers, Steele, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Toney, Walker, Williams and Zukoff.

Absent and Not Voting: Wilson.

So, a majority of the members present and voting not having voted in the affirmative, the amendment to the amendment was rejected.

The Judiciary Committee amendment was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 150, Budget Bill; on second reading, coming up in regular order, was read a second time.

At the request of Delegate Summers, and by unanimous consent, the bill was advanced to third reading with amendments pending and the general right to amend, and the rule was suspended to permit the consideration of amendments on that reading.

Com. Sub. for S. B. 490, Relating to criminal offenses against agricultural facilities; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 578, Recalculating tax on generating, producing, or selling electricity from solar energy facilities; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 600, Creating special revenue account designated Military Authority Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 614, Changing method of allocating funding from Safe School Funds; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page one, section forty-eight, line twelve, following the word "windows", by striking out the comma and the word "etc".

The bill was then ordered to third reading.

Com. Sub. for S. B. 662, Removing restrictions on fiduciary commissioners; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 668, Enacting Uniform Trust Decanting Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk, and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"ARTICLE 8B. WEST VIRGINIA UNIFORM TRUST DECANTING ACT.

§44D-8B-1. Short title.

This article may be cited as the West Virginia Uniform Trust Decanting Act.

§44D-8B-2. Definitions.

In addition to the definitions contained in §44D-1-103 of this code which apply to this article:

(1) 'Appointive property' means the property or property interest subject to a power of appointment.

(2) 'Authorized fiduciary' means:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute or direct a trustee to distribute part or all of the principal of the first trust to one or more current beneficiaries;

(B) A special fiduciary appointed under §44D-8B-9 of this code; or

(C) A special-needs fiduciary under §44D-8B-13 of this code.

(3) 'Charitable interest' means an interest in a trust which:

(A) Is held by an identified charitable organization and makes the organization a qualified beneficiary;

(B) Benefits only charitable organizations and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary; or

(C) Is held solely for charitable purposes and, if the interest were held by an identified charitable organization, would make the organization a qualified beneficiary.

(4) 'Charitable organization' means:

(A) A person, other than an individual, organized and operated exclusively for charitable purposes; or

(B) A government or governmental subdivision, agency, or instrumentality, to the extent it holds funds exclusively for a charitable purpose.

(5) 'Charitable purpose' means the relief of poverty, the advancement of education or religion, the promotion of health, a municipal or other governmental purpose, or another purpose the achievement of which is beneficial to the community.

(6) 'Decanting power' or 'the decanting power' means the power of an authorized fiduciary under this article to distribute property of a first trust to one or more second trusts or to modify the terms of the first trust.

(7) 'Expanded distributive discretion' means a discretionary power of distribution that is not limited to an ascertainable standard or a reasonably definite standard.

(8) 'First trust' means a trust over which an authorized fiduciary may exercise the decanting power.

(9) 'First-trust instrument' means the trust instrument for a first trust.

(10) 'General power of appointment' means a power of appointment exercisable in favor of a powerholder, the powerholder's estate, a creditor of the powerholder, or a creditor of the powerholder's estate.

(11) 'Power of appointment' means a power that enables a powerholder acting in a nonfiduciary capacity to designate a recipient of an ownership interest in or another power of appointment over the appointive property. The term does not include a power of attorney.

(12) 'Powerholder' means a person in which a donor creates a power of appointment.

(13) 'Presently exercisable power of appointment' means a power of appointment exercisable by the powerholder at the relevant time. The term:

(A) Includes a power of appointment exercisable only after:

(i) The occurrence of the specified event;

(ii) The satisfaction of the ascertainable standard; or

(iii) The passage of the specified time; and

(B) Does not include a power exercisable only at the powerholder's death.

(14) 'Reasonably definite standard' means a clearly measurable standard under which a holder of a power of distribution is legally accountable within the meaning of 26 U.S.C. §674(b)(5)(A) and any applicable regulations.

(15) 'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form.

(16) 'Second trust' means:

(A) A first trust after modification under this article; or

(B) A trust to which a distribution of property from a first trust is or may be made under this article.

(17) 'Second-trust instrument' means the trust instrument for a second trust.

(18) 'Sign' means with present intent to authenticate or adopt a record:

(A) To execute or adopt a tangible symbol; or

(B) To attach to or logically associate with the record an electronic symbol, sound, or process.

§44D-8B-3. Scope.

(a) Except as otherwise provided in subsections (b) and (c) of this section, this article applies to an express trust that is irrevocable or revocable by the grantor only with the consent of the trustee or a person holding an adverse interest.

(b) This article does not apply to a trust held solely for charitable purposes.

(c) Subject to §44D-8B-15 of this code, a trust instrument may restrict or prohibit exercise of the decanting power.

(d) This article does not limit the power of a trustee, powerholder, or other person to distribute or appoint property in further trust or to modify a trust under the trust instrument, law of this state other than this article, common law, a court order, or a nonjudicial settlement agreement.

(e) This article does not affect the ability of a grantor to provide in a trust instrument for the distribution of the trust property or appointment in further trust of the trust property or for modification of the trust instrument.

§44D-8B-4. Fiduciary duty.

(a) In exercising the decanting power, an authorized fiduciary shall act in accordance with its fiduciary duties, including the duty to act in accordance with the purposes of the first trust.

(b) This article does not create or imply a duty to exercise the decanting power or to inform beneficiaries about the applicability of this article.

(c) Except as otherwise provided in a first-trust instrument, for purposes of this article and §44D-8-1 and §44D-8-2(a) of this code, the terms of the first trust are considered to include the decanting power.

§44D-8B-5. Application; governing law.

This article applies to a trust created before, on, or after the effective date of this article which:

(1) Has its principal place of administration in this state, including a trust whose principal place of administration has been changed to this state; or

(2) Provides by its trust instrument that it is governed by the law of this state or is governed by the law of this state for the purpose of:

(A) Administration, including administration of a trust whose governing law for purposes of administration has been changed to the law of this state;

(B) Construction of terms of the trust; or

(C) Determining the meaning or effect of terms of the trust.

§44D-8B-6. Reasonable reliance.

A trustee or other person that reasonably relies on the validity of a distribution of part or all of the property of a trust to another trust, or a modification of a trust, under this article, law of this state other than this article, or the law of another jurisdiction is not liable to any person for any action or failure to act as a result of the reliance.

§44D-8B-7. Notice; exercise of decanting power.

(a) In this section, a notice period begins on the day notice is given under subsection (c) of this section and ends 59 days after the day notice is given.

(b) Except as otherwise provided in this article, an authorized fiduciary may exercise the decanting power without the consent of any person and without court approval.

(c) Except as otherwise provided in subsection (f) of this section, an authorized fiduciary shall give notice in a record of the intended exercise of the decanting power not later than 60 days before the exercise to:

(1) Each grantor of the first trust, if living or then in existence;

(2) Each qualified beneficiary of the first trust;

(3) Each holder of a presently exercisable power of appointment over any part, or all of, the first trust;

(4) Each person that currently has the right to remove or replace the authorized fiduciary;

(5) Each other fiduciary of the first trust;

(6) Each fiduciary of the second trust; and

(7) The West Virginia Attorney General, if §44D-8B-14(b) of this code applies.

(d) An authorized fiduciary is not required to give notice under subsection (c) of this section to a person that is not known to the fiduciary.

(e) A notice under subsection (c) of this section must:

(1) Specify the manner in which the authorized fiduciary intends to exercise the decanting power;

(2) Specify the proposed effective date for exercise of the power;

(3) Include a copy of the first-trust instrument; and

(4) Include a copy of all second-trust instruments.

(f) The decanting power may be exercised before expiration of the notice period under subsection (a) of this section if all persons entitled to receive notice waive the period in a signed record.

(g) The receipt of notice, waiver of the notice period, or expiration of the notice period does not affect the right of a person to file an application under §44D-8B-9 of this code asserting that:

(1) An attempted exercise of the decanting power is ineffective because it did not comply with this article or was an abuse of discretion or breach of fiduciary duty; or

(2) Section 44D-8B-22 of this code applies to the exercise of the decanting power.

(h) An exercise of the decanting power is not ineffective because of the failure to give notice to one or more persons under subsection (c) of this section if the authorized fiduciary acted with reasonable care to comply with that subsection.

§44D-8B-8. Representation.

(a) Notice to a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter has the same effect as notice given directly to the person represented.

(b) Consent of or waiver by a person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter is binding on the person represented unless the person represented objects to the representation before the consent or waiver otherwise would become effective.

(c) A person with authority to represent and bind another person under a first-trust instrument or the provisions of this chapter may file an application under §44D-8B-9 of this code on behalf of the person represented.

(d) A grantor may not represent or bind a beneficiary under this article.

§44D-8B-9. Court involvement.

