

WEST VIRGINIA LEGISLATURE

# SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE  
REGULAR SESSION, 2021  
FIFTY-FIFTH DAY

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Charleston, West Virginia, Monday, April 5, 2021

The Senate met at 10:02 a.m.

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

Prayer was offered by Tom Saunders, Senate Assistant Doorkeeper, Dunbar, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Stephen Baldwin, a senator from the tenth district.

Pending the reading of the Journal of Friday, April 2, 2021,

At the request of Senator Phillips, 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 concurrence by that body in the passage of

**Eng. Com. Sub. for Senate Bill 80**, Allowing for administration of certain small estates by affidavit and without appointment of personal representative.

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. Com. Sub. for Senate Bill 81**, Relating generally to WV Uniform Trust Code.

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 346**, Authorizing DMV use electronic means when providing notice for licensees and vehicle owners.

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

**Eng. Senate Bill 374**, Increasing threshold for bid requirement to \$10,000 to be consistent with other state agencies.

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

**Eng. Com. Sub. Eng. Senate Bill 389**, Relating to State Resiliency Office responsibility to plan for emergency and disaster response, recovery, and resiliency.

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

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

**Eng. Com. Sub. for Senate Bill 389**—A Bill to amend and reenact §29-31-2 of the Code of West Virginia, 1931, as amended, relating to clarifying that State Resiliency Office is responsible to plan for emergency and disaster response, recovery, and resiliency; clarifying that the State Resiliency Officer is a member of the State Resiliency Office Board; placing Secretary of the Department of Health and Human Resources on board; requiring that the President of the Senate appoint two nonvoting members, one from each party, to the board; requiring the Speaker of the House of Delegates appoint two nonvoting members, one from each party, to the board; requiring that State Resiliency Officer vote only in the event of a tie vote of board; requiring that board elect a vice chair from its membership; establishing duties and responsibilities of the vice chair; and eliminating notice requirement for board meetings.

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

Engrossed Committee Substitute for Senate Bill 389, 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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Romano—1.

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. 389) 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. Senate Bill 421**, Authorizing Workforce West Virginia to hire at-will employees.

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 429**, Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts.

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

**Eng. Senate Bill 463**, Consolidating position of Inspector General of former Workers' Compensation Fraud and Abuse Unit and position of Director of Insurance Fraud Unit.

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

**Eng. Com. Sub. for Senate Bill 472**, Updating criteria for regulating certain occupations and professions.

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 9, section 3, line 66, by striking the period, inserting a comma and "a professional who works in the profession, a board member who regulates the profession, and any other interested party."; and

On page 11, section 4, line 4 after the word "regulation" by inserting "a professional who works in the field, a board member who regulates the profession.".

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

Engrossed Committee Substitute for Senate Bill 472, 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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Romano—1.

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. 472) passed with its 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, to take effect from passage, of

**Eng. Com. Sub. for Senate Bill 587**, Making contract consummation with state more efficient.

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 693**, Updating certain definitions and terms used in WV Personal Income Tax Act.

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

**Eng. Com. Sub. for House Bill 2022**—A Bill making appropriations of public money out of the Treasury in accordance with section 51, article VI of the Constitution.

At the request of Senator Takubo and by unanimous consent, reference of the bill to a committee was dispensed with, and it was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the fourth order of business.

Senator Maynard, from the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 5th day of April, 2021, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**(Com. Sub. for H. B. 2024)**, Expand use of telemedicine to all medical personnel.

**(Com. Sub. for H. B. 2026)**, Relating to the modernization of the collection of income taxes by adopting uniform provisions relating to the mobile workforce.

**(Com. Sub. for H. B. 2260)**, Relating to procurement of child placing services.

And,

**(Com. Sub. for H. B. 2263)**, Update the regulation of pharmacy benefit managers.

Respectfully submitted,

Mark R. Maynard,  
*Chair, Senate Committee.*  
Dean Jeffries,  
*Chair, House Committee.*

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 2002**, Relating to Broadband.

And has amended same.

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

Respectfully submitted,

Mark R. Maynard,  
*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 2507**, Remove the limitations on advertising and promotional activities by limited video lottery retailers.

And has amended same.

And,

**Eng. House Bill 2830**, Relating generally to sex trafficking.

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.*

The Senate proceeded to the sixth order of business.

On motions for leave, severally made, the following bill was introduced, read by its title, and referred to the appropriate committee:

**By Senators Blair (Mr. President) and Baldwin (By Request of the Executive):**

**Senate Bill 722**—A Bill expiring funds to the balance of the Department of Transportation, State Rail Authority - West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2021, organization 0804, in the amount of \$750,000 from the Department of Revenue, Insurance Commissioner – Insurance Commission Fund, fund 7152, fiscal year 2021, organization 0704, and making a supplementary appropriation of public moneys out of the Treasury for the fiscal year ending June 30, 2021.

Referred to the Committee on Finance.

Senators Nelson and Roberts offered the following resolution:

**Senate Concurrent Resolution 61**—Requesting the Joint Committee on Government and Finance study the feasibility of consolidating county boards of education to provide efficiencies and direct cost savings which may be used to increase spending per pupil and teacher salaries.

Whereas, West Virginia's educational system consists of 55 separate county boards of education. Each county board has its own organizational structure and is responsible for multiple administrative functions, including finance, transportation, facilities maintenance, personnel, and technology; and

Whereas, From the 2013-2014 to the 2020-2021 school years, West Virginia's K-12 enrollment has declined approximately 10 percent, from 281,013 to 252,357 students; and

Whereas, If these population trends continue on their current trajectory, the student population will continue to decrease, along with the funding associated with their attendance. As such, plans must be laid to increase efficiency in the systems that currently serve West Virginia students. In order for West Virginia students to thrive, they must have the resources to do so. By eliminating unnecessary duplication of services by combining county boards of education, districts will free up resources that can more directly benefit students and teachers; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance undertake a study the feasibility of consolidating county boards of education to provide efficiencies and direct cost savings which may be used to increase spending per pupil and teacher salaries; and, be it

*Further Resolved*, That the study include the appropriateness and feasibility of consolidating school boards over a span of three to seven years; and, be it

*Further Resolved*, That the study include examining the feasibility of combining each consolidated county's school board into one regional school board through the following method: At the initial consolidation of the county boards, each county could retain all five board members, who would remain a part of the combined board; at the next general election, each county could elect only four board members; and in the subsequent general elections, the counties could reduce their board membership by one seat per county per general election until the school board is reduced to a more appropriate number of members; and, be it

*Further Resolved*, That the study include an examination of the creation of an Office of Superintendents that would include county superintendents from all of the consolidated counties; and the superintendents nominating one superintendent who, with the appropriate approval of the board, would lead the office and be designated the regional superintendent; and, be it

*Further Resolved*, That the study examine potential financial incentives to aid in the consolidation process, provide additional funding for maintenance budgets and new school improvements, provide for increased compensation or per diem for existing board members and administrators; and, be it

*Further Resolved*, That the study include the economic effects of county board consolidation, including the proposed savings that could be redirected to increase per-pupil spending and supplemental pay to teachers; and, be it

*Further Resolved*, That the study specifically include examining the feasibility of a pilot project that would combine Kanawha, Boone, Clay, and Putnam county boards of education; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, on its findings, conclusions, and recommendations, together with drafts of any legislation or resolutions 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 the legislative appropriations to the Joint Committee on Government and Finance.

Which, under the rules, lies over one day.

Senator Woodrum offered the following resolution:

**Senate Resolution 40**—Recognizing and commemorating the 150th anniversary of the founding of Summers County, West Virginia.

Whereas, Summers County is located in the southeastern region of West Virginia, scenically placed between the beautiful Greenbrier and New River valleys; and

Whereas, The City of Hinton serves as the county seat and is the sole municipality within Summers County; and

Whereas, The railroad boom of the early 20th century helped to build Hinton and Summers County, however, the county's current economy is based primarily on tourism, thanks to the Bluestone Dam and Lake along with the Bluestone, Greenbrier, and New rivers which converge in Hinton; and

Whereas, Further, the New River Gorge National River begins at Hinton and flows northward into neighboring Fayette County; and

Whereas, Summers County is also home to Bluestone State Park, Pipestem Resort, and a number of other facilities that provide lodging, camping, and a variety of recreational activities; and

Whereas, The Hinton Railroad Museum, the Graham House, the Campbell Flanagan Murrell House, and other museums provide glimpses into the county's history; and

Whereas, The architecture of buildings in Hinton's nationally-registered historic district is of interest to many, and a solid core of retail stores and professional service providers meet the needs of residents and visitors alike; and

Whereas, Residents of Summers County enjoy a wonderful small town, laid back quality of life, and service clubs such as the Kiwanis, Lions, Rotary, and Ruritans support a number of community initiatives, school programs, and special events; and

Whereas, The Summers County Library supports the county school system and provides visitors with internet access and other services, while several denominations of churches meet the Summers County community's spiritual needs; and

Whereas, Summers County is served east-west by Interstate 64 and by north and south connections to Interstate 77, and the New River Parkway, when completed, will improve access to Sandstone Falls by upgrading River Road from I-64 near Exit 139 Sandstone into Hinton; and

Whereas, West Virginia Routes 3, 12, 19, 20, and 107 are the primary highways within the county, and Amtrak also provides an important transportation link to Summers County with its Cardinal line from New York to Washington DC to Chicago, and stops are made three times per week to pick up and disembark passengers at Hinton's historic Rail Depot; and

Whereas, Summers County's elected officials and its employees are dedicated to making the county the best possible place to live, work, and visit that it can be; and

Whereas, All of these achievements are appropriate to be recognized for such an important county in West Virginia; therefore, be it

*Resolved by the Senate:*

That the Senate hereby recognizes the 150th anniversary of Summers County, West Virginia; and, be it

*Further Resolved,* That the Clerk is hereby directed to forward a copy of this resolution to the Summers County Commission and the New River Gateway Convention and Visitor's Bureau.

