

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FOURTH LEGISLATURE
REGULAR SESSION, 2020
FIFTY-SEVENTH DAY

Charleston, West Virginia, Wednesday, March 4, 2020

The Senate met at 10:31 a.m.

(Senator Carmichael, Mr. President, in the Chair.)

Prayer was offered by Jerry Bias, Lay Pastor, Madison United Methodist Church, Madison, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Ron Stollings, a senator from the seventh district.

Pending the reading of the Journal of Tuesday, March 3, 2020,

At the request of Senator Smith, unanimous consent being granted, the Journal was approved and the further reading thereof dispensed with.

The Senate proceeded to the second order of business and the introduction of guests.

The Senate then proceeded to the third order of business.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Com. Sub. for Senate Bill 125, Prohibiting victim from being subjected to certain physical examinations for sexual offenses.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 8B. SEXUAL OFFENSES.

§61-8B-11. Sexual offenses; evidence.

(a) In any prosecution under this article in which the victim's lack of consent is based solely on the incapacity to consent because such victim was below a critical age, evidence of specific instances of the victim's sexual conduct, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admissible. In any other prosecution under this article, evidence of specific instances of the victim's prior sexual conduct with the defendant shall be admissible on the issue of consent: *Provided*, That such evidence heard first out of the presence of the jury is found by the judge to be relevant.

(b) In any prosecution under this article evidence of specific instances of the victim's sexual conduct with persons other than the defendant, opinion evidence of the victim's sexual conduct, and reputation evidence of the victim's sexual conduct shall not be admissible: *Provided*, That such evidence shall be admissible solely for the purpose of impeaching credibility, if the victim first makes his or her previous sexual conduct an issue in the trial by introducing evidence with respect thereto.

(c) In any prosecution under this article, neither age nor mental capacity of the victim shall preclude the victim from testifying.

(d) At any stage of the proceedings, in any prosecution under this article, the court may permit a child who is 11 years old or less to use anatomically correct dolls, mannequins, or drawings to assist such child in testifying.

(e)(1) A court may not order or otherwise require an alleged victim in a prosecution for a sexual offense to submit to or undergo a gynecological or physical examination of the breasts, buttocks, anus, or any part of the sex organs.

(2) The refusal of an alleged victim to undergo an examination described in subdivision (1) of this subsection may not serve as the basis to exclude evidence obtained from other relevant examinations of the victim, except where constitutionally required.

(3) For the purposes of this subsection, the term "sexual offense" means any offense in which sexual intercourse, sexual contact, or sexual intrusion is an element of the offense, and includes any prosecution under this article, §61-8-12, or §61-8D-5 of this code.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Committee Substitute for Senate Bill 125, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 125) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 125) takes effect from passage.

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

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Com. Sub. for Senate Bill 163, Relating to municipal or county taxation of hotel rooms booked through marketplace facilitator.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 18. HOTEL OCCUPANCY TAX.

§7-18-3. Definitions.

For the purposes of this article:

(a) “Consideration paid” or “consideration” means the amount received in money, credits, property, or other consideration for, or in exchange for, the right to occupy a hotel room as herein defined.

(b) “Consumer” means a person who pays the consideration for the use or occupancy of a hotel room. The term “consumer” does not mean the government of the United States of America, its agencies or instrumentalities, or the government of the State of West Virginia or political subdivisions thereof.

(c) “Hotel” means any facility, building, or buildings, publicly or privately owned (including a facility located in a state, county, or municipal park), in which the public may, for a consideration, obtain sleeping accommodations. The term includes, but is not limited to, boarding houses, hotels, motels, inns, courts, condominiums, lodges, cabins, and tourist homes. The term “hotel” includes state, county, and city parks offering accommodations as herein set forth. The term “hotel” does not mean a hospital, sanitarium, extended care facility, nursing home, or university or college housing unit, or any facility providing fewer than three rooms in private homes, not exceeding a

total of 10 days in a calendar year, nor any tent, trailer, or camper campsites: *Provided*, That where a university or college housing unit provides sleeping accommodations for the general nonstudent public for a consideration, the term “hotel” does, if otherwise applicable, apply to those accommodations for the purposes of this tax.

(d) “Hotel operator” means the person who is proprietor of a hotel, whether in the capacity of owner, lessee, mortgagee in possession, licensee, trustee in possession, trustee in bankruptcy, receiver, executor, or in any other capacity. Where the hotel operator performs his or her functions through a managing agent of any type or character other than an employee, the managing agent is a hotel operator for the purposes of this article and has the same duties and liabilities as his or her principal. Compliance with the provisions of this article by either the principal or the managing agent is, however, considered to be compliance by both.

(e) “Hotel room” means any room or suite of rooms or other facility affording sleeping accommodations to the general public and situated within a hotel. The term “hotel room” does not include:

(1) A banquet room, meeting room, or any other room not primarily used for, or in conjunction with, sleeping accommodations; or

(2) Sleeping accommodations rented on a month-to-month basis or other rental arrangement for 30 days or longer at the inception at a boarding house, condominium, cabin, tourist home, apartment, or home.

(3) Sleeping accommodations rented by a hotel operator to those persons directly employed by the hotel operator for the purposes of performing duties in support of the operation of the hotel or related operations.

(f) “Marketplace facilitator” shall have the same meaning as stated in W. Va. Code §11-15A-1(b)(8).

~~(f)~~ (g) “Person” means any individual, firm, partnership, joint venture, association, syndicate, social club, fraternal organization, joint stock company, receiver, corporation, guardian, trust, business trust, trustee, committee, estate, executor, administrator, or any other group or combination acting as a unit.

~~(g)~~ (h) “State park” means any state-owned facility which is part of this state’s park and recreation system established pursuant to this code. For purposes of this article, any recreational facility otherwise qualifying as a “hotel” and situated within a state park is considered to be solely within the county in which the building or buildings comprising the facility are physically situated, notwithstanding the fact that the state park within which the facility is located may lie within the jurisdiction of more than one county.

~~(h)~~ (i) “Tax”, “taxes”, or “this tax” means the hotel occupancy tax authorized by this article.

~~(i)~~ (j) “Taxing authority” means a municipality or county levying or imposing the tax authorized by this article.

~~(j)~~ (k) “Taxpayer” means any person liable for the tax authorized by this article.

§7-18-4. Consumer to pay tax; hotel or hotel operator not to represent that it will absorb tax; accounting by hotel and marketplace facilitators.

(a) The consumer shall pay to the hotel operator the amount of tax imposed by any municipality or county hereunder, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless the taxing authority shall, by ordinance, order, regulation or otherwise require in writing the hotel operator to segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provisions of article fifteen, chapter eleven of this code. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until the same shall have been remitted to the taxing authority as hereinafter provided.

(b) Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a hotel room, such marketplace facilitator shall be responsible, on behalf of the hotel or hotel operator, for the collection and remittance of the tax imposed by any municipality or county hereunder. The marketplace facilitator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for the occupancy or use of a hotel room. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the marketplace facilitator, on behalf of the hotel or hotel operator, until the same has been remitted by the marketplace facilitator to the State Tax Division as hereinafter provided. Nothing in this paragraph shall be construed to interfere with the ability of a marketplace facilitator and a hotel or hotel operator to enter into an agreement regarding fulfillment of the requirements of this chapter.

~~(b)~~ (c) A hotel or hotel operator shall not represent to the public in any manner, directly or indirectly, that it will absorb all or any part of the tax or that the tax is not to be considered an element in the price to be collected from the consumer.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Com. Sub. for Senate Bill 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.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Committee Substitute for Senate Bill 163, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 163) passed with its House of Delegates amended title.

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

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 208, Protecting consumers from unfair pricing practices during state of emergency.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended, to take effect from passage, and requested the concurrence of the Senate in the House of Delegates amendment, as to

Eng. Senate Bill 545, Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the bill was reported by the Clerk:

On page two, section sixteen, line twenty-three, by striking out the word "The" and inserting in lieu thereof the words "During the fiscal years beginning July 1, 2019, and July 1, 2020, the".

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendment to the bill.

Engrossed Senate Bill 545, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 545) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 545) takes effect from passage.

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

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Senate Bill 569, Expiring funds from various accounts to DHHR, Medical Services Program Fund.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 570, Expiring funds from State Excess Lottery Revenue Fund to DHHR, Medical Services Program Fund.

A message from the Clerk of the House of Delegates announced the amendment by that body, passage as amended with its House of Delegates amended title, and requested the concurrence of the Senate in the House of Delegates amendments, as to

Eng. Senate Bill 651, Relating to definition of “mortgage loan originator”.

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendments to the bill were reported by the Clerk:

On page three, section two, lines fifty-three and fifty-four, by striking out the word “section” and inserting in lieu thereof the word “subsection”;

On page three, section two, line sixty-four, by striking out the word “section” and inserting in lieu thereof the word “subsection”;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Eng. Senate Bill 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.

On motion of Senator Takubo, the Senate concurred in the House of Delegates amendments to the bill.

Engrossed Senate Bill 651, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 651) passed with its House of Delegates amended title.

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

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage of

Eng. Com. Sub. for Senate Bill 705, Allowing military veterans with certain experience qualify for examination as electrician or plumber.

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

Eng. Senate Bill 781, Relating to reports regarding collaborative agreements between community and technical colleges and federally registered apprenticeship programs.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill 803, Supplemental appropriation of money out of General Revenue Fund to DHHR.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill 804, Supplemental appropriation of moneys from Treasury to PSC, Consumer Advocate Fund.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill 805, Supplemental appropriation of moneys from Treasury to WV Commuter Rail Access Fund.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the passage, to take effect from passage, of

Eng. Senate Bill 806, Supplemental appropriation out of federal funds in Treasury to DOT.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments, as amended by the House of Delegates, passage as amended, and requested the concurrence of the Senate in the House of Delegates amendment to the Senate amendments, as to

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

On motion of Senator Takubo, the bill was taken up for immediate consideration.

The following House of Delegates amendment to the Senate amendments to the bill was reported by the Clerk:

On page one, section thirteen-b, line one, by striking out the words "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 "2022".

On motion of Senator Takubo, the Senate refused to concur in the foregoing House amendment to the Senate amendments to the bill (Eng. Com. Sub. for H. B. 4083) and requested the House of Delegates to recede therefrom.

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

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

Eng. Com. Sub. for House Bill 4090, Creating the Oil and Gas Abandoned Well Plugging Fund.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended, of

Eng. Com. Sub. for House Bill 4434, West Virginia health care workforce sustainability study.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, of

Eng. Com. Sub. for House Bill 4464, Relating to driving privileges and requirements for persons under the age of 18.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, of

Eng. House Bill 4510, Prohibiting bodily intrusion by an inmate upon any person at any correctional facility.

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

Eng. House Bill 4529, Relating to the collection of assessments and the priority of liens on property within a resort area.

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, of

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

A message from the Clerk of the House of Delegates announced the concurrence by that body in the Senate amendments to, and the passage as amended with its Senate amended title, of

Eng. House Bill 4559, Modifying the limitations on civil actions against the perpetrator of sexual assault or sexual abuse upon a minor.

The Senate proceeded to the fourth order of business.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 3098, Allowing the same business owner to brew and sell beer to also distill and sell liquor.

And has amended same.

Eng. Com. Sub. for House Bill 4560, Relating to deliveries by a licensed wine specialty shop.

And has amended same.

And,

Eng. Com. Sub. for House Bill 4852, Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 3098, 4560, and 4852) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4092, Relating to foster care.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4092) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4509, Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4509) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. Com. Sub. for House Bill 4717, Seizure and Forfeiture Reporting Act.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4717) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Hamilton, from the Committee on Natural Resources, submitted the following report, which was received:

Your Committee on Natural Resources has had under consideration

Com. Sub. for House Concurrent Resolution 75, Naming the highest peak on Wolf Creek Mountain in Monroe County, Boone's Peak.

And has amended same.

And reports the same back with the recommendation that it be adopted, as amended; but under the original double committee reference first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,
Chair.

The resolution, under the original double committee reference, was then referred to the Committee on Rules, with an amendment from the Committee on Natural Resources pending.

Senator Maroney, from 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

Eng. Com. Sub. for House Bill 4003, Relating to telehealth insurance requirements.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4003) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Clements, from the Committee on Transportation and Infrastructure, submitted the following report, which was received:

Your Committee on Transportation and Infrastructure has had under consideration

Eng. Com. Sub. for House Bill 4017, Establishing country roads accountability and transparency.

And reports the same back without recommendation as to passage; but with the recommendation that it be rereferred to the Committee on Transportation and Infrastructure.

Respectfully submitted,

Charles H. Clements,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4017) contained in the preceding report from the Committee on Transportation and Infrastructure was taken up for immediate consideration, read a first time, and ordered to second reading.

At the further request of Senator Takubo, and by unanimous consent, the bill was rereferred to the Committee on Transportation and Infrastructure.

The Senate proceeded to the sixth order of business.

Senator Prezioso offered the following resolution:

Senate Concurrent Resolution 58—Requesting the Joint Committee on Health study the issue of sexual violence in the State of West Virginia, as well as the efficacy of our funding structure to support rapid response and victim assistance.

Whereas, The number one reason for incarceration in the West Virginia Division of Corrections and Rehabilitation is sexual assault; and

Whereas, Lack of state funding has created service gaps in our prisons because they cannot meet federal mandates regarding access to outside sexual assault services; and

Whereas, Women in West Virginia are more likely to be a survivor of sexual assault than cancer; and

Whereas, One quarter of West Virginia counties have no state-funded rape crisis services; and

Whereas, Nurses and doctors must be specially trained in how to conduct and collect rape kits and DNA evidence; and

Whereas, Hospitals in this state, especially in rural areas, are closing doors and reducing services; and

Whereas, All metrics for the first quarter of FY 2020 show an increased demand for these services; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Health is hereby requested to study the issue of sexual violence in the State of West Virginia, as well as the efficacy of our funding structure to support rapid response and victim assistance; and, be it

Further Resolved, That the study include the issue of sexual violence in West Virginia, the role of rape crisis centers, the high level of sex offenders, and the inequity of addressing victim needs, as well as the efficacy of state funding towards the needs the committee may find; and, be it

Further Resolved, That the Joint Committee on Health report to the regular session of the Legislature, 2021, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senators Romano and Facemire offered the following resolution:

Senate Concurrent Resolution 59—Requesting the Division of Natural Resource to name the planned special event shelter that is to be put out for bid for construction in the Watters Smith Memorial State Park as the “Rachel Hershey Smith Memorial Shelter”.

Whereas, Watters Smith was born in Trenton, New Jersey, on July 15, 1767; and

Whereas, Watters Smith married Elizabeth Davisson, and settled in Harrison County on his father’s 1,000-acre tract of land, in what was then the state of Virginia; and

Whereas, Watters Smith purchased 112 acres adjacent to his father’s land in 1792; and

Whereas, Watters Smith and Elizabeth Davisson Smith cleared the rugged, remote land, planted crops, and built a cabin for their family, which eventually grew to eight children; and

Whereas, Watters Smith constructed a blacksmith, shop fashioning tools to build his cabin; and

Whereas, Upon the death of Watters Smith, the property was bequeathed to Watters Smith, Jr., who then bequeathed the property to his son, John Smith; and

Whereas, Ownership of the property eventually fell to Alexander Smith, who was born in 1847, and who built the home now known as the Smith family residence, to replace the original cabin built by Watters Smith; and

Whereas, Four generations of the Smith family operated the farm as a business; and

Whereas, Burr Smith, the great-great-grandson of Watters Smith, left his portion of the Watters Smith property to the State of West Virginia in 1949 to be developed into a park to honor his ancestors; and

Whereas, Rachel Smith Hershey, a life-long resident of Harrison County and descendant of Watters Smith, also generously donated her portion of the Watters Smith property to the State of West Virginia in 1975; and

Whereas, The park has become a permanent location for many of the tools and equipment used by generations of Smiths on the farm, and they are on display at the Smith homestead, in the museum, and outbuildings; and

Whereas, Rachel Smith Hershey added antiques, furnishings, and a sizable collection of West Virginia glassware in further generous donations to the park; and

Whereas, Watters Smith Memorial State Park now comprises of 532 acres and includes the museum, the Smith family residence, and many other historical buildings; and

Whereas, The Watters Smith Memorial State Park includes amenities such as picnic areas and shelters, playgrounds, hiking trails, a superintendent's house, and a log cabin relocated from Beech Fork State Park; and

Whereas, The State of West Virginia will continue adding and improving amenities to Watters Smith Memorial State Park including planned construction of a deluxe special event shelter with a kitchen, restroom, and amphitheater to serve not only the citizens of that area but also tourists from around the nation; and

Whereas, It is indisputable that without the generous donations by generations of Watters Smith's family, the citizens of the State of West Virginia would not have the pleasure and benefit of the park, including the authentic Smith homestead and displays of early life in West Virginia from the late 1700s to the early 1900s; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Natural Resources is hereby requested to name the planned special event shelter that is to be put out for bid for construction in the Watters Smith Memorial State Park as the "Rachel Hershey Smith Memorial Shelter"; and, be it

Further Resolved, That the Division of Natural Resources is hereby requested, on completion of the shelter, to have made and be placed signs identifying the shelter as the “Rachel Smith Hershey Memorial Shelter”; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Director of the Division of Natural Resources.

Which, under the rules, lies over one day.

Senator Rucker offered the following resolution:

Senate Concurrent Resolution 60—Requesting the Joint Committee on Government and Finance to study the eating patterns of public school students when outside of school and the availability of nutritious food to public school students when schools are closed.

Whereas, The Feed to Achieve Initiative has successfully improved the availability and awareness for the need to provide nutritious food to state students, and the Shared Table Initiative has facilitated a spirit of innovation and consciousness in our counties to find alternative ways to feed children in need; and

Whereas, A periodic assessment of the needs for county students and availability of county resources is necessary to determine what type of resources are available and needed to reduce food insecurity for students when they are not in school; and

Whereas, That expansion of the Shared Table Initiative to include a program to encourage county schools to locate, participate in, and initiate programs to provide meals during summers and nonschool-day times when some children may not have access to healthy meals could assist in reducing food insecurity for thousands of children in this state; and

Whereas, Creating a mechanism that is not a directive from the Legislature upon county school boards, but rather an authorization to use school resources to find innovative ways, within the means of the county school systems, to assist the communities they serve, will provide a public benefit; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance study the eating patterns of public school students when outside of school and the availability of nutritious food to public school students when schools are closed; and, be it

Further Resolved, That the Joint Committee on Government and Finance enlist the assistance of the West Virginia Office of Child Nutrition to assist and facilitate the study; and, be it

Further Resolved, That the Joint Committee on Government and Finance investigate the efficacy of requiring county boards of education to collect and compile information regarding availability of food resources in the county during nonschool days and distribute this information to all students; and, be it

Further Resolved, That the Joint Committee on Government and Finance investigate whether county boards of education should be required to investigate and implement any program that may facilitate an initiative to provide nutritious food to students, including but not limited to,

entrepreneurships programs to foster innovation in providing assistance, utilizing participation in programs as a positive discipline option, and creating mentorship programs or other opportunities to participate in nonschool student feeding programs; and, be it

Further Resolved, That the Joint Committee on Government and Finance investigate the efficacy of requiring county school boards to conduct an annual countywide or a coordinated regional training opportunity, with assistance from the West Virginia Office of Child Nutrition, that ensures that any entity that qualifies as a summer or nonschool-day feeding site is afforded the opportunity to receive training on operation of a feeding site; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2021, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senator Carmichael (Mr. President) offered the following resolution:

Senate Resolution 66—Recognizing the month of March as Red Cross Month.

Whereas, In the face of last year's disasters, hundreds of thousands of people turned to the American Red Cross for food, shelter, and recovery support in West Virginia and across the country; and

Whereas, Over the past year, the American Red Cross in West Virginia assisted over 1,000 local families impacted by a disaster, 90 percent of those were home fires. American Red Cross volunteers helped more than 2,664 West Virginians impacted by disaster, addressing urgent needs such as food and lodging, and providing recovery support; and

Whereas, The American Red Cross West Virginia Region and local partners installed over 6,000 free smoke alarms and made more than 2,700 homes safer in 2019. This brought the total number of alarms installed in West Virginia in the last five years to over 28,000, ensuring nearly 11,000 homes were safer. These efforts have saved 699 lives nationwide including 29 people in West Virginia; and

Whereas, In the last year, the American Red Cross has educated nearly 4,000 West Virginia youth about preparedness and coping skills through the Pillowcase Project. The American Red Cross supported over 1,000 military members, veterans, and their families through the Service to the Armed Forces Program. The American Red Cross collected almost 36,000 units of life-saving blood and trained almost 24,000 people in life-saving skills, such as first aid and CPR; and

Whereas, March is Red Cross Month, a special time to recognize and thank the Red Cross volunteers and donors who give of their time and resources to help members of the community. The American Red Cross depends on these local heroes to deliver help and hope. We applaud our Red Cross heroes here in West Virginia, who give of themselves to assist their neighbors when they need a helping hand; therefore, be it

Resolved by the Senate:

That the Senate hereby recognizes the month of March as Red Cross Month; and, be it

Further Resolved, That the Senate extends its most sincere gratitude and appreciation to the American Red Cross, West Virginia Region, for its dedicated public service; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the representatives of the American Red Cross, West Virginia Region.

Which, under the rules, lies over one day.

Senator Weld and Maroney offered the following resolution:

Senate Resolution 67—Designating March 5, 2020, as Treatment Court Day in West Virginia.

Whereas, The first adult drug court was established in the northern panhandle in 2005, and there currently are 29 adult drug courts serving 46 counties; and

Whereas, The first juvenile drug court was established in 1999 in Cabell County, ran for six years, and was reestablished in 2007. There are currently 18 juvenile drug courts serving 24 counties; and

Whereas, In 2019, the Legislature reestablished military service member treatment courts; and

Whereas, The first family drug treatment courts were established in Boone, Ohio, and Randolph counties in 2019, and now additional family treatment courts have opened in Roane and Nicholas counties; and

Whereas, There are have been more than 2,500 treatment court graduates and another 716 West Virginia adults and youths currently participating in the programs; and

Whereas, Treatment courts are now praised as one the most successful justice system interventions in our nation's history; and

Whereas, Treatment courts significantly improve substance use disorder treatment outcomes, substantially reduce addiction and related crime, and do so at less expense than many other criminal justice strategies; and

Whereas, Treatment courts have been shown to save the state money for every individual who successfully completes the program; and

Whereas, Circuit judges and family court judges throughout West Virginia devote their time at no additional pay to establish and operate treatment courts, with the help of full-time, dedicated treatment court probation officers; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 5, 2020, as Treatment Court Day in West Virginia; and, be it

Further Resolved, That the Senate hereby recognizes the considerable contributions of treatment courts to the State of West Virginia; and, be it

Further Resolved, That the Senate hereby acknowledges that adult, juvenile, family, and military service member treatment courts save lives, restore families, and are a prudent use of state resources; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the West Virginia Supreme Court of Appeals.

Which, under the rules, lies over one day.

Senators Hamilton and Pitsenbarger offered the following resolution:

Senate Resolution 68—Recognizing the Buckhannon-Upshur 4-H Air Rifle Club for excellence in marksmanship.

Whereas, The Buckhannon-Upshur 4-H Air Rifle Club competed in the West Virginia University 4-H State Individual Tournament on Saturday, February 15, 2020; and

Whereas, The Buckhannon-Upshur's 4-H Senior Air Rifle first team, comprised of shooters, Clint Crites, Olivia Caynor, and Ryan Bosley, earned its first state title at this competition and is currently ranked first in this state; and

Whereas, Olivia Caynor placed fourth in the state in the individual competition and will represent her team and state at the national competition in Nebraska in June 2020; and

Whereas, The Buckhannon-Upshur's 4-H Senior Air Rifle second team, comprised of shooters, Breanna Morgan, Sam Canter, and Dani Hovis, placed fourth in the state competition; and

Whereas, The Buckhannon-Upshur Middle School Air Rifle team is comprised of Samantha Sparks, Ryleigh Jeffries, and Leah Bennett, and is currently ranked third in the state; and

Whereas, The Buckhannon-Upshur 4-H Air Rifle Club is led by coach Russ Warner, assistant coach Dave Riffle, and 4-H Extension Agent Craig Presar; and

Whereas, The Buckhannon-Upshur 4-H Air Rifle Club will be forever remembered as one of the best 4-H rifle clubs in West Virginia history; therefore, be it

Resolved by the Senate:

That the Senate recognizes the Buckhannon-Upshur 4-H Air Rifle Club for excellence in marksmanship; and, be it

Further Resolved, That the Senate extends its congratulations to these sharp shooters and their coaches for their outstanding achievements; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the Buckhannon-Upshur 4-H Air Rifle Club.