(a) On application of an authorized fiduciary, a person entitled to notice under §44D-8B-7(c) of this code, a beneficiary, or with respect to a charitable interest any other person that has standing to enforce the charitable interest, the court may:

(1) Provide instructions to the authorized fiduciary regarding whether a proposed exercise of the decanting power is permitted under this article and consistent with the fiduciary duties of the authorized fiduciary;

(2) Appoint a special fiduciary and authorize the special fiduciary to determine whether the decanting power should be exercised under this article and to exercise the decanting power;

(3) Approve an exercise of the decanting power;

(4) Determine that a proposed or attempted exercise of the decanting power is ineffective because:

(A) After applying §44D-8B-22 of this code, the proposed or attempted exercise does not, or did not, comply with this article; or

(B) The proposed or attempted exercise would be or was an abuse of the fiduciary's discretion or a breach of fiduciary duty;

(5) Determine the extent to which §44D-8B-22 of this code applies to a prior exercise of the decanting power;

(6) Provide instructions to the trustee regarding the application of §44D-8B-22 of this code to a prior exercise of the decanting power; or

(7) Order other relief to carry out the purposes of this article.

(b) On application of an authorized fiduciary, the court may approve:

(1) An increase in the fiduciary's compensation under §44D-8B-16 of this code; or

(2) A modification under §44D-8B-18 of this code of a provision granting a person the right to remove or replace the fiduciary.

§44D-8B-10. Formalities.

An exercise of the decanting power must be made in a record signed by an authorized fiduciary. The signed record must, directly or by reference to the notice required by §44D-8B-7 of this code, identify the first trust and the second trust or trusts and state the property of the first trust being distributed to each second trust and the property, if any, that remains in the first trust.

§44D-8B-11. Decanting power under expanded distributive discretion.

(a) In this section:

(1) 'Noncontingent right' means a right that is not subject to the exercise of discretion or the occurrence of a specified event that is not certain to occur. The term does not include a right held by a beneficiary if any person has discretion to distribute property subject to the right to any person other than the beneficiary or the beneficiary's estate.

(2) 'Presumptive remainder beneficiary' means a qualified beneficiary other than a current beneficiary.

(3) 'Successor beneficiary' means a beneficiary that is not a qualified beneficiary on the date the beneficiary's qualification is determined. The term does not include a person that is a beneficiary only because the person holds a nongeneral power of appointment.

(4) 'Vested interest' means:

(A) A right to a mandatory distribution that is a noncontingent right as of the date of the exercise of the decanting power;

(B) A current and noncontingent right, annually or more frequently, to a mandatory distribution of income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(C) A current and noncontingent right, annually or more frequently, to withdraw income, a specified dollar amount, or a percentage of value of some or all of the trust property;

(D) A presently exercisable general power of appointment; or

(E) A right to receive an ascertainable part of the trust property on the trust's termination which is not subject to the exercise of discretion or to the occurrence of a specified event that is not certain to occur.

(b) Subject to subsection (c) of this section and §44D-8B-14 of this code, an authorized fiduciary that has expanded distributive discretion over the principal of a first trust for the benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Subject to §44D-8B-13 of this code, in an exercise of the decanting power under this section, a second trust may not:

(1) Include as a current beneficiary a person that is not a current beneficiary of the first trust, except as otherwise provided in subsection (d) of this section;

(2) Include as a presumptive remainder beneficiary or successor beneficiary a person that is not a current beneficiary, presumptive remainder beneficiary, or successor beneficiary of the first trust, except as otherwise provided in subsection (d) of this section; or

(3) Reduce or eliminate a vested interest.

(d) Subject to subdivision (3), subsection (c) of this section and §44D-8B-14 of this code, in an exercise of the decanting power under this section, a second trust may be a trust created or administered under the law of any jurisdiction and may:

(1) Retain a power of appointment granted in the first trust;

(2) Omit a power of appointment granted in the first trust, other than a presently exercisable general power of appointment;

(3) Create or modify a power of appointment if the powerholder is a current beneficiary of the first trust and the authorized fiduciary has expanded distributive discretion to distribute principal to the beneficiary; and

(4) Create or modify a power of appointment if the powerholder is a presumptive remainder beneficiary or successor beneficiary of the first trust, but the exercise of the power may take effect only after the powerholder becomes, or would have become if then living, a current beneficiary.

(e) A power of appointment described in subdivisions (1) through (4), inclusive, subsection (d) of this section may be general or nongeneral. The class of permissible appointees in favor of which the power may be exercised may be broader than or different from the beneficiaries of the first trust.

(f) If an authorized fiduciary has expanded distributive discretion over part, but not all of the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has expanded distributive discretion.

§44D-8B-12. Decanting power under limited distributive discretion.

(a) In this section, 'limited distributive discretion' means a discretionary power of distribution that is limited to an ascertainable standard or a reasonably definite standard.

(b) An authorized fiduciary that has limited distributive discretion over the principal of the first trust for benefit of one or more current beneficiaries may exercise the decanting power over the principal of the first trust.

(c) Under this section and subject to §44D-8B-14 of this code, a second trust may be created or administered under the law of any jurisdiction. Under this section, the second trusts, in the aggregate, must grant each beneficiary of the first trust beneficial interests which are substantially similar to the beneficial interests of the beneficiary in the first trust.

(d) A power to make a distribution under a second trust for the benefit of a beneficiary who is an individual is substantially similar to a power under the first trust to make a distribution directly to the beneficiary. A distribution is for the benefit of a beneficiary if:

(1) The distribution is applied for the benefit of the beneficiary;

(2) The beneficiary is under a legal disability or the trustee reasonably believes the beneficiary is incapacitated, and the distribution is made as permitted under this chapter; or

(3) The distribution is made as permitted under the terms of the first-trust instrument and the second-trust instrument for the benefit of the beneficiary.

(e) If an authorized fiduciary has limited distributive discretion over part, but not all of, the principal of a first trust, the fiduciary may exercise the decanting power under this section over that part of the principal over which the authorized fiduciary has limited distributive discretion.

§44D-8B-13. Trust for beneficiary with disability.

(a) In this section:

(1) 'Beneficiary with a disability' means a beneficiary of a first trust who the special-needs fiduciary believes may qualify for governmental benefits based on disability, whether or not the beneficiary currently receives those benefits or is an individual who has been adjudicated a protected person.

(2) 'Governmental benefits' means financial aid or services from a state, federal, or other public agency.

(3) 'Special-needs fiduciary' means, with respect to a trust that has a beneficiary with a disability:

(A) A trustee or other fiduciary, other than a grantor, that has discretion to distribute part or all of the principal of a first trust to one, or more current beneficiaries;

(B) If no trustee or fiduciary has discretion under paragraph (A) of this subdivision, a trustee or other fiduciary, other than a grantor, that has discretion to distribute part, or all of, the income of the first trust to one or more current beneficiaries; or

(C) If no trustee or fiduciary has discretion under paragraphs (A) and (B) of this subdivision, a trustee or other fiduciary, other than a grantor, that is required to distribute part, or all of, the income or principal of the first trust to one or more current beneficiaries.

(4) 'Special-needs trust' means a trust the trustee believes would not be considered a resource for purposes of determining whether a beneficiary with a disability is eligible for governmental benefits.

(b) A special-needs fiduciary may exercise the decanting power under §44D-8B-11 of this code over the principal of a first trust as if the fiduciary had authority to distribute principal to a beneficiary with a disability subject to expanded distributive discretion if:

(1) A second trust is a special-needs trust that benefits the beneficiary with a disability; and

(2) The special-needs fiduciary determines that exercise of the decanting power will further the purposes of the first trust.

(c) In an exercise of the decanting power under this section, the following rules apply:

(1) Notwithstanding §44D-8B-11(c)(2) of this code, the interest in the second trust of a beneficiary with a disability may:

(A) Be a pooled trust as defined by Medicaid law for the benefit of the beneficiary with a disability under 42 U.S.C. §1396p(d)(4)(C); or

(B) Contain payback provisions complying with reimbursement requirements of Medicaid law under 42 U.S.C. §1396p(d)(4)(A).

(2) Section 44D-8B-11(c)(3) of this code does not apply to the interests of the beneficiary with a disability.

(3) Except as affected by any change to the interests of the beneficiary with a disability, the second trust, or if there are two or more second trusts, the second trusts in the aggregate, must grant each other beneficiary of the first trust beneficial interests in the second trusts which are substantially similar to the beneficiary's beneficial interests in the first trust.

§44D-8B-14. Protection of charitable interest.

(a) In this section:

(1) 'Determinable charitable interest' means a charitable interest that is a right to a mandatory distribution currently, periodically, on the occurrence of a specified event, or after the passage of a specified time and which is unconditional or will be held solely for charitable purposes.