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 Rucker, from the Committee on Education, submitted the following report, which was received:

Your Committee on Education has had under consideration

**Senate Concurrent Resolution 62** (originating in the Committee on Education)—Requesting the Joint Committee on Government and Finance study the possible incentives and rewards to be given to counties who show academic growth and success on a consistent basis.

Whereas, Success in academic performance across the state can be varied and inconsistent; and

Whereas, Flexibilities and incentives could incentivize counties to perform at a higher and more consistent rate and give counties a clear goal for improving their performance overall; and

Whereas, A study by the Michigan State University found that incentives are an effective means of improving student achievement, specifically those that are linked to student performances in the classroom; and

Whereas, A study from the University of Chicago found that non-financial rewards for student achievement were more effective in improving performance than financial rewards overall; and



Whereas, There are many ways to possibly incentivize a county to improve performances beyond giving financial incentives, such as recognitions, rewards, or extended privileges; therefore, be it

*Resolved by the Legislature of West Virginia:*

Requesting the Joint Committee on Government and Finance study the possible incentives and rewards to be given to counties who show academic growth and success on a consistent basis; and, be it

*Further Resolved*, that the study survey the counties to gain an insight into what kinds of flexibilities, streamlining or other means which may incentivize and reward positive academic outcomes; and, be it

*Further Resolved*, that the Joint Committee on Government and Finance consider all possible incentives for counties beyond financial incentives, such as rewards, recognitions, or expanded privileges; and, be it

*Further Resolved*, that the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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 the legislative appropriations to the Joint Committee on Government and Finance.

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

Respectfully submitted,

Patricia Puertas Rucker,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 62) contained in the foregoing report from the Committee on Education was then referred to the Committee on Rules.

The Senate proceeded to the seventh order of business.

**Com. Sub. for Senate Concurrent Resolution 45**, Dennis E. Davis Veterans Nursing Home.

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

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

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. C. R. 45) adopted.

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

**Senate Resolution 38**, Recognizing Ben Ferrell on his achievements in archery.

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

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

**Senate Resolution 39**, Congratulating Miss Pre-Teen USA, 2020, Tiarah Thompson, on her achievements.

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

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

The Senate proceeded to the eighth order of business.

**Eng. House Bill 2028**, Exempting veterinarians from the requirements of controlled substance monitoring.

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, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—30.

The nays were: Baldwin, Ihlenfeld, Lindsay, and Romano—4.

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. 2028) passed with its title.

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

**Eng. House Bill 2366**, Requiring agencies who have approved a proposed rule that affects fees or other special revenues to provide to the committee a fiscal note.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips,

Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2366) 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 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2427) 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 2427**—A Bill to amend and reenact §64-5-1 *et seq.* of the Code of West Virginia, 1931, as amended, all relating generally to authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules; authorizing the rules as filed, as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature; directing the promulgation of a current legislative rule with amendments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to behavioral health centers licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to hospital licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to nursing home licensure; directing the Department of Health and Human Resources to promulgate a legislative rule relating to food establishments; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to lead abatement licensing; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to emergency medical services; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to client rights at state-operated mental health facilities; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to delegation of medication administration and health maintenance tasks to approved medication assistive personnel; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to diabetes self-management education; authorizing the

Department of Health and Human Resources to promulgate a legislative rule relating to West Virginia clearance for access, registry, and employment screening; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to a recovery residence certification and accreditation program; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to child placing agencies licensure; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to minimum licensing requirements for residential child care and treatment facilities for children and transitioning adults and vulnerable and transitioning youth group homes and programs in West Virginia; authorizing the Department of Health and Human Resources to promulgate a legislative rule relating to the procedure to contest the substantiation of child abuse or neglect; and authorizing the Health Care Authority to promulgate a legislative rule relating to exemption from certificate of need.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2427) 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 2529**, Prohibiting West Virginia institutions of higher education from discriminating against graduates of private, nonpublic or home schools by requiring them to submit to alternative testing.

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 2529 pass?”

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2529) 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 2529**—A Bill to amend and reenact §18-8-12 of the Code of West Virginia, 1931, as amended; and to amend and reenact §18B-1-1e of said code, all relating to allowing an institution, once a student has been fully admitted, to administer placement tests or other assessments for certain purposes; prohibiting state institutions of higher education from discriminating against graduates of private, nonpublic, or home schools by requiring them to submit to alternative testing as a precondition for acceptance into the institution of higher education; and prohibiting institutions of higher education from rejecting a person with appropriate diploma or credentialing for admission to an institution of higher education solely because their secondary education was not accredited by the state Board of Education or agency the board approves.

*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 2633**, Creating the 2021 Farm Bill.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on Friday, April 2, 2021, for further amendments to be received on third reading, was reported by the Clerk.

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 1. DEPARTMENT OF AGRICULTURE.**

### **§19-1-2. Commissioner of Agriculture.**

The commissioner of agriculture shall be elected by the qualified voters of the state at the same time and in the same manner as other state officers are elected, and shall hold office for a term of four years and until his or her successor is elected and qualified.

~~The commissioner shall be a practical farmer, learned in the science of agriculture, and shall have made agriculture his chief business for a period of ten years immediately preceding his election.~~

### **§19-1-3a. Marketing and ~~Development Division~~; economic development duties.**

~~(a) The duties of the Marketing and Development Division are to~~ department shall establish marketing, promotional, and economic development programs to advance West Virginia agriculture in the domestic and international markets; ~~to~~ provide grading, inspection, and market news services to the various elements of the West Virginia agricultural industry; and ~~to~~ regulate and license individuals involved in the marketing of agricultural products. Upon request of the commissioner, the Department of Economic Development may coordinate with the Department of Agriculture in the development of such programs.

(b) Any documentary material, data, or other writing made or received by the department in furtherance of its economic development duties and for the purpose of furnishing assistance to a new or existing business shall be exempt from the provisions of §29B-1-1 et seq. of this code.

**§19-1-7. Shared animal ownership agreement to consume raw milk.**

(a) Notwithstanding any other provision of the law to the contrary, a responsible party may enter into a written shared animal ownership agreement to consume raw milk in which he or she:

(1) Acquires a percentage ownership interest in a milk-producing animal;

(2) Agrees to pay another for the percentage ownership interest for the care and boarding of the milk-producing animal at the dairy farm;

(3) Is entitled to receive a fair share of the animal's raw milk production as a condition of the contractual agreement;

(4) Agrees to sign a written document acknowledging the inherent dangers of consuming raw milk that may contain bacteria, such as Brucella, Campylobacter, Listeria, Salmonella, and E. Coli, that has not been pasteurized to remove bacteria and that is particularly dangerous to children, pregnant women, and those with compromised immunity. The responsible party then agrees to release the herd seller of liability for the inherent dangers of consuming raw milk but not for those dangers that are caused by negligent acts or omissions of the herd seller; and

(5) Agrees not to distribute raw milk. The sale or resale of raw milk obtained from a herd share is strictly prohibited.

(b) The signed and executed shared animal ownership agreement shall be filed by the herd seller with the Commissioner of Agriculture and shall contain the names, addresses, and phone numbers of the herd seller and the responsible party so that either party may be contacted in the event of an illness.

(c) The herd seller shall meet the animal health requirements for milk-producing animals established by the state veterinarian in accordance with state and national standards including the following:

(1) Raw milk from milk-producing animals intended for consumption shall be from a herd that tested negative within the previous 12 months for brucellosis, tuberculosis, and other diseases as required by the state veterinarian. Additions to the herd shall test negative for the diseases within the previous 30 days before introduction into the herd; and

(2) Milk-producing animals producing bloody, stringy, or abnormal milk, but with only slight inflammation of the udder, shall be excluded from the milking herd until reexamination shows that the milk has become normal. Milk-producing animals showing chronic mastitis, whether producing abnormal milk or not, shall be permanently excluded from the milking herd.

(d) Parties to a shared animal ownership agreement and physicians who become aware of an illness directly related to consuming raw milk shall report the illness to the local health department and the Commissioner of Agriculture. Upon receipt of such a report, the Commissioner of Agriculture or his or her designee shall contact and warn other parties consuming raw milk from the same herd seller.

(e) The Commissioner of Agriculture may impose an administrative penalty not to exceed \$100 for a person who violates the provisions of this section. Any penalty imposed under this subsection may be contested by the person against whom it is imposed pursuant to §29A-5-1 *et seq.* of this code.

(f) The Commissioner of Agriculture, in consultation with the Department of Health and Human Resources, may propose rules for promulgation in accordance with the provisions of §29A-3-1 *et seq.* of this code in compliance with raw milk dairy industry standards.

(g) Notwithstanding any provision of code to the contrary, raw milk may be sold without the parties entering into a written shared animal ownership agreement if the raw milk is to be used:

(1) As an ingredient in the preparation or making of a nonedible product, such as a soap or lotion; or

(2) As feed for another animal: *Provided*, That the sale of raw milk to be used as animal feed is subject to the provisions of §19-14-1 *et seq.* of this code.

## **ARTICLE 1C. CARE OF LIVESTOCK.**

### **§19-1C-2. Definitions.**

For the purposes of this article:

(1) "Board" means the Livestock Care Standards Board.

(2) "Commissioner" means the Commissioner of Agriculture.

(3) "Department" means the West Virginia Department of Agriculture.

(4) "Livestock" has the same definition as set out in §19-10B-2(d) of this code.

### **§19-1C-3. Livestock Care Standards Board.**

(a) On July 1, 2010, there is hereby created the Livestock Care Standards Board.