Which, under the rules, lies over one day.

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the fourth order of business.

Senator Swope, from the Committee on Economic Development, submitted the following report, which was received:

Your Committee on Economic Development has had under consideration

Senate Concurrent Resolution 61 (originating in the Committee on Economic Development)—Requesting the West Virginia Geological Survey and the Office of Geographical Information Systems (GIS) Coordination to research, study, and make recommendations regarding a state-administered GIS for West Virginia communities with less than 5,000 inhabitants.

Whereas, Geographical Information Systems (GIS) are currently being used and developed across West Virginia by local, state, and federal agencies, as well as the business community, serving as a valuable medium for assembling, manipulating, and displaying geographically referenced material, aiding in development planning, resource management, and scientific investigation in the state; and

Whereas, The management of geospatial information about the character and location of natural and cultural resources, and the human and economic activities that affect and are affected by those resources, is essential to all levels of government in the State of West Virginia; and

Whereas, There is a need to plan and prioritize the development of publicly funded data, define the roles and responsibilities for data development and stewardship, and formulate policies for integration, access, and distribution of geospatial data, and to develop standards, policies, and guidelines for the use of geospatial information by the state, other units of government, and private and nonprofit entities; and

Whereas, Executive Order No. EO 4-93 provided direction to the State GIS Program created by order and reaffirmed by EO 10-10 which further revised the duties and responsibilities of the State GIS Coordinator, the GIS Steering Committee, and the GIS Technical Center created by the same order; and

Whereas, Making GIS data, applications, software, and hardware more available statewide, particularly for communities with a low population and low resourced governmental agencies which are not in a position to implement GIS programs, the creation of a State GIS support program that supports this effort is paramount to the economic development of these communities and the state; and

Whereas, The cost of development, installation, and maintenance a stand-alone GIS is high; and

Whereas, Determining and formalizing the roles of the West Virginia Geological and Economic Survey, the Office of GIS Coordination, the GIS Technical Center, and regional organizations with GIS expertise to provide GIS services and support to users around the state that currently have limited access to GIS data, software, hardware, and applications would support a statewide effort; and

Whereas, In this context, some states are considering, as a means to ameliorate the cost of GIS, the establishment of support programs where licensed software, hardware, and training are more affordable to small municipal and county governments; and

Whereas, The effective use of an installed GIS system would require hardware, software, trained personnel, and high-speed broadband; and

Whereas, Mississippi has a master purchase agreement (MPA) with a major GIS software provider on behalf of Mississippi governmental and educational entities; furthermore, a small municipal and county enterprise license agreement (ELA) was added to the Mississippi MPA terms and conditions. The ELA is a three-year limited term license as opposed to the perpetual licenses purchased under the MPA. The price list is not-to-exceed prices and incorporate a quantity discount based upon Mississippi volume; and

Whereas, It appears that there are many issues related to acquiring such a license in West Virginia which involve legal and economic variables which are yet unknown; and

Whereas the suitability of a state-administered GIS support program, and the monitoring, implementation, licensing, training, outreach, and other issues relating to the state-administered GIS support system is paramount to the economic development of small counties and municipalities in West Virginia; therefore, be it

Resolved by the Legislature of West Virginia:

That the Legislature hereby requests the West Virginia Geological Survey and the Office of Geographical Information Systems (GIS) Coordination to research, study, and make recommendations regarding a state-administered GIS for West Virginia communities with less than 5,000 inhabitants; and, be it

Further Resolved, That the West Virginia Geological Survey and the Office of GIS Coordination report to the Joint Committee on Economic Development, by October 1, 2020, and the Joint Committee on Economic Development report to the regular session of the Legislature, 2021, on its findings, conclusions, and recommendations, together with drafts of any legislation necessary to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation, be paid from legislative appropriations to the Joint Committee on Government and Finance.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Chandler Swope,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 61) contained in the foregoing report from the Committee on Economic Development was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 6, Walter E. Swiger, Jr., Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendment to the resolution, from the Committee on Transportation and Infrastructure, was reported by the Clerk and adopted:

On page two, in the eighth Whereas clause, after the word "November" by striking out "5" and inserting in lieu thereof "7".

The question now being on the adoption of the resolution (S. C. R. 6), as amended, the same was put and prevailed.

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

Senate Concurrent Resolution 57, Frye Brothers Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk and referred to the Committee on Transportation and Infrastructure.

Senate Resolution 63, Designating March 4, 2020, as Recovery Community Day.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Unger, unanimous consent being granted, the resolution was taken up for immediate consideration and reference to a committee dispensed with.

On motion of Senator Takubo, at 11:01 a.m., the Senate recessed for 10 minutes.

The Senate reconvened at 11:38 a.m. and resumed consideration of

Senate Resolution 63, Designating March 4, 2020, as Recovery Community Day.

The question being on the adoption of the resolution, and on this question, Senator Unger demanded the yeas and nays.

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. R. 63) adopted.

Thereafter, at the request of Senator Beach, and by unanimous consent, the remarks by Senator Unger regarding the adoption of Senate Resolution 63 were ordered printed in the Appendix to the Journal.

At the request of Senator Takubo, unanimous consent being granted, the remarks by Senators Baldwin and Romano regarding the adoption Senate Resolution 63 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 11:52 a.m., the Senate recessed to present Senate Resolution 63.

The Senate reconvened at 11:57 a.m. and resumed business under the seventh order.

Senate Resolution 64, Recognizing efforts of Kanawha State Forest Foundation.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Lindsay, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

Thereafter, at the request of Senator Takubo, and by unanimous consent, the remarks by Senator Lindsay regarding the adoption of Senate Resolution 64 were ordered printed in the Appendix to the Journal.

On motion of Senator Takubo, at 12:00 p.m., the Senate recessed to present Senate Resolution 64.

The Senate reconvened at 12:03 p.m. and resumed business under the seventh order.

Senate Resolution 65, Designating WV State Folk Festival as official site of WV State Pepperoni Roll Championship.

On unfinished business, coming up in regular order, was reported by the Clerk.

At the request of Senator Romano, unanimous consent being granted, the resolution was taken up for immediate consideration, reference to a committee dispensed with, and adopted.

Com. Sub. for House Concurrent Resolution 33, U.S.A.F. Lt Col Frederick Donald Belknap Memorial Bridge.

On unfinished business, coming up in regular order, was reported by the Clerk.

The following amendments to the resolution, from the Committee on Transportation and Infrastructure, were reported by the Clerk, considered simultaneously, and adopted:

By striking out everything after the title and inserting in lieu thereof the following:

Whereas, Frederick Donald Belknap was born July 31, 1929, on a farm on Little Tenmile Creek, two miles west of Wallace, in Harrison County, West Virginia. His parents were Dewey and Thelma Belknap. He graduated from Wallace High School in 1948 and attended West Virginia University from 1948-1952, where he worked as a waiter in Terrace Hall, a women's residence hall, to earn his meals; and

Whereas, Upon graduation from West Virginia University with a bachelor's degree in education, Frederick Donald Belknap was commissioned a second lieutenant in the United States Air Force, having participated in reserve officer training while at the university; and

Whereas, Frederick Donald Belknap married Hester “Hedy” Ogden, also of Wallace, West Virginia, on September 10, 1951. The couple had one child, Dianne Lynne Belknap Lunsford; and

Whereas, Frederick Donald Belknap enjoyed a 25-year-long career in the Air Force, being trained as a navigator, graduating first in his class, later rated Master Navigator, and rising to the rank of lieutenant colonel; and

Whereas, During his career USAF Lt. Col. Belknap flew missions worldwide in C124 “GlobeMaster” aircraft, participating in troop carrier and cargo missions to Germany and the rest of Europe, and

Whereas, In 1957, Lt. Col. Belknap was involved in airlifting U.S. Marines to Lebanon on orders of President Dwight D. Eisenhower, and carried out other missions in Greece, Egypt, Jordan, Libya, and Morocco, and

Whereas, In 1959, Colonel Belknap was trained as a missile launch officer and served as a Nuclear Missile Launch Officer in Germany from 1961 to 1964. Following various assignments stateside, Colonel Belknap was assigned to Saigon, Vietnam, in 1970 where he served as psychological warfare officer with the Joint United States Public Affairs Office until June of 1971; and

Whereas, Upon returning from Vietnam, Colonel Belknap was assigned to Langley Air Force Base in Hampton, Virginia, from where he flew missions in Southeast Asia. At the time of his retirement in 1977, Colonel Belknap had flown all over the world for more than 6,000 hours (including more than 88 hours of combat missions) in C124, C119, and C130 aircraft, and had been awarded the Bronze Star; and

Whereas, After his Air Force career, Colonel Belknap and his wife returned to Harrison County, where he served as personnel coordinator for District 4 of the West Virginia Department of Highways from 1978 to 1989. He was a member of the West Milford Lions Club and VFW and served as a leader for his grandson’s Boy Scout troop and was inducted into the Order of the Arrow. He enjoyed hunting, fishing, gardening, camping, gathering with old friends from all over, and attending Mountaineer football games, and

Whereas, USAF Lt. Col. Belknap died on February 23, 2017, at the age of 87, having lived a life of service to his country, his community, and his family; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 17-79-119.96 (17A318), locally known as Lodgeville I-79 Bridge, carrying IS 79 over CR 50/16, 50/25 and railroad in Harrison County, the “USAF Lt. Col. Frederick Donald Belknap Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the “USAF Lt. Col. Frederick Donald Belknap Memorial Bridge”; and, be it

Further Resolved, That the Clerk forward a copy of this resolution to the Commissioner of the Division of Highways.;

And,

By striking out the title and substituting therefor a new title, to read as follows:

Com. Sub. for House Concurrent Resolution 33—Requesting the Division of Highways to name bridge number 17-79-119.96 (17A318), locally known as Lodgeville I-79 Bridge, carrying Interstate 79 over CR 50/16, 50/25 and railroad in Harrison County, the “USAF Lt. Col. Frederick Donald Belknap Memorial Bridge”.

The question now being on the adoption of the resolution (Com. Sub. for H. C. R. 33), as amended, the same was put and prevailed.

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

Senator Takubo announced that in the meeting of the Committee on Rules previously held, the committee, in accordance with Rule 17 of the Rules of the Senate, had removed from the Senate second reading calendar, **Eng. Com. Sub. for House Bill 2775, Eng. Com. Sub. for House Bill 2961, Eng. Com. Sub. for House Bill 2967, Eng. Com. Sub. for House Bill 4069, Eng. Com. Sub. for House Bill 4102, Eng. Com. Sub. for House Bill 4108, Eng. House Bill 4159, Eng. Com. Sub. for House Bill 4176, Eng. House Bill 4354, Eng. Com. Sub. for House Bill 4362, Eng. Com. Sub. for House Bill 4377, Eng. Com. Sub. for House Bill 4395, Eng. Com. Sub. for House Bill 4439, Eng. House Bill 4447, Eng. Com. Sub. for House Bill 4497, Eng. House Bill 4514, Eng. House Bill 4523, Eng. Com. Sub. for House Bill 4535, Eng. Com. Sub. for House Bill 4573, Eng. House Bill 4607, Eng. Com. Sub. for House Bill 4634, Eng. House Bill 4665, Eng. House Bill 4737, Eng. Com. Sub. for House Bill 4747, Eng. Com. Sub. for House Bill 4748, Eng. House Bill 4777, Eng. Com. Sub. for House Bill 4803, Eng. House Bill 4804, Eng. Com. Sub. for House Bill 4823, Eng. Com. Sub. for House Bill 4892, Eng. Com. Sub. for House Bill 4946, and Eng. House Bill 4958.**

Senator Takubo also announced that in the meeting previously held, the Committee on Rules had returned to the Senate calendar, on second reading, **Eng. Com. Sub. for House Bill 4378** and **Eng. House Bill 4960**, under Rule 17 seventeen of the Rules of the Senate.

The Senate proceeded to the eighth order of business.

Eng. Senate Bill 854, Expiring funds to Division of Culture and History from Auditor's Office, Purchasing Card Administration Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 854) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 854) takes effect from passage.

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

Eng. Senate Bill 855, Expiring funds to State Rail Authority, WV Commuter Rail Access Fund from Auditor's Office, Purchasing Card Administration Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 855) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 855) takes effect from passage.

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

Eng. Senate Bill 856, Expiring funds from WV Development Office, Synthetic Fuel, Producing County Fund to Market and Communications Operating Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 856) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. S. B. 856) takes effect from passage.

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

Eng. Com. Sub. for House Bill 2892, Including digital and virtual information in the definition of property that can be searched and seized by a warrant.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2892) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 2892—A Bill to amend and reenact §62-1A-2 of the Code of West Virginia, 1931, as amended, relating to including electronic and digital information in the definition of property that can be searched and seized by a search warrant and clarifying that a search warrant issued for a computer, computer network, or other device containing electronic or digital information includes the search of the contents of that device; requiring particularity regarding items, applications, property and information to be served; clarifying that search warrants for electronic or digital information may be served or executed in any county of this state or in any state where the information to be seized is stored or where the person or entity storing the information does business or resides.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2892) takes effect from passage.

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

Eng. House Bill 4022, Clarifying the qualifications of the Chancellor of the Higher Education Policy Commission.

On third reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Rucker, unanimous consent was granted to offer an amendment to the bill on third reading.

Thereupon, on motion of Senator Rucker, the following amendment to the bill was reported by the Clerk and adopted:

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

(e) The commission sets the chancellor's salary. The salary may not exceed by more than 20 percent the average annual salary of the chief executive officers of state systems of higher education in the states that comprise the membership of the Southern Regional Education Board.

Pursuant to §6B-2-5(l) of this code, the chancellor may receive only one form of salary if such person serves as the chancellor for both the higher education policy commission and the council for community and technical colleges.

Having been engrossed, the bill (Eng. H. B. 4022), as just amended, was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—32.

The nays were: Beach and Prezioso—2.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4022) passed.

On motion of Senator Rucker, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. House Bill 4022—A Bill to amend and reenact §18B-1B-5 of the Code of West Virginia, 1931, as amended, clarifying the qualifications of the Chancellor of the Higher Education Policy Commission; modifying provisions pertaining to salary of Chancellor of the Higher Education Policy Commission; retitling the Vice Chancellor for Health Sciences; and abolishing the statutory position of Vice Chancellor for State Colleges.

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

Eng. Com. Sub. for House Bill 4099, Eliminating the permit for shampoo assistants.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4099 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4099) passed with its title.

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

Eng. House Bill 4113, Relating to motor fuel excise taxes.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4113) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. House Bill 4113—A Bill to amend and reenact §11-14C-9 and §11-14C-30 of the Code of West Virginia, 1931, as amended, all relating to refundable exemptions from tax on motor fuels generally; extending certain refundable exemption from tax to tax on motor fuel used in a power take-off unit on a fuel delivery truck; and expanding certain refundable exemptions from tax on motor fuel claimable by certain taxpayers to include the variable rate component of the tax.

Senator Takubo moved that the bill take effect July 1, 2020.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Plymale—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4113) takes effect July 1, 2020.

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

Eng. House Bill 4396, Relating to reporting suspected governmental fraud.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4396) passed with its title.

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

Eng. House Bill 4409, Relating to transferring remaining funds from the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4409) passed.

The following amendment to the title of the bill, from the Committee on Finance, was reported by the Clerk and adopted:

Eng. House Bill 4409—A Bill to amend and reenact §33-3-33a of the Code of West Virginia, 1931, as amended, relating to transferring funds from the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund to the Fire Service Equipment and Training Fund; and extending the sunset date to June 30, 2022.

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

Eng. Com. Sub. for House Bill 4414, Relating to the selection of language and development milestones for the deaf and hard-of-hearing children.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4414 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4414) passed.

The following amendment to the title of the bill, from the Committee on Education, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 4414—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-20, relating to authorizing certain modes of communication as a means for acquiring language for children from birth to five years of age; making implementation subject to appropriation by the Legislature; requiring reporting of measures specific to language and literacy for children age three to five to advisory committee; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families and service providers to understand and monitor deaf and hard-of-hearing children's receptive and expressive language acquisition and progress toward English literacy development; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to prepare a list of valid and reliable existing tools for assessments for service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children; requiring dissemination of the family resource and the educator tools and assessments, as well as the provision of informational materials on the use of the resources, tools, and assessments; imposing certain requirements on the child's individualized family service plan team and individual education program team if a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to establish an advisory committee to solicit input from certain stakeholders on the selection of language developmental milestones for children who are deaf or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing for inclusion in the family resource; setting forth membership of advisory committee; requiring the West Virginia Department of Education to annually produce an aggregated report that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age; and requiring that all of certain activities be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.

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

Eng. Com. Sub. for House Bill 4415, Relating to missing and endangered children.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4415) passed.

The following amendment to the title of the bill, from the Select Committee on Children and Families, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 4415—A Bill to amend and reenact §15-3D-3 and the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-3D-9; to amend and reenact §49-6-103, §49-6-105, §49-6-106, §49-6-109, §49-6-110, §49-6-112, §49-6-113, and §49-6-114; and to amend said code by adding thereto a new section, designated §49-6-116, all relating to children; defining terms; creating missing and endangered child advisory system; providing for rulemaking; expanding missing child information clearinghouse requirements; updating requirements for providing information; updating requirements for missing child report forms; requiring law-enforcement agency to investigate and issue advisory; providing for confidential information to be provided to Department of Health and Human Resources as legal custodian; updating clearinghouse advisory council; updating comprehensive strategic plan; establishing missing foster child locator unit program; establishing duties; providing for report; and making technical changes.

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

Eng. House Bill 4417, Relating to permitting professional boards.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4417) passed with its title.

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

Eng. House Bill 4519, Establishing a summer youth intern pilot program within Department of Commerce.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4519) passed with its title.

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

Eng. Com. Sub. for House Bill 4546, Relating to tuberculosis testing for school superintendents.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4546) passed with its title.

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

Eng. House Bill 4551, Relating to subsidized adoption.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4551) passed.

The following amendment to the title of the bill, from the Select Committee on Children and Families, was reported by the Clerk and adopted:

Eng. House Bill 4551—A Bill to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating to subsidies; providing for adoption subsidies; providing for legal guardianship subsidies; updating availability; requiring payment for attorney's fees; updating requirements for insurance coverage; requiring certification; eliminating requirements with respect to child who is dependent of voluntary licensed child placing agency; prohibiting subsidy payment under certain circumstances; requiring adoptive parents and legal guardians receiving subsidy to inform department; and making technical changes.

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

Eng. House Bill 4589, Conducting study for an appropriate memorial for West Virginians killed in the War on Terror.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed House Bill 4589 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4589) passed.

The following amendment to the title of the bill, from the Committee on Military, was reported by the Clerk and adopted:

Eng. House Bill 4589—A Bill to amend and reenact §29-1-3 of the Code of West Virginia, 1931, as amended, relating to eliminating the requirement that the Commission on the Arts prioritize a women’s veterans memorial statue, and causing a requiring a study and recommendations by the Commission on the Arts on the construction and design of a memorial to honor West Virginians killed in the United States War on Terror.

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

Eng. Com. Sub. for House Bill 4593, Authorizing the assignment of poll workers to serve more than one precinct under certain circumstances.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4593) passed.

The following amendment to the title of the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 4593—A Bill to amend and reenact §3-1-5 and §3-1-30 of the Code of West Virginia, 1931, as amended, all relating to authorizing the assignment of members of a standard receiving board to serve on the standard receiving board for more than one precinct in certain circumstances.

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

Eng. Com. Sub. for House Bill 4621, West Virginia FinTech Regulatory Sandbox Act.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4621) passed.

The following amendment to the title of the bill, from the Committee on Economic Development, was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 4621—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8G-1, §31A-8G-2, §31A-8G-3, §31A-8G-4, §31A-8G-5, §31A-8G-6, §31A-8G-7, and §31A-8G-8, all relating to the West Virginia FinTech Regulatory Sandbox Program; defining terms; providing that the program shall be administered by the West Virginia Division of Finance, establishing requirements for participants to temporarily test innovative financial products or services on a limited basis without otherwise being licensed under the laws of the state; establishing scope of the ability to operate approved financial products or services without a license; providing consumer protections; establishing time limitations on the ability to operate approved financial products or services without a license; providing reporting requirements; and providing for rulemaking; and directing the Division of Financial Institutions to provide annual reports to the legislature and which shall be made available on the division's website.

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

Eng. Com. Sub. for House Bill 4633, Expanding county commissions' ability to dispose of county or district property.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4633) passed.

On motion of Senator Maynard, the following amendment to the title of the bill was reported by the Clerk and adopted:

Eng. Com. Sub. for House Bill 4633—A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions' ability to dispose of county or district property; and adding the ability of county commissions to dispose of the property to community center organization in existence on effective date of amendment to this section of said code or nonprofit senior center organization without conducting a public sale.

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

Eng. House Bill 4655, Permitting military personnel in areas where on-the-job emergency medicine is part of the training to be granted automatic EMS or EMT certification.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4655) passed.

The following amendment to the title of the bill, from the Committee on Military, was reported by the Clerk and adopted:

Eng. House Bill 4655—A Bill to amend and reenact §16-4C-8 of the Code of West Virginia, 1931, as amended, relating to automatic certification as an emergency medical technician-paramedic or emergency medical technician-basic upon application; providing that an applicant may have previously served in any branch of the United States military, National Guard, Coast Guard, or the Reserve Components of the Armed Services; providing that an applicant must have been honorably discharged within two years of application; providing for similar military job titles that bear a rational nexus to the training and education required by the commissioner to be

certified as a paramedic or emergency medical technician; providing that the commissioner must issue a license upon review of the application; and providing that if an individual permits a certification to expire the commissioner may require examination as a condition of recertification.

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

Eng. Com. Sub. for House Bill 4666, Relating to competitive bids for intergovernmental relations and urban mass transportation.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion,

The question being “Shall Engrossed Committee Substitute for House Bill 4666 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4666) passed with its title.

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

Eng. House Bill 4691, Relating to employment in areas of critical need in public education.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4691) passed with its title.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo,

Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4691) takes effect from passage.

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

Eng. House Bill 4714, Increasing the monetary threshold for requiring nonprofit organizations to register as a charitable organization.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4714) passed with its title.

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

Eng. Com. Sub. for House Bill 4780, Permitting county boards to offer elective courses of instruction on the Bible.

On third reading, coming up in regular order, was read a third time and put upon its passage.

Pending discussion and a point of inquiry to the President, with resultant response thereto,

The question being “Shall Engrossed Committee Substitute for House Bill 4780 pass?”

On the passage of the bill, the yeas were: Azinger, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Jeffries, Lindsay, Mann, Maroney, Maynard, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—30.

The nays were: Baldwin, Ihlenfeld, and Palumbo—3.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4780) passed with its title.

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

Eng. House Bill 4859, Accounting for state funds distributed to volunteer and part-volunteer fire companies and departments.

On third reading, coming up in regular order, was read a third time and put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Blair, Boley, Clements, Cline, Facemire, Hamilton, Hardesty, Ihlenfeld, Jeffries, Lindsay, Mann, Maroney, Maynard, Palumbo, Pitsenbarger, Plymale, Prezioso, Roberts, Romano, Rucker, Smith, Stollings, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, and Carmichael (Mr. President)—33.

The nays were: None.

Absent: Beach—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4859) passed with its title.

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

The Senate proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 2646, Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

The Committee on the Judiciary moved to amend the bill by striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 5. WAGE PAYMENT AND COLLECTION.

§ 21-5-4a. Safe Harbor.

(a) An employee, in bringing an action for the underpayment or nonpayment of wages and fringe benefits due upon the employee's separation of employment as contemplated by §21-5-4 of this code, is not entitled to seek liquidated damages or attorney's fees from an employer without first making a written demand, as defined in subsection (c) of this section, to the employer seeking the payment of any alleged underpayment or nonpayment as set forth in this section: *Provided*, That upon separation or with the issuance of the final paycheck, the employer shall notify the employee in writing who the employer's authorized representative is and where to send a written demand by both e-mail and regular mail: *Provided however*, that if the employer fails to provide the required written notice, the employee is not required to comply with the provisions of this section. Upon receiving a written demand, the employer has seven calendar days from receipt to correct the alleged underpayment or nonpayment of the wages and fringe benefits due. If, after seven days, the employer has not corrected the alleged underpayment or nonpayment, or paid all undisputed amounts due to the employee, the employee may seek liquidated damages and

attorney's fees. Nothing in this section prohibits the employee from presenting a claim under this article without making a written demand to the employer.