(2) 'Unconditional' means not subject to the occurrence of a specified event that is not certain to occur, other than a requirement in a trust instrument that a charitable organization be in existence or qualify under a particular provision of the United States Internal Revenue Code of 1986 on the date of the distribution, if the charitable organization meets the requirement on the date of determination.

(b) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the Attorney General has the rights of a qualified beneficiary and may represent and bind the charitable interest.

(c) If a first trust contains a charitable interest, the second trust or trusts may not:

(1) Diminish the charitable interest;

(2) Diminish the interest of an identified charitable organization that holds the charitable interest;

(3) Alter any charitable purpose stated in the first-trust instrument; or

(4) Alter any condition or restriction related to the charitable interest.

(d) If there are two or more second trusts, the second trusts shall be treated as one trust for purposes of determining whether the exercise of the decanting power diminishes the charitable

interest or diminishes the interest of an identified charitable organization for purposes of subsection (c) of this section.

(e) If a first trust contains a determinable charitable interest which is not held by an identified charitable organization, the second trust or trusts that include a charitable interest pursuant to subsection (c) of this section must be administered under the law of this state unless:

(1) The Attorney General, after receiving notice under section 7 of this article, fails to object in a signed record delivered to the authorized fiduciary within the notice period;

(2) The Attorney General consents in a signed record to the second trust or trusts being administered under the law of another jurisdiction; or

(3) The court approves the exercise of the decanting power.

§44D-8B-15. Trust limitation on decanting.

(a) An authorized fiduciary may not exercise the decanting power to the extent the first-trust instrument expressly prohibits exercise of:

(1) The decanting power; or

(2) A power granted by state law to the fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(b) Exercise of the decanting power is subject to any restriction in the first-trust instrument that expressly applies to exercise of:

(1) The decanting power; or

(2) A power granted by state law to a fiduciary to distribute part, or all of, the principal of the trust to another trust or to modify the trust.

(c) A general prohibition of the amendment or revocation of a first trust, a spendthrift clause, or a clause restraining the voluntary or involuntary transfer of a beneficiary's interest does not preclude exercise of the decanting power.

(d) Subject to subsections (a) and (b) of this section, an authorized fiduciary may exercise the decanting power under this article even if the first-trust instrument permits the authorized fiduciary or another person to modify the first-trust instrument or to distribute part, or all of, the principal of the first trust to another trust.

(e) If a first-trust instrument contains an express prohibition described in subsection (a) of this section or an express restriction described in subsection (b) of this section, the provision must be included in the second-trust instrument.

§44D-8B-16. Change in compensation.

(a) If a first-trust instrument specifies an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the specified compensation unless:

(1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) The increase is approved by the court.

(b) If a first-trust instrument does not specify an authorized fiduciary's compensation, the fiduciary may not exercise the decanting power to increase the fiduciary's compensation above the compensation permitted by this chapter unless:

(1) All qualified beneficiaries of the second trust consent to the increase in a signed record; or

(2) The increase is approved by the court.

(c) A change in an authorized fiduciary's compensation which is incidental to other changes made by the exercise of the decanting power is not an increase in the fiduciary's compensation for purposes of subsections (a) and (b) of this section.

§44D-8B-17. Relief from liability and indemnification.

(a) Except as otherwise provided in this section, a second-trust instrument may not relieve an authorized fiduciary from liability for breach of trust to a greater extent than the first-trust instrument.

(b) A second-trust instrument may provide for indemnification of an authorized fiduciary of the first trust or another person acting in a fiduciary capacity under the first trust for any liability or claim that would have been payable from the first trust if the decanting power had not been exercised.

(c) A second-trust instrument may not reduce fiduciary liability in the aggregate.

(d) Subject to subsection (c) of this section, a second-trust instrument may divide and reallocate fiduciary powers among fiduciaries, including one or more trustees, distribution advisors, investment advisors, trust protectors, or other persons, and relieve a fiduciary from liability for an act or failure to act of another fiduciary as permitted by law of this state other than this article.

§44D-8B-18. Removal or replacement of authorized fiduciary.

An authorized fiduciary may not exercise the decanting power to modify a provision in a first-trust instrument granting another person power to remove or replace the fiduciary unless:

(1) The person holding the power consents to the modification in a signed record and the modification applies only to the person;

(2) The person holding the power and the qualified beneficiaries of the second trust consent to the modification in a signed record and the modification grants a substantially similar power to another person; or

(3) The court approves the modification and the modification grants a substantially similar power to another person.

§44D-8B-19. Tax-related limitations.

(a) In this section:

(1) 'Grantor trust' means a trust as to which a grantor of a first trust is considered the owner under 26 U.S.C. §§671-677 or 26 U.S.C. §679.

(2) 'Internal Revenue Code' means the United States Internal Revenue Code of 1986.

(3) 'Nongrantor trust' means a trust that is not a grantor trust.

(4) 'Qualified benefits property' means property subject to the minimum distribution requirements of 26 U.S.C. §401(a)(9), and any applicable regulations, or to any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations.

(b) An exercise of the decanting power is subject to the following limitations:

(1) If a first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a marital deduction for purposes of the gift or estate tax under the Internal Revenue Code or a state gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(2) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a charitable deduction for purposes of the income, gift, or estate tax under the Internal Revenue Code or a state income, gift, estate, or inheritance tax, the second-trust instrument must not include or omit any term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying for the deduction, or would have reduced the amount of the deduction, under the same provisions of the Internal Revenue Code or state law under which the transfer qualified.

(3) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b), the second-trust instrument must not include or omit a term that, if included in or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. §2503(b). If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for the exclusion from the gift tax described in 26 U.S.C. §2503(b) by application of 26 U.S.C. §2503(c), the second-trust instrument must not include or omit a term that, if included or omitted from the trust instrument for the trust to which the property was transferred, would have prevented the transfer from qualifying under 26 U.S.C. §2503(c).

(4) If the property of the first trust includes shares of stock in an S corporation, as defined in 26 U.S.C. §1361 and the first trust is, or but for provisions of this article other than this section would be, a permitted shareholder under any provision of 26 U.S.C. §1361, an authorized fiduciary may exercise the power with respect to part or all of the S corporation stock only if any second trust receiving the stock is a permitted shareholder under 26 U.S.C. §1361(c)(2). If the property of the first trust includes shares of stock in an S corporation and the first trust is, or but for provisions of this article other than this section would be, a qualified subchapter-S trust within the meaning of 26 U.S.C. §1361(d), the second-trust instrument must not include or omit a term that prevents the second trust from qualifying as a qualified subchapter-S trust.

(5) If the first trust contains property that qualified, or would have qualified but for provisions of this article other than this section, for a zero inclusion ratio for purposes of the generation-skipping transfer tax under 26 U.S.C. §2642(c) the second-trust instrument must not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the transfer to the first trust from qualifying for a zero inclusion ratio under 26 U.S.C. §2642(c).

(6) If the first trust is directly or indirectly the beneficiary of qualified benefits property, the second-trust instrument may not include or omit any term that, if included in or omitted from the first-trust

instrument, would have increased the minimum distributions required with respect to the qualified benefits property under 26 U.S.C. §401(a)(9) and any applicable regulations, or any similar requirements that refer to 26 U.S.C. §401(a)(9) or the regulations. If an attempted exercise of the decanting power violates the preceding sentence, the trustee is determined to have held the qualified benefits property and any reinvested distributions of the property as a separate share from the date of the exercise of the power and §2201 applies to the separate share.

(7) If the first trust qualifies as a grantor trust because of the application of 26 U.S.C. §672(f)(2)(A), the second trust may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented the first trust from qualifying under 26 U.S.C. §672(f)(2)(A).

(8) In this subdivision, 'tax benefit' means a federal or state tax deduction, exemption, exclusion, or other benefit not otherwise listed in this section, except for a benefit arising from being a grantor trust. Subject to subdivision (9) of this subsection, a second-trust instrument may not include or omit a term that, if included in or omitted from the first-trust instrument, would have prevented qualification for a tax benefit if:

(A) The first-trust instrument expressly indicates an intent to qualify for the benefit or the first-trust instrument clearly is designed to enable the first trust to qualify for the benefit; and

(B) The transfer of property held by the first trust or the first trust qualified, or but for provisions of this article other than this section, would have qualified for the tax benefit.

(9) Subject to subdivision (4) of this subsection:

(A) Except as otherwise provided in subdivision (7) of this subsection, the second trust may be a nongrantor trust, even if the first trust is a grantor trust; and

(B) Except as otherwise provided in subdivision (10) of this subsection, the second trust may be a grantor trust, even if the first trust is a nongrantor trust.