~~(b) Prior to July 1, 2010, the Governor shall appoint, by and with the advice and consent of the Senate, the following eleven members:~~

~~(1) One member who is a veterinarian licensed in this state engaging in large animal practice, for a term of two years;~~

~~(2) The dean of the agriculture department of a college or university located in this state, for a term of three years;~~

~~(3) One member representing a county humane society that is organized under state law, for a term of four years;~~

~~(4) One member who is knowledgeable about food safety in this state, for a term of five years;~~

~~(5) Two members of the public representing West Virginia consumers, one for a term of two years and one for a term of four years;~~

~~(6) Two members representing state agricultural organizations that represent farmers, one of whom must be a member of the largest organization in the state representing farmers for a term of three years, and the other must be a member of a statewide livestock organization, for a term of five years; and~~

~~(7) Three members representing family farms engaged in animal production, at least two of whom are family farmers, for the following terms: one for three years, one for four years and one for five years.~~

~~(c) After the initial appointment terms, the appointment term is five years. Appointed members may be reappointed for additional terms.~~

~~(d) (b) Commencing July 1, 2010 2021, the board consists of the following 13 members, to be appointed by the Governor, by and with the consent of the Senate:~~

~~(1) The Commissioner of the Department of Agriculture or his or her designee, ex officio non-voting, who is the chairperson of the board;~~

~~(2) The Director of the Animal Health Division State Veterinarian, ex officio non-voting;~~

~~(3) One member who is a veterinarian licensed in this state engaging in large animal practice;~~

~~(4) The dean of the agriculture department of a college or university located in this state;~~

~~(5) One member representing a county humane society that is organized under state law;~~

~~(6) One member who is knowledgeable about food safety in this state;~~

~~(7) Two members of the public representing West Virginia consumers who are law-enforcement officers: Provided, That one member shall be appointed for an initial term of two years, and the other shall be appointed for an initial term of five years;~~

~~(8) Two members representing state agricultural organizations that represent farmers, one of whom must be a member of the largest organization in the state representing farmers, and the other must be a member of a statewide livestock organization; and One member selected from a list of three individuals submitted from the largest statewide poultry organization;~~

~~(9) One member selected from a list of three individuals submitted by the largest statewide livestock organization; and~~

~~(10) Three members representing family farms engaged in animal production, at least two of whom are family farmers, selected from a list of 10 individuals submitted by the largest organization in the state representing farmers.~~

~~(c) After the initial appointment terms, the appointment term is five years. Appointed members may be reappointed for additional terms.~~

~~(e) (d) All members must be residents of this state during their terms. No more than seven members of the board may be of the same political party and no more than five may be from the same congressional district at any given time.~~



(f) (e) All appointed members serve until their successor has been appointed and qualified. Vacancies shall be filled in the same manner as the original appointment for the remainder of the unexpired term.

**§19-1C-4. Powers and duties of the board.**

(a) The board has the following powers and duties to:

- (1) Establish standards governing the care and well-being of livestock;
- (2) Maintain food safety;
- (3) Encourage locally grown and raised food; and
- (4) Protect West Virginia farms and families.

(b) The commissioner, in consultation with the board, is ~~also~~ authorized to establish standards by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code, governing the care and well-being of livestock in this state, including:

(1) The agricultural best management practices for the care and well-being of livestock and poultry in this state;

(2) Procedures for addressing complaints regarding the inhumane treatment of livestock and coordinating efforts with county humane officers: Provided, That documents and communication regarding any investigation thereof, are considered confidential and are exempt from disclosure pursuant to §29B-1-1 *et seq.* of this code;

- (3) Biosecurity, disease prevention, animal morbidity, and mortality data;
- (4) Food safety practices; and
- (5) The protection of local, affordable food supplies for consumers.

(c) ~~The Department of Agriculture shall administer and enforce the standards established by the board that are approved by the Legislature. The board shall review any rule proposed by the commissioner for legislative approval pursuant to this section. After reviewing the proposed legislative rule, the board may provide a recommendation to the Legislative Rule-Making Review Committee that the Legislature:~~

- (1) Authorize the promulgation of the legislative rule;
- (2) Authorize the promulgation of part of the legislative rule;
- (3) Authorize the promulgation of the legislative rule with certain amendments;
- (4) Recommend that the proposed rule be withdrawn; or
- (5) Reject the proposed rule.

**§19-1C-6. Meetings of the board.**

(a) The board shall meet at least annually, and the ~~chairperson~~ commissioner may call additional meetings of the board upon the written request of three members.

(b) The commissioner, on behalf of the board, may file an annual report with the Joint Committee on Government and Finance that contains information about the activities of the board and department for the prior year concerning livestock care standards; *Provided*: That after December 31, 2025, no reports filed on behalf the board may be filed with the Joint Committee on Government and Finance.

**§19-1C-7. Enforcement of livestock care standards.**

(a) The commissioner shall administer and enforce the standards established pursuant to this article. This authority may include, but is not limited to:

(1) Coordinating with and providing assistance to law-enforcement officers;

(2) Assisting law-enforcement officers with investigations and other actions taken in response to complaints regarding the care of livestock;

(3) Working with county, municipal, and state authorities to address situations in which a livestock care complaint needs to be reassigned due to a conflict of interest;

(4) Providing training for law-enforcement officers on the livestock care standards and proper animal handling techniques; and

(5) Providing opinions to law-enforcement officers, when such opinions are requested, regarding the application of livestock care standards promulgated pursuant to this article.

(b) State, county, and local law-enforcement officers shall notify the commissioner of all complaints and investigations concerning care of livestock, and may seek the advice and opinion of the commissioner regarding application of the livestock care standards in those cases.

(c) No later than September 1, 2021, the commissioner shall notify state, county, and local law-enforcement officers of the changes made to this article of code during the 2021 Regular Legislative Session.

**ARTICLE 9A. FEEDING OF UNTREATED GARBAGE TO SWINE.****§19-9A-2. Permit required for feeding garbage to swine; renewal; fee; exception.**

(a) No person shall feed garbage to swine without first securing a permit to do so from the commissioner. Such permits shall be renewed annually. ~~The fee for obtaining such permit shall be \$5.~~

(b) This article shall not apply to any person who feeds only his own household garbage to swine which are raised for such person's own use.

**ARTICLE 12A. LAND DIVISION.****§19-12A-5. Powers, duties, and responsibilities of commissioner.**

(a) The commissioner shall manage all institutional farms, equipment, and other property in order to most efficiently produce food products for state institutions, support the department and its activities, advance the agricultural interests of the state, as identified by the commissioner, and otherwise implement the intent of the Legislature as set forth by this article. From the total amount of food, milk, and other commodities produced on institutional farms, the commissioner shall sell, at prevailing wholesale prices, and each of the institutions under the control of the Department of Health and Human Resources and Division of Corrections and Rehabilitation shall purchase, these products based on the dietary needs of each institution: *Provided*, That if the commissioner cannot sell sufficient food products to each institution to meet the demand created, each institution may purchase such food products from vendors who can supply those food products at the greatest savings to the taxpayers of the state.

(b) If requested by the Commissioner of the Division of Corrections and Rehabilitation, the commissioner may authorize the Division of Corrections and Rehabilitation to operate a farm or other enterprise using inmates as labor on those lands. The Commissioner of the Division of Corrections and Rehabilitation is responsible for the selection, direction, and supervision of the inmates and shall, in consultation with the Commissioner of Agriculture, assign the work to be performed by inmates. The Commissioner of Agriculture may also request inmate labor to perform work on the institutional farms, and if requested, the Commissioner of the Division of Corrections and Rehabilitation shall provide inmate labor, if available.

(c) The commissioner is hereby authorized and empowered to:

(1) Lease to public or private parties, for purposes including agricultural production or experimentation, public necessity, or other purposes, any land, easements, equipment, or other property, except that property may not be leased for any use in any manner that would render the land toxic for agricultural use, nor may toxic or hazardous materials as identified by the Commissioner of Agriculture be used or stored upon such property unless all applicable state and federal permits necessary are obtained. ~~Any lease for an annual consideration of \$1,000 or more shall be by sealed bid auction and the commission shall give notice of such auction 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 is the county in which the property to be leased is located;~~

(2) Transfer to the public land corporation land designated in its management plan as land to be disposed of, which land shall be sold, exchanged, or otherwise transferred pursuant to §5A-11-4 and §5A-11-5 of this code;

(3) Develop lands to which it has title for the public use including forestation, recreation, wildlife, stock grazing, agricultural production, rehabilitation, and/or other conservation activities and may contract or lease for the proper development of timber, oil, gas, or mineral resources, including coal by underground mining or by surface mining where reclamation as required by specifications of the Department of Environmental Protection will increase the beneficial use of such property. ~~Any such contract or lease shall be by sealed bid auction as provided for in subdivision (1) of this subsection; and~~

(4) Upon 30 days written notice to the lessee, cancel a lease to which the department is a party and which is for annual consideration of less than \$5 per acre: *Provided*, That such lease must contain a provision authorizing cancellation or impairment by the Legislature; and

(4) ~~(5)~~ Exercise all other powers and duties necessary to effectuate the purposes of this article.

(d) Notwithstanding the provisions of subsection (c) of this section, no timberland may be leased, sold, exchanged, or otherwise disposed of unless there is no commercially salable timber on the timberland, an inventory is provided, and an appraisal of the timber is provided, ~~and the sale, lease, exchange, or other disposition is accomplished by the sealed bid auction procedure provided above in subdivision (1) or (2), subsection (c) of this section as applicable.~~

(e) The commissioner may promulgate, pursuant to §29-1-1 *et seq.* of this code, rules and regulations relating to the powers and duties of the commissioner as enumerated in this section.

## **ARTICLE 14. WEST VIRGINIA COMMERCIAL FEED LAW.**

### **§19-14-1. Title.**

This article shall be known as the “West Virginia Commercial Feed Law ~~of 1994.~~”

### **§19-14-2. Definitions.**

(a) “Brand name” means any word, name, symbol or device, or any combination thereof, identifying the commercial feed of a distributor, guarantor, or manufacturer and distinguishing it from all others.