(b) In a class action lawsuit brought under this article for the underpayment or nonpayment of wages and fringe benefits due upon the employees' separation of employment, the employee, prior to the filing of the class action, shall submit a written demand stating it is a demand for all other employees similarly situated for the underpayment or nonpayment of their wages and fringe benefits: *Provided*, That if only the underpayment or nonpayment of wages and fringe benefits of the named employee is corrected, a class action may proceed for the underpayment or nonpayment of wages and fringe benefits still owed to the other members of the class.

(c) For purposes of this section, a "written demand" means any writing, including e-mail, from or on behalf of an employee stating that the employer has not paid all of the wages or fringe benefits which the employee is owed.

The bill (Eng. Com. Sub. for H. B. 2646), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 2775, Requiring each high school student to complete a full credit course of study in personal finance.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 2961, Permitting the commissioner to require a water supply system be equipped with a backflow prevention assembly.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 2967, Permitting a county to retain the excise taxes for the privilege of transferring title of real estate.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 3049, Improving dissemination of boiled water advisories to affected communities.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

On page three, section nine-a, line forty-nine, by striking out the words "promptly report" and inserting in lieu thereof the words "immediately, but in no instance later than six hours, report".

The bill (Eng. Com. Sub. for H. B. 3049), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4001, Creating West Virginia Impact Fund.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4009, Relating to the process for involuntary hospitalization.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

(a) As used in this chapter, “addiction” or substance use disorder means a maladaptive pattern of substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring within 30 days prior to the filing of the petition:

(1) Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home, including, but not limited to, repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; or neglect of children or household;

(2) Recurrent use in situations in which it is physically hazardous, including, but not limited to, driving while intoxicated or operating a machine when impaired by substance use;

(3) Recurrent substance-related legal problems; or

(4) Continued use despite knowledge or having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

(b) As used in this section, “substance” ~~shall mean~~ means alcohol, controlled substances as defined in sections §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code, or anything consumed for its psychoactive effect whether or not designed for human consumption.

ARTICLE 5. INVOLUNTARY HOSITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

(a) *Appointment of mental hygiene commissioners.* — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of ~~such a~~ a commissioner, take the oath required of other special commissioners as provided in §6-1-1 *et seq.* of this code.

Prior to presiding over an involuntary hospitalization hearing, each ~~All persons~~ newly appointed person to serve as a mental hygiene commissioners and all magistrates shall attend and complete an orientation course ~~that, within one year of their appointment, consisting~~ consists of training provided annually by the Supreme Court of Appeals and complete an orientation

program to be developed by the Secretary of the Department of Health and Human Resources. In addition, existing mental hygiene commissioners and ~~any all~~ magistrates ~~designated by the chief judge of a judicial circuit~~ trained to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health and Human Resources. Persons attending ~~such the~~ courses outside the county of their residence shall be reimbursed out of the budget of the Supreme Court—General Judicial for reasonable expenses incurred. The Supreme Court of Appeals shall establish curricula and rules for ~~such the~~ courses, including rules providing for the reimbursement of reasonable expenses as authorized ~~herein in this section.~~ The Secretary of the Department of Health and Human Resources shall consult with the Supreme Court of Appeals regarding the development of the orientation program.

(b) *Duties of mental hygiene commissioners.* —

(1) Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and may make conclusions of law, but ~~such the~~ findings and conclusions ~~shall not be~~ are not binding on the circuit court. All mental hygiene commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by ~~such the~~ chief judge. ~~It shall be the duty of a~~ A mental hygiene commissioner ~~to~~ shall conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any individual who is deaf or cannot speak, or who speaks a foreign language, and who may be subject to involuntary commitment to a mental health facility.

(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuits may serve in ~~such that~~ capacity in a jurisdiction other than that of his or her original appointment if ~~such be~~ it is agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during ~~noncourt~~ hours when the courthouse is closed or on nonjudicial days.

(c) *Duties of prosecuting attorney.* — ~~It shall be the duty of the~~ The prosecuting attorney or one of his or her assistants ~~to~~ shall represent the applicants in all final commitment proceedings filed pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the provisions of this article if he or she ~~deems~~ determines it to be in the public interest.

(d) *Duties of sheriff.* — Upon written order of the circuit court, mental hygiene commissioner, or magistrate in the county where the individual formally accused of being mentally ill or ~~addicted~~ having a substance use disorder is a resident or is found, the sheriff of that county shall take ~~said~~

the individual into custody and transport him or her to and from the place of hearing and the mental health facility. The sheriff shall also maintain custody and control of the accused individual during the period of time in which the individual is waiting for the involuntary commitment hearing to be convened and while ~~such~~ the hearing is being conducted: *Provided*, That an individual who is a resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her state of residence for treatment pursuant to §27-5-4(p) of this code: *Provided, however*, That where an individual is a resident of West Virginia but not a resident of the county in which he or she is found and there is a finding of probable cause, the county in which the hearing is held may seek reimbursement from the county of residence for reasonable costs incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit courts and county commissions, ~~whereby~~ by which transportation and security responsibilities for hearings held pursuant to the provisions of this article during ~~noncourt~~ hours when the courthouse is closed or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment. In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff shall contact the state hospital in advance of the transportation to determine if the state hospital has available suitable bed capacity to place the individual.

(e) *Duty of sheriff upon presentment to mental health care facility.* — When a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed, or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) *Duties of Supreme Court of Appeals.* — The Supreme Court of Appeals shall provide uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

(g) *Duties of the Department of Health and Human Resources.* — The secretary shall develop an orientation program as provided in subsection (a) of this section. The orientation program shall include, but not be limited to, instruction regarding the nature and treatment of mental illness and substance use disorder; the goal and purpose of commitment; community-based treatment options; and less restrictive alternatives to inpatient commitment.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined ~~is addicted,~~ has a substance use disorder as defined in ~~§ 27-1-11 of this code,~~ by the most recent edition of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill and, because of his or her ~~addiction~~ substance use disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and certification by a physician, ~~or psychologist,~~ licensed professional counselor, licensed independent social worker, an advanced nurse practitioner, or physician assistant as

provided in subsection (e) of this section: *Provided*, That a diagnosis of dementia alone may not serve as a basis for involuntary commitment.

Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services for the individual's mental illness or ~~addiction~~ substance use disorder.

(b) The person making the application shall make the application under oath.

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found. ~~When no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, the application may be made to a magistrate designated by the chief judge of the judicial circuit to accept applications and hold probable cause hearings. A designated magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.~~

(d) The person making the application shall give information and state facts in the application ~~as may be~~ required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner, or ~~designated~~ magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided in §27-5-2(g) of this code for the purpose of an examination of the individual by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician's assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician's assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or ~~addiction~~ substance use disorder sufficient to make the determinations ~~as are~~ required by the provisions of this section. The examination is to be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the hearing be held ~~forthwith~~ immediately and is to provide for the appointment of counsel for the individual: *Provided, however*, That the order may allow the hearing to be held up to 24 hours after the person to be examined is taken into custody rather than ~~forthwith~~ immediately if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of persons: *Provided further*, That the time requirements set forth in this subsection only apply to

persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or in the event of a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by the provisions of this subsection, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or ~~addicted~~ has no substance use disorder, or is determined to be mentally ill or ~~addicted~~ has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court, or ~~designated~~ magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate, ~~designated by the chief judge of the judicial circuit~~, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours.

The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and to examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not there is probable cause to believe that the individual, as a result of mental illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself or herself or to others.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for ~~addiction~~ substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held

pursuant to the provisions of §27-5-4 of this code finds that the individual, as a result of mental illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself, herself, or others and because of mental illness or ~~addiction~~ a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or ~~addiction~~ substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of §27-5-3 of this code may be entered. ~~In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or Medicaid, the Secretary of the Department of Health and Human Resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: *Provided*, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization.~~ Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

Notwithstanding anything in this article to the contrary, the commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional under subsection (e) of this section, who is

acting in a manner consistent with the standard of care, establishes that the commitment or treatment of that individual requires an inpatient hospital placement.

(i) ~~If the certifying physician or psychologist~~ professional determines that ~~a person~~ an individual requires involuntary hospitalization for a ~~an addiction to a substance~~ substance use disorder which, due to the degree of ~~addiction~~ the disorder, creates a reasonable likelihood that withdrawal or detoxification ~~from the substance of addiction~~ will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-2a. Process for involuntary hospitalization.

(a) As used in this section:

(1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

(2) "Authorized staff physician" means a physician, authorized pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code, who is a bona fide member of the hospital's medical staff.

(3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 et seq. of this code, and any acute care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals under the supervision of physicians.

(4) "Psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others.

(b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or unable to be immediately contacted, an authorized staff physician may order the involuntary hospitalization of an individual who is present at, or presented at, a hospital emergency department in need of treatment, if the authorized staff physician believes, following an examination of the individual, that the individual is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his or her decision that the patient presents a harm to himself, herself or others and needs to be held involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to generate a form for the statement to be signed by the authorized staff physician or other person authorized by the hospital and provided to the individual.

(2) Immediately upon admission, or as soon as practicable thereafter, but in no event later than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff physician or designated employee shall file a mental hygiene petition in which the authorized staff physician certifies that the individual for whom the involuntary hospitalization is sought is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff physician shall also certify the same in the individual's health records. Upon receipt of this filing, the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant to §27-5-2 of this code.

(3) An individual who is involuntarily hospitalized pursuant to this section shall be released from the hospital within 72 hours, unless further detained under the applicable provisions of this article.

(c) During a period of involuntary hospitalization authorized by this section, upon consent of the individual, or in the event of a medical or psychiatric emergency, the individual may receive treatment. The hospital or authorized staff physician shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications.

(d) Each hospital or authorized staff physician which provides services under this section shall be paid for the services at the same rate the hospital or authorized staff physician negotiates with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may file a claim for payment with the West Virginia Legislative Claims Commission in accordance with §14-2-1 *et seq.* of this code.

(e) Authorized staff physicians and hospitals and their employees carrying out duties or rendering professional opinions as provided in this section shall be free from liability for their actions, if the actions are performed in good faith and within the scope of their professional duties and in a manner consistent with the standard of care.

(f) The West Virginia Supreme Court of Appeals is requested, by no later than July 1, 2020, to provide each hospital with a list of names and contact information of the mental hygiene commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed to the West Virginia Supreme Court of Appeals.

(g) An action taken against an individual pursuant to this section may not be construed to be an adjudication of the individual, nor shall any action taken pursuant to this section be construed to satisfy the requirements of §61-7-7(a)(4) of this code.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) Admission to a mental health facility for examination. — Any individual may be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code ~~and~~ upon a finding by a licensed physician that the individual is medically stable, and upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, or an advanced nurse practitioner with psychiatric

certification practicing in compliance with §30-7-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code with advanced duties in psychiatric medicine that he or she has examined the individual and is of the opinion that the individual is mentally ill or ~~addicted~~ has a substance use disorder and, because of ~~such~~ the mental illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained: *Provided*, That the opinions offered by an independent clinical social worker, ~~or an advanced nurse practitioner with psychiatric certification,~~ or a physician's assistant with advanced duties in psychiatric medicine must be within their ~~their~~ his or her particular areas of expertise, as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination.* — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or ~~addicted~~ has a substance use disorder, the individual shall be released.

(c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of this code ~~shall be~~ is valid for three days. Any individual with respect to whom the certification has been issued may not be admitted on the basis of the certification at any time after the expiration of three days from the date of the examination.

(d) *Findings and conclusions required for certification.* — A certification under this section must include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based.

(e) *Notice requirements.* — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) ~~Five-day~~ Three-day *time limitation for examination and certification at mental health facility or state hospital.* — After the individual's admission to a mental health facility or state hospital, he or she may not be detained more than ~~five~~ three days, excluding Sundays and holidays, unless, within the period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is mentally ill or ~~addicted~~ has a substance use disorder and is likely to injure himself, herself, or others if allowed to be at liberty. In the event the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself or others, or that the individual has an underlying medical issue or issues that resulted in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) ~~Fifteen-day~~ Ten-day *time limitation for institution of final commitment proceedings.* — If, in the opinion of the examining physician, the patient is mentally ill or ~~addicted~~ has a substance use disorder and because of the mental illness or ~~addiction~~ substance use disorder is likely to injure

himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within ~~45~~ 10 days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within ~~such 15-day~~ the 10-day period, the ~~patient~~ individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) ~~Thirty-day~~ Twenty-day *time limitation for conclusion of all proceedings.* — If all proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within ~~30~~ 20 days from the date of institution of the proceedings, the ~~patient~~ individual shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) *Involuntary commitment.* — Except as provided in §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* —

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or ~~addiction~~ substance use disorder. The applicant shall state in detail the recent overt acts upon which the belief is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents, filed with a circuit court, mental hygiene commissioner, or ~~designated~~ magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or ~~designated~~ magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922, and

the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications may not be accepted for individuals who only have epilepsy, ~~a mental deficiency, senility dementia, or an intellectual or developmental disability.~~

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.* —

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or ~~addicted~~ has a substance use disorder and that because of the mental illness or ~~addiction~~ substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and, therefore, should be hospitalized. The certificate shall state in detail the recent overt acts on which the conclusion is based.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, ~~forthwith~~ immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician, ~~or psychologist,~~ advanced nurse practitioner, or physician's assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, ~~or psychologist,~~ an advanced nurse practitioner with psychiatric certification, or a physician's assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or ~~addiction~~ substance use disorder of the individual and the likelihood of causing serious harm to self or others.

(2) If the designated physician, ~~or psychologist,~~ advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, ~~or psychologist,~~ nurse practitioner, or physician's assistant. All ~~such~~ orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, ~~or psychologist,~~ nurse practitioner, or physician's assistant do not confirm that the individual is mentally ill or ~~addicted~~ has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

(h) Rights of the individual at the final commitment hearing; seven days' notice to counsel required. —

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) In the event the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(i) Duties of counsel representing individual; payment of counsel representing indigent. —

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to ~~physicians or psychologists~~ health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by ~~physician's or psychologist's~~ the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A ~~psychologist or physician~~ health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* —

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

(A) Whether the individual is mentally ill or ~~addicted~~ has a substance use disorder;

(B) Whether, because of illness or ~~addiction~~ substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: Provided, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.* —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for an indeterminate period or for a temporary observatory period not exceeding six months, a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 et seq. of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment. The chief medical officer shall provide notice to the court and the prosecuting attorney that the individual requires commitment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe the reasons for ongoing commitment. In its discretion, the court or prosecuting attorney may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment.

(2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:

(A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in remission;

(B) Whether the individual's condition resulting from mental illness or substance use disorder is likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others unless treatment is continued;

(C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;

(D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;

(E) Whether the individual is not a danger to self or others; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

~~(2)~~ (3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

~~(3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.~~

~~(4) An order for an indeterminate period expires of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the Department of Health and Human Resources, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization. If the patient or his or her counsel requests a hearing, a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.~~

(4) An individual committed pursuant to §27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.

(5) In the event the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

(m) Dismissal of proceedings. — In the event the individual is discharged as provided in subsection (l) of this section, if the circuit court or mental hygiene commissioner shall find that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not, because of the illness or addiction, likely to cause serious harm to self or others if allowed to remain at liberty, the proceedings shall be dismissed. dismiss the proceedings.

(n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.

(o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.* —

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and the individual is not currently a resident of a mental health facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall ~~forthwith~~ immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth ~~above~~ in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted ~~forthwith~~ immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* — In lieu of ordering the ~~patient~~ individual to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or ~~addicted to have a substance use disorder~~ by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be ~~forthwith~~ immediately given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) *Report to the Secretary of the Department of Health and Human Resources.* —

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall ~~forthwith~~ immediately make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall ~~forthwith~~ immediately, after the release of the individual, make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(s) *Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.* —

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

§27-5-10. Transportation for the mentally ill or ~~substance abuser~~ persons with substance use disorder.

(a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et seq.* and §27-5-1 *et seq.* of this code, ~~it shall be the duty of the sheriff to~~ shall provide immediate transportation to or from the appropriate mental health facility or state hospital: *Provided*, That, where hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request of a person having proper interest in the individual's hospitalization, for the interested person to arrange for the individual's transportation to the mental health facility or state hospital if the sheriff determines that ~~such~~ those means are suitable given the individual's condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participation, and the persons bearing ultimate responsibility for the individual's safety and well-being.

(c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal governments ~~are hereby authorized to~~ may enter into written agreements ~~whereby~~ by which certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs, and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, "certified municipal law-enforcement officer" means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests, and enforce the laws of this state or any political subdivision thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et seq.* of this code.

(d) In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the state hospital in advance of the transportation to determine if the state hospital has suitable bed capacity to place the individual.

(e) ~~(d)~~ Nothing in this section is intended to alter security responsibilities for the patient by the sheriff unless mutually agreed upon as provided in subsection (c) of this section.

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-12. Study of adult criminal competency and responsibility issues; requiring and requesting report and proposed legislation; submission to legislature.

(a) The Secretary of the Department of Health and Human Resources shall, in collaboration with designees of the Supreme Court of Appeals, the Prosecuting Attorney's Institute, the Public Defender Services, Disability Rights of West Virginia, and designees of the Board of Medicine, Board of Osteopathy, and the Board Examiners of Psychologists with experience in issues of competence and criminal responsibility, undertake an evaluation of the provisions of this article in the context of current constitutional requirements related to competency and responsibility issues, best medical practices, and pharmacological developments and draft proposed legislation to update the provisions of this article.

(b) The legislation required by the provisions of subsection (a) of this section shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2020.

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4009) was laid over one day, retaining its place on the calendar, with the Judiciary committee amendment pending.

Eng. Com. Sub. for House Bill 4019, Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4020, Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on the Judiciary, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section three-ff, line one, by striking out the word "chapter" and inserting in lieu thereof the word "code";

And,

On page one, section twenty, line one, by striking out the word "chapter" and inserting in lieu thereof the word "code".

The bill (Eng. Com. Sub. for H. B. 4020), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4061, Health Benefit Plan Network Access and Adequacy Act.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 4069, West Virginia Student Religious Liberties Act.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4088, Disposition of funds from certain oil and natural gas wells due to unknown or unlocatable interest owners.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4094, Continuing the Foster Care Ombudsman.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Select Committee on Children and Families, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 9. FOSTER CARE OMBUDSMAN PROGRAM.

§49-9-101. The Foster Care Ombudsman.

(a) There is continued within the Office of the Inspector General the position of the West Virginia Foster Care Ombudsman. The Office of the Inspector General shall employ a Foster Care Ombudsman to affect the purposes of this article.

(b) In addition to the duties provided in §9-5-27 of this code, the duties of the Foster Care Ombudsman include, but are not limited to, the following:

(1) Establishing a statewide procedure to receive, investigate, and resolve complaints filed on behalf of a foster child, foster parent, or kinship parent, or, on the Foster Care Ombudsman's own initiative, on behalf of a foster child, relating to action, inaction, or decisions of the state agency, child-placing agency, or residential care facility which may adversely affect the foster child, foster parent, or kinship parent;

(2) Review periodically and make appropriate recommendations for the policies and procedures established by any state agency providing services to foster children, foster parents, kinship parents, including, but not limited to, the system of providing foster care and treatment;

(3) Pursuant to an investigation, provide assistance to a foster child, foster parent, or kinship parent who the Foster Care Ombudsman determines is in need of assistance, including, but not limited to, collaborating with an agency, provider, or others on behalf of the best interests of the foster child;

(4) Recommend action when appropriate, including, but not limited to, undertaking legislative advocacy and making proposals for systemic reform and formal legal action, in order to secure and ensure the legal, civil, and special rights of foster children who reside in this state;

(5) Conduct programs of public education when necessary and appropriate;

(6) Have input into the creation of, and thereafter make recommendations consistent with, the foster children, foster parents, and kinship parents bill of rights;

(7) Take appropriate steps to advise the public of the services of the Foster Care Ombudsman, the purpose of the ombudsman, and procedures to contact the office; and

(8) Make inquiries and obtain assistance and information from other state governmental agencies or persons as the Foster Care Ombudsman requires for the discharge of his or her duties.

§49-9-102. Investigation of complaints.

(a) Upon receipt of a complaint filed on behalf of a foster child, foster parent, or kinship parent, on his or her own initiative or by court order within the scope of the Foster Care Ombudsman Program, the Foster Care Ombudsman shall investigate, except as provided in §49-9-102(c), any act, practice, policy, or procedure of any state agency, child-placing agency, or residential care facility which affects the health, safety, welfare, or rights of a foster child, a foster parent, or a kinship parent.

(b) Investigative activities of the Foster Care Ombudsman include, but are not limited to: information gathering, mediation, negotiation, informing parties of the status of the investigation, notification to any aggrieved party of alternative processes, reporting of suspected violations to a licensing or certifying agency, and the reporting of suspected criminal violations to the appropriate authorities.

(c) The Foster Care Ombudsman need not investigate any complaint upon determining that:

(1) The complaint is trivial, frivolous, vexatious, or not made in good faith;

(2) The complaint has been too long delayed to justify present investigation;

(3) The resources available, considering the established priorities, are insufficient for an adequate investigation;

(4) The matter complained of is not within the investigatory authority of the Foster Care Ombudsman; or

(5) A real or apparent conflict of interest exists and no other person within the office is available to investigate the complaint in an impartial manner.

(d) The Office of the Inspector General and other appropriate state governmental agencies may establish and implement cooperative agreements for receiving, processing, responding to, and resolving complaints involving state governmental agencies under the provisions of this section.

(e) Beginning with the third quarter of 2020, the Foster Care Ombudsman shall submit a written report to the Governor containing:

(1) The number of complaints;

(2) The types of complaints;

(3) The location of the complaints;

(4) How the complaints are resolved; and

(5) Any other information the Foster Care Ombudsman feels is appropriate.

(f) Beginning in December 2020, the Foster Care Ombudsman shall summarize the quarterly reports and present that information to the Legislative Oversight Commission on Health and Human Resources Accountability.

§49-9-103. Access to foster care children.

(a) The Foster Care Ombudsman shall, with proper identification, have access to a foster family home, a state agency, a child-placing agency, or a residential care facility for the purposes of investigations of a complaint. The Foster Care Ombudsman may enter a foster family home, a state agency, a child-placing agency, or a residential care facility at a time appropriate to the complaint. The visit may be announced in advance or be made unannounced as appropriate to the complaint under investigation. Upon entry, the Foster Care Ombudsman shall promptly and personally advise the person in charge of his or her presence. If entry is refused by the person in charge, the Foster Care Ombudsman may apply to the magistrate court of the county in which a foster family home, a state agency, a child-placing agency, or a residential care facility is located for a warrant authorizing entry, and the court shall issue an appropriate warrant if it finds good cause therefor.

(b) For activities other than those specifically related to the investigation of a complaint, the Foster Care Ombudsman, upon proper identification, shall have access to a foster family home, a state agency, a child-placing agency, or a residential care facility between the hours of 8:00 a.m. and 8:00 p.m. in order to:

(1) Provide information on the Foster Care Ombudsman Program to a foster child, foster parents, or kinship parents;

(2) Inform a foster child, a foster parent, or a kinship parent of his or her rights and entitlements, and his or her corresponding obligations, under applicable federal and state laws; and

(3) Direct the foster child, the foster parents, or the kinship parents to appropriate legal resources;

(c) Access to a foster family home, a state agency, a child-placing agency, or a residential care facility under this section shall be deemed to include the right to private communication with the foster child, the foster parents, or the kinship parents.

(d) A Foster Care Ombudsman who has access to a foster family home, a state agency, a child-placing agency, or a residential care facility under this section shall not enter the living area of a foster child, foster parent, or kinship parent without identifying himself or herself to the foster child, foster parent, or kinship parent. After identifying himself or herself, an ombudsman shall be permitted to enter the living area of a foster child, foster parent, or kinship parent unless that foster child, foster parent, or kinship parent communicates on that particular occasion the foster child,

foster parents', or kinship parents' desire to prevent the ombudsman from entering. A foster child, foster parent, or kinship parent has the right to terminate, at any time, any visit by the Foster Care Ombudsman.

(e) Access to a foster family home, a state agency, a child-placing agency, or a residential care facility pursuant to this section includes the right to tour the facility unescorted.

§49-9-104. Access to records.