(10) An authorized fiduciary may not exercise the decanting power if a grantor objects in a signed record delivered to the fiduciary within the notice period and:

(A) The first trust and a second trust are both grantor trusts, in whole or in part, the first trust grants the grantor or another person the power to cause the first trust to cease to be a grantor trust, and the second trust does not grant an equivalent power to the grantor or other person; or

(B) The first trust is a nongrantor trust and a second trust is a grantor trust, in whole or in part, with respect to the grantor, unless:

(i) The grantor has the power at all times to cause the second trust to cease to be a grantor trust;
or

(ii) The first-trust instrument contains a provision granting the grantor or another person a power that would cause the first trust to cease to be a grantor trust and the second-trust instrument contains the same provision.

§44D-8B-20. Duration of second trust.

(a) Subject to subsection (b) of this section, a second trust may have a duration that is the same as or different from the duration of the first trust.

(b) To the extent that property of a second trust is attributable to property of the first trust, the property of the second trust is subject to any rules governing maximum perpetuity, accumulation, or suspension of the power of alienation which apply to property of the first trust.

§44D-8B-21. Need to distribute not required.

An authorized fiduciary may exercise the decanting power whether or not under the first trust's discretionary distribution standard the fiduciary would have made or could have been compelled to make a discretionary distribution of principal at the time of the exercise.

§44D-8B-22. Saving provision.

(a) If exercise of the decanting power would be effective under this article except that the second-trust instrument in part does not comply with this article, the exercise of the power is effective and the following rules apply with respect to the principal of the second trust attributable to the exercise of the power:

(1) A provision in the second-trust instrument which is not permitted under this article is void to the extent necessary to comply with this article; and

(2) A provision required by this article to be in the second-trust instrument which is not contained in the instrument is considered to be included in the instrument to the extent necessary to comply with this article.

(b) If a trustee or other fiduciary of a second trust determines that subsection (a) of this section applies to a prior exercise of the decanting power, the fiduciary shall take corrective action consistent with the fiduciary's duties.

§44D-8B-23. Trust for care of animal.

(a) In this section:

(1) 'Animal trust' means a trust or an interest in a trust created to provide for the care of one or more animals.

(2) 'Protector' means a person appointed in an animal trust to enforce the trust on behalf of the animal or, if no person is appointed in the trust, a person appointed by the court for that purpose.

(b) The decanting power may be exercised over an animal trust that has a protector to the extent the trust could be decanted under this article if each animal that benefits from the trust were an individual, if the protector consents in a signed record to the exercise of the power.

(c) A protector for an animal has the rights under this article of a qualified beneficiary.

(d) Notwithstanding any other provision of this article, if a first trust is an animal trust, in an exercise of the decanting power, the second trust must provide that trust property may be applied only to its intended purpose for the period the first trust benefitted the animal.

§44D-8B-24. Terms of second trust.

Any reference in this chapter to a trust instrument or terms of the trust includes a second-trust instrument and the terms of the second trust.

§44D-8B-25. Grantor.

(a) For purposes of law of this state other than this article and subject to subsection (b) of this section, a grantor of a first trust is considered to be the grantor of the second trust with respect to the portion of the principal of the first trust subject to the exercise of the decanting power.

(b) In determining grantor intent with respect to a second trust, the intent of a grantor of the first trust, a grantor of the second trust, and the authorized fiduciary may be considered.

§44D-8B-26. Later-discovered property.

(a) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust and property paid to or acquired by the first trust after the exercise of the power is part of the trust estate of the second trust or trusts.

(b) Except as otherwise provided in subsection (c) of this section, if exercise of the decanting power was intended to distribute less than all the principal of the first trust to one or more second trusts, later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power remains part of the trust estate of the first trust.

(c) An authorized fiduciary may provide in an exercise of the decanting power or by the terms of a second trust for disposition of later-discovered property belonging to the first trust or property paid to or acquired by the first trust after exercise of the power.

§44D-8B-27. Obligations.

A debt, liability, or other obligation enforceable against property of a first trust is enforceable to the same extent against the property when held by the second trust after exercise of the decanting power.

§44D-8B-28. Uniformity of application and construction.

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

§44D-8B-29. Relation to Electronic Signatures in Global and National Commerce Act.

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. §7001 *et seq.*, but does not modify, limit, or supersede Section 101(c) of that act, 15 U.S.C. §7001(c), or authorize electronic delivery of any of the notices described in §103(b) of that act, 15 U.S.C. §7003(b).

§44D-8B-30. Severability.

If any provision of this article or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable.

§44D-8B-31. Effective date.

This article takes effect on July 1, 2020.”

The bill was then ordered to third reading.

Com. Sub. for S. B. 802, Relating to public utilities generally; on second reading, coming up in regular order, was read a second time,

An amendment, recommended by the Committee on Government Organization, was reported by the Clerk, and adopted on page two, section twenty, line twenty-four, after the word “certification”, by inserting the following proviso: “: *Provided*, That the natural gas provider bills the customer and the customer pays for at least 100,000 million cubic feet during each full calendar year after the utility has been notified, except in the event one or both of the contracting parties experiences a force majeure event or a condition beyond their reasonable control.”

The bill was then ordered to third reading.

Com. Sub. for S. B. 810, Implementing federal Affordable Clean Energy rule; on second reading, coming up in regular order, was read a second time and ordered to third reading.

First Reading

The following bills on first reading, coming up in regular order, were each read a first time and ordered to second reading:

S. B. 42, Permitting faith-based electives in classroom drug prevention programs,

Com. Sub. for S. B. 130, Relating to procedure for driver’s license suspension and revocation for DUI,

Com. Sub. for S. B. 269, Establishing advisory council on rare diseases,

Com. Sub. for S. B. 275, Creating Intermediate Court of Appeals,

Com. Sub. for S. B. 308, Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation,

Com. Sub. for S. B. 312, Relating to provisional licensure of social workers,

Com. Sub. for S. B. 547, Relating to employer testing, notice, termination, and forfeiture of unemployment compensation,

S. B. 654, Allowing certain sheriffs transfer from PERS to Deputy Sheriff Retirement System,

Com. Sub. for S. B. 678, Waiving fines and fees for completing Getting Over Addicted Lifestyles Successfully Program,

S. B. 691, Limiting programs adopted by State Board of Education,

Com. Sub. for S. B. 707, Relating to nursing career pathways,

S. B. 723, Requiring Department of Education develop plan based on analyzed data on school discipline,

Com. Sub. for S. B. 729, Relating to awards and disability under Deputy Sheriff Retirement Act,

Com. Sub. for S. B. 739, Authorizing PSC protect consumers of distressed and failing water and wastewater utilities,

S. B. 750, Establishing extended learning opportunities,

Com. Sub. for S. B. 760, Allowing state college or university apply to HEPC for designation as administratively exempt school,

Com. Sub. for S. B. 785, Establishing uniform electioneering prohibition area,

Com. Sub. for S. B. 793, Relating to B&O taxes imposed on certain coal-fired electric generating units,

S. B. 830, Eliminating special merit-based employment system for health care professionals,

S. B. 839, Creating State Advisory Council on Postsecondary Attainment Goals,

S. B. 842, Requiring Superintendent of Schools establish a Behavior Interventionist Pilot Program in two school districts for five years,

S. B. 846, Requiring hospital publish notification prior to facility closure regarding patient medical records,

S. B. 848, Clarifying persons charged with DUI may not participate in Military Service Members Court,

Com. Sub. for H. B. 4975, Making a supplementary appropriation to the School Building Authority, Debt Service Fund,

Com. Sub. for H. B. 4976, Making a supplementary appropriation to the School Building Authority,

H. B. 4977, Expiring funds to the balance of the Department of Arts, Culture and History, Division of Culture and History, Public Records and Preservation Revenue Account Fund, coming up in regular order, were each read a first time and ordered to second reading,

And,

H. B. 4978, Expiring funds to the balance of the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Householder, Chair of the Committee on Finance submitted the following report, which was received:

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 716, Requiring DHHR pay for tubal ligation without 30-day wait between consent and sterilization,

And reports the same back, with a title amendment, with the recommendation that it do pass, as amended.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 291, Requiring PEIA and health insurance providers provide mental health parity,

Com. Sub. for S. B. 551, Relating to Water and Wastewater Investment and Infrastructure Improvement Act,

Com. Sub. for S. B. 589, Creating Critical Needs/Failing Systems Sub Account,

Com. Sub. for S. B. 648, Providing dental coverage for adult Medicaid recipients,

And,

Com. Sub. for S. B. 787, Providing benefits to pharmacists for rendered care,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 719, Imposing health care-related provider tax on certain health care organizations,

S. B. 740, Clarifying authorized users of Ron Yost Personal Assistance Services Fund,

S. B. 852, Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Fund,

And,

S. B. 853, Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Authority,

And reports the same back with the recommendation that they each do pass.

Miscellaneous Business

Delegate Sybolt noted to the Clerk that she was absent when the vote was taken on Com. Sub. for S. B. 125, and had she been present, she would have voted "Yea" thereon.

Delegate Rohrbach noted to the Clerk that he was absent when the votes were taken on Roll Nos. 445 through 455, and had he been present, he would have voted "Yea" thereon.