(b) “Bulk” refers to commercial feed or feed ingredients distributed in nonpackaged form where a label cannot be attached and accompanied by an invoice or delivery slip.

(c) “Commercial feed” means all materials or combinations of materials which are distributed, or intended for distribution, for use as feed or for mixing in feed for animals, other than ~~man~~ humans, except: (1) Unmixed or unprocessed whole seeds when such whole or unprocessed seeds are not chemically changed or adulterated; (2) ~~unground~~ unprocessed hay, straw, stover, silage, cobs, husks, hulls, and raw meat when not mixed with other materials and when not adulterated; (3) individual chemical compounds when not mixed with other materials. The term commercial feed shall include the categories of feed ingredients, customer-formula feeds, pet foods and specialty pet foods.

(d) “Commissioner” refers to the commissioner of agriculture of the State of West Virginia or a duly authorized employee of the commissioner.

(e) “Contract feeder” means a person who, as an independent contractor, feeds commercial feed to animals pursuant to a contract and the commercial feed is supplied, furnished, or provided to the independent contractor and such contractor’s remuneration is determined all or in part by feed consumption, mortality, profits, or the amount or quality of the product.

(f) “Customer-formula feed” means a commercial feed that consists of a mixture of commercial feed and/or feed ingredients, each batch of which is manufactured according to the specific instructions of the final purchaser.

(g) “Distribute” means to offer for sale, sell, ~~expose for sale~~, exchange, or barter commercial feed; or to supply, furnish, or provide commercial feed to a contract feeder.

(h) “Distributor” means any person who ~~sells, exposes for sale, offers for sale, exchanges, barter, gives, parcels out, allots, shares, or dispenses~~ distributes a commercial feed.

~~(i) “Domesticated animal” means any species of animal living and bred in a tame condition.~~

~~(j)~~ (i) “Drug” means any substance intended for use in the diagnosis, cure, mitigation, treatment, or prevention of disease in animals, other than man humans; and ~~substances, other than nutritive components,~~ any substance intended to affect the structure or any function of the animal body.

(j) “Feed” means any material consumed, or intended to be consumed, by animals other than humans, or any element of that material that contributes nutrition, taste, or aroma, or otherwise has a technical effect on the consumed material. The term “feed” includes raw materials, ingredients, and finished product.

(k) “Feed ingredient” means each constituent material making up ~~commercial~~ feed, including individual chemical compounds labeled for use as a feed ingredient.

(l) “Guarantor” means any person whose name appears on a label and who is therefore responsible for the product and its labeling.

~~(m)~~ (m) “Label” means a display of written, printed, or graphic matter printed upon or otherwise affixed to the container in which commercial feed is distributed; or printed upon or otherwise affixed to the invoice, delivery slip, or other shipping document which accompanies bulk shipments of commercial feed or customer-formula feed. All such labels shall be legible and in English.

~~(n)~~ (n) “Labeling” means and includes all labels as well as all other written, printed, or graphic matter, or advertising referencing such commercial feed found: (1) upon a commercial feed or any of its containers or wrappers, or (2) accompanying such commercial feed.

~~(o)~~ (o) “Manufacture” means to grind, mix, blend, package, pack, repackage, repack, or otherwise process a commercial feed for distribution.

~~(p)~~ (p) “Medicated feed” means any ~~commercial~~ feed which contains one or more drugs. Antibiotics included in a feed growth promotion and/or efficiency level are drug additives and feeds containing such antibiotics are included in the definition of “medicated feed”.

~~(q)~~ (q) “Mineral feed” means a commercial feed designed or intended to supply primarily mineral elements or inorganic nutrients.

~~(r)~~ (r) “Official sample” means any sample of ~~commercial~~ feed taken by the commissioner in accordance with the provisions of this article and rules promulgated hereunder.

~~(s)~~ (s) “Percent” or “percentage” means percentage by weights.

~~(t)~~ (t) “Person” means an individual, partnership, association, fiduciary, firm, company, corporation, or any organized group of persons whether incorporated or not.

~~(t)~~ (u) "Pet" means any ~~domesticated species of animal normally maintained in or near the household of the owner including, but not limited to, dogs, cats and specialty pets~~ dog (Canis familiaris) or cat (Felis catus).

~~(u)~~ (v) "Pet food" means any commercial feed manufactured and distributed for consumption by pets.

~~(v)~~ "Principal display panel" means the part of a label that is intended to be shown and examined when the product is on display for retail sale.

~~(w)~~ "Process" means any ~~treatment that changes a feed ingredient so that it can no longer be restored to its previous form~~ a method used to prepare, treat, convert, or transform materials into feed or feed ingredients. The word "processed" can be used to further describe an ingredient name, so long as the ingredient is not nutritionally altered from the original form of the ingredient.

~~(x)~~ "Product name" means the name of the commercial feed which identifies it, ~~such as: Species of animal, age group of animal, characterizing ingredients, specific use, or other descriptive terms~~ as to kind, class, or specific use and distinguishes it from all other products bearing the same brand name.

~~(y)~~ "Quantity statement" means the net weight (mass), liquid measure, or count.

~~(y)~~ "Registrant" means any person who registers commercial feed for distribution or use in this state.

~~(z)~~ "Repack" or "repackaging" means to pack and label a previously manufactured ~~and packaged commercial feed prior to a specific request of a customer.~~

~~(aa)~~ "Specialty pet" means any ~~domesticated pet animal normally maintained in a cage or tank including, but not limited to,~~ household, such as gerbils, hamsters rodents, ornamental birds, tropical fish, goldfish, snakes and turtles, reptiles, amphibians, ferrets, hedgehogs, marsupials, and rabbits not raised for food or fur.

~~(bb)~~ "Specialty pet food" means any commercial feed ~~intended~~ prepared and distributed for consumption by specialty pets.

~~(cc)~~ "Ton" means a net weight of two thousand pounds avoirdupois.

### **§19-14-3. Powers and duties of the commissioner.**

The commissioner has the power and authority to:

~~(a)~~ (1) Enter and inspect, during reasonable hours, any location where commercial feeds ~~are feed is~~ manufactured, distributed, transported, or used, and where records relating to the manufacture, distribution, shipment, labeling, or sale of commercial feed are kept. Such inspection includes may include, but is not limited to, examining, photographing, verifying, copying, and auditing records as ~~is necessary to determine compliance with this article;~~ and reviewing labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of commercial feeds.

~~(b)~~ (2) Open, examine, sample, and test commercial feed, unmixed or unprocessed whole seeds, equipment, containers, transport containers, and packages used or intended to be used in the manufacture and distribution of commercial feeds.

~~(c)~~ (3) Issue permits and registrations pursuant to this article.

~~(d)~~ (4) Refuse, suspend, or revoke permits and registrations as provided in this article.

~~(e)~~ (5) Issue embargoes as provided in this article.

~~(f)~~ (6) Condemn and confiscate any product that is not brought into compliance with this article.

~~(g)~~ (7) Collect fees and penalties, and expend moneys under the terms of this article.

~~(h)~~ (8) Conduct sampling in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

~~(i)~~ (9) Conduct hearings as provided by this article.

~~(j)~~ (10) Assess civil penalties and refer violations to a court of competent jurisdiction.

~~(k)~~ (11) Obtain court orders directing any person refusing to submit to inspection, sampling, and auditing to submit.

~~(l)~~ (12) Establish and maintain feed testing facilities; establish reasonable fees for such tests; incur expenses; and conduct tests in accordance with the official methods published in the current edition of the Official Methods of Analysis of the Association of Official Analytical Chemists and supplements thereto, or other methods approved by the commissioner by rules.

~~(m)~~ (13) Be guided by the analytical results of the official sample when determining whether the commercial feed is deficient in any component.

~~(n)~~ (14) Report the analytical results on all official samples to the ~~registrant~~ guarantor and, in the case of deficient samples, also to the dealer and the purchaser, if known.

~~(o)~~ (15) Upon request made within 30 days from the date the official sample results are reported, furnish a portion of the official sample to the ~~registrant~~ guarantor.

~~(p)~~ ~~Publish and distribute annually a composite report containing: (1) The sales of commercial feeds and feed ingredients during the preceding period, (2) the results of the analysis of official samples as compared with the guarantee on the label, (3) firms responsible for the product, and (4) such other data the commissioner deems necessary: *Provided*, That the information on production and use so provided does not disclose the operations of any person.~~

~~(q)~~ (16) ~~To cooperate~~ Cooperate with and enter into agreements with governmental agencies of this state and other states, agencies of the federal government and foreign governments, and private associations ~~in order~~ to carry out the purpose and provisions of this article.

~~(r)~~ (17) Promulgate rules, in accordance with §29A-3-1 *et seq.* of this code, dealing with commercial feeds and enforcement of this article.

**§19-14-5. Permits; registration.**

(a) Permits and registrations shall not be transferrable with respect to persons or locations.

(b) A person must apply for a permit or registration at least ~~fifteen~~ 30 days prior to the expiration of the current permit or registration ~~expires~~; or at least ~~fifteen~~ 30 days prior to the date that the person intends to engage in the business of selling or marketing commercial feed products or market products in this state. All applications shall be accompanied by the required fee established in this section. A penalty of ~~\$2~~ shall be added to the fee for all permits or registrations that are not applied for or renewed within the time limit.

(c) Persons manufacturing commercial feed or customer-formula feed in this state must obtain a Commercial Feed Manufacturing Permit from the commissioner, except ~~all~~ for persons manufacturing feed for only his/her animals on his/her premises, or those producing pet food. Application forms shall be provided by the commissioner and include such information as established by rules. A separate permit shall be obtained for each manufacturing facility or location in this state. Each Commercial Feed Manufacturing Permit application shall be accompanied by ~~an~~ the required application fee of ~~\$15~~. Each permit issued shall expire on December 31, next following the date of issue.