(a) The Foster Care Ombudsman is allowed access to any foster child's, foster parents' or kinship parents' records, including medical records reasonably necessary to any investigation, without fee.

(b) The Foster Care Ombudsman is allowed access to all records of any foster family home, state agency, child-placing agency, or residential care facility that is reasonably necessary for the investigation of a complaint, including, but not limited to, incident reports; dietary records; policies and procedures that a foster family home, a state agency, a child-placing agency, or a residential care facility are required to maintain under federal or state law; admission agreements; staffing schedules; or any document depicting the actual staffing pattern.

§49-9-105. Subpoena powers.

(a) The Foster Care Ombudsman may, in the course of any investigation:

(1) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha County for the issuance of a subpoena to compel at a specific time and place, by subpoena, the appearance, before a person authorized to administer oaths, the sworn testimony of any person whom the Foster Care Ombudsman reasonably believes may be able to give information relating to a matter under investigation; or

(2) Apply to the circuit court of the appropriate county or the Circuit Court of Kanawha County for the issuance of a subpoena duces tecum to compel any person to produce at a specific time and place, before a person authorized to administer oaths, any documents, books, records, papers, objects, or other evidence which the Foster Care Ombudsman reasonably believes may relate to a matter under investigation.

(b) A subpoena or subpoena duces tecum applied for by the Foster Care Ombudsman may not be issued until a circuit court judge in term or vacation thereof has personally reviewed the application and accompanying affidavits and approved, by a signed order entered by the judge, the issuance of the subpoena or subpoena duces tecum. Subpoenas or subpoenas duces tecum applied for pursuant to this section may be issued on an ex parte basis following review and approval of the application by the judge in term or vacation thereof.

(c) The Attorney General shall, upon request, provide legal counsel and services to the Foster Care Ombudsman in all administrative proceedings and in all proceedings in any circuit court and the West Virginia Supreme Court of Appeals.

§49-9-106. Cooperation among government departments or agencies.

(a) The Foster Care Ombudsman shall have access to the records of any state government agency reasonably necessary to any investigation. The Foster Care Ombudsman shall be notified

of and be allowed to observe any survey conducted by a government agency affecting the health, safety, welfare, or rights of the foster child, the foster parents, or the kinship parents.

(b) The Foster Care Ombudsman shall develop procedures to refer any complaint to any appropriate state government department, agency, or office.

(c) When abuse, neglect, or exploitation of a foster child is suspected, the Foster Care Ombudsman shall make a referral to the Bureau for Children and Families, Office of Health Facility Licensure and Certification, or both.

(d) Any state government department, agency, or office that responds to a complaint referred to it by the Foster Care Ombudsman Program shall make available to the Foster Care Ombudsman copies of inspection reports and plans of correction, and notices of any citations and sanctions levied against the foster family home, the child-placing agency, or the residential care facility identified in the complaint.

§49-9-107. Confidentiality of investigations.

(a) Information relating to any investigation of a complaint that contains the identity of the complainant or foster child, foster parent, or kinship parent shall remain confidential except:

(1) Where disclosure is authorized in writing by the complainant foster child, foster parent, kinship parent, or the guardian.

(2) Where disclosure is necessary to the Bureau for Children and Families in order for such office to determine the appropriateness of initiating an investigation regarding potential abuse, neglect, or emergency circumstances; or

(3) Where disclosure is necessary to the Office of Health Facility Licensure and Certification in order for such office to determine the appropriateness of initiating an investigation to determine facility compliance with applicable rules of licensure, certification, or both.

(b) Notwithstanding any other section within this article, all information, records, and reports received by or developed by the Foster Care Ombudsman Program which relate to a foster child, foster parent, or kinship parent, including written material identifying a foster child, foster parent, or kinship parent, are confidential pursuant to §49-5-101 *et seq.* of this code, and are not subject to the provisions of §29B-1-1 *et seq.* of this code, and may not be disclosed or released by the Foster Care Ombudsman Program, except under the circumstances enumerated in this section.

(c) Nothing in this section prohibits the preparation and submission by the Foster Care Ombudsman of statistical data and reports, as required to implement the provisions of this article or any applicable federal law, exclusive of any material that identifies any foster child, foster parent, kinship parent, or complainant.

(d) The Inspector General shall have access to the records and files of the Foster Care Ombudsman Program to verify its effectiveness and quality where the identity of any complainant or foster child, foster parent, or kinship parent is not disclosed.

§49-9-108. Limitations on liability.

(a) The Foster Care Ombudsman participating in an investigation carried out pursuant to this article who is performing his or her duties is immune from civil liability that otherwise might result by reason of his or her participation in the investigation, as long as such participation is not

violative of any applicable law, rule, or regulation, and done within the scope of his or her employment and in good faith.

(b) If an act or omission by the Foster Care Ombudsman or an act in good faith pursuant to a specific foster child, foster parent, or kinship parent complaint causes a foster child's, foster parents', or kinship parents' rights to be violated, no foster family home, state agency, child-placing agency, or residential care facility, its owners, administrators, officers, director, agents, consultants, employees, or any member of management may be held civilly liable as a result of the act or omission.

§49-9-109. Willful interference; retaliation; penalties.

(a) An individual who willfully interferes with or impedes the Foster Care Ombudsman in the performance of his or her official duties shall be guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.

(b) An individual who institutes or commits a discriminatory, disciplinary, retaliatory, or reprisal action against a foster child, foster parent, or kinship parent for having filed a complaint with or provided information in good faith to the Foster Care Ombudsman in carrying out the duties pursuant to this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100.

(c) An individual violating the provisions of subsection (a) or (b) of this section is, for the second or any subsequent offense under either of these subsections, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250. Each day of a continuing violation after conviction shall be considered a separate offense.

(d) Nothing in this section infringes upon the rights of an employer to supervise, discipline, or terminate an employee for other reasons.

§49-9-110. Funding for Foster Care Ombudsman Program.

The Foster Care Ombudsman Program shall receive such funds appropriated by the Legislature for the operation of the program.

The bill (Eng. Com. Sub. for H. B. 4094), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4102, Relating to opioid antagonists.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4108, Relating generally to certificates of need for health care services.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4159, Relating to the manufacture and sale of hard cider.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4165, West Virginia Remembers Program.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4176, West Virginia Intelligence/Fusion Center Act.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4178, Requiring calls which are recorded be maintained for a period of five years.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 6. LOCAL EMERGENCY TELEPHONE SYSTEM.

§24-6-13. Confidentiality of certain calls to county answering points and records; retention of records.

(a) Except as provided by the provisions of this section, calls for emergency service to a county answering point are not confidential. All calls for emergency service reporting alleged criminal conduct which are recorded electronically, in writing or in any other form are to be kept confidential by the county answering point receiving the call and may be released only pursuant to an order entered by a court of competent jurisdiction, a valid subpoena or through the course of discovery in a criminal action requiring the release of the information: *Provided*, That nothing contained in this section may be construed as preventing the county answering point from releasing information to a responding agency as may be necessary for that agency's response on a call or the completion of necessary reports relating to that call.

(b) Upon proper request and payment of a reasonable fee set by the center director to cover the cost of production, a person or entity may obtain, without court order or a valid subpoena, a transcription of a call for emergency service reporting alleged criminal conduct. The answering point shall exclude from the transcription any information relating to the identity of the caller including, but not limited to, the caller's name, address, telephone number or his or her location in relation to the alleged offense or the alleged perpetrator. If the transcript of a call is such that it cannot be successfully redacted so as to protect the identity of the caller, the answering point may decline to provide the transcript. In that case, the person requesting the transcription may apply to a court of competent jurisdiction for a court order releasing the transcript.

(c) All calls for emergency service which are recorded electronically, in writing or in any other form are to be maintained for a period of at least ~~ninety days~~ two years or longer if required by an order entered by a court of competent jurisdiction or a valid subpoena.

(d) A county answering point may release information to bonafide law-enforcement agencies, the prosecuting attorney of a county or a United States attorney pursuant to a lawful criminal investigation. Nothing in this article may be construed as prohibiting a freedom of information request under §29B-1-1 *et seq.* of this code for information relating to the operation of the center or to calls for emergency service which do not involve reporting of alleged criminal conduct.

(e) Nothing in this article requires disclosure of any information that is specifically exempt from disclosure by statute. Except as otherwise provided in this article, nothing prohibits disclosure of information that is not specifically exempted from disclosure under a provision of this code.

(f) Every county answering point shall, within 90 days of the effective date of this section, promulgate a written policy, available to the public, reflecting its compliance with the provisions of this section.

(g) No answering point or center personnel ~~shall~~ may be civilly liable for any injury arising from disclosure of information pursuant to the provisions of this section.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4178) was laid over one day, retaining its place on the calendar, with the Government Organization committee amendment pending.

Eng. Com. Sub. for House Bill 4198, Permitting a person to obtain a 12-month supply of contraceptive drugs.

Having been read a second time on yesterday, Tuesday, March 3, 2020, and now coming up in regular order, was reported by the Clerk.

The following amendment to the bill, from the Committee on Health and Human Resources, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

**CHAPTER 5. GENERAL POWERS AND AUTHORITY OF THE
GOVERNOR, SECRETARY OF STATE, AND ATTORNEY GENERAL;
BOARD OF PUBLIC WORKS; MISCELLANEOUS AGENCIES,
COMMISSIONS, OFFICES, PROGRAMS, ETC.**

ARTICLE 16. WEST VIRGINIA PUBLIC EMPLOYEES INSURANCE ACT.

§5-16-28. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-2 of this code is made applicable to the provisions of this article.

CHAPTER 33. INSURANCE.

ARTICLE 15. ACCIDENT AND SICKNESS INSURANCE.

§33-15-4u. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-2 of this code is made applicable to the provisions of this article.

ARTICLE 16. GROUP ACCIDENT AND SICKNESS INSURANCE.

§33-16-3ff. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-2 of this code is made applicable to the provisions of this article.

ARTICLE 24. HOSPITAL SERVICE CORPORATIONS, MEDICAL SERVICE CORPORATIONS, DENTAL SERVICE CORPORATIONS, AND HEALTH SERVICE CORPORATIONS.

§33-24-7u. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-2 of this code is made applicable to the provisions of this article.

ARTICLE 25. HEALTH CARE CORPORATIONS.

§33-25-8r. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-2 of this code is made applicable to the provisions of this article.

ARTICLE 25A. HEALTH MAINTENANCE ORGANIZATION ACT.

§33-25A-8u. Incorporation of the coverage for 12-month refill for contraceptive drugs.

The provision requiring coverage for 12-month refill for contraceptive drugs codified at §33-53-2 of this code is made applicable to the provisions of this article.

ARTICLE 53. REQUIRED COVERAGE FOR HEALTH INSURANCE.

§33-53-2. Coverage and dispensing birth control.

(a) Notwithstanding the a prohibition or limitation contained within the provisions of §33-1-1 et seq. and §5-16-1 of this code an insurer subject to §5-16-1 et seq., §33-15-1 et seq., §33-16-1 et seq., §33-24-1 et seq., §33-25-1 et seq., and §33-25A-1 of this code which amends, renews, or delivers a health policy on or after January 1, 2021, that provides coverage for contraceptive drugs, shall provide coverage for a 12-month refill of contraceptive drugs obtained at one time by the insured after the insured has completed the initial supply of the drugs, unless the insured requests a smaller supply or the prescribing provider instructs that the insured must receive a smaller supply. A health benefit plan that provides coverage shall allow the insured to receive the contraceptive drugs on-site at the provider's office, if available, and dispensing practices must

follow all clinical guidelines for appropriate prescribing and dispensing to ensure the health of the patient while maximizing access to effective contraceptive drugs.

(b) A health benefit plan that provides coverage for hormonal contraceptives, in the absence of clinical contraindications, may not impose utilization controls or other forms of medical management limiting the supply of contraceptive drugs that may be dispensed or furnished by a provider or pharmacy, or at a location licensed or otherwise authorized to dispense drugs or supplies, to an amount that is less than a 12-month supply.

(c) This section does not exclude coverage for contraceptive drugs as prescribed by a provider for reasons other than contraceptive purposes, such as decreasing the risk of ovarian cancer or eliminating symptoms of menopause, or for contraception that is necessary to preserve the life or health of an enrollee.

(d) Nothing in this section requires a health benefit plan to cover contraceptive drugs provided by a provider, pharmacy, or at a location authorized to dispense drugs or supplies, that does not participate in the health benefit plan's provider or pharmacy network, as applicable, except as may be otherwise authorized or required by state law or by the plan's policies governing out-of-network coverage.

(e) For purposes of this section, the term "contraceptive drugs" means all drugs approved by the United States Food and Drug Administration that are used to prevent pregnancy, including, but not limited to, hormonal drugs administered orally, transdermally, and intravaginally.

At the request of Senator Takubo, and by unanimous consent, the bill (Eng. Com. Sub. for H. B. 4198), as amended, was advanced to third reading with the right for further amendments to be considered on that reading.

Eng. House Bill 4354, Adding nabiximols to the permitted list of distributed and prescribed drugs.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4360, Exempting certain persons from heating, ventilating, and cooling system licensing requirements.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4361, Relating to insurance law violations.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 41. INSURANCE FRAUD PREVENTION ACT.**§33-41-2. Definitions.**

As used in this article:

~~(1)~~ (a) "Benefits" mean money payments, goods, services, or other thing of value paid in response to a claim filed with an insurer based upon a policy of insurance.

~~(2)~~ (b) "Business of insurance" means the writing of insurance, including the writing of workers' compensation insurance under the provisions of §23-1-1 *et seq.* of this code, self-insurance by an employer or employer group for workers' compensation risk including the risk of catastrophic injuries under the provisions of §23-1-1 *et seq.* of this code, or the reinsuring of risks by an insurer, including acts necessary or incidental to writing insurance or reinsuring risks and the activities of persons who act as or are officers, directors, agents, or employees of insurers, or who are other persons authorized to act on their behalf.

~~(3)~~ (c) "Claim" means an application or request for payment or benefits provided under the terms of a policy of insurance.

~~(4)~~ (d) "Commissioner" means the Insurance Commissioner of West Virginia or his or her designee.

~~(5)~~ (e) "Fraudulent insurance act" means an act or omission committed by a person who knowingly and with intent to defraud misrepresents or conceals any material information concerning one or more of the following:

(1) Presenting, causing to be presented, or preparing with knowledge or belief that it will be presented to or by an insurer, a reinsurer, broker, or its agent, false information as part of, in support of, or concerning a fact material to one or more of the following:

(A) An application for the issuance or renewal of an insurance policy or reinsurance contract;

(B) The rating of an insurance policy or reinsurance contract;

(C) A claim for payment or benefit pursuant to an insurance policy or reinsurance contract;

(D) Premiums paid on an insurance policy or reinsurance contract;

(E) Payments made in accordance with the terms of an insurance policy or reinsurance contract;

(F) A document filed with the commissioner or the chief insurance regulatory official of another jurisdiction;

(G) The financial condition of an insurer or reinsurer;

(H) The formation, acquisition, merger, reconsolidation, dissolution, or withdrawal from one or more lines of insurance or reinsurance in all or part of this state by an insurer or reinsurer;

(I) The issuance of written evidence of insurance; or

(J) The reinstatement of an insurance policy.

(2) Solicitation or acceptance of new or renewal insurance risks on behalf of an insurer, reinsurer, or other person engaged in the business of insurance by a person who knows or should know that the insurer or other person responsible for the risk is insolvent at the time of the transaction;

(3) Removal, concealment, alteration, or destruction of the assets or records of an insurer, reinsurer, or other person engaged in the business of insurance;

(4) Willful embezzlement, abstracting, purloining, or conversion of moneys, funds, premiums, credits, or other property of an insurer, reinsurer, or person engaged in the business of insurance;

(5) Transaction of the business of insurance in violation of laws requiring a license, certificate of authority, or other legal authority for the transaction of the business of insurance; or

(6) Attempt to commit, aiding, or abetting in the commission of, or conspiracy to commit the acts or omissions specified in this subdivision.

~~(5)~~ (f) "Health care provider" means a person, partnership, corporation, facility, or institution licensed by, or certified in, this state or another state, to provide health care or professional health care services, including, but not limited to, a physician, osteopathic physician, hospital, dentist, registered or licensed practical nurse, optometrist, pharmacist, podiatrist, chiropractor, physical therapist, or psychologist.

~~(6)~~ (g) "Insurance" means a contract or arrangement in which a person undertakes to:

~~(A)~~ (1) Pay or indemnify another person as to loss from certain contingencies called "risks", including through reinsurance;

~~(B)~~ (2) Pay or grant a specified amount or determinable benefit to another person in connection with ascertainable risk contingencies;

~~(C)~~ (3) Pay an annuity to another person;

~~(D)~~ (4) Act as surety; or

~~(E)~~ (5) Self-insurance for workers' compensation risk, including the risk of catastrophic injuries under pursuant to the provisions of §23-1-1 *et seq.* of this code.

~~(7)~~ (h) "Insurer" means a person entering into arrangements or contracts of insurance or reinsurance. Insurer includes, but is not limited to, any domestic or foreign stock company, mutual company, mutual protective association, farmers' mutual fire companies, fraternal benefit society, reciprocal or interinsurance exchange, nonprofit medical care corporation, nonprofit health care corporation, nonprofit hospital service association, nonprofit dental care corporation, health maintenance organization, captive insurance company, risk retention group, or other insurer, regardless of the type of coverage written, including the writing of workers' compensation insurance or self insurance under the provisions of this code, benefits provided, or guarantees made by each. A person is an insurer regardless of whether the person is acting in violation of laws requiring a certificate of authority or regardless of whether the person denies being an insurer.

~~(8)~~ (i) "Person" means an individual, a corporation, a limited liability company, a partnership, an association, a joint stock company, a trust, trustees, an unincorporated organization, or any similar business entity, or any combination of the foregoing. "Person" also includes hospital service corporations, medical service corporations, and dental service corporations as defined in §33-24-1 *et seq.* of this code, health care corporations as defined in, §33-25-1 *et seq.* of this code, or a health maintenance organization organized pursuant to §33-25A-1 *et seq.* of this code.

~~(9)~~ (j) "Policy" means an individual or group policy, group certificate, contract or arrangement of insurance or reinsurance, coverage by a self-insured employer or employer group for its workers' compensation risk including its risk of catastrophic injuries or reinsurance, affecting the rights of a resident of this state or bearing a reasonable relation to this state, regardless of whether delivered or issued for delivery in this state.

~~(10)~~ (k) "Reinsurance" means a contract, binder of coverage (including placement slip) or arrangement under which an insurer procures insurance for itself in another insurer as to all or part of an insurance risk of the originating insurer.

~~(11)~~ (l) "Statement" means any written or oral representation made to any person, insurer or authorized agency. A statement includes, but is not limited to, any oral report or representation; any insurance application, policy, notice or statement; any proof of loss, bill of lading, receipt for payment, invoice, account, estimate of property damages, or other evidence of loss, injury or expense; any bill for services, diagnosis, prescription, hospital or doctor record, X-ray, test result or other evidence of treatment, services or expense; and any application, report, actuarial study, rate request or other document submitted or required to be submitted to any authorized agency. A statement also includes any written or oral representation recorded by electronic or other media.

~~(12)~~ (m) "Unit" means the insurance fraud unit established pursuant to the provisions of this article acting collectively or by its duly authorized representatives.

§33-41-4a. Acceptance of forfeiture proceeds by commissioner; creation of special revenue fund; court awards of investigation costs.

(a) The commissioner may accept proceeds of court ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts.

(b) Forfeiture proceeds shall be deposited into the special revenue account established in subsection (c) of this section, and the commissioner may make expenditures from the fund in order to effectuate the purposes of this article.

(c) The Insurance Fraud Prevention Fund is hereby created. The fund shall be administered by the commissioner and shall consist of all moneys made available from court ordered forfeiture proceedings involving the prosecution of fraudulent insurance acts, including all interest or other return earned from investment of the fund which may be invested in the manner permitted by §12-6C-9 of this code. Expenditures from the fund shall be for the purposes set forth in this article (to provide and are not authorized from collections but are to be made only in accordance with appropriation by the Legislature and in accordance with the provisions of §12-3-1, *et seq.* of this code and upon the fulfillment of the provisions set forth in §11B-2-1, *et seq.* of this code: *Provided*, That for the fiscal year ending June 30, 2021, expenditures are authorized from collections rather than pursuant to an explicit appropriation by the Legislature. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to

the General Revenue Fund but shall remain in the fund and be expended as provided by this section.

§33-41-5. Reporting Mandatory reporting of insurance fraud or criminal offenses otherwise related to the business of insurance.

(a) A person engaged in the business of insurance having knowledge or a reasonable belief that ~~fraud~~ a fraudulent insurance act or another crime related to the business of insurance is being, will be, or has been committed shall provide to the commissioner the information required by, and in a manner prescribed by, the commissioner.

(b) Any other person having knowledge or a reasonable belief that a fraudulent insurance act or another crime related to the business of insurance is being, will be, or has been committed may provide to the commissioner the information requested by, and in a manner prescribed by, the commissioner.

~~(b)~~ (c) The commissioner may prescribe a reporting form to facilitate reporting of possible ~~fraud~~ fraudulent insurance acts or other offenses related to the business of insurance for use by persons other than those persons referred to in subsection (a) of this section.

(d) Notwithstanding any other provision of this code, a person engaged in the business of insurance shall furnish and disclose any information, including documents, materials, or other information in its possession concerning a fraudulent insurance act or a suspected fraudulent insurance act to the commissioner. Disclosures provided pursuant to this section are subject to the confidentiality provisions set forth in §33-41-7 of this code.

§33-41-8. Creation of Insurance Fraud Unit; purpose; duties; personnel qualifications.

(a) There is established the West Virginia Insurance Fraud Unit within the ~~office~~ offices of the ~~Insurance Commissioner of West Virginia~~ commissioner. The commissioner may employ full-time supervisory, legal, and investigative personnel for the unit who shall be qualified by training and experience in the areas of detection, investigation, or prosecution of fraud within and against the insurance industry to perform the duties of their positions. The director of the ~~fraud~~ unit is a full-time position and shall be appointed by the commissioner and serve at his or her will and pleasure. The commissioner shall provide office space, equipment, and supplies, and shall employ and train personnel, including legal counsel, investigators, auditors and clerical and other staff that is necessary for the unit to carry out its duties and responsibilities under this article as the commissioner determines is necessary.

(b) ~~The fraud unit may in its discretion~~ It is the duty of the unit to:

(1) Initiate inquiries and conduct investigations when the unit has cause to believe violations of any of the following provisions of this code relating to the business of insurance have been or are being committed: §33-1-1 *et seq.* and §23-1-1 *et seq.* of this code; §61-3-1 *et seq.* of this code; and §61-4-5 of this code. Notwithstanding any provision of this code to the contrary, the ~~fraud~~ unit may, with the agreement of the Director of the Public Employees Insurance Agency, conduct investigations related to possible fraud under §5-16-1 *et seq.* of this code;

(2) Review reports or complaints of alleged fraud related to the business of insurance activities from federal, state, and local law-enforcement and regulatory agencies, persons engaged in the

business of insurance and the general public to determine whether the reports require further investigation; ~~and~~

(3) Conduct independent examinations of alleged fraudulent activity related to the business of insurance and undertake independent studies to determine the extent of fraudulent insurance acts; and

(4) Perform any other duties related to the purposes of this article assigned to it by the commissioner.