Pursuant to House Rule 94b, a form was filed with the Clerk's Office to be added as a cosponsor of the following:

- Delegate Rohrbach for H. C. R. 8

At 11:13 a.m., the House of Delegates recessed until 7:00 p.m.

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Evening Session

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The House of Delegates was called to order by the Honorable Roger Hanshaw, Speaker.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for H. B. 4975, Com. Sub. for H. B. 4976, H. B. 4977 and H. B. 4978, on Second Reading, Special Calendar, had been transferred to the House Calendar; Com. Sub. for S. B. 175, Com. Sub. for S. B. 230, Com. Sub. for S. B. 261, Com. Sub. for S. B. 288, S. B. 289, Com. Sub. for S. B. 303, Com. Sub. for S. B. 491, S. B. 510, Com. Sub. for S. B. 530, Com. Sub. for S. B. 575, S. B. 641, S. B. 647, Com. Sub. for S. B. 689, Com. Sub. for S. B. 692, Com. Sub. for S. B. 746, S. B. 747, S. B. 748, Com. Sub. for S. B. 749, S. B. 767, Com. Sub. for S. B. 770, S. B. 838 and S. B. 851, on Second Reading, House Calendar to the Special Calendar; and Com. Sub. for S. B. 195, Com. Sub. for S. B. 213, S. B. 322, Com. Sub. for S. B. 615, Com. Sub. for S. B. 660, Com. Sub. for S. B. 670, Com. Sub. for S. B. 690, Com. Sub. for S. B. 722 and Com. Sub. for S. B. 738, on First Reading, House Calendar, had been transferred to the Special Calendar.

Unanimous consent having been obtained, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

Delegate Shott, Chair of the Committee on the Judiciary submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

S. B. 180, Relating to Second Chance Driver's License Program,

And reports the same back, with amendment, with the recommendation that it do pass, as amended, and with the recommendation that second reference to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bill (S. B. 180) to the Committee on Finance was abrogated.

Delegate Anderson, Chair of the Committee on Energy, submitted the following report, which was received:

Your Committee on Energy has had under consideration:

Com. Sub. for S. B. 120, Establishing priorities for expenditures for plugging abandoned gas or oil wells,

And reports the same back with the recommendation that it do pass.

Delegate Hill, Chair of the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration:

Com. Sub. for S. B. 710, Establishing pilot program to evaluate telemedicine health services,

And reports the same back with the recommendation that it do pass.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 193, Setting forth timeframes for continuing purchases of commodities and services over \$1 million,

Com. Sub. for S. B. 597, Relating to judicial branch members' salaries and pensions,

And,

Com. Sub. for S. B. 797, Authorizing governing boards of public and private hospitals employ hospital police officers,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended.

Delegate Householder, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

Com. Sub. for S. B. 522, Relating to compensation awards to crime victims,

Com. Sub. for S. B. 579, Changing and adding fees to wireless enhanced 911 fee,

S. B. 843, Supplemental appropriation of funds from Treasury to DHHR Energy Assistance Fund,

S. B. 844, Supplemental appropriation from Treasury to DHHR Birth-to-Three Fund,

And,

Com. Sub. for S. B. 845, Supplemental appropriation from Treasury to DHHR, Division of Human Services,

And reports the same back with the recommendation that they each do pass.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

S. B. 278, Providing various methods to deal with defendant who becomes incompetent during trial,

And,

S. B. 765, Modifying "Habitual Offender" statute,

And reports the same back, with amendment, with the recommendation that they each do pass, as amended.

Delegate Shott, Chair of the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration:

S. B. 51, Specifying forms of grandparent visitation,

Com. Sub. for S. B. 253, Providing for fair pay and maximized employment of disabled persons,

S. B. 664, Adding physician's assistant to list of medical professionals capable of determining if individual lacks capacity,

Com. Sub. for S. B. 711, Relating to juvenile jurisdiction of circuit courts,

And,

Com. Sub. for S. B. 717, Relating generally to adult protective services,

And reports the same back with the recommendation that they each do pass.

Delegate Capito, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 3rd day of March, 2020, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

Com. Sub. for H. B. 2338, Allowing the owner of an antique military vehicle to display alternate registration insignia,

H. B. 4411, Relating to the West Virginia Residential Mortgage Lender, Broker and Servicer Act,

H. B. 4477, West Virginia Mutual to Mutual Insurance Holding Company Act,

H. B. 4600, Relating to the definition of the term member regarding distributing premium tax proceeds,

And,

H. B. 4661, Relating to the powers of the Public Service Commission and the regulation of natural gas utilities.

Messages from the Senate

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4077, Increasing the amount of the bond required to be posted by proprietary schools.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4083, Requiring the West Virginia Parkways Authority to accept the use of credit and debit cards for paying tolls.

On motion of Delegate Summers, the House concurred in the following amendment of the bill by the Senate, with further amendment:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

~~“ARTICLE 16A. WEST VIRGINIA PARKWAYS, ECONOMIC DEVELOPMENT AND TOURISM AUTHORITY.~~

§17-16A-13b. Collection of tolls through credit and debit cards.

(a) By July 1, 2023, or as soon thereafter as the provisions of this subsection can be implemented without conflicting with any of its existing agreements, including but not limited to covenants under any trust agreement securing bonds related to the turnpike or tolls, the authority shall implement procedures that allow tolls on the turnpike to be paid at each toll facility by credit and debit cards with technology designed to ensure that the transaction processing speed supports operational requirements of the authority. The authority may incorporate or add a cost adjustment to the amount of any toll paid at a toll facility by a credit card so that the amount collected covers all charges against the authority by the credit card company or financial institution for accepting payment through the card: *Provided*, That the authority may also include in such cost adjustment an amount that will reimburse the authority for equipment necessary to offer such optional payment method: *Provided, however*, That such cost adjustment for the optional payment by a credit card is not subject to toll payments made through any West Virginia EZ Pass transponder or discount program as defined or authorized by §17-16A-29 of this code: *Provided further*, That the cost adjustment for the optional use of a credit card is not subject to the public notice or meeting requirement in §17-16A-13a of this code.

(b) The authority may limit the number of toll booths that accept payment by credit and debit cards at each toll collection point.

(c) The authority shall provide a progress report to the Joint Committee on Government and Finance no later than December 31 of each year until the provisions of this section are implemented. Such report shall include a description of the status of, and any impediments to, the implementation of the provisions of this section and may include any other information the authority deems relevant.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4083 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §17-16A-13b, relating to requiring the West Virginia Parkways Authority to accept the use of credit and debit cards for paying tolls on the West Virginia Turnpike; authorizing cost adjustments to the amount of tolls paid at a toll facility by credit card; clarifying application of the cost adjustment; declaring cost adjustment not subject to public notice or meeting requirement; and requiring reporting.”

With the further amendment, sponsored by Delegate Howell, being as follows:

On page one, section thirteen-b, line one, after “July 1”, by striking out “2023, or as soon thereafter as the provisions of this subsection can be implemented without conflicting with any of its existing agreements, including but not limited to covenants under any trust agreement securing bonds related to the turnpike or tolls” and inserting in lieu thereof the year “2022”.

The bill as amended by the Senate and further amended by the House, was put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 470**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, S. Brown, Graves, Hardy, Hicks, Kump, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4083) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4090, Creating the Oil and Gas Abandoned Well Plugging Fund.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page four, section three-a, lines sixty-three through seventy-one, by striking out all of subsection (e) and inserting in lieu thereof a new subsection, designated subsection (e), to read as follows:

“(e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: *Provided*, That if on June 1, 2023, or on June 1 of any year thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6 million then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Tax Commissioner shall issue an

Administrative Notice by July 1 of each year indicating the balance in the fund as of the immediately preceding June 1 and the rate of tax on wells pursuant to this subsection.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 471**), and there were—yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4090) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4137, Allowing counties to store and maintain voter registration records in a digital format.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4217, Authorizing the Department of Environmental Protection to promulgate legislative rules.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4352, Removing the use of post-criminal conduct in professional and occupational initial licensure or certification in decision making.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4434, West Virginia health care workforce sustainability study.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, section nine, line eight, by striking out the word “and”.

On page one, section nine, line ten, after the word “code”, by changing the period to a semicolon and adding the following: “and.

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

On page five, section nine, line ninety-seven, by striking out the word “and”.

On page five, section nine, line ninety-eight, after the word “Home”, by changing the period to a semicolon and adding the following: “and;

(vii) Emergency Medical Service Agency.”

On page five, section nine, line one hundred seventeen, by striking out the word “and”.

On page five, section nine, line one hundred eighteen, after the word “Technician”, by changing the period to a semicolon and adding the following:

“(xx) Radiologic Technologist; and

(xxi) Emergency Medical Service Personnel.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 472**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Little, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4434) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4464, Relating to driving privileges and requirements for persons under the age of 18.