(d) Each person ~~first~~ distributing commercial feed ~~into~~ in West Virginia ~~trade channels~~ must obtain a Commercial Feed Distributor Permit from the commissioner, except: (1) Persons distributing pet food exclusively, (2) persons holding a valid Commercial Feed Manufacturing Permit issued by the commissioner, and (3) persons ~~distributing only those feeds that they register~~ holding a Commercial Feed Guarantor Permit issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Distributor Permit application shall be accompanied by ~~an~~ the required application fee of ~~\$10~~. Each permit issued shall expire on December 31, next following the date of issue.

(e) ~~All commercial feed distributed or used in this state, except customer-formula feed, must be registered. Commercial feed that can be uniquely identified by its brand name, product name, physical form or other descriptive term shall be registered as a separate product. Commercial feed that is packaged in such weights as to apply to several categories shall be registered in each applicable category. Application forms shall be provided by the commissioner and include such information as established by rules. Each person whose name appears on the label of a commercial feed or customer-formula feed as guarantor must obtain a Commercial Feed Guarantor Permit from the commissioner for each manufacturing facility or location that distributes feed in or into the state, except those facilities or locations for which a Commercial Feed Manufacturing Permit has already been issued by the commissioner. Application forms shall be provided by the commissioner and include such information as established by rules. Each Commercial Feed Guarantor Permit application shall be accompanied by the required application fee. Each permit issued shall expire on December 31, next following the date of issue.~~

~~(1) Commercial feed, other than pet food, in packages over ten pounds or bulk shall be registered permanently. A registration fee of \$10 per product shall accompany each application for registration, except that there will be no fee for a revision of a commercial feed already on file that involves a change in the net weight, a change in the list of ingredients, and/or a change in the guarantee for vitamins or minerals.~~



~~(2) (f) On the thirty first day of August, 1991, permanent registrations for pet food in packages over ten pounds are void and application for registration and payment of fees will be required. Pet food, including specialty pet feeds, in packages over 10 pounds or bulk shall be registered annually. A registration fee of \$50 per product shall accompany each Each application for registration shall be accompanied by the required registration fee. The Each registration shall expire on the thirty first day of August August 31 next following the date of issue: *Provided*, That until June 30, 2027, an additional registration fee of \$50 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.~~

~~(3) (g) Commercial feed, excluding specialty pet food in packages of one pound or less, Pet food packaged in packages of 10 pounds and under shall be registered annually. A registration fee of \$40 per product shall accompany each Each application for registration shall be accompanied by the required registration fee. The Each registration shall expire on December 31, next following the date of issue: *Provided*, That until June 1, 2027, an additional registration fee of \$35 per product shall accompany each application for registration and the additional registration fee shall be deposited into the West Virginia Spay Neuter Assistance Fund for spay and neutering services performed within this state by licensed veterinarians.~~

~~(4) (h) Specialty pet food in packages of one pound or less shall be registered annually. A registration fee of \$20 per product shall accompany each Each application for registration shall be accompanied by the required registration fee. The Each registration shall expire on December 31, next following the date of issue.~~

~~(f) (i) A person is not required to register any brand name or product name of commercial feed which is already registered by another person.~~

~~(g) (j) Alteration of ~~commercial feed~~ a pet food or specialty pet food that changes the label requires a new application for a ~~Commercial Feed Registration~~ registration be made and approved before distribution.~~

#### **§19-14-6. Refusal of applications; suspension and revocation of registrations and permits.**

The commissioner may refuse to grant, or may suspend or revoke ~~registration of any commercial feed~~ Commercial Feed Manufacturing Permit; any commercial feed manufacturing permit Commercial Feed Guarantor Permit; or any commercial feed distributor permit Commercial Feed Distributor Permit; or the registration of any Pet Food or Specialty Pet Food when it is determined that: ~~(a)(1)~~ (1) The applicant, permittee, or ~~registrant~~ guarantor has violated the provisions of this article or any official rule promulgated hereunder; or ~~(b)(2)~~ (2) this article or the rules promulgated hereunder cannot be or will not be complied with: *Provided*, That the permittee or ~~registrant~~ guarantor shall have the opportunity to be heard prior to the suspension or revocation of the registration or permit.

#### **§19-14-7. Hearings and appeals.**

(a) No application shall be refused until the applicant has the opportunity to amend his/her application to comply with the requirements of this article.

(b) No registration or permit shall be refused, suspended, or revoked until the ~~registrant~~ guarantor or permittee shall have the opportunity to have a hearing before the commissioner.

~~(b)~~ (c) Any person adversely affected by an act, order, or ruling made pursuant to the provisions of this article, may ~~within forty-five days thereafter~~, bring an action for judicial review in the circuit court of the county in which the violation occurred in accordance with §29A-5-1 et seq. of this code.

~~Any party aggrieved by a final judgment entered by a circuit court, may appeal to the West Virginia Supreme Court of Appeals.~~

#### **§19-14-8. Labeling.**

(a) When commercial feed, except customer-formula feed, is distributed in this state in bags or other containers, the label shall be affixed to the container; when commercial feed is distributed in bulk, the label shall accompany delivery.

(b) All commercial feed labels, except customer-formula feeds, shall ~~state~~ include the following:

(1) ~~The net weight avoirdupois. The net weight may also be stated in metric units~~ quantity statement.

(2) The product name, including brand name, if any, under which the commercial feed is distributed.

(3) The guaranteed analysis, expressed on an "as is" basis, stating what the commissioner determines by rules is required to advise the user of the composition of the commercial feed and other necessary information to support claims made on the label. The substances or elements guaranteed must be determinable by laboratory methods published by the association of official analytical chemists or ~~by an acceptable method supplied by the registrant~~ other methods approved by the commissioner.

(4) An ingredient statement, except that an ingredient statement is not required for single standardized ingredient feeds ~~or when such statement is not in the interest of consumers.~~ An ingredient statement shall include:

(A) The common or usual name of each ingredient as officially defined in the annual Official Publication of the Association of American Feed Control Officials;

(B) ~~Collective Feed~~ Feed terms as defined in the annual Official Publication of the Association of American Feed Control Officials;

(C) The common or usual name of substances generally recognized as safe (GRAS) as authorized by 21 Code of Federal Regulations 570.30 (~~April 1, 1990~~ revised April 1, 2019) of the Federal Drug and Cosmetic Act as amended August, 1985;

(D) The common or usual name of substances which are so common ~~so~~ as to not need a definition, have a substantially safe history, and no safety hazard is known to exist after consumption by a significant number of animals, including, but not limited to, salt and sugar; or

(E) Other ingredients or additives that the commissioner, by rules, deems necessary.

(5) The name and principal mailing address of the manufacturer or the distributor.

(6) For all commercial feeds containing drugs and for all other such commercial feeds as the commissioner may require by legislative rules, Adequate adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(7) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the medicated commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word "medicated" shall appear directly following and below the product name in type size, no smaller than one-half the type size of the product name.

(c) Pet food and specialty pet food labels shall have such additional information as required by the commissioner through rules.

(d) All customer-formula feeds shall be labeled at all times and shall be supplied to the purchaser at the time of delivery. The label shall bear the following information:

(1) Name and address of the manufacturer.

(2) Name and address of the purchaser.

(3) Date of manufacture and/or delivery.

(4) ~~Net weight (avoirdupeis) of the commercial feed and each feed ingredient used in the customer-formula feed~~ The product name and quantity statement of each commercial feed and each other ingredient used in the mixture.

(5) For all customer-formula feeds containing drugs and for all other such customer-formula feeds as the commissioner may require by legislative rules, Adequate adequate directions as necessary for their safe and effective use and precautionary statements for safe and effective use.

(6) If a drug or drug containing product is used, then the following shall be stated:

(A) The established name of each active drug ingredient;

(B) The level of each drug used in the final mixture;

(C) The purpose of the medication (claim statement);

(D) Appropriate cautions and warnings on the use of the commercial feed;

(E) Withdrawal statements, if applicable; and

(F) The word "medicated" shall appear directly following and below the product name in type size no smaller than one-half the type size of the product name.

**§19-14-9. Tonnage reports; inspection fees.**

(a) Each person holding a Commercial Feed Manufacturing Permit, or a Commercial Feed Distributor Guarantor Permit, and every registrant, except those persons ~~exempted in subsection (b) of this section~~ exclusively manufacturing pet food or specialty pet food, shall report the number of tons of commercial feed distributed and pay an inspection fee on all feed distributed, except no inspection fee shall be due on:

(1) Commercial feed, if the payment was previously made by a ~~previous~~ distributor, manufacturer, or guarantor.

(2) Customer-formula feeds or commercial feeds manufactured in this state, if the inspection fee was paid on the commercial feed or all the feed ingredients used as ingredients therein. For the purpose of this exemption, the sale of the feed ingredients used in customer-formula feeds are considered to have taken place before the processing of these items.

(3) Commercial feeds ~~or commercial feeds manufactured in this state~~ which are subsequently used as ingredients in the continuing manufacture of commercial feeds in which the end product is registered.

(4) Commercial feed supplied to a poultry contract feeder.

~~(5) Commercial feed in packages of ten pounds or less.~~

~~(6)~~ (5) Pet food or specialty pet food.

~~(7) Commercial feed, where the inspection fee was paid during a previous quarter and is offered for sale in the current quarter.~~

(b) An annual fee for commercial feed which does not meet the minimum inspection fee shall be paid in lieu of the inspection fee as established by legislative rule.

~~(b)~~ (c) Each person holding a Commercial Feed Manufacturing Permit, or a Commercial Feed Distributor Guarantor Permit, or a registrant, except those persons: ~~(1) Exclusively~~ exclusively distributing or manufacturing pet food or specialty pet food; ~~or (2) exclusively distributing or manufacturing commercial feed in packages of ten pounds or less,~~ shall file a semiannual statement under oath before ~~the 31st day of January~~ 31 and July 31 of each year. The statement shall include the number of net tons of commercial feeds and feed ingredients manufactured or ~~first~~ distributed in this state during the preceding six-month period.