(c) The ~~Insurance Fraud Unit~~ unit may:

~~(1) Employ and train personnel to achieve the purposes of this article and to employ legal counsel, investigators, auditors and clerical support personnel and other personnel as the commissioner determines necessary from time to time to accomplish the purposes of this article;~~

~~(2)~~ (1) Inspect, copy, or collect records and evidence;

~~(3)~~ (2) Serve subpoenas issued by grand juries and trial courts in criminal matters;

(3) Administer oaths and affirmations;

(4) Share records and evidence with federal, state, or local law-enforcement or regulatory agencies, and enter into interagency agreements. For purposes of carrying out investigations under this article, the unit shall be ~~deemed~~ considered a criminal justice agency under all federal and state laws and regulations and as such shall have access to any information that is available to other criminal justice agencies concerning violations of the insurance laws of West Virginia or related criminal laws;

(5) Make criminal referrals to the county prosecutors;

(6) Execute search warrants and arrest warrants for criminal violations of the insurance laws of West Virginia or related criminal laws: *Provided*, That those persons designated by the commissioner to do so meet the requirements of and are certified as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

(7) Arrest upon probable cause, without a warrant a person found in the act of violating or attempting to violate an insurance law of West Virginia or related criminal law: *Provided*, That those persons designated by the commissioner to do so meet the requirements of and are certified as law-enforcement officers under §30-29-5 of this code and the certification is currently active;

~~(6)~~ (8) Conduct investigations outside this state. If the information the ~~Insurance Fraud Unit~~ unit seeks to obtain is located outside this state, the person from whom the information is sought may make the information available to the ~~insurance fraud~~ unit to examine at the place where the information is located. The ~~Insurance Fraud Unit~~ unit may designate representatives, including officials of the state in which the matter is located, to inspect the information on behalf of the ~~Insurance Fraud Unit~~ unit, and the ~~Insurance Fraud Unit~~ may respond to similar requests from officials of other states; ~~and~~

~~(7) The Insurance Fraud Unit may initiate~~ (9) Initiate investigations and participate in the development of, and, if necessary, the prosecution of, any health care provider, including a

provider of rehabilitation services, suspected of fraudulent activity related to the business of insurance; and

(10) Initiate investigations and participate in the development of, and, if necessary, the investigation, control, and prosecution of, any workers' compensation fraud, as previously assigned to the workers' compensation fraud and abuse unit created pursuant to §23-1-1b of this code.

~~(8) (d) Specific personnel of the unit designated by the commissioner shall be permitted to may operate vehicles owned or leased for the state displaying Class A registration plates.~~

~~(9) (e) Notwithstanding any provision of this code to the contrary, specific personnel of the unit designated by the commissioner may carry firearms in the course of their official duties after meeting specialized qualifications established by the Governor's Committee on Crime, Delinquency, and Correction, which shall include the successful completion of handgun training provided to law-enforcement officers by the West Virginia State Police. *Provided*, That nothing in this subsection shall be construed to include any person designated by the commissioner as a law-enforcement officer as that term is defined by the provisions of §30-29-1 of this code; and~~

~~(10) (f) The Insurance Fraud Unit unit shall is not be subject to the provisions of §6-9A-1 *et seq.* of this code and the investigations conducted by the Insurance Fraud Unit unit and the materials placed in the files of the unit as a result of any such investigation are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code.~~

~~(d) The Insurance Fraud Unit shall perform other duties as may be assigned to it by the commissioner.~~

§33-41-11. Fraudulent claims to insurance companies acts; interference and participation of convicted felons prohibited.

~~(a) Any person who knowingly and willfully and with intent to defraud submits a materially false statement in support of a claim for insurance benefits or payment pursuant to a policy of insurance or who conspires to do so is guilty of a crime and is subject to the penalties set forth in the provisions of this section.~~

~~(b) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is \$1,000 or more in value is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than ten years, fined not more than \$10,000, or both, or in the discretion of the circuit court confined in jail for not more than one year and fined not more than \$10,000, or both.~~

~~(c) Any person who commits a violation of the provisions of subsection (a) of this section where the benefit sought is less than \$1,000 in value is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, fined not more than \$2,500, or both.~~

~~(d) Any person convicted of a violation of this section is subject to the restitution provisions of article eleven a, chapter sixty one of this code.~~

~~(e) In addition to the foregoing provisions, the offenses enumerated in sections twenty-four-e through twenty-four-h, inclusive, article three, chapter sixty-one of this code are applicable to matters concerning workers' compensation insurance.~~

~~(f) The circuit court may award to the unit or other law enforcement agency investigating a violation of this section or other criminal offense related to the business of insurance its cost of investigation.~~

(a) A person shall not commit a fraudulent insurance act as defined in §33-41-2 of this code.

(b) A person shall not knowingly or intentionally interfere with the enforcement of the provisions of this article or investigations of suspected or actual violations of this article.

(c) A person convicted of a felony involving dishonesty or breach of trust, or a felony violation law reasonably related to the business of insurance, shall not participate in the business of insurance.

(d) A person in the business of insurance shall not knowingly or intentionally permit a person convicted of a felony involving dishonesty or breach of trust, or of a felony reasonably related to the business of insurance, to participate in the business of insurance.

§33-41-11a. Insurer antifraud initiatives.

(a) Insurers shall have antifraud initiatives reasonably calculated to detect, prosecute, and prevent fraudulent insurance acts.

(b) Antifraud initiatives may include:

(1) Fraud investigators, who may be insurer employees or independent contractors; or

(2) An antifraud plan submitted to the commissioner. Antifraud plans submitted to the commissioner are privileged and confidential, are exempt from public disclosure under the provisions of §29B-1-1 *et seq.* of this code, and are not subject to discovery or subpoena in a civil or criminal action.

(c) The commissioner may propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code to set forth requirements or standards for the submission of insurer antifraud plans.

§33-41-12. Civil and criminal penalties; injunctive relief; employment disqualification; restitution.

(a) A person or entity engaged in the business of insurance or a person or entity making a claim against an insurer who violates any provision of this article may be subject to the following:

(1) Where applicable, suspension or revocation of license or certificate of authority or a civil penalty of up to \$10,000 per violation, or where applicable, both. Suspension or revocation of license or certificate of authority or imposition of civil penalties may be pursuant to an order of the commissioner issued pursuant to the provisions of §33-2-13 of this code. The commissioner's order may require a person found to be in violation of this article to make reasonable restitution

to persons aggrieved by violations of this article. The commissioner may assess a person sanctioned pursuant to the provisions of this section the cost of investigation;

(2) Notwithstanding any other provision of law, a civil penalty imposed pursuant to the provisions of this section is mandatory and not subject to suspension;

(3) A person convicted of a felony violation law reasonably related to the business of insurance shall be disqualified from engaging in the business of insurance; and

(4) The commissioner may apply for a temporary or permanent injunction in any appropriate circuit court of this state seeking to enjoin and restrain a person from violating or continuing to violate the provisions of this article or rule promulgated under this article, notwithstanding the existence of other remedies at law. The circuit court shall have jurisdiction of the proceeding and have the power to make and enter an order or judgment awarding temporary or permanent injunctive relief restraining any person from violating or continuing to violate any provision of this article or rule promulgated under the article as in its judgment is proper.

(b) Any person who commits a violation of the provisions of §33-41-11 of this code where the benefit sought is \$1,000 or more in value is guilty of a felony and, upon conviction thereof, shall be imprisoned in a correctional facility for not less than one nor more than 10 years, fined not more than \$10,000, or both fined and imprisoned, or in the discretion of the court, confined in jail for not more than one year and fined not more than \$10,000, or both fined and confined.

(c) Any person who commits a violation of the provisions of §33-41-11 of this code where the benefit sought is less than \$1,000 in value is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than one year, or fined not more than \$2,500, or both fined and confined.

(d) Any person convicted of a violation of §33-41-11 of this code is subject to the restitution provisions of §61-11A-1 of this code.

(e) A court may award to the unit or other law-enforcement agency investigating a violation of §33-41-11 of this code or other criminal offense related to the business of insurance its cost of investigation.

(f) In addition to the provisions of this section, the offenses enumerated in §61-3-24e through §61-3-24h, inclusive, of this code are applicable to matters concerning workers' compensation insurance.

The bill (Eng. Com. Sub. for H. B. 4361), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4362, Relating to penalties for neglect, emotional abuse or death caused by a caregiver.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4363, Establishing the West Virginia Division of Natural Resources Police Officer Retirement System.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Pensions, were reported by the Clerk, considered simultaneously, and adopted:

On page twenty-four, section five, line eleven, by striking out the words “plan to the Consolidated Public Retirement Board expense fund” and inserting in lieu thereof the following: “board from funds received by the board through gifts and bequests to the fund and any accretions and accumulations which may properly be paid into and become a part of the fund. The board may receive gifts and bequests for purposes of paying start-up costs as set forth in this subsection”;

On page thirty-two, section ten, line three, after the word “Natural” by inserting the word “Resources”;

And,

On page forty-four, section fifteen, line fifty-one, by striking out the word “distribute” and inserting in lieu thereof the word “distributee”.

The bill (Eng. Com. Sub. for H. B. 4363), as amended, was then ordered to third reading.

Eng. House Bill 4375, Speech-Language Pathologists and Audiologists Compact.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 4377, The Protection of Vulnerable Adults from Financial Exploitation Act.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

At the request of Senator Plymale, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the ninth order of business, the next bill coming up in numerical sequence being

Eng. Com. Sub. for House Bill 4378, Relating to disciplining teachers.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today’s second reading calendar.

Eng. Com. Sub. for House Bill 4388, Limiting the Alcohol Beverage Control Commissioner’s authority to restrict advertising.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 16. NONINTOXICATING BEER.

§11-16-2. Declaration of legislative findings, policy and intent; construction.

It is hereby found by the Legislature and declared to be the policy of this state that it is in the public interest to regulate and control the manufacture, sale, distribution, transportation, storage, and consumption of the beverages regulated by this article within this state and that, therefore, the provisions of this article are a necessary, proper, and valid exercise of the police powers of this state and are intended for the protection of the public safety, welfare, health, peace and morals and are further intended to eliminate, or to minimize to the extent practicable, the evils attendant to the unregulated, unlicensed, and unlawful manufacture, sale, distribution, transportation, storage, and consumption of such beverages and are further intended to promote temperance in the use and consumption thereof. In order to further these ends, the provisions of this article and of the rules ~~and regulations~~ promulgated pursuant thereto, shall be construed so that the accomplishment of these stated purposes may be effectuated.

§11-16-18. Unlawful acts of licensees; criminal penalties.

(a) It is unlawful:

(1) For any licensee, his, her, its, or their servants, agents, or employees to sell, give, or dispense, or any individual to drink or consume, in or on any licensed premises or in any rooms directly connected, nonintoxicating beer or cooler on weekdays between the hours of 2:00 a.m. and 7:00 a.m., or between the hours of 2:00 a.m. and 10:00 a.m., or a Class A retail dealer to sell nonintoxicating beer for on-premises consumption only between the hours of 2:00 a.m. and 1:00 p.m. in any county upon approval as provided for in §7-1-3ss of this code, on any Sunday, except in private clubs licensed under the provisions of §60-7-1 *et seq.* of this code, where the hours shall conform with the hours of sale of alcoholic liquors;

(2) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer, as defined in this article, to any person visibly or noticeably intoxicated or to any person known to be insane or known to be a habitual drunkard;

(3) For any licensee, his, her, its, or their servants, agents, or employees to sell, furnish, or give any nonintoxicating beer as defined in this article to any person who is less than 21 years of age;

(4) For any distributor to sell or offer to sell, or any retailer to purchase or receive, any nonintoxicating beer as defined in this article, except for cash and a right of action shall not exist to collect any claims for credit extended contrary to the provisions of this subdivision. Nothing herein contained in this section prohibits a licensee from crediting to a purchaser the actual price charged for packages or containers returned by the original purchaser as a credit on any sale, or from refunding to any purchaser the amount paid or deposited for the containers when title is retained by the vendor: *Provided*, That a distributor may accept an electronic transfer of funds if the transfer of funds is initiated by an irrevocable payment order on the invoiced amount for the

nonintoxicating beer. The cost of the electronic fund transfer shall be borne by the retailer and the distributor shall initiate the transfer no later than noon of one business day after the delivery;

~~(5) For any brewer or distributor or brew pub or his, her, its or their agents to transport or deliver nonintoxicating beer as defined in this article to any retail licensee on Sunday;~~

~~(6) (5) For any brewer or distributor to give, furnish, rent, or sell any equipment, fixtures, signs, supplies, or services directly or indirectly or through a subsidiary or affiliate to any licensee engaged in selling products of the brewing industry at retail or to offer any prize, premium, gift, or other similar inducement, except advertising matter, including indoor electronic or mechanical signs, of nominal value up to \$150.00 as authorized by the commissioner, to either trade or consumer buyers: *Provided*, That a distributor may offer, for sale or rent, tanks of carbonic gas. *Provided however*, that, in the interest of public health and safety, a distributor may, independently or through a subsidiary or affiliate, furnish, sell, install, or maintain draught line equipment, supplies, and cleaning services to a licensed retailer so long as the furnishing or sale of draught line services are not provided at a price less than their fair market value. For the purposes of this section, "equipment, supplies, and cleaning services" means glassware, standards, faucets, cold plates, rods, vents, taps, tap standards, hoses, washers, couplings, gas gauges, vent tongues, shanks, check valves, and carbon dioxide (or other gasses used to dispense nonintoxicating beer), ice, and services related to the installation and maintenance thereof. Nothing contained in this section prohibits a brewer from sponsoring any professional or amateur athletic event or from providing prizes or awards for participants and winners in any events. *Provided, however*, That no event shall be sponsored which permits actual participation by athletes or other persons who are minors, unless specifically authorized by the commissioner.~~

~~(5) (6) For any brewer or distributor to sponsor any professional or amateur athletic event or provide prizes or awards for participants and winners when a majority of the athletes participating in the event are minors, unless specifically authorized by the commissioner;~~

~~(6) (7) For any retail licensee to sell or dispense nonintoxicating beer through draught lines where the draught lines have not been cleaned at least every two weeks in accordance with rules promulgated by the commissioner, and where written records of all cleanings are not maintained and available for inspection;~~

~~(7) (8) For any licensee to permit in his or her premises any lewd, immoral, or improper entertainment, conduct, or practice;~~

~~(8) (9) For any licensee except the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code or a holder of a license or a private wine restaurant issued under the provisions of §60-8-1 *et seq.* of this code to possess a federal license, tax receipt, or other permit entitling, authorizing, or allowing the licensee to sell liquor or alcoholic drinks other than nonintoxicating beer;~~

~~(9) (10) For any licensee to obstruct the view of the interior of his or her premises by enclosure, lattice, drapes, or any means which would prevent plain view of the patrons occupying the premises. The interior of all licensed premises shall be adequately lighted at all times: *Provided*, That provisions of this subdivision do not apply to the premises of a Class B retailer, the premises of a private club licensed under the provisions of §60-7-1 *et seq.* of this code, or the premises of a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code;~~

~~(40)~~ (11) For any licensee to manufacture, import, sell, trade, barter, possess, or acquiesce in the sale, possession, or consumption of any alcoholic liquors on the premises covered by a license or on premises directly or indirectly used in connection with it: *Provided*, That the prohibition contained in this subdivision with respect to the selling or possessing or to the acquiescence in the sale, possession, or consumption of alcoholic liquors is not applicable with respect to the holder of a license to operate a private club issued under the provisions of §60-7-1 *et seq.* of this code nor shall the prohibition be applicable to a private wine restaurant licensed under the provisions of §60-8-1 *et seq.* of this code insofar as the private wine restaurant is authorized to serve wine;

~~(41)~~ (12) For any retail licensee to sell or dispense nonintoxicating beer, as defined in this article, purchased, or acquired from any source other than a distributor, brewer, or manufacturer licensed under the laws of this state;

~~(42)~~ (13) For any licensee to permit loud, boisterous, or disorderly conduct of any kind upon his or her premises or to permit the use of loud musical instruments if either or any of the same may disturb the peace and quietude of the community where the business is located: *Provided*, That a licensee may have speaker systems for outside broadcasting as long as the noise levels do not create a public nuisance or violate local noise ordinances;

~~(43)~~ (14) For any person whose license has been revoked, as provided in this article, to obtain employment with any retailer within the period of one year from the date of the revocation, or for any retailer to knowingly employ that person within the specified time;

~~(44)~~ (15) For any distributor to sell, possess for sale, transport, or distribute nonintoxicating beer except in the original container;

~~(45)~~ (16) For any licensee to knowingly permit any act to be done upon the licensed premises, the commission of which constitutes a crime under the laws of this state;

~~(46)~~ (17) For any Class B retailer to permit the consumption of nonintoxicating beer upon his or her licensed premises;

~~(47)~~ (18) For any Class A licensee, his, her, its, or their servants, agents, or employees, or for any licensee by or through any servants, agents, or employees, to allow, suffer, or permit any person less than 18 years of age to loiter in or upon any licensed premises; except, however, that the provisions of this subdivision do not apply where a person under the age of 18 years is in or upon the premises in the immediate company of his or her parent or parents, or where and while a person under the age of 18 years is in or upon the premises for the purpose of and actually making a lawful purchase of any items or commodities sold, or for the purchase of and actually receiving any lawful service rendered in the licensed premises, including the consumption of any item of food, drink, or soft drink lawfully prepared and served or sold for consumption on the premises;

~~(48)~~ (19) For any distributor to sell, offer for sale, distribute, or deliver any nonintoxicating beer outside the territory assigned to any distributor by the brewer or manufacturer of nonintoxicating beer or to sell, offer for sale, distribute, or deliver nonintoxicating beer to any retailer whose principal place of business or licensed premises is within the assigned territory of another distributor of the nonintoxicating beer: *Provided*, That nothing in this section is considered to prohibit sales of convenience between distributors licensed in this state where one distributor

sells, transfers, or delivers to another distributor a particular brand or brands for sale at wholesale; and

~~(19)~~ (20) For any licensee or any agent, servant, or employee of any licensee to knowingly violate any rule lawfully promulgated by the commissioner in accordance with the provisions of chapter 29A of this code.

(b) Any person who violates any provision of this article, including, but not limited to, any provision of this section, or any rule, or order lawfully promulgated by the commissioner, or who makes any false statement concerning any material fact in submitting an application for a license or for a renewal of a license or in any hearing concerning the revocation of a license, or who commits any of the acts in this section declared to be unlawful is guilty of a misdemeanor and, upon conviction thereof, shall be punished for each offense by a fine of not less than \$25, nor more than \$500, or confined in the county or regional jail for not less than 30 days nor more than six months, or by both fine and confinement. Magistrates have concurrent jurisdiction with the circuit court and any other courts having criminal jurisdiction in their county for the trial of all misdemeanors arising under this article.

(c) (1) A Class B licensee that:

(A) Has installed a transaction scan device on its licensed premises; and

(B) Can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold, furnished, or given away by the use of the transaction device may not be subject to: (i) Any criminal penalties whatsoever, including those set forth in subsection (b) of this section; (ii) any administrative penalties from the commissioner; or (iii) any civil liability whatsoever for the improper sale, furnishing, or giving away of nonintoxicating beer to an individual who is less than 21 years of age by one of his or her employees, servants, or agents. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to the criminal penalties of subsection (b) of this section. Any agent, servant, or employee who has improperly sold, furnished, or given away nonintoxicating beer to an individual less than 21 years of age is subject to termination from employment, and the employer shall have no civil liability for the termination.

(2) For purposes of this section, a Class B licensee can demonstrate that it requires each employee, servant, or agent to verify the age of any individual to whom nonintoxicating beer is sold by providing evidence: (A) That it has developed a written policy which requires each employee, servant, or agent to verify the age of each individual to whom nonintoxicating beer will be sold, furnished, or given away; (B) that it has communicated this policy to each employee, servant, or agent; and (C) that it monitors the actions of its employees, servants, or agents regarding the sale, furnishing, or giving away of nonintoxicating beer and that it has taken corrective action for any discovered noncompliance with this policy.

(3) "Transaction scan" means the process by which a person checks, by means of a transaction scan device, the age and identity of the cardholder, and "transaction scan device" means any commercial device or combination of devices used at a point of sale that is capable of deciphering in an electronically readable format the information enclosed on the magnetic strip or bar code of a driver's license or other governmental identity card.

(d) Nothing in this article nor any rule or regulation of the commissioner shall prevent or be considered to prohibit any licensee from employing any person who is at least 18 years of age to serve in the licensee's lawful employ, including the sale or delivery of nonintoxicating beer as defined in this article. With the prior approval of the commissioner, a licensee whose principal business is the sale of food or consumer goods, or the providing of recreational activities, including, but not limited to, nationally franchised fast food outlets, family oriented restaurants, bowling alleys, drug stores, discount stores, grocery stores, and convenience stores, may employ persons who are less than 18 years of age but at least 16 years of age: *Provided*, That the person's duties may not include the sale or delivery of nonintoxicating beer or alcoholic liquors: *Provided, however*, That the authorization to employ persons under the age of 18 years shall be clearly indicated on the licensee's license.

At the request of Senator Trump, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4388) was laid over one day, retaining its place on the calendar, with the Judiciary committee amendment pending.

Eng. Com. Sub. for House Bill 4395, Removing the requirement that a veterinarian access and report to the controlled substance monitoring database.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4406, Relating to the reproduction of checks and other records.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 4410, Permitting directors and executive officers of a banking institution to borrow from a banking institution with which he or she is connected.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4421, Natural Gas Liquids Economic Development Act.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4439, Clarifying the method for calculating the amount of severance tax attributable to the increase in coal production.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4447, Creating the shared table initiative for senior citizens who suffer from food insecurity.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4452, Modifying the notice requirements for the redemption of delinquent properties.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Government Organization, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 3. SALE OF TAX LIENS AND NONENTERED, ESCHEATED, AND WASTE AND UNAPPROPRIATED LANDS.

§11A-3-18. Limitations on tax certificates.

(a) No lien upon real property evidenced by a tax certificate of sale issued by a sheriff on account of any delinquent property taxes may remain a lien on the real property for a period longer than 18 months after the original issuance of the tax certificate of sale.

(b) All rights of a purchaser to the property, to a lien on the property, or to any other interest in the property, including, but not limited to any right to a tax deed, shall be considered forfeited and expired, and no tax deed is to be issued on any tax sale evidenced by a tax certificate of sale where the certificate has ceased to be a lien pursuant to the provisions of this section and application for the tax deed, pursuant to the provisions of §11A-3-27 of this code, is not pending at the time of the expiration of the limitation period provided in this section.

(c) Whenever a lien evidenced by a tax certificate of sale has expired by reason of the provisions of this section, the State Auditor shall immediately issue and record a certificate of cancellation describing the real estate included in the certificate of purchase or tax certificate and giving the date of cancellation, and the State Auditor shall also make proper entries in his or her records. The State Auditor shall also present a copy of every certificate of cancellation to the sheriff, who shall enter it in the sheriff's records, and the certificate and the record are prima facie evidence of the cancellation of the certificate of sale and of the release of the lien of the certificate on the lands described in the certificate. Failure to record the certificate of cancellation does not extend the lien evidenced by the certificate of sale. The sheriff and State Auditor are not entitled to any fees for the issuing of the certificate of cancellation, nor for the entries in their books made under the provisions of this subsection.

(d) Whenever a purchaser has complied with the notice requirements provided in §11A-3-19 of this code, but has failed to request a deed within the 18 month deadline provided in this section, thereby forfeiting all rights to a tax deed, the purchaser may recover the amounts paid in excess of the taxes owed and expenses incurred by the State Auditor in the processing of the tax lien if, within 30 days of the expiration of the lien, upon a showing of compliance with the ~~provisions~~ provisions of §11A-3-19 of this code, the purchaser files with the State Auditor a request in writing for the refund. A purchaser who fails to file the request within the 30-day period forfeits all rights to the refund.

(e) Whenever a purchaser has failed to comply with the notice requirements set forth in §11A-3-19 of this code, the purchaser may receive an additional 30 days to comply with the notice requirements set forth in §11A-3-19 of this code if, by December 1st of the year following the sale, the purchaser files with the State Auditor a request in writing for the extension and makes payment

by cash, cashier check, certified check, or money order in the amount of \$100 or 10 percent of the total amount paid on the day of sale set forth in §11A-3-5 of this code, whichever is greater. The fee for issuing the certificate of extension shall be \$25 made payable to the State Auditor.

(f) The State Auditor shall each month draw his or her warrant upon the Treasury payable to the county board of education of each county for payment received by him or her for the extension of the time period set forth in subsection (e) of this section for property located within each such county.

§11A-3-22. Service of notice.

(a) As soon as the State Auditor has prepared the notice provided in §11A-3-21 of this code, he or she shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of §11A-3-19 of this code.

(b) The notice shall be served upon all persons residing or found in the state in the manner provided for serving process commencing a civil action, or by certified mail, return receipt requested, or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30th day following the request for the notice.

~~(c) If a person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he or she shall be served at that address by certified mail, return receipt requested.~~

~~(d) If the address of a person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code and the publication area for the publication shall be the county in which the real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth in this section and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.~~

(c) The notice shall be served upon persons not residing or found in the state by certified mail, return receipt requested, or in the manner provided for serving process commencing a civil action, or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30 days following the request for the notice.

(d) If the address of a person is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 et seq. of this code, and the publication area for the publication shall be the county in which the real property is located. If service by publication is necessary, publication shall be commenced within 60 days following the request for the notice, and a copy of the notice shall, at the same time, be sent pursuant to subsection (b) or (c) of this section, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.