On motion of Delegate Kessinger, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page two, section three-a, line thirty-three, after the word “military” by inserting a comma.

And,

On page six, section three-a, lines one hundred twenty-nine and one hundred thirty, by striking out the words “§17B-2-3a(c)(2) §17B-2-3a(d)(1)(A), §17B-2-3a(d)(1)(B), §17B-2-3a(d)(1)(C) or §17B-2-3a(d)(1)(D) of this code” and inserting in lieu thereof the words “§17B-2-3a(d)(2) of this code”.

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4464 – “A Bill to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended, relating to graduated driver’s licenses; prohibiting holders of level three licenses from using a wireless communication device while operating a motor vehicle and specifying exception; making a violation of level three license terms and conditions subject to criminal penalty provision; and extending validity of level one instruction driver’s permits for active members of the military.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 473**), and there were—yeas 89, nays 1, absent and not voting 10, with the nays and absent and not voting being as follows:

Nays: Summers.

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Little, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4464) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

H. B. 4480, Relating to legislative rules for the Higher Education Policy Commission.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4510, Prohibiting bodily intrusion by an inmate upon any person at any correctional facility.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 8. CRIMES BY AND PROCEEDINGS AGAINST INMATES.

§62-8-1. Offenses by inmates; conspiracy.

(a) A person imprisoned or otherwise in the custody of the Commissioner of Corrections ~~or the Executive Director of the Regional Jail and Correctional Facility Authority~~ and Rehabilitation is guilty of a felony if he or she kills, wounds, or inflicts other bodily injury upon any person at any correctional facility; or breaks, cuts, or injures, or sets fire to any building, fixture, or fastening of any correctional facility, or jail or any part thereof, for the purpose of escaping or aiding any other inmate to escape therefrom, or renders any correctional facility or jail less secure as a place of confinement; or makes, procures, secretes, or has in his or her possession, any instrument, tool, or other thing for such purpose, or with intent to kill, wound, or inflict bodily injury; or resists the lawful authority of an officer

or guard of any correctional facility or jail for such purpose or with such intent. Any three or more inmates ~~se~~ confined, or in ~~such~~ custody, who conspire together to commit any offense mentioned in this section are each guilty of a felony.

(b) Any person in the custody of the Commissioner of Corrections and Rehabilitation who commits an act of bodily intrusion is guilty of a felony and, upon conviction thereof, shall be imprisoned for not less than one year nor more than five years. As used in this subsection "bodily intrusion" means penetration, however slight, of the anus of a male or female or the sex organ of a female without his or her consent by means of forcible compulsion and for reasons other than the sexual gratification of either person."

And,

By amending the title of the bill to read as follows:

H. B. 4510 – "A Bill to amend and reenact §62-8-1 of the Code of West Virginia, 1931, as amended, relating to creating the offense of bodily intrusion by an inmate in the custody of the Commissioner of Corrections and Rehabilitation; defining terms; and establishing criminal penalties."

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 474**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Little, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4510) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4529, Relating to the collection of assessments and the priority of liens on property within a resort area.

On motion of Delegate Kessinger, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

"ARTICLE 25. RESORT AREA DISTRICTS.

§7-25-22. Liens; recording notice of liens; priority; release of lien; notice to future property owners.

(a) With the exception of property exempt from assessment pursuant to §7-25-18 of this code, there shall be a lien on all real property located within the resort area district for the assessments

imposed by §7-25-17 of this code, which ~~lien~~ shall attach to those parcels made subject to the assessment on the date specified in the notice to property owners. A notice of the liens of ~~said~~ the assessments referring to the assessing resolution and setting forth a list of the property assessed, described respectively as to amounts of assessment, ownership, and location of the property, shall be certified, by the ~~chairman~~ chair and secretary of the board, to the clerk of the county commission of the county ~~wherein in which~~ the project is located. The county clerk shall record the notice of ~~such~~ the lien in the appropriate trust deed book or other appropriate county lien book and index the ~~same~~ lien in the name of each owner of real property assessed. From the date of an assessment, the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, and/or the district ~~shall have such~~ has the lien and ~~shall be is~~ entitled to enforce the ~~same~~ lien in its, his, her, or their name to the extent of the amount, including principal and interest and any penalty due for any failure to pay an installment when due, of ~~such~~ the assessments and against the property to which the assessment applies, as to any assessment not paid as and when due. The trustee or the district, as an alternative to the enforcement provision set forth in §7-25-21 of this code, are granted all legal remedies ~~as are~~ necessary to collect the assessment. ~~Such~~ The assessments ~~shall be are~~ and constitute liens for the benefit of the resort area district or the trustee, for the benefit of bondholders if assessment bonds are issued by the resort area district, upon the respective lots and parcels of land assessed and ~~shall~~ have priority over all other liens except: ~~to these~~ (1) Any liens for land taxes due the state, county, and municipality; and except (2) any liens for preexisting special assessments provided under this code; and (3) any liens by a lien creditor, including, without limitation, any lien creditor secured by a deed of trust lien, with respect to any of the lots or parcels of land with a lien properly recorded with the Clerk of the County Commission of the county in which the lots or parcels of land are located prior to the time that the notice of the assessment lien is recorded. If any assessment is revised in accordance with this article, the lien created by this section ~~shall extend~~ extends to the revised assessment ~~so revised~~ and ~~shall have~~ has the same priority as the priority of the lien created upon the laying of the original assessment. ~~Such~~ The assessments and interest thereon shall be paid by the owners of the property assessed as and when the installments are due. Following the payment in full of any assessment bonds including any interest thereon, the ~~chairman~~ chair and secretary of the board shall execute a release of all liens and shall certify the ~~same to~~ release to the county clerk for recondition.

(b) Following the grant of any assessment on property as provided in this article, the seller of ~~such~~ the property shall provide reasonable disclosure to the buyer in the real estate contract that an assessment has been granted on the property, the amount of the assessment, and the duration of the assessment.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 475**), and there were—yeas 90, nays none, absent and not voting 10, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Little, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4529) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4544, Relating to possession of any controlled substance on the premises of or within 200 feet of a public library.

On motion of Delegate Summers, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 4. OFFENSES AND PENALTIES.

§60A-4-406. Distribution to persons under the age of 18 by persons over the age of 21; distribution by persons 18 or over in, on, or within 1,000 feet of, school or college; distribution by persons 18 or over in, on, or within 200 feet of a public library; increasing mandatory period of incarceration prior to parole eligibility.

(a) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of three years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(i) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution; ~~or~~

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(b) Notwithstanding any other provision of law to the contrary, a person is ineligible for parole for a period of two years if he or she is sentenced to the custody of the Commissioner of Corrections and Rehabilitation, for service of a sentence of incarceration and is convicted of a felony violation under the provisions of §60A-4-401(a)(ii) of this code for distribution of a controlled substance and:

(1) Is 21 years of age or older at the time of the distribution upon which the conviction is based, and the person to whom the controlled substance was distributed was under the age of 18 years at the time of the distribution; ~~or~~

(2) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 1,000 feet of, the real property comprising a public or private elementary, vocational or secondary school or a public or private college, junior college or university in this state; or

(3) Is 18 years of age or older and the distribution upon which the conviction is based occurred in, on, or within 200 feet of, the real property comprising a public library in this state.

(c) The existence of any fact which would make any person subject to the provisions of this section may not be considered unless the fact is clearly stated and included in the indictment or presentment by which the person is charged and is either:

(1) Found by the court upon a plea of guilty or nolo contendere;

(2) Found by the jury, if the matter be tried before a jury, upon submission to the jury of a special interrogatory for such purpose; or

(3) Found by the court, if the matter be tried by the court without a jury.

(d) Nothing in this section ~~shall be construed to limit~~ limits the sentencing alternatives made available to circuit court judges under other provisions of this code.”

And,

By amending the title of the bill to read as follows:

Com. Sub. for H. B. 4544 – “A Bill to amend and reenact §60A-4-406 of the Code of West Virginia, 1931, as amended, relating to applying a mandatory period of incarceration prior to parole eligibility to persons 18 years old or over who are convicted of distributing a controlled substance within 200 feet of a public library; and establishing criminal penalties.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 476**), and there were—yeas 69, nays 22, absent and not voting 9, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, S. Brown, Caputo, Diserio, Doyle, Evans, Fleischauer, Fluharty, Hansen, Hill, Hornbuckle, Lavender-Bowe, McGeehan, Pushkin, Pyles, Rowe, Sponaugle, C. Thompson, Walker and Williams.

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4544) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, a bill of the House of Delegates, as follows:

H. B. 4559, Modifying the limitations on civil actions against the perpetrator of sexual assault or sexual abuse upon a minor.