(d) Each report shall be accompanied by an inspection fee at the rate of ~~35¢ per ton~~ established by legislative rule, including a minimum inspection fee, on commercial feed and feed ingredients ~~with the minimum inspection fee being \$10 each statement. The minimum fee is waived if the total amount of the calculated inspection fee due is \$2 or less. Such fees become effective on July 1, 1991.~~

Inspection fees which are due and payable and not remitted to the commissioner within 15 days following the due date shall be assessed a penalty of 10 percent of the amount due, except

that semiannual reports with no fees due received 15 days after the due date shall be assessed a penalty of \$10 in an amount established by legislative rule. The assessment of this penalty fee shall not prevent the commissioner from taking other actions as provided in this chapter.

(e) (e) All persons must keep accurate records, as may be necessary or required by the commissioner, to indicate the tonnage of commercial feed distributed in this state. The commissioner shall have the right to examine such records.

#### **§19-14-10. Adulteration.**

Commercial feed or feed ingredients is adulterated:

(a)(1) If it bears or contains any poisonous, or deleterious or nonnutritive substance, including pesticide chemical residues, food additives, color additives or drugs which is or may be render it injurious to animals when fed such feed in accordance with the directions, or to humans who consume the resultant food product of the animal health; unless the substance is not an added substance, in which case such commercial feed shall not be considered adulterated under this subsection if the quantity of such substance in such commercial feed does not ordinarily render it injurious to health;

(b)(2) If its composition or quality falls below or differs from what is stated on the label or by its labeling; If it bears or contains any added poisonous, added deleterious, or added nonnutritive substance which is unsafe within the meaning of Section 406 of the Federal Food, Drug, and Cosmetic Act (other than one which is: (A) A pesticide chemical in or on a raw commodity; or (B) a food additive;

(c)(3) If it contains viable weed seeds exceeding the limits set by the commissioner by rules; If it is, or it bears or contains any food additive which is unsafe within the meaning of Section 409 of the Federal Food, Drug, and Cosmetic Act;

(d)(4) If the facilities, controls, or methods used in the manufacture, processing, or packaging do not conform to industry standards set by the commissioner by rules; or If it is a raw agricultural commodity and it bears or contains a pesticide chemical which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act: *Provided*, That where a pesticide chemical has been used in or on a raw agricultural commodity in conformity with an exemption granted or a tolerance prescribed under Section 408 of the Federal Food, Drug, and Cosmetic Act and such raw agricultural commodity has been subjected to processing such as canning, cooking, freezing, dehydrating, or milling, the residue of such pesticide chemical remaining in or such processed feed shall not be deemed unsafe if such residue in or on the raw agricultural commodity has been removed to the extent possible in good manufacturing practice and the concentration of such residue in the processed feed is not greater than the tolerance prescribed for the raw agricultural commodity unless the feeding of such processed feed will result or is likely to result in a pesticide residue in the edible product of the animal, which is unsafe within the meaning of Section 408(a) of the Federal Food, Drug, and Cosmetic Act;

(e)(5) If it was manufactured or held under conditions whereby it became contaminated by dust, dirt, insects, birds, rodents, or animal excretion thereby rendering it injurious to animal health. If it bears or contains any color additive which is unsafe within the meaning of Section 721 of the Federal Food, Drug, and Cosmetic Act;

(6) If it is, or it bears or contains, any new animal drug which is unsafe within the meaning of Section 512 of the Federal Food, Drug, and Cosmetic Act;

(7) If it consists, in whole or part, of any filth or decomposed substance, or if it is otherwise unfit for feed;

(8) If it has been prepared, packed, or held under unsanitary conditions whereby it may have become contaminated with filth, or whereby it may have been rendered injurious to health;

(9) If it is, in whole or in part, the product of a diseased animal, or of an animal that has died other than by slaughter that is unsafe within the meaning of Section 401(a)(1) or (a)(2) of the Federal Food, Drug, and Cosmetic Act;

(10) If the container is composed, in whole or in part, of any poisonous or deleterious substance which may render the contents injurious to health;

(11) If it has been intentionally subjected to radiation, unless the use of the radiation was in conformity with the regulation or exemption in effect pursuant to Section 409 of the Federal Food, Drug, and Cosmetic Act;

(12) If any valuable constituent has been, in whole or in part, omitted or abstracted therefrom or any less valuable substance substituted therefor;

(13) If its composition falls below or differs from that which it is purported or represented to possess by its labeling; or

(14) If it contains a drug, and the methods used in the facilities or controls used for its manufacture, processing, or packaging do not conform to current good manufacturing practice regulations promulgated by the commissioner to assure that the drug meets the requirements of this law as to safety and has the identity and strength and meets the quality and purity characteristics which it purports or is represented to possess.

#### **§19-14-11. Misbranding.**

Commercial feed ~~is~~ shall be deemed to be misbranded:

~~(a)~~(1) If its label or labeling is false or misleading;

~~(b)~~(2) If it is not labeled as required by this article;

~~(c)~~(3) If any word, statement, or other information required by this article to appear on the label is not prominently and conspicuously placed so that it can be read and understood by the ordinary individual under customary conditions of purchase and use;

~~(d)~~(4) If it purports to be or is represented as a commercial feed, or ~~contains~~ if it purports to contain or is represented as containing a commercial feed ingredient that does not conform to the definition of identity prescribed by the commissioner by rules; ~~or~~

~~(e)~~(5) If any damage or inferiority has been concealed; or

(6) If it is distributed under the name of another commercial feed.

**§19-14-12. Embargoes; condemnation and confiscation; injunctions.**

## (a) Embargo orders:.

(1) When the commissioner has reasonable cause to believe any lot of commercial feed is being manufactured, distributed, offered for sale, exposed for sale, or used in this state in violation of the provisions of this article or any rule promulgated hereunder, then ~~he/she~~ he or she may issue and enforce a written embargo order, warning the custodian of the commercial feed not to manufacture, distribute, use, remove, or dispose of the commercial feed lot in any manner until the embargo is released by the commissioner or by court order.

(2) When the embargo is issued, the commissioner shall affix a tag or other marking to the commercial feed and/or to the manufacturing device warning that such product or process is under embargo and notify the custodian that ~~he/she~~ he or she has a right to request an immediate hearing.

(3) The commissioner shall release the commercial feed lot so embargoed when said commercial feed has been brought into compliance with this article and its rules.

(4) The commissioner shall have the authority to issue an embargo against a perishable product, even if the result is the involuntary disposal of the product.

(5) The commissioner may take action to seize and condemn any product if not brought into compliance with this article and the rules issued hereunder, within 90 days of the notice to the custodian.

## (b) Condemnation and confiscation:.

(1) Any commercial feed not in compliance with the provisions of this article or the rules promulgated hereunder shall be subject to condemnation and confiscation on complaint of the commissioner to the circuit court of the county in which the commercial feed in question is located. Jurisdiction is hereby conferred upon the circuit courts to hear and determine such matter.

(2) If the court finds that the commercial feed is in violation of the provisions of this article or its rules and should be confiscated, then the court shall order the condemnation and confiscation of such commercial feed and its disposition in a manner consistent with the quality of such commercial feed which is not in violation of any other laws of this state: *Provided*, That the owner thereof must first be given an opportunity to process or relabel such commercial feed or dispose of the same in full compliance with the provisions of this article and its rules.

(c) Injunctions: Upon application by the commissioner, the circuit court of the county in which the violation is occurring, has occurred, or is about to occur, may grant a temporary or permanent injunction restraining any person from violating or continuing to violate any of the provisions of this article or any rule promulgated hereunder. An injunction shall be issued without bond.

**§19-14-14. Prohibited acts.**

It shall be unlawful:

(a) To manufacture or distribute, ~~or knowingly use~~ any commercial feed that is adulterated or misbranded.

(b) To adulterate or misbrand any commercial feed.

(c) To distribute, use, remove, or dispose of commercial feed in violation of an embargo order, or condemnation and confiscation order provided for under this article.

(d) To manufacture, distribute, or use any commercial feed containing a drug or drugs that cause or may cause residue of the drug or drugs in the edible tissues, milk, or eggs of the animals fed such feed in excess of the acceptable residue levels set by the commissioner by rules.

(e) To fail or refuse to register ~~commercial feeds~~ pet foods or specialty pet foods.

(f) To fail or refuse to obtain permits required under this article.

(g) To fail to make an accurate statement of tonnage.

(h) To fail to pay inspection fees as required under this article.

(i) To distribute or knowingly use any commercial feed that has not had an accurate statement of tonnage reported to the commissioner in the previous reporting period.

(j) To use or imply the name West Virginia Department of Agriculture, or reference any inspection or sample findings made by the West Virginia Department of Agriculture on labels or labeling of commercial feed.

(k) To interfere with the commissioner's official duties.

(l) To distribute raw milk for use as commercial feed for any species, unless:

(1) It has been decharacterized using a sufficient quantity of food coloring as designated by the commissioner;

(2) It has been decharacterized using food coloring approved by the U.S. Food and Drug Administration, or in the case of raw milk labeled as organic, approved by the U.S. Department of Agriculture;

(3) It has been decharacterized and the nutritive value of the milk has not been adversely affected by the decharacterization;

(4) The packaging of the raw milk does not resemble that used for the packaging of milk for human consumption;

(5) It is not stored at retail with, or in the vicinity of, milk or milk products intended for human consumption; and

(6) It does not otherwise violate this section.

#### **§19-14-16. Deviations and Penalties.**

(a) The commissioner is authorized to adopt regulations establishing permitted analytical variation and providing for reasonable deviation from the guaranteed analysis.



(b) If the analysis of a sample shows a deviation from permitted analytical variation established by the commissioner, the guarantor or other responsible person shall be penalized as established by legislative rule.