(e) In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the same time the State Auditor issues the required notices by certified mail, the State Auditor shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, or in the manner provided for serving process commencing a civil action, addressed to "Occupant", to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the tax lien pursuant to the provisions of §11A-3-19 of this code. Where the mail is not deliverable to an address at the physical location of the subject property, the copy of the notice shall be sent to any other mailing address that exists to which the notice would be delivered to an occupant of the subject property.

§11A-3-52. What purchaser must do before he or she can secure a deed.

(a) Within 45 days following the approval of the sale by the auditor pursuant to §11A-3-51 of this code, the purchaser, his or her heirs or assigns, in order to secure a deed for the real estate purchased, shall:

(1) Prepare a list of those to be served with notice to redeem and request the deputy commissioner to prepare and serve the notice as provided in §11A-3-54 and §11A-3-55 of this code;

(2) When the real property subject to the tax lien was classified as Class II property, provide the deputy commissioner with the actual mailing address of the property that is subject to the tax lien or liens purchased; and

(3) Deposit, or offer to deposit, with the deputy commissioner a sum sufficient to cover the costs of preparing and serving the notice.

(b) If the purchaser fails to fulfill the requirements set forth in ~~paragraph~~ subsection (a) of this section, the purchaser shall lose all the benefits of his or her purchase.

(c) After the requirements of ~~paragraph~~ subsection (a) of this section have been satisfied, the deputy commissioner may then sell the property in the same manner as he sells lands which have been offered for sale at public auction but which remain unsold after such auction, as provided in §11A-3-48 of this code.

(d) If the person requesting preparation and service of the notice is an assignee of the purchaser, he or she shall, at the time of the request, file with the deputy commissioner a written assignment to him or her of the purchaser's rights, executed, acknowledged, and certified in the manner required to make a valid deed.

(e) Whenever a purchaser has failed to comply with the notice requirements set forth in subsection (a) of this section, the purchaser may receive an additional 30 days to comply with the notice requirements set forth in subsection (a) of this section if the purchaser files with the State Auditor a request in writing for the extension before the expiration of the time period set forth in subsection (a) of this section and makes payment by cash, cashier check, certified check, or money order in the amount of \$100 or 10 percent of the total amount paid on the day of sale set forth in §11A-3-45 of this code, whichever is greater. The fee for issuing the certificate of extension shall be \$25 made payable to the State Auditor.

(f) The State Auditor shall each month draw his or her warrant upon the Treasury payable to the county board of education of each county for payment received by him or her for the extension of the time period set forth in subsection (e) of this section for property located within each such county.

§11A-3-55. Service of notice.

(a) As soon as the deputy commissioner has prepared the notice provided for in §11A-3-54 of this code, he or she shall cause it to be served upon all persons named on the list generated by the purchaser pursuant to the provisions of §11A-3- 52 of this code. Such notice shall be mailed and, if necessary, published at least 45 days prior to the first day a deed may be issued following the deputy commissioner's sale.

(b) The notice shall be served upon all such persons residing or found in the state in the manner provided for serving process commencing a civil action or by certified mail, return receipt requested or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30th day following the request for such notice.

~~If any person entitled to notice is a nonresident of this state, whose address is known to the purchaser, he shall be served at such address by certified mail, return receipt requested.~~

~~If the address of any person entitled to notice, whether a resident or nonresident of this state, is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for such publication shall be the county in which such real estate is located. If service by publication is necessary, publication shall be commenced when personal service is required as set forth above, and a copy of the notice shall at the same time be sent by certified mail, return receipt requested, to the last known address of the person to be served. The return of service of such notice, and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the auditor in his office, together with any return receipts for notices sent by certified mail.~~

(c) The notice shall be served upon persons not residing or found in the state by certified mail, return receipt requested, or in the manner provided for serving process commencing a civil action or other types of delivery service courier that provide a receipt. The notice shall be served on or before the 30 days following the request for the notice.

(d) If the address of a person is unknown to the purchaser and cannot be discovered by due diligence on the part of the purchaser, the notice shall be served by publication as a Class III-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication shall be the county in which the real property is located. If service by publication is necessary, publication shall be commenced within 60 days following the request for the notice, and a copy of the notice shall be at the same time be sent pursuant to subsection (b) or (c) of this section, to the last known address of the person to be served. The return of service of the notice and the affidavit of publication, if any, shall be in the manner provided for process generally and shall be filed and preserved by the State Auditor in his or her office, together with any return receipts for notices sent by certified mail.

(e) In addition to the other notice requirements set forth in this section, if the real property subject to the tax lien was classified as Class II property at the time of the assessment, at the

same time the deputy commissioner issues the required notices by certified mail, the deputy commissioner shall forward a copy of the notice sent to the delinquent taxpayer by first class mail, or in the manner provided for serving process commencing a civil action, addressed to "Occupant", to the physical mailing address for the subject property. The physical mailing address for the subject property shall be supplied by the purchaser of the property, pursuant to the provisions of §11A-3-52 of this code. Where the mail is not deliverable to an address at the physical location of the subject property, the copy of the notice shall be sent to any other mailing address that exists to which the notice would be delivered to an occupant of the subject property.

The bill (Eng. Com. Sub. for H. B. 4452), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4484, Relating to the Hazardous Waste Management Fund.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4497, Requiring an external defibrillator device at any secondary school athlete event.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4499, Relating to multicounty trail network authorities.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. House Bill 4502, Relating to insurance adjusters.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on Banking and Insurance, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 12B. ADJUSTERS.

§33-12B-1. Definitions.

~~(a) An "adjuster" is any individual who, for compensation, fee or commission, investigates and settles claims arising under property, casualty or surety insurance contracts, on behalf solely of either the insurer or insured. A licensed attorney who is qualified to practice law in this state is deemed not to be an adjuster for the purposes of this article~~

~~(b)~~ (a) "Automated claims adjudication system" means a preprogrammed computer system designed for the collection, data entry, calculation, and final resolution of portable electronics insurance claims which:

(1) May only be used by a licensed adjuster, licensed producer, or supervised individuals operating pursuant to ~~section four-a of this article~~ §33-12B-3(a)(14) of this code;

(2) Must comply with all claims payments requirements of the insurance code; and

(3) Must be certified as compliant with this section by a licensed adjuster that is an officer of the entity which employs the individuals operating pursuant to ~~section four a of this article~~ §33-12B-3(a)(14) of this code.

(b) "Business entity" means a corporation, association, partnership, limited liability company, limited liability partnership, or other legal entity.

(c) "Company adjuster" means an adjuster representing the interests of the insurer, including an independent contractor and a salaried employee of the insurer who is a staff employee of an insurance company, who is paid by the insurance company, and who investigates, negotiates, or settles claims.

(d) "Home state" means the District of Columbia or any state, commonwealth, or territory of the United States in which an adjuster maintains his or her principal place of residence or business and in which he or she is licensed to act as a resident adjuster. If a person's principal place of residence or business does not license adjusters for the type of adjuster license sought in this state, he or she shall designate as his or her home state any state in which he or she has such a license.

(e) "Independent adjuster" means a person who:

(1) Is an individual, a business entity, an independent contractor, or an employee of a contractor, who contracts for compensation with insurers or self-insurers;

(2) Is one whom the insurer's or self-insurer's tax treatment of the individual is consistent with that of an independent contractor, rather than as an employee, as defined in the Internal Revenue Code, United States Code, Title 26, Subtitle C; and

(3) Investigates, negotiates, or settles property, casualty, or workers' compensation claims for insurers or self-insurers.

(f) "Individual" means a natural person.

(g) "Insurance emergency" means a temporary situation, as declared by the commissioner pursuant to §33-2-10a of this code, when the number of licensed adjusters in this state is inadequate to meet the demands of the public.

(h) "Person" means an individual or business entity.

~~(e)~~ (i) "Public adjuster" means an independent contractor representing solely the financial interests of the insured named in the policy any person who, for compensation or any other thing of value on behalf of the insured:

(1) Acts or aids, solely in relation to first-party claims arising under insurance contracts that insure the real or personal property of the insured, on behalf of an insured in negotiating for, or effecting the settlement of, a claim for loss or damage covered by an insurance contract;

(2) Advertises for employment as a public adjuster of insurance claims or solicits business or represents himself or herself to the public as a public adjuster of first-party insurance claims for losses or damages arising out of policies of insurance that insure real or personal property; or

(3) Directly or indirectly solicits business, investigates or adjusts losses, or advises an insured about first-party claims for losses or damages arising out of policies of insurance that insure real or personal property for another person engaged in the business of adjusting losses or damages covered by an insurance policy on behalf of an insured.

~~(f) "Crop adjuster" means a person who adjusts crop insurance claims under the federal crop insurance program administered by the United States Department of Agriculture~~

§33-12B-2. License required.

(a) No person may act or hold himself, herself, or itself out as a company adjuster, an independent adjuster, or a public adjuster in this state unless the person is licensed in accordance with this article or is exempt from licensure under this article.

(b) The license shall contain the licensee's name, address, personal identification number, the date of issuance, expiration date, and any other information the commissioner deems necessary.

(c) A person licensed as a public adjuster shall not misrepresent to a claimant that he, she, or it is an adjuster representing an insurer in any capacity, including acting as an employee of the insurer or acting as an independent adjuster unless so appointed by an insurer in writing to act on the insurer's behalf for that specific claim or purpose. A licensed public adjuster is prohibited from charging that specific claimant a fee when appointed by the insurer and the appointment is accepted by the public adjuster.

(d) The commissioner shall license an individual as a company adjuster, independent adjuster, or public adjuster. An individual may be licensed concurrently under separate licenses but shall not act as an adjuster representing the interests of the insured and the insurer with respect to the same claim.

§33-12B-3. Company, public and crop adjusters; concurrency; direct conflict prohibited Exemptions from license requirement.

~~The commissioner shall license an individual as a company adjuster, public adjuster or crop adjuster. An individual may be licensed concurrently under separate licenses but shall not act as an adjuster representing the interests of the insured and the insurer with respect to the same claim~~

(a) Notwithstanding any other provisions of this article, a company adjuster license or independent adjuster license shall not be required of the following:

(1) Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

(2) A person employed only for the purpose of obtaining facts surrounding a claim or furnishing technical assistance to a licensed company or independent adjuster;

(3) An individual who is employed to investigate suspected fraudulent insurance claims but who does not adjust losses, investigate or determine coverage, or determine claim payments;

(4) A person who solely performs executive, administrative, managerial, or clerical duties, or any combination thereof, and who does not investigate, negotiate, or settle insurance claims with policyholders, claimants, or their legal representative;

(5) A licensed health care provider or its employee who is not responsible for determining compensability;

(6) A managed care organization or any of its employees or an employee of any organization providing managed care services, so long as the managed care organization or employee referenced herein is not determining compensability;

(7) A person who settles reinsurance or subrogation claims between insurers;

(8) An officer, director, or manager of an authorized insurer, surplus lines insurer, a risk retention group, or an attorney-in-fact of a reciprocal insurer;

(9) A manager of the United States branch of an alien insurer;

(10) A person who investigates, negotiates, or settles life, accident and health, annuity, or disability insurance claims;

(11) An individual employee, under a self-insured arrangement, who adjusts claims on behalf of his or her employer;

(12) A licensed individual producer, attorney-in-fact of a reciprocal insurer, or managing general agent of the insurer to whom claim authority has been granted by the insurer;

(13) A business entity licensed under the authority of §33-46-1 *et seq.* of this code;

(14) Individuals who collect claim information from, or furnish claim information to, insureds or claimants, and who conduct data entry, including entering data into an automated claims adjudication system are exempt from licensure under this article: *Provided*, That the individuals are under the supervision of a licensed adjuster or licensed producer: *Provided however*, That no more than 25 persons are under the supervision of one licensed adjuster or licensed producer; or

(15) Company adjusters employed by an insurer outside of this state who adjust claims solely by telephone, fax, United States mail, and electronic mail, and who do not physically enter this state in the course of adjusting such claims: *Provided*, That such adjusters shall be subject to the jurisdiction of, and regulation by, the commissioner in regard to their adjustment of West Virginia claims: *Provided, however*, That the commissioner may require such adjusters to complete continuing education, not to exceed requirements pursuant to §33-12B-13(d) of this code, to address any deficiencies with respect to their claims handling practices.

(b) Notwithstanding any other provisions of this article, a public adjuster license shall not be required of the following:

(1) Attorneys-at-law admitted to practice in this state, when acting in their professional capacity as an attorney;

(2) A person who negotiates or settles claims arising under a life or health insurance policy or an annuity contract;

(3) A person employed only for the purpose of obtaining facts surrounding a loss or furnishing technical assistance to a licensed public adjuster;

(4) A licensed health care provider, or employee of a licensed health care provider, who prepares or files a health claim form on behalf of a patient; or

(5) A person who settles subrogation claims between insurers.

§33-12B-4. License required; exception Temporary licensure for emergency company or independent adjusters.

~~No person shall in West Virginia act as or hold out to be an adjuster unless then licensed therefor pursuant to this article: *Provided*, That the provisions of this section do not apply to emergency insurance adjusters as defined in section eleven-a of this article~~

(a) In the event of a declared insurance emergency, an insurer shall notify the commissioner with an application for temporary emergency licensure for each individual who will act as an emergency company adjuster or emergency independent adjuster on behalf of the insurer.

(b) A person who is otherwise qualified to adjust claims, but not already licensed in this state when the insurance emergency has been declared, may act as an emergency company or independent adjuster and adjust claims if, within five days of the declared insurance emergency, the insurer notifies the commissioner by providing the following information in a format proposed by the commissioner:

(1) Name and address of the individual;

(2) National Producer Number of the individual if the individual has a National Producer Number;

(3) Name of the insurer which the company or independent adjuster will represent;

(4) Effective date of the contract between the insurer and independent adjuster, if applicable;

(5) Insurance emergency or loss control number;

(6) Insurance emergency event name; and

(7) Any other information the commissioner deems necessary.

(c) An emergency company or independent adjuster's license shall remain in force for a period not to exceed 90 days, unless extended for an additional period by the commissioner.

(d) The fee for emergency company or independent adjuster application for licensure shall be in an amount specified in §33-12B-8 of this code. The fee shall be due and payable at the time of application for licensure.

§33-12B-4a. Exemptions from license.

[Repealed]

§33-12B-5. Qualifications for resident adjuster's license; examination; exemptions.

~~(a) For the protection of the people of West Virginia, the commissioner shall not issue, renew or permit to exist any adjuster's license, except to an individual who~~ An individual applying for a resident adjuster license shall make application to the commissioner and declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the individual's knowledge and belief. Before approving the application, the commissioner shall find that the individual:

(1) Is 18 years of age or more;

(2) Is a resident of West Virginia, except for nonresident adjusters as provided in section nine of this article or eligible to designate West Virginia as his or her home state;

(3) Satisfies the commissioner that he or she is trustworthy, and competent, reliable, and of good reputation, evidence of which may be determined by the commissioner;

(4) Has a business or mailing address in this state for acceptance of service of process or, if residing outside of this state, acknowledges that by adjusting claims in this state he or she is subject to this state's jurisdiction, pursuant to §56-3-33 of this code, and automatically appoints the West Virginia Secretary of State as his or her agent for service of process;

(5) Has not committed any act that is a ground for probation, suspension, revocation, or refusal of an adjuster's license as set forth in §33-12B-11 of this code;

(6) Has successfully passed the written examination for the line or lines of authority for which the person has applied; and

(7) Has paid the fees applicable to licensure.

~~(b)(1) The commissioner may, at his or her discretion, test the competency of an applicant for a license under this section by examination. However, in order to qualify for a crop adjuster license, an applicant must pass a written examination that tests the knowledge of the individual concerning the insurance laws of this state and the duties and responsibilities of a multi-peril crop adjuster. In lieu of such an examination, the commissioner may accept certification that the individual has passed a proficiency examination approved by the federal Risk Management Agency~~ A resident individual applying for an adjuster license shall pass a written examination unless exempt pursuant to §33-12B-5(b)(5) or §33-12B-5(b)(6) of this code. The examination shall test the knowledge of the individual concerning the line or lines of authority for which application is made, if applicable, the duties and responsibilities of an adjuster, and the insurance laws and rules of this state. However, to qualify for an adjuster license with the crop line of authority, the commissioner may accept, in lieu of such an examination, certification that the individual has passed a proficiency examination approved by the United States Department of Agriculture Risk Management Agency.

(2) ~~If such an examination is required~~ Each examinee shall pay a nonrefundable \$25 examination fee for each examination to the commissioner, which fees shall be used for the

purposes set forth in §33-3-13 of this code. The commissioner may, at his or her discretion, designate an independent testing service to prepare and administer such examination subject to direction and approval by the commissioner, and examination fees charged by such service shall be paid by the applicant.

(3) An individual who fails to appear for the examination as scheduled, or fails to pass the examination, shall reapply for an examination and remit all required fees and forms before being rescheduled for another examination.

(4) An individual who initially fails to pass an examination required by this section is limited to seven additional attempts to pass the examination.

(5) An individual who applies for an adjuster license in this state, who was previously licensed for the same lines of authority in another jurisdiction, shall not be required to complete any prelicensing examination. This exemption is only available if the individual is currently licensed in that jurisdiction, or if the application is received within 90 days of the cancellation of the applicant's previous license, and if the prior jurisdiction issues a certification that, at the time of cancellation, the applicant was in good standing in that jurisdiction or the jurisdiction's adjuster database records, maintained by the National Association of Insurance Commissioners, its affiliates or subsidiaries, indicate that the adjuster is or was licensed in good standing for the line of authority requested. The certification must be of a license with the same line of authority for which the individual has applied.

(6) An individual licensed as an adjuster in another jurisdiction who moves to this state shall make application within 90 days of establishing legal residence to become a resident licensee pursuant to this section: *Provided*, That no pre-licensing examination shall be required of that individual to obtain any line of authority previously held in the prior jurisdiction, except where the commissioner determines otherwise by rule.

(7) Examinations may be developed and conducted under rules proposed by the commissioner.

(8) Examinations required by this subsection are applicable for individual adjusters first licensed on or after July 1, 2021, or for individual adjusters who add a line of authority to an existing adjuster license on or after July 1, 2021.

(c) A business entity applying for a resident independent or public adjuster license shall make application to the commissioner on forms proposed by the commissioner and shall declare under penalty of suspension, revocation, or refusal of the license that the statements made in the application are true, correct, and complete to the best of the business entity's knowledge and belief. Before approving the application, the commissioner shall find that the business entity:

(1) Is eligible to designate West Virginia as its home state;

(2) Has a business or mailing address in this state for acceptance of service of process;

(3) Has designated a licensed independent or public adjuster responsible for the business entity's compliance with the insurance laws and rules of this state; and

(4) Has not committed an act that is a ground for probation, suspension, revocation, or refusal of an independent or public adjuster's license as set forth in §33-12B-11 of this code.

~~(c)~~(d) The requirements of this section do not apply to temporary licenses issued to emergency company adjusters or emergency independent adjusters.

§33-12B-6. Application Authorization for criminal history record check; fees.

~~(a) Application for an adjuster's license or renewal thereof or emergency adjusters' licenses shall be made to the commissioner upon a form prescribed by him and shall contain such information and be accompanied by such supporting documents as the commissioner may require, and the commissioner may require such application to be made under the applicant's oath. In furtherance of the national goal of promoting uniformity and reciprocity among the states, commonwealths, territories, and the District of Columbia with regard to adjuster licensing, this section sets forth the requirements to obtain access to the Federal Bureau of Investigation Criminal Justice Information Services Division criminal history record information and to secure information or reports from the Federal Bureau of Investigation Criminal Justice Information Services Division. The scope of this section is to set forth the applicability of the criminal history record check to applicants for a home state insurance adjuster license.~~

~~(b) As used in this section, the following terms have the meanings ascribed in this subsection, unless a different meaning is clearly required by the context:~~

~~(1) "Applicant" means a natural person applying for:~~

~~(A) An initial home state license as an insurance adjuster;~~

~~(B) An additional line of authority under an existing home state insurance adjuster license where a criminal history record check has not been obtained; or~~

~~(C) A resident insurance adjuster license under change of home state provisions.~~

~~"Applicant" does not mean a person applying for renewal or continuation of a home state insurance adjuster license or a nonresident insurance adjuster license.~~

~~(2) "Fingerprint" means an impression of the lines on the finger taken for the purpose of identification. The impression may be obtained electronically or in ink converted to an electronic format.~~

~~(c) In order to make a determination of adjuster license eligibility, the commissioner is authorized to require fingerprints of applicants and to submit the fingerprints and the fee required to perform a criminal history record check to the West Virginia State Police and to the Federal Bureau of Investigation.~~

~~(d) The commissioner shall require a criminal history record check on each applicant in accordance with this section. The commissioner shall require each applicant to submit a full set of fingerprints, including a scanned file from a hard copy fingerprint, in order for the commissioner to obtain and receive national criminal history records from the Federal Bureau of Investigation's Criminal Justice Information Services Division.~~

~~(e) The commissioner shall collect a fee from each applicant in an amount sufficient to cover:~~

(1) The cost of the collection and transmittal of fingerprints by persons, including local law enforcement agencies that are approved by the commissioner to capture fingerprints, to the West Virginia State Police and the Federal Bureau of Investigation; and

(2) The cost of any amounts charged by the West Virginia State Police and the Federal Bureau of Investigation to perform the criminal history record checks.

(f) The commissioner may contract for the collection and transmission of fingerprints authorized under this section and may order that the fee for collecting and transmitting fingerprints be payable directly by the applicant to the contractor.

(g) The commissioner is authorized to receive criminal history record information directly from the Federal Bureau of Investigation, in lieu of via transmission of the information from the Federal Bureau of Investigation to the West Virginia State Police.

(h) The commissioner shall treat and maintain an applicant's fingerprints and any criminal history record information obtained under this section as confidential and shall apply security measures consistent with the Federal Bureau of Investigation's Criminal Justice Information Services Division standards for the electronic storage of fingerprints and necessary identifying information. The commissioner shall limit the use of records solely to the purposes authorized in this section. The fingerprints and the criminal history record information in the custody of the commissioner are not subject to subpoena, other than one issued in a criminal action or investigation, are confidential by law and privileged, and are not subject to discovery or admissible in evidence in any private civil action.

§33-12B-7. Issuance of license Lines of authority.

The commissioner may issue a license to any individual as an adjuster who complies with the applicable provisions of this chapter and who in the opinion of the commissioner is trustworthy and competent (a) An independent adjuster or a company adjuster may qualify for a license in one or more of the following lines of authority:

(1) Property and casualty;

(2) Workers' compensation; or

(3) Crop.

(b) A public adjuster may only qualify for a license designating a property and casualty line of authority.

§33-12B-8. License fee; exemptions fees.

(a) The annual fee for an adjuster's individual adjuster license shall be \$25, as provided in section thirteen, article three of this chapter: *Provided*, That when any other state imposes a tax, bond, fine, penalty, license fee or other obligation or prohibition on adjusters resident in this state, the same tax, bond, fine, penalty, license fee or other obligation or prohibition shall be imposed upon adjusters (where licensing of nonresident adjusters is permitted under this article) of each other state licensed or seeking a license in this state. All fees and moneys so collected shall be used for the purposes set forth in section thirteen, article three of this chapter: *Provided, however*,

~~That the provisions of this section shall not apply to emergency insurance adjusters as defined in section eleven-a of this article~~

(b) The annual fee for a business entity adjuster license shall be \$200.

(c) The fee for a temporary emergency adjuster license shall be \$25.

(d) All fees collected pursuant to this section shall be used for the purposes set forth in §33-3-13 of this code.

§33-12B-9. Licensing of nonresident adjusters.

(a) A nonresident applicant for an adjuster license who holds a similar license in his or her home state may be licensed as a nonresident adjuster in this state if the applicant's home state has established, by law or regulation, like requirements for the licensing of a resident of this state as a nonresident adjuster.

(b) As a condition of continuing a nonresident adjuster license, the licensee must maintain a license in his or her home state. The commissioner may verify the adjuster's licensing status through the producer database maintained by the National Association of Insurance Commissioners, its affiliates, or subsidiaries.

(c) If a nonresident adjuster desires to become a resident adjuster, he or she must apply to become one within 90 days of establishing legal residency in this state.

(d) If a nonresident adjuster has his or her license suspended, terminated, or revoked by his or her home state, the adjuster must immediately notify the commissioner of that action and, with respect to license terminations or revocations, surrender the license to the commissioner.

(e) A resident of Canada may be licensed as a nonresident adjuster under this section if that person has obtained a resident or home state adjuster license in another state United States jurisdiction.