On motion of Delegate Kessinger, the House of Delegates concurred in the following amendment of the bill by the Senate:

On page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 2. LIMITATIONS OF ACTIONS AND SUITS.

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

(a) A personal action for damages resulting from sexual assault or sexual abuse of a person who was an infant at the time of the act or acts alleged, shall be brought against the perpetrator of the sexual assault or sexual abuse, within ~~four~~ 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 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.”

And,

By amending the title of the bill to read as follows:

H. B. 4559 – “A Bill to amend and reenact §55-2-15 of the Code of West Virginia, 1931, as amended, relating to extending the limitation on civil actions against the perpetrator of sexual assault or sexual abuse upon a minor; adding any person or organization which aided, abetted, or concealed the sexual assault or abuse to the extended statute of limitations; allowing victims to initiate actions for sexual assault or sexual abuse against perpetrators only within four years of discovery regardless of age; and clarifying effect of 2020 amendments as to possible actions.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 477**), and there were—yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Porterfield, Steele and Waxman.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4559) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4620, Redefining definition of “recovery residence”.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

H. B. 4647, Relating to limited video lottery permit holders.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

Com. Sub. for H. B. 4729, Requiring higher education institutions to use previous versions or editions of instructional materials.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, with amendment, changed the effective date, to take effect July 1, 2020, a bill of the House of Delegates, as follows:

H. B. 4887, Relating to revocation, cancellation, or suspension of business registration certificates.

On motion of Delegate Summers, the House refused to concur in the following amendment of the bill by the Senate, and requested the Senate to recede therefrom.

On page two, section five-b, lines twenty-two through thirty, by striking out all of subsection (b) and inserting in lieu thereof a new subsection, designated subsection (b), to read as follows:

“(b) If an individual or business entity has not filed any tax return or report for a tax or fee administered under the provisions of §11-10-1 et seq. of this code one year after having been issued a business registration certificate, the Tax Commissioner shall send the individual or business entity a letter by certified mail return receipt requested to the address for which the business registration certificate was issued requesting that the individual or business entity explain why no tax return or report was filed. If the individual or business entity fails to respond to the letter, whether the letter was received, claimed, unclaimed or refused, within 60 days after it was deposited in the United States mail, postage paid, the Tax Commissioner may begin the process to revoke the individual’s or business entity’s business registration certificate.”

And,

By amending the title of the bill to read as follows:

H. B. 4887 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §11-12-5b, relating to revocation, cancellation, or suspension of business registration certificates where the registrant filed a false or fraudulent application for a business registration certificate, failed to pay taxes, additions to taxes, penalties, interest, or where the Secretary of State has revoked the registrant’s authority to conduct business; establishing causes for revocation, cancellation, or suspension; directing means of notice and opportunity for cure; providing procedures therefor; and specifying effective date.”

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates and request concurrence therein.

A message from the Senate, by
The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates, as follows:

H. B. 4955, Relating to reducing the cost of fees for state licenses to carry concealed deadly weapons and provisional state licenses to carry concealed deadly weapons.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

Com. Sub. for S. B. 201, Relating generally to criminal offenses of stalking and harassment.

A message from the Senate, by
The Clerk of the Senate, announced concurrence in the House of Delegates amendment, with further title amendment, and the passage, as amended, of

S. B. 781, Relating to reports regarding collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

On motion of Delegate Kessinger, the House of Delegates concurred in the following Senate title amendment:

S. B. 781 – “A Bill to amend and reenact §18B-3C-16 of the Code of West Virginia, 1931, as amended, relating to modifying information required to be included in report to the Legislature and the Governor regarding the collaborative agreements between community and technical colleges and federally registered apprenticeship programs.”

The bill, as amended by the Senate, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 478**), and there were—yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

Absent and Not Voting: Azinger, Boggs, Graves, Hardy, Hicks, Kump, Porterfield, Steele and Waxman.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 781) passed.

Ordered, That the Clerk of the House communicate to the Senate the action of the House of Delegates.

Delegate Summers moved that the House adjourn until 10:00 a.m., Wednesday, March 4, 2020.

Delegate Fluharty then moved to discharge **S. B. 850** from the Committee on the Judiciary.

The motion to adjourn having been made, at 7:33 p.m., the House of Delegates adjourned until 10:00 a.m., Wednesday, March 4, 2020.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

SPECIAL CALENDAR

Wednesday, March 4, 2020

57th Day

10:00 A. M.

THIRD READING

- Com. Sub. for S. B. 136 - Prohibiting certain misleading lawsuit advertising practices (SHOTT) (REGULAR)
- Com. Sub. for S. B. 150 - Budget Bill (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE) [AMENDMENTS PENDING] [RIGHT TO AMEND]
- Com. Sub. for S. B. 490 - Relating to criminal offenses against agricultural facilities (SHOTT) (REGULAR)
- Com. Sub. for S. B. 578 - Recalculating tax on generating, producing, or selling electricity from solar energy facilities (HOUSEHOLDER) (JULY 1, 2020)
- S. B. 600 - Creating special revenue account designated Military Authority Fund (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 614 - Changing method of allocating funding from Safe School Funds (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 662 - Removing restrictions on fiduciary commissioners (SHOTT) (REGULAR)
- Com. Sub. for S. B. 668 - Enacting Uniform Trust Decanting Act (SHOTT) (JULY 1, 2020)
- Com. Sub. for S. B. 802 - Relating to public utilities generally (HOWELL) (REGULAR)
- Com. Sub. for S. B. 810 - Implementing federal Affordable Clean Energy rule (SHOTT) (REGULAR)

SECOND READING

- S. B. 42 - Permitting faith-based electives in classroom drug prevention programs (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 130 - Relating to procedure for driver's license suspension and revocation for DUI (SHOTT) (REGULAR)
- Com. Sub. for S. B. 175 - Requiring certain agencies maintain website which contains specific information (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)

- Com. Sub. for S. B. 230 - Requiring State Board of Education provide routine education in suicide prevention (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 261 - Creating criminal penalties for introducing ransomware into computer with intent to extort (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 269 - Establishing advisory council on rare diseases (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (HILL) (REGULAR)
- Com. Sub. for S. B. 275 - Creating Intermediate Court of Appeals (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 288 - Relating to family planning and child spacing (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (HILL) (REGULAR)
- S. B. 289 - Creating Green Alert Plan (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 303 - Enacting Students' Right to Know Act (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (JANUARY 1, 2021)
- Com. Sub. for S. B. 308 - Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation (SHOTT) (REGULAR)
- Com. Sub. for S. B. 312 - Relating to provisional licensure of social workers (HILL) (REGULAR)
- Com. Sub. for S. B. 491 - Relating to Seed Certification Program (HOWELL) (REGULAR)
- S. B. 510 - Making permanent land reuse agency or municipal land bank's right of first refusal on certain tax sale properties (SHOTT) (REGULAR)
- Com. Sub. for S. B. 530 - Relating to taxation of aircraft (FINANCE COMMITTEE TITLE AMENDMENT PENDING) (HOUSEHOLDER) (JULY 1, 2020)
- Com. Sub. for S. B. 547 - Relating to employer testing, notice, termination, and forfeiture of unemployment compensation (SHOTT) (REGULAR)
- Com. Sub. for S. B. 575 - Designating local fire department as safe-surrender site to accept physical custody of certain children from lawful custodian (HILL) (REGULAR)
- S. B. 641 - Allowing WVCHIP flexibility in rate setting (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (HILL) (REGULAR)
- S. B. 647 - Permitting physician's assistants and advanced practice registered nurses issue do-not-resuscitate orders (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (HILL) (REGULAR)

- S. B. 654 - Allowing certain sheriffs transfer from PERS to Deputy Sheriff Retirement System (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 678 - Waiving fines and fees for completing Getting Over Addicted Lifestyles Successfully Program (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 689 - Enacting Requiring Accountable Pharmaceutical Transparency, Oversight, and Reporting Act (HILL) (REGULAR)
- S. B. 691 - Limiting programs adopted by State Board of Education (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 692 - Clarifying persons indicted or charged jointly for felony offense can move to have separate trial (SHOTT) (REGULAR)
- Com. Sub. for S. B. 707 - Relating to nursing career pathways (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (EFFECTIVE FROM PASSAGE)
- S. B. 723 - Requiring Department of Education develop plan based on analyzed data on school discipline (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 729 - Relating to awards and disability under Deputy Sheriff Retirement Act (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 739 - Authorizing PSC protect consumers of distressed and failing water and wastewater utilities (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 746 - Providing contracted managed care companies access to uniform maternal screening tool (HILL) (REGULAR)
- S. B. 747 - Requiring Bureau for Public Health develop Diabetes Action Plan (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (HILL) (REGULAR)
- S. B. 748 - Increasing awareness of palliative care services (HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING) (HILL) (REGULAR)
- Com. Sub. for S. B. 749 - Requiring Fatality and Mortality Review Team share data with CDC (HILL) (REGULAR)
- S. B. 750 - Establishing extended learning opportunities (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 760 - Allowing state college or university apply to HEPC for designation as administratively exempt school (ELLINGTON) (REGULAR)
- S. B. 767 - Relating to licensure of hospitals (HILL) (REGULAR)
- Com. Sub. for S. B. 770 - Revising requirements for post-doctoral training (HILL) (REGULAR)