(c) Penalties for multiple deviations within a sample shall be cumulative: *Provided*, That in no case shall the penalty exceed the retail value of the product.

(d) Penalties paid pursuant to this section shall, where possible, be used to reimburse the purchaser of the lot of commercial feed representing the sample analyzed. If the purchaser or purchasers cannot be found, the amount of the penalty assessed shall be paid to the commissioner and deposited in the department's fees account to be used for feed related program maintenance and educational training of the industry and consumers.

(e) If any penalty has not been paid within 90 days of notice of such penalty, a late payment penalty established by legislative rule will be added to the original penalty.

(f) If a product is found to be adulterated, the guarantor or other responsible party shall be penalized as established by legislative rules.

## **ARTICLE 21. CONSERVATION DISTRICTS.**

### **§19-21A-1. Legislative determinations and declaration of policy.**

It is hereby declared, as a matter of legislative determination:

(a) That the farm and grazing lands of the State of West Virginia are among the basic assets of the state and that the preservation of these lands is necessary to protect and promote the health, safety and general welfare of its people; that improper land-use practices have caused and have contributed to, and are now causing and contributing to, a progressively more serious erosion of the farm and grazing lands of this state by water; that the breaking of natural grass, plant, and forest cover has interfered with the natural factors of soil stabilization, causing loosening of soil and exhaustion of humus and developing a soil condition that favors erosion; that the topsoil is being washed out of fields and pastures; that there has been an accelerated washing of sloping fields; that these processes of erosion by water and flooding is increased with removal of absorptive topsoil, causing exposure of less absorptive and less protective but more erosive subsoil; that failure by any landowner to conserve the soil and control erosion upon his lands causes a washing of soil and water from his or her lands onto other lands and makes the conservation of soil and control of erosion of such other lands difficult or impossible and increases the potential damages from flooding.

(b) That the consequences of such soil erosion in the form of soil washing are the silting and sedimentation of stream channels, reservoirs, dams, ditches, and harbors; the piling up of soil on lower slopes and its deposit over alluvial plains; the reduction in productivity or outright ruin of rich bottom lands by over-wash of -poor subsoil material, sand and gravel swept out of the hills; deterioration of soil and its fertility, deterioration of crops grown thereon and declining acre yields despite development of scientific processes for increasing such yields; loss of soil and water which causes destruction of food and cover for wildlife; the washing of soil into streams which silts over spawning beds and destroys water plants, diminishing the food supply of fish; a diminishing of the underground water reserve which causes water shortages, intensifies periods of drought and causes crop failures; an increase in the speed and volume of rainfall runoff, causing more severe and more numerous floods which bring suffering, disease, and death;

impoverishment of families attempting to farm eroding and eroded lands; damage to roads, highways, railways, farm buildings, and other property from floods; and losses in navigation, hydroelectric power, municipal water supply, irrigation developments, farming, grazing and reduction of suitable land available for homes and businesses.

(c) That to conserve soil resources and control and prevent soil erosion and prevent floodwater and sediment damage and further the conservation, development, utilization, water quality, and disposal of water, it is necessary that land-use practices contributing to soil wastage and soil erosion be discouraged and discontinued and appropriate soil-conserving land-use practices and works of improvement for flood prevention or the conservation, development, utilization, water quality, and disposal of water be adopted and carried out; that among the procedures necessary for widespread adoption are engineering operations such as the construction of terraces, terrace outlets, dams, desilting basins, floodwater retarding structures, channel improvements, floodways, dikes, ponds, ditches, and the like; the utilization of strip cropping, lister furrowing, contour cultivating and contour furrowing; land drainage; land irrigation; seeding and planting of waste, sloping, abandoned or eroded lands with water-conserving and erosion-preventing plants, trees and grasses; forestation and reforestation; rotation of crops; soil stabilization with trees, grasses, legumes, and other thick-growing, soil-holding crops; retardation of runoff by increasing absorption of rainfall; and retirement from cultivation of steep, highly erosive areas and areas now badly gullied or otherwise eroded.

(d) It is hereby declared to be the policy of the Legislature to provide for the conservation of the soil and soil resources of this state, for the control and prevention of soil erosion, for the prevention of floodwater and sediment damage and for furthering the conservation, development, utilization, water quality, and disposal of water, and thereby to preserve natural resources, control floods, prevent impairment of dams and reservoirs, assist in maintaining the navigability of rivers and harbors, preserve wildlife, protect the tax base, protect public lands, and protect and promote the health, safety, and general welfare of the people of this state.

(e) This article contemplates that the incidental cost of organizing conservation districts will be borne by the state, while the expense of operating the districts so organized will be provided by donations, gifts, contributions, grants, and appropriations, in money, services, materials, or otherwise, from the United States or any of its agencies, from the State of West Virginia or from other sources, with the understanding that the owners or occupiers will contribute funds, labor, materials, and equipment to aid in carrying out erosion control measures on their lands.

### **§19-21A-3. Definitions.**

Wherever used or referred to in this article, unless a different meaning clearly appears from the context:

(1) "Agency of this state" means the government of this state and any subdivision, agency, or instrumentality, corporate or otherwise, of the government of this state.

(2) "Committee" or "State Conservation Committee" means the agency created in §19-21A-4 of this code.

(3) "Conservation" means the reduction of soil erosion, enhancement of water supplies, control, and abatement of nonpoint sources of water pollution, improvement of water quality, increased aquatic and wildlife habitat, and the reduction of damages caused by floodwater and sediment damages and other natural disasters.

~~(3)~~ (4) "District" or "conservation district" means a subdivision of this state, organized in accordance with the provisions of this article, for the purposes, with the powers and subject to the restrictions hereinafter set forth.

~~(4)~~ (5) "Grant" means the providing of grants for conservation purposes pursuant to legislative rule.

~~(5)~~ (6) "Governing body" means the supervisors of any conservation district, town, or city, council, city commission, county court, or body acting in lieu of a county court, in this state, and the term "governmental division" means any conservation district, town, city, or county in this state.

~~(6)~~ (7) "Land occupier" or "occupier of land" means any person, firm, or corporation who shall hold title to, or shall be in possession of, any lands lying within a district organized under the provisions of this article, whether as owner, lessee, renter, or tenant.

~~(7)~~ (8) "Landowners" or "owners of land" means any person or persons, firm, or corporation who holds title to any lands lying within a district organized under the provisions of this article.

~~(8)~~ (9) "Notice" means notice published as a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code and the publication area for the publication is the county in which is located the appropriate area. At any hearing held pursuant to such notice at the time and place designated in the notice, adjournment may be made, from time to time, without the necessity of renewing the notice for the adjournment dates.

~~(9)~~ (10) "Petition" means a petition filed under the provisions of §19-21A-5(a) of this code for the creation of a district.

~~(10)~~ (11) "Soil conservation", "erosion control", or "erosion prevention projects" means those projects that have been established by federal agencies in cooperation with state agencies for the purpose of demonstrating soil erosion control and water conservation practices.

~~(11)~~ (12) "State" means the State of West Virginia.

~~(12)~~ (13) "Supervisor" means one of the members of the governing body of a district, elected or appointed in accordance with the provisions of this article.

~~(13)~~ (14) "United States" or "agencies of the United States" means the United States of America, Natural Resources Conservation Service of the United States Department of Agriculture, and any other agency or instrumentality, corporate or otherwise, of the United States of America.

~~(14)~~ (15) "Works of improvement" means such structures as may be necessary or convenient for flood prevention or the conservation, development, utilization, or disposal of water.

#### **§19-21A-4. State Conservation Committee; continuation.**

(a) The State Conservation Committee is continued. It serves as an agency of the state and is to perform the functions conferred upon it in this article. The committee consists of the following 10 members:

(1) Four citizen members;

(2) The following ex officio members or his or her designee:

(A) The Director of the state Cooperative Extension Service;

(B) The Director of the State Agricultural and Forestry Experiment Station;

(C) The Secretary of the Department of Environmental Protection;

(D) The State Commissioner of Agriculture, who is the chairperson of the committee;

(E) The Director of the Division of Forestry; and

(F) The President of the West Virginia Association of Conservation Districts.

(b) The Governor shall appoint, by and with the consent of the Senate, the four citizen members. Members shall be appointed for four-year terms, which are staggered in accordance with the initial appointments under prior enactment of this section. In the event of a vacancy, the appointment is for the unexpired term.

(c) The committee may invite the Secretary of Agriculture of the United States of America to appoint one person to serve with the committee as an advisory member.

(d) The committee shall keep a record of its official actions, shall adopt a seal, which shall be judicially noticed, and may perform those acts, hold public hearings, and adopt or propose for legislative approval rules necessary for the execution of its functions under this article.

(e) The State Conservation Committee may employ an administrative officer, technical experts, and other agents and employees, permanent and temporary, as it requires. The administrative officer and support staff shall be known as the West Virginia Conservation Agency. The committee shall determine their qualifications, duties, and compensation. The committee may call upon the Attorney General of the state for legal services it requires. It may delegate to its chairperson, to one or more of its members, or to one or more agents or employees powers and duties it considers proper. The committee may secure necessary and suitable office accommodations and the necessary supplies and equipment. Upon request of the committee, for the purpose of carrying out any of its functions, the supervising officer of any state agency or of any state institution of learning shall, insofar as may be possible, under available appropriations and having due regard to the needs of the agency to which the request is directed, assign or detail to the committee members of the staff or personnel of the agency or institution of learning and make special reports, surveys or studies required by the committee.

(f) A member of the committee holds office so long as he or she retains the office by virtue of which he or she is serving on the committee. A majority of the committee is a quorum and the concurrence of a majority in any matter within their duties is required for its determination. The chairperson and members of the committee may receive no compensation for their services on the committee, but are entitled to reimbursement of expenses, including traveling expenses necessarily incurred in the discharge of their duties on the committee. The committee shall:

(1) Require the execution of surety bonds for all employees and officers who are entrusted with funds or property;

(2) Provide for the keeping of a full and accurate public record of all proceedings and of all resolutions, rules, and orders issued or adopted;

(3) Provide for an annual audit of the accounts of receipts and disbursements; and

(4) Cooperate with the State Resiliency Office to the fullest extent practicable to assist that office in fulfilling its duties.