§33-12B-10. Expiration of license; renewal.

~~(a) All licenses of adjusters shall~~ The commissioner may, in his or her discretion, fix the dates of expiration of respective licenses for all adjusters in any manner as is considered by him or her to be advisable for an efficient distribution of the workload of his or her office. If the expiration date so fixed would upon first occurrence shorten the period for which a license fee has theretofore been paid, no refund of the unearned fee shall be made. If the expiration date so fixed would upon first occurrence lengthen the period for which license fee had theretofore been paid, the commissioner shall charge no additional fee for the lengthened period. If another date is not so fixed by the commissioner, each license shall, unless continued as herein above provided, expire at midnight on May 31 next following the date of issuance, and the commissioner shall renew annually the license of all such licensees who qualify, and make application therefor, and have paid the fees set forth in this article. However, the commissioner may, in his or her discretion, establish the dates of expiration of licenses in any manner deemed advisable for an efficient distribution of the workload of his or her office

(b) An adjuster whose license expires may, if application is made within one year of the expiration date, be reissued a license upon payment of twice the renewal fee.

(c) The commissioner may waive any renewal requirement for any adjuster who is unable to comply due to military service, long-term medical disability, or other extenuating circumstance.

(d) As a condition of the renewal of ~~a crop~~ an adjuster license with the designation of a crop insurance line of authority, the commissioner may require that the licensee demonstrate that he or she has maintained certification of proficiency issued or approved by the USDA United States Department of Agriculture Risk Management Agency.

§33-12B-11. Denial, revocation, suspension, probation, or refusal to renew license; penalties; violations.

(a) The commissioner may examine and investigate the business affairs and conduct of persons applying for or holding an adjuster license to determine whether such person is trustworthy and competent or has been or is engaged in any violation of the insurance laws or rules of this state or in any unfair or deceptive acts or practices in any state.

(b) If the commissioner denies an initial or renewal application for a license, he or she shall notify the applicant or licensee in writing of the reason for such action. The applicant or licensee may, within 10 days of receipt of such notice, make written demand for a hearing before the commissioner to determine the reasonableness of the action, and such hearing shall be held in accordance with the provisions of §33-2-13 of this code.

(c) Whenever, after notice and hearing, the commissioner is satisfied that any adjuster has violated any provision of this chapter or of rules promulgated or proposed hereunder, or is incompetent or untrustworthy, he or she shall place the adjuster on probation or refuse to issue, revoke, suspend, or, if renewal of license is pending, refuse to renew the license of such adjuster. In addition to placing a licensee on probation or revoking, suspending, or refusing to renew or issue his or her license, the commissioner may in his or her discretion order such licensee to pay to the State of West Virginia an administrative penalty in a sum not to exceed \$1,000 for each violation. Upon the failure of ~~the~~ a licensee to pay such within 30 days a civil penalty imposed by the commissioner, his or her license shall be revoked or suspended by the commissioner.

(d) Each of the following shall constitute a violation under this article:

(1) Providing incorrect, misleading, incomplete, or materially untrue information in the license application;

(2) Violating any insurance statute, rule, subpoena, or order of the commissioner or of another state's insurance commissioner;

(3) Obtaining or attempting to obtain a license through misrepresentation or fraud;

(4) Improperly withholding, misappropriating, or converting any monies or properties received in the course of doing insurance business;

(5) Intentionally misrepresenting the terms of an actual or proposed insurance contract or application for insurance;

(6) Having been convicted of or pleaded nolo contendere to any felony;

(7) Having been convicted of or pleaded nolo contendere to a misdemeanor in connection with his or her activities relating to the business of insurance;

(8) Having admitted or been found to have committed any insurance unfair trade practice or fraud;

(9) Having an insurance license or its equivalent suspended, revoked, or refused in any other state, province, district, or territory;

(10) Forging any document or signature relating to an insurance transaction or fraudulently procuring a forged signature to any document related to an insurance transaction;

(11) Cheating, including improperly using notes or any other reference material, in the course of taking an examination for an insurance license;

(12) Using fraudulent, coercive, or dishonest practices, or demonstrating incompetence, untrustworthiness, or financial irresponsibility, in the conduct of insurance business in this state or elsewhere;

(13) Failing to comply with an administrative or court order imposing a child support obligation;
or

(14) Failing to pay state income tax or comply with any administrative or court order directing payment of state income tax which remains unpaid.

~~(d) (e)~~ Orders issued pursuant to ~~subsection (b) or (c)~~ of this section are subject to the judicial review provisions of §33-2-14 of this code.

§33-12B-11a. Emergency adjusters and insurance emergencies; definitions; authorization of temporary emergency adjusters; applications; limitations and authority.

[Repealed]

§33-12B-12. Rules and regulations.

~~The commissioner is authorized to promulgate such rules and regulations as are necessary to effectuate the provisions of this article. Such rules and regulations shall be promulgated and adopted pursuant to the provisions of chapter twenty nine a of this code. may propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code to implement the provisions of this article.~~

§33-12B-13. Continuing education.

(a) The purpose of this section is to provide continuing education requirements for individual adjusters under guidelines established by the commissioner's office in conjunction with the Board of Insurance Agent Education as provided in §33-12-7 of this code.

(b) This section applies to company adjusters, independent adjusters, and public adjusters licensed pursuant to §33-12B-2 of this code.

(c) This section shall not apply to:

(1) Licensees not licensed for one full year prior to the end of the applicable continuing education biennium; or

(2) Licensees holding nonresident adjuster licenses who have met substantially similar continuing education requirements of their designated home state and whose home state gives credit to residents of this state on the same basis.

(d)(1) The Board of Insurance Agent Education as established by §33-12-7 of this code shall develop a program of continuing education for adjusters and submit the proposal for the approval of the commissioner on or before December 31 of each year. No program may be approved by the commissioner that includes a requirement that any individual adjuster complete more than 24 hours of continuing insurance education biennially.

(2) The biennium mandatory continuing education provisions of this section become effective on the reporting period beginning July 1, 2021.

(3) The commissioner and the Board of Insurance Agent Education, under standards established by the board, may approve any course or program of instruction developed or sponsored by an authorized insurer, accredited college or university, adjusters' association, insurance trade association, or independent program of instruction that presents the criteria and the number of hours that the board and commissioner determine appropriate for the purpose of this section.

(e) An individual who holds an adjuster license and who is not exempt shall satisfactorily complete a minimum of 24 hours of continuing education courses, of which three hours must be in ethics, reported to the commissioner on a biennial basis in conjunction with their license renewal cycle.

(f) Every individual adjuster subject to the continuing education requirements shall furnish, at intervals and on forms as may be proposed by the commissioner, written certification listing the courses, programs, or seminars of instruction successfully completed by the adjuster. The certification shall be executed by, or on behalf of, the organization sponsoring the courses, programs, or seminars of instruction.

(g) Subject to the approval of the commissioner, the active annual membership by an adjuster in an organization or association recognized and approved by the commissioner as a state, regional, or national professional insurance organization or association may be approved by the commissioner for up to two hours of continuing insurance education: *Provided*, That not more than two hours of continuing education may be awarded to an adjuster for membership in a professional insurance organization during a biennial reporting period.

(h) Adjusters who exceed the minimum continuing education requirement for the biennial reporting period may carry over a maximum of six credit hours only into the next reporting period.

(i) Any individual adjuster failing to meet the requirements mandated in this section and who has not been granted an extension of time with respect to the requirements, or who has submitted to the commissioner a false or fraudulent certificate of compliance, shall have his or her license automatically suspended and no further license may be issued to the person until the person demonstrates to the satisfaction of the commissioner that he or she has complied with all of the requirements mandated by this section and all other applicable laws or rules.

(j) The commissioner shall notify the individual adjuster of his or her suspension pursuant to subsection (i) of this section by certified mail, return receipt requested, to the last address on file with the commissioner pursuant to §33-12B-2(b) of this code. Any individual insurance adjuster who has had a suspension order entered against him or her pursuant to this section may, within 30 calendar days of receipt of the order, file with the commissioner a request for a hearing for reconsideration of the matter.

(k) Any individual adjuster who does not satisfactorily demonstrate compliance with this section and all other laws applicable thereto as of the last day of the biennium following his or her suspension shall have his or her license automatically terminated and is subject to the licensing and examination requirements of §33-12B-5 of this code.

(l) The commissioner is authorized to hire personnel and make reasonable expenditures considered necessary for purposes of establishing and maintaining a system of continuing education for adjusters. The commissioner shall charge a fee of \$25 to continuing education providers for each continuing education course submitted for approval which shall be used to maintain the continuing education system. The commissioner may, at his or her discretion, designate an outside administrator to provide all of or part of the administrative duties of the continuing education system subject to direction and approval by the commissioner. The fees charged by the outside administrator shall be paid by the continuing education providers. In addition to fees charged by the outside administrator, the outside administrator shall collect and remit to the commissioner the \$25 course submission fee.

§33-12B-15. Effective date for 2020 amendments.

The effective date of the amendments made to this article during the 2020 regular legislative session is July 1, 2021.

The bill (Eng. H. B. 4502), as amended, was then ordered to third reading.

Eng. House Bill 4514, Permitting the use of leashed dogs to track mortally wounded deer or bear.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4523, Removing the limitation of number of apprentice hunting and trapping licenses a person may purchase.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4524, Making the entire state “wet” or permitting the sale of alcoholic liquors for off-premises consumption.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

CHAPTER 60. STATE CONTROL OF ALCOHOLIC LIQUORS

ARTICLE 5. LOCAL OPTION ELECTIONS.

§60-5-1. Election in county, magisterial district or municipality.

A county ~~magisterial district~~ or any municipality may in an election held especially for the purpose, determine whether the sale of alcoholic liquors for beverage purposes shall be permitted within that county ~~magisterial district~~ or municipality.

A local option election shall not be held within 60 days of a general or municipal election.

§60-5-2. Election called on petition of five percent of qualified voters.

The county commission, or the governing body of the municipality, ~~as the case may be~~, shall call a special local option election upon the filing of a petition signed by not less than five percent of the qualified voters within the county ~~a magisterial district~~ or municipality.

§60-5-3. Form of petition.

The petition shall be in the following form:

Petition for Local Option Election

We, the undersigned legally qualified voters, resident within the county (~~magisterial district~~) (municipality) of _____, do hereby petition that a special election be held within the county (city, town) of _____ on the _____ day of _____, 1920 ____, upon the following question:

Shall the sale of alcoholic beverages under the West Virginia Alcohol Beverage Control Commissioner be (permitted) (prohibited) in _____?

Name Address Date

(Post office or street and number)

§60-5-4. Notice of election; when held; election officers.

The county ~~court~~ commission or governing body of the municipality shall give notice of the special local option election by publication thereof as a Class II-0 legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and the publication area for such publication shall be the area in which the election is to be held. Such notice shall be so published within 14 consecutive days next preceding the election. The election shall be held not more than 90 nor less than 60 days from the filing of the petition. The regular election officers of the county or municipal corporation shall open the polls and conduct the election in the same manner provided for general elections.

§60-5-5. Form of ballot.

On the ballot shall be printed the following:

Shall the sale of alcoholic ~~beverages~~ liquors for off-premises consumption under the West Virginia ~~liquor~~ Alcohol Beverage Control ~~commission~~ Commissioner be permitted in?

Yes.

No.

(Place a cross mark in the square opposite your choice.)

§60-5-6. How election conducted and results certified.

The ballots shall be counted, returns made and canvassed as in general elections, and the results certified by the commissioners of election to the county ~~court~~ commission of the county, or the governing body of the municipality. ~~as the case may be~~. The county ~~court~~ commission or governing body shall without delay certify the result of the election to the ~~commission~~ commissioner.

§60-5-7. Discontinuance of state stores and agencies in local option territory.

Within 30 days after a local option election in which a majority has voted No, the ~~commission~~ commissioner shall close order the closing of all state stores selling alcoholic liquor for off-premises consumption within the county, ~~the magisterial district~~ or municipality.

§60-5-8. When another election may be held.

When a local option election has been held in a county, ~~a magisterial district~~ or municipality, another such election ~~shall~~ may not be held for a period of two years.

§60-5-9. Allowing state-wide off premises of alcoholic liquors; exceptions; procedures.

(a) Effective July 1, 2020, the sale of alcoholic liquors for off-premises consumption is authorized in all counties and municipalities of the state.

(b) Notwithstanding the provisions of subsection (a) of this section, a county or municipality which prior to January 1, 2020, prohibited the sale of alcoholic liquors for off-premises consumption may, pursuant to this article, hold an election to maintain the prohibition against the sale of alcoholic liquors for off-premises consumption; *Provided*, That a county commission or the governing body of a municipality may, without the petition required by the provisions of §60-5-2 of this code, enter an order to hold a local election option on the issue of whether to maintain the prohibition against the sale of alcoholic liquors for off-premises consumption based upon a majority vote of the county commission or governing body of the municipality if such order is entered on or before July 1, 2020, in which event the election shall be held concurrent with the 2020 general election. The County Commission or municipality may require the state to reimburse it for the actual cost of conducting the election authorized by this subsection.

(c) A county or municipality which prohibits the sale of alcoholic liquors for off-premises consumption pursuant to subsection (b) of this section may later reconsider its action using the procedures set forth in §60-5-1 *et seq.* of this code.

The bill (Eng. H. B. 4524), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4535, Relating to student aide class titles.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4557, Relating to centers and institutions that provide the care and treatment of mentally ill or intellectually disabled individuals.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Health and Human Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page one, section one, by striking out the section caption and inserting in lieu thereof the following:

§27-9-1. License from ~~director of health~~ Secretary of Health and Human Resources; regulations.;

And,

On page two, section three, by striking out the section caption and inserting in lieu thereof the following:

§27-17-3. License from ~~director of health~~ Secretary of Health and Human Resources; regulations; and penalties.

The bill (Eng. Com. Sub. for H. B. 4557), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4573, Relating to Medicaid subrogation liens of the Department of Health and Human Resources.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4581, Relating to West Virginia Clearance for Access: Registry and Employment Screening.

On second reading, coming up in regular order, was read a second time.

The following amendments to the bill, from the Committee on Health and Human Resources, were reported by the Clerk, considered simultaneously, and adopted:

On page two, section one, line twenty-eight, by striking out the words "of a covered provider";

On page two, section one, line thirty-one, by striking out the words "a covered provider" and inserting in lieu thereof the words "the department, a covered provider,";

And,

On page four, section two, line fifteen, by striking out the words "the covered provider" and inserting in lieu thereof the words "the department, the covered provider,".

The bill (Eng. Com. Sub. for H. B. 4581), as amended, was then ordered to third reading.

Eng. House Bill 4607, Authorizing the operation of mobile shops for hair, nail, cosmetology, and aesthetics services.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4618, Relating to deadly weapons for sale or hire.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

Eng. Com. Sub. for House Bill 4619, Approving plans proposed by electric utilities to install middle-mile broadband fiber.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 4634, Southern West Virginia Lake Development Study Commission Act.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4665, Reducing the amount of rebate going to the Purchasing Improvement Fund.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4668, Creating the misdemeanor crime of trespass for entering a structure that has been condemned.

On second reading, coming up in regular order, was read a second time.

The following amendment to the bill, from the Committee on the Judiciary, was reported by the Clerk and adopted:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 3B. TRESPASS.

§61-3B-2. Trespass in structure or conveyance.

(a) Any person who knowingly enters in, upon, or under a structure or conveyance without being authorized, licensed, or invited, or having been authorized, licensed, or invited is requested to depart by the owner, tenant, or the agent of ~~such~~ the owner or tenant, and refuses to do so, ~~shall be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$100.

(b) Notwithstanding the provisions of subsection (a) of this section, any person who, without permission, knowingly and willfully enters a structure which has a clear posting that the structure has been condemned by any municipal or county government as unfit for human habitation or use, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100, or confined in jail not more than six months, or both fined and confined: *Provided*, That for any first violation of this subsection offense of trespass on condemned property, a court may substitute community service or pretrial diversion in lieu of a fine or confinement for trespassing on condemned property.

~~(b)~~(c) If the offender is armed with a firearm or other dangerous weapon while in the structure or conveyance, with the intent to do bodily injury to a human being in ~~said~~ the structure or conveyance at the time the offender knowingly trespasses, ~~such~~ the offender shall, notwithstanding the provisions of §61-7-1 of this code, ~~be~~ is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not less than \$100 nor more than \$500, or be confined in ~~the~~ county jail for a ~~period not to exceed~~ not more than one year, or both ~~such~~ fined and ~~imprisonment~~ confined.

The bill (Eng. Com. Sub. for H. B. 4668), as amended, was then ordered to third reading.

Eng. House Bill 4737, Clarifying student eligibility for state-sponsored financial aid.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4747, Extending electronic submission of various applications and forms for nonprofit and charitable organizations, professionals and licensees.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4748, Relating to the increase of fees that private nongovernment notary publics may charge for notarial acts.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4777, Relating to the right of disposition of remains.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4797, Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership.

On second reading, coming up in regular order, was reported by the Clerk.

At the request of Senator Takubo, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar.

Eng. Com. Sub. for House Bill 4803, Relating to certification of electrical inspectors.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4804, Relating to comprehensive systems of support for teacher and leader induction and professional growth.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4823, Developing a plan for periodic audits of the expenditure of the fees from the emergency 911 telephone system and wireless enhanced 911.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4892, Reducing personal income tax rates when personal income tax reduction fund is funded at a certain threshold.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. Com. Sub. for House Bill 4946, Eliminating the requirement that municipal police civil service commissions certify a list of three individuals for every position vacancy.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4958, Relating to eliminating the ability of a person's driver license to be suspended for failure to pay court fines and costs.

Having been removed from the Senate second reading calendar in earlier proceedings today, no further action thereon was taken.

Eng. House Bill 4960, Relating to exempting from licensure as an electrician.

On second reading, coming up in regular order, was read a second time and ordered to third reading.

The end of today's second reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 4378, Relating to disciplining teachers.

On second reading, coming up in deferred order, was read a second time.

The following amendment to the bill, from the Committee on Education, was reported by the Clerk:

By striking out everything after the enacting clause and inserting in lieu thereof the following:

ARTICLE 2. SCHOOL PERSONNEL.**§18A-2-8. Suspension and dismissal of school personnel by board; appeal.**

(a) Notwithstanding any other provisions of law, a board may suspend or dismiss any person in its employment at any time for: Immorality, incompetency, cruelty, insubordination, intemperance, willful neglect of duty, unsatisfactory performance, a finding of abuse by the Department of Health and Human Resources in accordance with §49-1-1 *et seq.* of this code, the conviction of a misdemeanor or a guilty plea or a plea of nolo contendere to a misdemeanor charge that has a rational nexus between the conduct and performance of the employee's job, the conviction of a felony or a guilty plea or a plea of nolo contendere to a felony charge.

(b) A charge of unsatisfactory performance shall not be made except as the result of an employee performance evaluation pursuant to §18A-2-12 of this code. The charges shall be stated in writing served upon the employee within two days of presentation of the charges to the board.

(c) The affected employee shall be given an opportunity, within five days of receiving the written notice, to request, in writing, a level three hearing and appeals pursuant to the provisions of §6C-2-1 *et seq.* of this code, except that dismissal for a finding of abuse or the conviction of a felony or guilty plea or plea of nolo contendere to a felony charge is not by itself a grounds for a grievance proceeding. An employee charged with the commission of a felony, a misdemeanor with a rational nexus between the conduct and performance of the employee's job, or child abuse may be reassigned to duties which do not involve direct interaction with pupils pending final disposition of the charges.

(d) A county board of education has the duty and authority to provide a safe and secure environment in which students may learn and prosper; therefore, it may take necessary steps to suspend or dismiss any person in its employment at any time should the health, safety, and welfare of students be jeopardized or the learning environment of other students has been impacted. A county board shall complete an investigation of an employee that involves evidence that the employee may have engaged in conduct that jeopardizes the health, safety, or welfare of students despite the employee's resignation from employment prior to completion of the investigation.

(e) It shall be the duty of any county superintendent to report any employee suspended or dismissed, or resigned during the course of an investigation of the employee's alleged misconduct, in accordance with this section, including the rationale for the suspension or dismissal, to the state superintendent within seven business days of the suspension, dismissal, or resignation. The state superintendent shall maintain a database of all individuals suspended or dismissed for jeopardizing the health, safety, and welfare of students, or for impacting the learning environment of other students. The database shall also include the rationale for the suspension or dismissal. The database shall be confidential and shall only be accessible to county human resource directors, county superintendents, and the state superintendent.

ARTICLE 3. TRAINING, CERTIFICATION, LICENSING, PROFESSIONAL DEVELOPMENT.

§18A-3-6. Grounds for revocation or suspension of certificates; other authorized actions by state superintendent; required reporting by county superintendents; and recalling certificates for correction.

(a) The State Superintendent may, after 10 days' notice and upon proper evidence, revoke or suspend the certificates of any teacher for any of the following causes: Intemperance; untruthfulness; cruelty; immorality; the conviction of a felony or a guilty plea or a plea of no contest to a felony charge; the conviction, guilty plea or plea of no contest to any charge involving sexual misconduct with a minor or a student; or for using fraudulent, unapproved or insufficient credit to obtain the certificates: *Provided*, That in order for any conduct of a teacher involving intemperance; cruelty; immorality; or using fraudulent, unapproved or insufficient credit to obtain the certificates to constitute grounds for the revocation of the certificates of the teacher, there must be a rational nexus between the conduct of the teacher and the performance of his or her job. The State Superintendent shall also have the authority to limit certificates, issue letters of admonishment, or enter into consent agreements requiring specific training in order for a teacher to maintain a certificate. The State Superintendent may designate the West Virginia commission for professional teaching standards or members thereof to conduct hearings on revocations or certificate denials and make recommendations for action by the State Superintendent. The State Superintendent may issue subpoenas and subpoenas duces tecum to obtain testimony and documents to aid in the investigation of allegations against any person subject to licensure by the State Superintendent.

(b) ~~Provided further, That~~ A teacher, as defined by West Virginia Code §18-1-1(g), convicted under §61-8D-3 or §61-8D-5 of this code or comparable statute in any other state, any criminal offense that requires the teacher to register as a sex offender, or any criminal offense which has as an element delivery or distribution of a controlled substance, or pleads guilty to or is convicted under the provisions of §61-2-1 of this code or has been so convicted under any law of the United States or any other state for an offense which has the same elements as those offenses described in §61-2-1, shall have his or her certificate or license automatically revoked. Should the conviction resulting in automatic revocation pursuant to this section be overturned by any Court of this State or the United States, the teacher's certification shall be reinstated unless otherwise prohibited by law.

(c) A teacher, as defined by §18-1-1(g) of this code, and including any individual holding a license granted pursuant to §18A-3-2a of this code, shall maintain a professional relationship with all students at all times, both in and out of the classroom. Any teacher found to have committed any act of sexual abuse of a student or minor or to have engaged in inappropriate sexual conduct with a student or minor; committed an act of cruelty to children or an act of child endangerment or solicited, encouraged, engaged in or consummated an inappropriate relationship with any student, minor, or individual who was a student in the preceding 24 months; or engaged in grooming a student or minor shall have his or her license revoked for a period of time not less than five years. For the purposes of this subsection, "grooming a student or minor" means befriending and establishing an emotional connection with a student or minor, which may include the family of the student or minor, to lower the student's or minor's inhibitions with the objective of committing sexual abuse, child trafficking, child prostitution, the production of child pornography, or any other offense for which a license shall be revoked under this subsection.

~~(b)~~ (d) Any county superintendent, public school principal, or public charter school administrator who knows of any acts on the part of any teacher for which a certificate may be revoked or for which other action may be taken in accordance with this section shall report this, together with all the facts and evidence, to the State Superintendent for such action as in the State Superintendent's judgment may be proper.

~~(e)~~ (e) If a certificate has been granted through an error, oversight, or misinformation, the State Superintendent may recall the certificate and make such corrections as will conform to the requirements of law and the state board.

(f) The state superintendent shall maintain a public database of individuals who have had adverse action taken against their teaching certificate by the state superintendent. Individuals whose certificate has been revoked by the state superintendent are not eligible to be employed by a county board unless the individual's certificate is subsequently reinstated by the state superintendent.

(g) This section applies to all public school teachers whether employed by a county board or the governing board of a public charter school.

(h) The state superintendent shall periodically ensure that county boards are acting in compliance with this section.

(i) The state board may propose legislative rules pursuant to §29A-3B-1 et seq. of this code that are necessary to implement the provisions of this section.