- Com. Sub. for S. B. 785 - Establishing uniform electioneering prohibition area (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 793 - Relating to B&O taxes imposed on certain coal-fired electric generating units (HOUSEHOLDER) (REGULAR)
- S. B. 830 - Eliminating special merit-based employment system for health care professionals (HILL) (REGULAR)
- S. B. 838 - Directing state police establish referral program for substance abuse treatment (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (EFFECTIVE FROM PASSAGE)
- S. B. 839 - Creating State Advisory Council on Postsecondary Attainment Goals (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (REGULAR)
- S. B. 842 - Requiring Superintendent of Schools establish a Behavior Interventionist Pilot Program in two school districts for five years (EDUCATION COMMITTEE AMENDMENT PENDING) (ELLINGTON) (EFFECTIVE FROM PASSAGE)
- S. B. 846 - Requiring hospital publish notification prior to facility closure regarding patient medical records (HILL) (EFFECTIVE FROM PASSAGE)
- S. B. 848 - Clarifying persons charged with DUI may not participate in Military Service Members Court (SHOTT) (REGULAR)
- S. B. 851 - Requiring Governor's Committee on Crime, Delinquency, and Correction propose rule in coordination with law enforcement and certain medical boards (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)

FIRST READING

- S. B. 51 - Specifying forms of grandparent visitation (SHOTT) (REGULAR)
- Com. Sub. for S. B. 120 - Establishing priorities for expenditures for plugging abandoned gas or oil wells (ANDERSON) (REGULAR)
- S. B. 180 - Relating to Second Chance Driver's License Program (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 193 - Setting forth timeframes for continuing purchases of commodities and services over \$1 million (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 195 - Updating powers of personal representatives of deceased person's estate (SHOTT) (REGULAR)
- Com. Sub. for S. B. 213 - Relating to administration of trusts (SHOTT) (JULY 1, 2020)

- Com. Sub. for S. B. 253 - Providing for fair pay and maximized employment of disabled persons (SHOTT) (REGULAR)
- S. B. 278 - Providing various methods to deal with defendant who becomes incompetent during trial (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)
- Com. Sub. for S. B. 291 - Requiring PEIA and health insurance providers provide mental health parity (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- S. B. 322 - Relating to prequalifications for state contract vendors (HOWELL) (REGULAR)
- Com. Sub. for S. B. 522 - Relating to compensation awards to crime victims (HOUSEHOLDER) (JULY 1, 2020)
- Com. Sub. for S. B. 551 - Relating to Water and Wastewater Investment and Infrastructure Improvement Act (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 579 - Changing and adding fees to wireless enhanced 911 fee (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 589 - Creating Critical Needs/Failing Systems Sub Account (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 597 - Relating to judicial branch members' salaries and pensions (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 615 - Declaring certain claims against state as moral obligations of state (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 648 - Providing dental coverage for adult Medicaid recipients (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 660 - Regulating electric bicycles (SHOTT) (REGULAR)
- S. B. 664 - Adding physician's assistant to list of medical professionals capable of determining if individual lacks capacity (SHOTT) (REGULAR)
- Com. Sub. for S. B. 670 - Amending service of process on nonresident persons or corporate entities (SHOTT) (REGULAR)
- Com. Sub. for S. B. 690 - Permitting street-legal special purpose vehicles on highways (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING) (HOWELL) (REGULAR)
- Com. Sub. for S. B. 710 - Establishing pilot program to evaluate telemedicine health services (HILL) (REGULAR)

Com. Sub. for S. B. 711 - Relating to juvenile jurisdiction of circuit courts (SHOTT) (REGULAR)

Com. Sub. for S. B. 716 - Requiring DHHR pay for tubal ligation without 30-day wait between consent and sterilization (FINANCE COMMITTEE TITLE AMENDMENT PENDING) (HOUSEHOLDER) (JULY 1, 2020)

Com. Sub. for S. B. 717 - Relating generally to adult protective services (SHOTT) (REGULAR)

Com. Sub. for S. B. 719 - Imposing health care-related provider tax on certain health care organizations (HOUSEHOLDER) (JULY 1, 2020)

Com. Sub. for S. B. 722 - Relating to special license plates for public and private nonprofit transit providers (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING) (HOWELL) (JULY 1, 2020)

Com. Sub. for S. B. 738 - Creating Flatwater Trail Commission (HOWELL) (REGULAR)

S. B. 740 - Clarifying authorized users of Ron Yost Personal Assistance Services Fund (HOUSEHOLDER) (REGULAR)

S. B. 765 - Modifying "Habitual Offender" statute (JUDICIARY COMMITTEE AMENDMENT PENDING) (SHOTT) (REGULAR)

Com. Sub. for S. B. 787 - Providing benefits to pharmacists for rendered care (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)

Com. Sub. for S. B. 797 - Authorizing governing boards of public and private hospitals employ hospital police officers (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)

S. B. 843 - Supplemental appropriation of funds from Treasury to DHHR Energy Assistance Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 844 - Supplemental appropriation from Treasury to DHHR Birth-to-Three Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

Com. Sub. for S. B. 845 - Supplemental appropriation from Treasury to DHHR, Division of Human Services (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 852 - Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 853 - Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Authority (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

HOUSE CALENDAR

Wednesday, March 4, 2020

57th Day

10:00 A. M.

UNFINISHED BUSINESS

H. R. 3 - Amending the Rules of the House of Delegates, relating to remarks by members

THIRD READING

Com. Sub. for S. B. 502 - Relating to methamphetamine criminal penalty (SHOTT) (REGULAR)

S. B. 509 - Relating to custodial allocation actions independent of divorce (SHOTT) (REGULAR)

Com. Sub. for H. B. 2663 - Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code (HOWELL) (REGULAR)

Com. Sub. for H. B. 4096 - Requiring candidates to live in the state or local election district for the office for which they are seeking (SHOTT) (REGULAR)

Com. Sub. for H. B. 4746 - Establishing a registry of persons with a communication disability (HOWELL) (REGULAR)

Com. Sub. for H. B. 4905 - Ban-the-Box Act (SHOTT) (REGULAR)

H. B. 4953 - Providing the PSC with authority to order the acquisition of failing utilities and a variety of tools to assist distressed and failing utilities (SHOTT) (REGULAR)

H. B. 4966 - Relating generally to updating the North American Industry Classification System code references (CRISS) (REGULAR)

H. B. 4970 - Relating to military service as a factor in certain insurance coverage rates (SHOTT) (REGULAR)

SECOND READING

S. B. 170 - Alleviating double taxation on foreign income at state level (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)

S. B. 610 - Removing resident manager requirement for Alcohol Beverage Control Administration (SHOTT) (JULY 1, 2020)

Com. Sub. for S. B. 625 - Creating one-day annual license to permit charitable auction of sealed rare, antique, or vintage liquor bottles (SHOTT) (REGULAR)

- Com. Sub. for S. B. 751 - Removing certain requirements of municipality annexing property within urban growth boundary (HOWELL) (REGULAR)
- H. J. R. 102 - Providing the West Virginia Legislature rulemaking oversight of the board of education (SHOTT)
- Com. Sub. for H. B. 4021 - Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 4059 - Increasing access to long acting reversible contraception (HILL) (REGULAR)
- H. B. 4455 - Permitting fees from the Central Abuse Registry to be used for costs relating to information technology support and infrastructure (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4613 - Allowing the Division of Highways use money in the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4690 - Relating to solid waste facilities (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4975 - Making a supplementary appropriation to the School Building Authority, Debt Service Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 4976 - Making a supplementary appropriation to the School Building Authority (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 4977 - Expiring funds to the balance of the Department of Arts, Culture and History, Division of Culture and History, Public Records and Preservation Revenue Account Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 4978 - Expiring funds to the balance of the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

FIRST READING

- Com. Sub. for H. B. 4485 - Reorganizing and redesignating the Department of Military Affairs and Public Safety as the Department of Homeland Security (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4651 - Clarifying the powers and duties of the Division of Highways in acquiring property for state road purposes (SHOTT) (REGULAR)
- H. B. 4884 - Relating to a charitable or public service organization must submit a certifying statement attesting to its status (HOWELL) (REGULAR)

WEST VIRGINIA HOUSE OF DELEGATES

WEDNESDAY, MARCH 4, 2020

HOUSE CONVENES AT 10:00 A.M.

**COMMITTEE ON RULES
9:45 A.M. – BEHIND CHAMBER**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470