On motion of Senator Weld, the following amendment to the Education committee amendment to the bill (Eng. Com. Sub. for H. B. 4378) was reported by the Clerk:

On pages three and four, section six, lines twenty-eight through forty, by striking out all of subsection (c) and inserting in lieu thereof a new subsection (c), to read as follows:

(c) A teacher, as defined by §18-1-1(g) of this code, and including any individual holding a license granted pursuant to §18A-3-2a of this code, shall maintain a professional relationship with all students at all times, both in and out of the classroom. Following a hearing as provided in subsection (a) of this section, any teacher found to have committed any act of sexual abuse of a student or minor or to have engaged in inappropriate sexual conduct with a student or minor; committed an act of cruelty to children or an act of child endangerment or solicited, encouraged, engaged in or consummated an inappropriate relationship with any student, minor, or individual; exploited a student by engaging in any of the aforementioned illegal or inappropriate conduct which then escalated into a relationship with the exploited student within 12 months of that student's graduation; or engaged in grooming a student or minor shall have his or her license revoked for a period of time not less than five years. For the purposes of this subsection, "grooming a student or minor" means befriending and establishing an emotional connection with a student or minor, which may include the family of the student or minor, to lower the student's or minor's inhibitions with the objective of committing sexual abuse, child trafficking, child prostitution, the production of child pornography, or any other offense for which a license shall be revoked under this subsection.

Following discussion,

The question being on the adoption of Senator Weld's amendment to the Education committee amendment to the bill, the same was put and prevailed.

The question now being on the adoption of the Education committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4378), as amended, was then ordered to third reading.

The Senate proceeded to the eleventh order of business and the introduction of guests.

The Senate then proceeded to the twelfth order of business.

Remarks were made by Senator Weld.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 1:47 p.m., the Senate recessed until 6:30 p.m. today.

The Senate reconvened at 7:19 p.m. and, without objection, returned to the third order of business.

Executive Communications

Senator Carmichael (Mr. President) laid before the Senate the following proclamation from His Excellency, the Governor, extending this current legislative session until and including the eighth day of March, two thousand twenty, which was received and read by the Clerk:

STATE OF WEST VIRGINIA**EXECUTIVE DEPARTMENT****Charleston****A PROCLAMATION****By the Governor**

WHEREAS, the Constitution of West Virginia sets forth the respective powers, duties, and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of January two thousand twenty; and

WHEREAS, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand twenty regular session of the Legislature is scheduled to conclude on the seventh day of March, two thousand twenty; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, the Budget Bill has not been finally acted upon by the Legislature as of this fourth day of March, two thousand twenty.

NOW, THEREFORE, I, JIM JUSTICE, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article VI, Section 51 of the Constitution of West Virginia, extending the two thousand twenty regular session of the Legislature for an additional period not to exceed one day, through and including the eighth day of March, two thousand twenty; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



By the Governor

DONE at the Capitol in the City of Charleston, State of West Virginia, on this the fourth day of March, in the year of our Lord, Two Thousand Twenty, and in the One Hundred Fifty-Seventh year of the State.


GOVERNOR


SECRETARY OF STATE

Senator Carmichael (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:



Jim Justice
Governor of West Virginia

March 4, 2020

Senate Executive Message No. 2
Regular Session 2020

TO: The Honorable Members of the
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Chief Administrative Law Judge, Workers' Compensation Office of Judges within the Office of the Insurance Commissioner, Bradley A. Crouser, Charleston, Kanawha County, for the term ending December 31, 2023.
2. For Member, West Virginia Board of Social Work Examiners, Natalie Buskirk Murphy, Huntington, Cabell County, for the term ending June 30, 2020.
3. For Member, West Virginia Board of Social Work Examiners, Joanne Mahood Boileau, Ghent, Raleigh County, for the term ending June 30, 2020.
4. For Member, West Virginia Board of Social Work Examiners, Charles S. Inghram, Athens, Mercer County, for the term ending June 30, 2020.
5. For Member, West Virginia Board of Social Work Examiners, Robert D. Musick, Morgantown, Monongalia County, for the term ending June 30, 2020.
6. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Randall Belt, Johnson City, Tennessee, for the term ending June 30, 2021.
7. For Member, West Virginia Parole Board, David P. Reider, Bridgeport, Taylor County, for the term ending June 30, 2021.
8. For Member, West Virginia Investment Management Board of Trustees, Georgette Rashid George, Charleston, Kanawha County, for the term ending January 31, 2024.

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9. For Member, Board of Veterinary Medicine, Monica Patton, Charleston, Kanawha County, for the term ending June 30, 2024.
10. For Member, Board of Veterinary Medicine, Mark A. Ayers, Hurricane, Putnam County, for the term ending June 30, 2023.
11. For Member, Retail Liquor Licensing Board, Clarence Pennington, Martinsburg, Berkeley County, for the term ending December 1, 2022.
12. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, Douglas M. Wood, Hurricane, Putnam County, for the term ending June 30, 2022.
13. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, Edward F. Maguire II, Charleston, Kanawha County, for the term ending June 30, 2022.
14. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, James T. Anderson, Reedsville, Preston County, for the term ending June 30, 2023.
15. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, Elizabeth Wheatley, Charleston, Kanawha County, for the term ending June 30, 2023.
16. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, M. Lavonne Paden, Martinsburg, Berkeley County, for the term ending June 30, 2023.
17. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, Barbara Breshock, Arnett, Raleigh County, for the term ending June 30, 2020.
18. For Member, West Virginia Outdoor Heritage Conservation Fund Board of Trustees, Zachary J. Loughman, Wheeling, Ohio County, for the term ending June 30, 2022.
19. For Commissioner, West Virginia Division of Motor Vehicles, Everett J. Frazier, Cyclone, Wyoming County, to serve at the will and pleasure of the Governor.
20. For Member, West Virginia Emergency Medical Services Advisory Council, Robert Craig Horn, Harpers Ferry, Jefferson County, for the term ending June 30, 2022.
21. For Member, West Virginia Emergency Medical Services Advisory Council, William A. Weese, Jr., Man, Logan County, for the term ending June 30, 2022.
22. For Member, Board of Barbers and Cosmetologists, Donald Snyder, Fayetteville, Fayette County, for the term ending June 30, 2024.
23. For Member, Board of Barbers and Cosmetologists, Catherine Donahoe, Barboursville, Cabell County, for the term ending June 30, 2020.
24. For Member, Board of Barbers and Cosmetologists, Chelsea McBee, Rippon, Jefferson County, for the term ending June 30, 2024.

OFFICE OF THE GOVERNOR

25. For Member, Board of Barbers and Cosmetologists, Samantha Grady, Eleanor, Putnam County, for the term ending June 30, 2023.
26. For Member, Board of Barbers and Cosmetologists, Catelyne Nguyen, Hurricane, Putnam County, for the term ending June 30, 2023.
27. For Member, Board of Barbers and Cosmetologists, Margaret Osborne, Cross Lanes, Kanawha County, for the term ending June 30, 2022.
28. For Member, Board of Barbers and Cosmetologists, Tyler Yates, Morgantown, Monongalia County, for the term ending June 30, 2024.
29. For Member, Board of Barbers and Cosmetologists, Melissa Kelley, Kingwood, Preston County, for the term ending June 30, 2024.
30. For Member, Fairmont State University Board of Governors, Robert R. Hutson, Jr., Birmingham, Alabama, for the term ending June 30, 2021.
31. For Member, West Virginia Commission for the Deaf and Hard of Hearing, Nancy B. Mullins Gillispie, Sumerco, Lincoln County, for the term ending June 30, 2022.
32. For Member, Board of Risk and Insurance Management, Gordon Lane, Jr., Charleston, Kanawha County, for the term ending June 30, 2023.
33. For Member, Motor Vehicle Dealers Advisory Board, Larry Dawson, Winfield, Putnam County, for the term ending June 30, 2020.
34. For Member, Motor Vehicle Dealers Advisory Board, Johnnie Brown, Charleston, Kanawha County, for the term ending June 30, 2022.
35. For Member, Motor Vehicle Dealers Advisory Board, Kellee Turner Humphrey, Charleston, Kanawha County, for the term ending June 30, 2022.
36. For Member, West Virginia University - Parkersburg Board of Governors, Steven R. Hardman, Parkersburg, Wood County, for the term ending June 30, 2022.
37. For Member, West Virginia University - Parkersburg Board of Governors, John Denbigh, Spencer, Roane County, for the term ending June 30, 2022.
38. For Member, West Virginia University - Parkersburg Board of Governors, Stephanie McCoy, Cottageville, Jackson County, for the term ending June 30, 2022.
39. For Member, West Virginia Northern Community and Technical College Board of Governors, Davis S. Artman, New Cumberland, Hancock County, for the term ending June 30, 2023.

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40. For Member, West Virginia Northern Community and Technical College Board of Governors, Amy Dobkin, Wheeling, Ohio County, for the term ending June 30, 2021.
41. For Member, West Virginia Northern Community and Technical College Board of Governors, Christine Mitchell, Pine Grove, Wetzel County, for the term ending June 30, 2020.
42. For Member, State Board of Sanitarians, Jesse J. Rose, Welch, McDowell County, for the term ending June 30, 2022.
43. For Member, State Board of Sanitarians, Phyllis L. Lowe, Chapmanville, Logan County, for the term ending June 30, 2024.
44. For Member, State Board of Sanitarians, Warren L. Elmer, Jane Lew, Lewis County, for the term ending June 30, 2021.
45. For Member, Board of Pharmacy, James E. Rucker, Elkview, Kanawha County, for the term ending June 30, 2024.
46. For Member, Solid Waste Management Board, Roger E. Bryant, Logan, Logan County, for the term ending June 30, 2023.
47. For Member, Solid Waste Management Board, Mallie J. Combs, Moorefield, Hardy County, for the term ending June 30, 2024.
48. For Member, West Virginia Children's Health Insurance Program Board, Lisa M. Costello, Morgantown, Monongalia County, for the term ending June 30, 2022.
49. For Member, West Virginia Children's Health Insurance Program Board, Kellie Wooten-Willis, Logan, Logan County, for the term ending June 30, 2022.
50. For Member, West Virginia Children's Health Insurance Program Board, Janet Allio, Elkview, Kanawha County, for the term ending June 30, 2021.
51. For Member, West Virginia Children's Health Insurance Program Board, Kelli Caseman, South Charleston, Kanawha County, for the term ending June 30, 2022.
52. For Member, West Virginia Children's Health Insurance Program Board, M. Jill Griffith, Bloomingrose, Boone County, for the term ending June 30, 2020.
53. For Member, West Virginia Children's Health Insurance Program Board, Robert D. Whitler, Elkview, Kanawha County, for the term ending June 30, 2022.
54. For Member, Board of Examiners of Psychologists, Shirley Vinciguerra, Bluefield, Mercer County, for the term ending June 30, 2021.
55. For Member, Board of Examiners of Psychologists, Beverly Ann Branson, Charleston, Kanawha County, for the term ending June 30, 2022.

OFFICE OF THE GOVERNOR

56. For Member, Board of Examiners of Psychologists, Scott A. Fields, Charleston, Kanawha County, for the term ending June 30, 2021.
57. For Member, State Board of Sanitarians, Delores W. Cook, Ridgeview, Boone County, for the term ending June 30, 2023.
58. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Gary L. Poling, Beckley, Raleigh County, for the term ending June 30, 2023.
59. For Member, West Virginia School of Osteopathic Medicine Board of Governors, Robert B. Holstein, Venice, Florida, for the term ending June 30, 2023.
60. For Member, Bridge Valley Community and Technical College Board of Governors, JB Akers, Charleston, Kanawha County, for the term ending June 30, 2020.
61. For Member, Bridge Valley Community and Technical College Board of Governors, Mark C. Blankenship, Charleston, Kanawha County, for the term ending June 30, 2020.
62. For Member, Athletic Commission, Paul E. Thornton, Williamstown, Wood County, for the term ending June 30, 2023.
63. For Member, Athletic Commission, Leon Ramsey, Glenville, Gilmer County, for the term ending June 30, 2023.
64. For Member, Athletic Commission, Anthony Figaretti, Wheeling, Ohio County, for the term ending June 30, 2022.
65. For Member, Athletic Commission, Michael Shawn Johnson, Crawley, Greenbrier County, for the term ending June 30, 2020.
66. For Member, Housing Development Fund, Wendy E. McCuskey, Charleston, Kanawha County, for the term ending June 30, 2023.
67. For Member, West Virginia Board of Licensed Dietitians, Susan J. Arnold, Morgantown, Monongalia County, for the term ending June 30, 2022.
68. For Member, West Virginia Board of Licensed Dietitians, Mallory Mount, Milton, Cabell County, for the term ending June 30, 2020.
69. For Member, West Virginia Commission on Holocaust Education, Barbara A. Lewine, Wheeling, Ohio County, for the term ending June 30, 2022.
70. For Member, West Virginia Commission on Holocaust Education, Matthew D. Cox, Hurricane, Putnam County, for the term ending June 30, 2022.

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71. For Member, West Virginia Commission on Holocaust Education, Marc J. Slotnick, Charleston, Kanawha County, for the term ending June 30, 2022.
72. For Member, West Virginia Commission on Holocaust Education, Victor H. Urecki, Charleston, Kanawha County, for the term ending June 30, 2022.
73. For Member, Real Estate Commission, Gregory A. Duckworth, Beaver, Raleigh County, for the term ending June 30, 2023.
74. For Member, Housing Development Fund, Patrick J. Martin, Morgantown, Monongalia County, for the term ending June 30, 2023.
75. For Member, Bluefield State College Board of Governors, Rebecca Peterson, Bluefield, Virginia, for the term ending June 30, 2023.
76. For Member, Board of Control for Southern Regional Education, The Honorable Roman W. Prezioso, Jr., Fairmont, Marion County, for the term ending June 30, 2023.
77. For Member, Board of Control for Southern Regional Education, Sarah Armstrong Tucker, Charleston, Kanawha County, for the term ending June 30, 2020.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,



Jim Justice
Governor

JC]: mrp

cc: Clerk of the Senate
Assistant Clerk of the Senate
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Takubo, consideration of the nominations immediately hereinbefore reported was made a special order of business for Saturday, March 7, 2020, at 11:30 a.m.

Executive Communications

The Clerk then presented a communication from His Excellency, the Governor, advising that on March 4, 2020,, he had approved **Enr. Committee Substitute for House Bill 4026**.

The Senate again proceeded to the fourth order of business.

Senator Carmichael (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Com. Sub. for Senate Concurrent Resolution 23, Requesting study of State Police's increased duties and responsibilities.

And reports the same back with the recommendation that it be adopted.

Respectfully submitted,

Mitch Carmichael,
Chair ex officio.

At the request of Senator Takubo, unanimous consent being granted, the resolution (Com. Sub. for S. C. R. 23) contained in the preceding report from the Committee on Rules was taken up for immediate consideration.

The question being on the adoption of the resolution, the same was put and prevailed.

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

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2088, Relating to admissibility of certain evidence in a civil action for damages.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2088) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 2419, Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 2419) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4123, Clarifying that 911 telecommunication workers are included in the definition of those individuals who perform “emergency services” during a disaster.

And has amended same.

And reports the same back with the recommendation that it do pass, as amended; but under the original double committee reference first be referred to the Committee on Finance.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4123) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance, with amendments from the Committee on the Judiciary pending.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4494, Tobacco Use Cessation Initiative.

And has amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 2, 2020;

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

Respectfully submitted,

Craig Blair,
Chair.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4530, Authorizing daily passenger rental car companies to charge reasonable administrative fees.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4530) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4543, Relating to insurance coverage for diabetics.

With an amendment from the Committee on Health and Human Resources pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 3, 2020;

And reports the same back with the recommendation that it do pass as amended by the Committee on Health and Human Resources to which the bill was first referred; and as last amended by the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4558, Creating a personal income tax credit for volunteer firefighters in West Virginia.

And has amended same.

And,

Eng. Com. Sub. for House Bill 4611, Relating to fireworks.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4558 and 4611) contained in the preceding report from the Committee on Finance were each taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Trump, from the Committee on the Judiciary, submitted the following report, which was received:

Your Committee on the Judiciary has had under consideration

Eng. House Bill 4715, Authorizing municipalities to take action to grant certain fire department employees limited power of arrest.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4715) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maynard, from the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration

Eng. House Bill 4749, Providing more efficient application processes for private investigators, security guards, and firms.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4749) contained in the preceding report from the Committee on Government Organization was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Blair, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4092, Relating to foster care.

With amendments from the Committee on the Judiciary pending;

And has also amended same.

Now on second reading, having been read a first time and referred to the Committee on Finance on March 4, 2020;

And reports the same back with the recommendation that it do pass as last amended by the Committee on Finance.

Respectfully submitted,

Craig Blair,
Chair.

The Senate proceeded to the thirteenth order of business.

Under the provisions of Rule 15 of the Rules of the Senate, the following senators were added as co-sponsors to the following resolutions:

Senate Concurrent Resolution 57 (*Frye Brothers Memorial Bridge*): Senators Stollings, Lindsay, Beach, Unger, and Jeffries;

Senate Concurrent Resolution 58 (*Requesting study of sexual violence in WV*): Senator Stollings;

Senate Concurrent Resolution 59 (*Rachel Hershey Smith Memorial Shelter*): Senator Stollings;

Senate Concurrent Resolution 60 (*Requesting study on nutrition of public school students when schools are closed*): Senators Stollings and Cline;

Senate Resolution 63 (*Designating March 4, 2020, as Recovery Community Day*): Senators Stollings, Lindsay, Cline, Baldwin, Prezioso, Beach, Palumbo, Ihlenfeld, Hardesty, Woelfel, Jeffries, and Plymale;

Senate Resolution 64 (*Recognizing efforts of Kanawha State Forest Foundation*): Senators Stollings, Beach, Hamilton, Palumbo, and Unger;

Senate Resolution 65 (*Designating WV State Folk Festival as official site of WV State Pepperoni Roll Championship*): Senators Lindsay, Unger, and Jeffries;

Senate Resolution 66 (*Recognizing March as Red Cross Month*): Senators Stollings and Cline;

Senate Resolution 67 (*Designating March 5, 2020, as Treatment Court Day*): Senator Stollings;

And,

Senate Resolution 68 (*Recognizing Buckhannon-Upshur 4-H Air Rifle Club*): Senators Stollings and Cline.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 7:33 p.m., the Senate adjourned until tomorrow, Thursday, March 5, 2020, at 11 a.m.

SENATE CALENDAR

Thursday, March 05, 2020
11:00 AM

SPECIAL ORDER OF BUSINESS

Saturday, March 07, 2020 – 11:30 AM

Consideration of executive nominations

UNFINISHED BUSINESS

- S. C. R. 58 - Requesting study of sexual violence in WV
- S. C. R. 59 - Rachel Hershey Smith Memorial Shelter
- S. C. R. 60 - Requesting study on nutrition of public school students when schools are closed
- S. R. 66 - Recognizing March as Red Cross Month **[ADOPT]**
- S. R. 67 - Designating March 5, 2020, as Treatment Court Day **[ADOPT]**
- S. R. 68 - Recognizing Buckhannon-Upshur 4-H Air Rifle Club **[ADOPT]**

THIRD READING

- Eng. Com. Sub. for H. B. 2646 - Providing a safe harbor for employers to correct underpayment or nonpayment of wages and benefits due to separated employees - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 3049 - Improving dissemination of boiled water advisories to affected communities
- Eng. Com. Sub. for H. B. 4001 - Creating West Virginia Impact Fund - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4019 - Downstream Natural Gas Manufacturing Investment Tax Credit Act of 2020
- Eng. Com. Sub. for H. B. 4020 - Removing authority of municipalities to require occupational licensure if licensure for the occupation is required by the state
- Eng. Com. Sub. for H. B. 4088 - Disposition of funds from certain oil and natural gas wells due to unknown or unlocatable interest owners - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4094 - Continuing the Foster Care Ombudsman
- Eng. Com. Sub. for H. B. 4165 - West Virginia Remembers Program

- Eng. Com. Sub. for H. B. 4198 - Permitting a person to obtain a 12-month supply of contraceptive drugs - (Com. title amend. pending) - (With right to amend)
- Eng. Com. Sub. for H. B. 4360 - Exempting certain persons from heating, ventilating, and cooling system licensing requirements
- Eng. Com. Sub. for H. B. 4361 - Relating to insurance law violations - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4363 - Establishing the West Virginia Division of Natural Resources Police Officer Retirement System
- Eng. Com. Sub. for H. B. 4378 - Relating to disciplining teachers - (Com. title amend. pending)
- Eng. H. B. 4406 - Relating to the reproduction of checks and other records - (Com. title amend. pending)
- Eng. H. B. 4410 - Permitting directors and executive officers of a banking institution to borrow from a banking institution with which he or she is connected
- Eng. Com. Sub. for H. B. 4421 - Natural Gas Liquids Economic Development Act
- Eng. Com. Sub. for H. B. 4452 - Modifying the notice requirements for the redemption of delinquent properties - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4484 - Relating to the Hazardous Waste Management Fund
- Eng. H. B. 4499 - Relating to multicounty trail network authorities - (Com. title amend. pending)
- Eng. H. B. 4502 - Relating to insurance adjusters - (Com. title amend. pending)
- Eng. H. B. 4524 - Making the entire state "wet" or permitting the sale of alcoholic liquors for off-premises consumption - (Com. title amend. pending)
- Eng. Com. Sub. for H. B. 4557 - Relating to centers and institutions that provide the care and treatment of mentally ill or intellectually disabled individuals
- Eng. Com. Sub. for H. B. 4581 - Relating to West Virginia Clearance for Access: Registry and Employment Screening
- Eng. H. B. 4618 - Relating to deadly weapons for sale or hire
- Eng. Com. Sub. for H. B. 4668 - Creating the misdemeanor crime of trespass for entering a structure that has been condemned - (Com. title amend. pending)
- Eng. H. B. 4960 - Relating to exempting from licensure as an electrician

SECOND READING

- Eng. Com. Sub. for H. B. 2088 - Relating to admissibility of certain evidence in a civil action for damages - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 2419 - Relating to the authorization to release a defendant or a person arrested upon his or her own recognizance - (Com. amend. and title amend. pending)
- Eng. Com. Sub. for H. B. 3098 - Allowing the same business owner to brew and sell beer to also distill and sell liquor - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4003 - Relating to telehealth insurance requirements - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4009 - Relating to the process for involuntary hospitalization - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4061 - Health Benefit Plan Network Access and Adequacy Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4092 - Relating to foster care - (Com. amend. and title amend. pending)

Eng. H. B. 4178 - Requiring calls which are recorded be maintained for a period of five years - (Com. amend. pending)

Eng. H. B. 4375 - Speech-Language Pathologists and Audiologists Compact - (Com. amend. and title amend. pending) (original similar to SB656)

Eng. Com. Sub. for H. B. 4388 - Limiting the Alcohol Beverage Control Commissioner's authority to restrict advertising - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4494 - Tobacco Use Cessation Initiative - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4509 - Transferring the Parole Board to the Division of Corrections and Rehabilitation for purposes of administrative and other support - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4530 - Authorizing daily passenger rental car companies to charge reasonable administrative fees - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4543 - Relating to insurance coverage for diabetics - (Com. amends. pending)

Eng. Com. Sub. for H. B. 4558 - Creating a personal income tax credit for volunteer firefighters in West Virginia - (Com. amend. pending)

Eng. Com. Sub. for H. B. 4560 - Relating to deliveries by a licensed wine specialty shop - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4611 - Relating to fireworks - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4619 - Approving plans proposed by electric utilities to install middle-mile broadband fiber - (Com. amend. and title amend. pending)

Eng. H. B. 4715 - Authorizing municipalities to take action to grant certain fire department employees limited power of arrest - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4717 - Seizure and Forfeiture Reporting Act - (Com. amend. pending)

Eng. H. B. 4749 - Providing more efficient application processes for private investigators, security guards, and firms - (Com. amend. and title amend. pending)

Eng. H. B. 4797 - Authorizing municipalities to enact ordinances that allow the municipal court to place a structure, dwelling or building into receivership - (Com. amend. pending)

Eng. Com. Sub. for H. B. 4852 - Relating to the penalties for the manufacture, delivery, possession, or possession with intent to manufacture or deliver methamphetamine - (Com. amend. and title amend. pending)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2020

Thursday, March 5, 2020

9 a.m.	Transportation and Infrastructure	(Room 451M)
9:30 a.m.	Rules	(Room 219M)
10 a.m.	Government Organization	(Room 208W)