(g) In addition to other duties and powers conferred upon the State Conservation Committee, it may:

(1) Offer appropriate assistance to the supervisors of conservation districts, organized as provided in this article, in the carrying out of any of their powers and programs;

(2) Assist and advise conservation districts and others in implementing conservation improvements, and projects to control and abate nonpoint sources of water pollution and prevent damage from floodwater and sediment;

~~(2)~~ (3) Keep the supervisors of each of the several districts, organized under the provisions of this article, informed of the activities and experience of all other districts organized under this article, and facilitate an interchange of advice and experience between the districts and cooperation between them;

~~(3)~~ (4) Coordinate the programs of the several conservation districts so far as this may be done by advice and consultation;

~~(4)~~ (5) Contract for services directly related to natural disaster recovery and stream restoration related to flooding, on an as needed basis;

~~(5)~~ (6) Comply with provisions of present and future federal aid statutes and regulations, including execution of contracts or agreements with, and cooperation in, programs of the United States government and any of its proper departments, bureaus, or agencies relating to natural disaster response, natural disaster recovery, or stream restoration related to flooding;

~~(6)~~ (7) Secure the cooperation and assistance of the United States and any of its agencies and of agencies of this state in the work of the districts;

~~(7)~~ (8) Disseminate information throughout the state concerning the activities and programs of the conservation districts and encourage the formation of the districts in areas where their organization is desirable;

~~(8)~~ (9) Administer a conservation grant program that provides financial assistance to conservation districts and others to promote approved conservation, water quality, and soil conservation projects;

~~(9)~~ (10) Accept and receive donations, gifts, contributions, grants, and appropriations in money, services, materials, or otherwise from the United States or any of its agencies, from the State of West Virginia, or from other sources and use or expend the money, services, materials, or other contributions in carrying out the policy and provisions of this article, including the right to allocate the money, services, or materials in part to the various conservation districts created by this article in order to assist them in carrying on their operations;

~~(40)~~ (11) Obtain options upon and acquire by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise any property, real or personal, or rights or interests in the property; maintain, administer, operate, and improve any properties acquired; receive and retain income from the property and to expend the income as required for operation, maintenance, administration, or improvement of the properties or in otherwise carrying out the purposes and provisions of this article; and sell, lease, or otherwise dispose of any of its property or interests in the property in furtherance of the purposes and the provisions of this article. Money received from the sale of land acquired in the small watershed program shall be deposited in the special account of the State Conservation Committee and expended as provided in this article;

~~(44)~~ (12) Promulgate emergency and legislative rules to effectuate the provisions of this article ~~as amended and reenacted by the Legislature during the 2018 regular session of the Legislature;~~ and

~~(42)~~ (13) Upon a Governor's proclamation declaring a state of emergency or federal disaster declaration, the state committee, its employees, or agents may enter any water of the state for the purpose of removing debris and other obstruction which impede water flow and present additional flood hazards. The agency shall make reasonable efforts to secure the permission of the landowner before entering any private property in connection with these removal activities. The exercise of this limited authority does not constitute taking of private property or trespass. This authority shall continue for the duration of the Governor's proclamation or the federal disaster declaration.

#### **§19-21A-8. Powers of districts; additional powers of supervisors.**

A conservation district organized under the provisions of this article and the supervisors thereof shall have the following powers, in addition to others granted in other sections of this article:

(1) To conduct surveys, investigations, and research relating to the character of soil erosion, ~~and floodwater and sediment damage, and nonpoint source water pollution,~~ and to the conservation, development, utilization, water quality, and disposal of water and the preventive and control measures needed to publish the results of such surveys, investigations, or research and to disseminate information concerning such preventive and control measures and works of improvement: *Provided*, That in order to avoid duplication of research activities, no district shall initiate any research program or publish the results except with the approval of the state committee and in cooperation with the government of this state or any of its agencies, or with the United States or any of its agencies;

(2) To conduct demonstrational projects within the district on lands owned or controlled by this state or any of its agencies, with the consent and cooperation of the agency administering and having jurisdiction thereof, and on any other lands within the district upon obtaining the consent of the owner and occupier of the lands or the necessary rights or interests in the lands in order to demonstrate by example the means, methods, and measures by which soil and soil resources may be conserved and soil erosion in the form of soil washing may be prevented and controlled, water quality may be improved, and works of improvement may be carried out;

(3) To carry out preventive and control measures and works of improvement within the district, including, but not limited to, engineering operations, methods of cultivation, the growing of vegetation, changes in use of land; drainage, irrigation, and other agricultural water management operations and measures for the prevention of floodwater and sediment damages, or for the

control and abatement of nonpoint sources of water pollution; and the measures listed in §19-21A-2(c) of this code on lands owned or controlled by this state or any of its agencies with the consent and cooperation of the agency administering and having jurisdiction thereof and on any other lands within the district upon obtaining the consent of the owner and occupier of such lands or the necessary rights or interests in such lands;

(4) To cooperate, or enter into agreements with, and within the limits of appropriations duly made available to it by law, to furnish financial or other aid to any agency, governmental or otherwise, or any occupier of lands within the district in the carrying on of erosion-control and prevention operations, operations for the control and abatement of nonpoint sources of water pollution, and works of improvement within the district, subject to such conditions as the supervisors may deem necessary to advance the purposes of this article;

(5) To obtain options upon and to acquire, by purchase, exchange, lease, gift, grant, bequest, devise, or otherwise, any property, real or personal, or rights or interests therein; to institute condemnation proceedings to acquire any property, real or personal, or rights or interests therein, whether or not located in the district, required for works of improvement; to maintain, administer and improve any properties acquired, to receive income from such properties and to expend such income in carrying out the purposes and provisions of this article; and to sell, lease or otherwise dispose of any of its property or interests therein in furtherance of the purposes and the provisions of this article;

(6) To make available, on such terms as it shall prescribe, to land occupiers within the district agricultural and engineering machinery and equipment, fertilizer, seeds and seedlings, and such other material or equipment as will assist such land occupiers to carry on operations upon their lands for the conservation of soil resources and for the prevention and control of soil erosion and for flood prevention or the conservation, development, utilization, water quality, and disposal of water;

(7) To construct, improve, operate, and maintain such structures as may be necessary or convenient for the performance of any of the operations authorized in this article;

(8) To develop with the approval of the state committee comprehensive plans for the conservation of soil resources and for the control and prevention of soil erosion and for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district. The plans shall specify, in as much detail as may be possible, the acts, procedures, performances and avoidances which are necessary or desirable for the effectuation of such plans, including the specification of engineering operations, methods of cultivation, the growing of vegetation, cropping programs, tillage practices and changes in use of land; and to publish such plans and information and bring them to the attention of occupiers of lands within the district;

(9) To take over, by purchase, lease or otherwise, and to administer any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, located within its boundaries, undertaken by the United States or any of its agencies, or by this state or any of its agencies; to manage, as agent of the United States or any of its agencies, or of this state or any of its agencies, any soil-conservation, flood-prevention, drainage, irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to act as agent for the United States or any of its agencies, or for this state or any of its agencies, in connection with the acquisition, construction, operation, or administration of any soil-conservation, flood-prevention, drainage,

irrigation, water-management, erosion-control or erosion-prevention project, or combinations thereof, within its boundaries; to accept donations, gifts, contributions and grants in money, services, materials, or otherwise, from the United States or any of its agencies, or from this state or any of its agencies, or from any other source and to use or expend such money, services, materials or other contributions in carrying on its operations;

(10) To sue and be sued in the name of the district; to have a seal, which shall be judicially noticed; to have perpetual succession unless terminated as hereinafter provided; to make and execute contracts and other instruments, necessary or convenient to the exercise of its powers; to make and, from time to time, amend and repeal rules and regulations not inconsistent with this article to carry into effect its purposes and powers;

(11) As a condition to this extending of any benefits under this article to, or the performance of work upon, any lands, the supervisors may require contributions in money, services, materials or otherwise to any operations conferring such benefits and may require land occupiers to enter into and perform such agreements or covenants as to the permanent use of such lands as will tend to prevent or control erosion and prevent floodwater and sediment damage thereon;

(12) No provisions with respect to the acquisition, operation, or disposition of property by other public bodies shall be applicable to a district organized hereunder in its acquisition, operation and disposition of property unless the Legislature shall specifically so state;

(13) To enter into contracts and other arrangements with agencies of the United States, with persons, firms, or corporations, including public corporations, with the state government of this state or other states, or any department or agency thereof, with governmental divisions, with soil conservation, drainage, flood control, soil erosion, or other improvement districts in this state or other states, for cooperation or assistance in constructing, improving, operating, or maintaining works of improvement within the district, or in preventing floods, or in conserving, developing, utilizing and disposing of water in the district, or for making surveys, investigations, or reports thereof; and to obtain options upon and acquire property, real or personal, or rights or interests therein, in other districts or states required for flood prevention and water quality improvement, or the conservation, development, utilization, and disposal of water within the district and to construct, improve, operate or maintain thereon or therewith works of improvement.

## **ARTICLE 25. LIMITING LIABILITY OF LANDOWNERS.**

### **§19-25-1. Purpose.**

The purpose of this article is to encourage owners of land to make available to the public land and water areas for military, law-enforcement, or homeland-defense training, or recreational, agricultural, or wildlife propagation purposes by limiting their liability for injury to persons entering thereon and for injury to the property of persons entering thereon and limiting their liability to persons who may be injured or otherwise damaged by the acts or omissions of persons entering thereon.

### **§19-25-2. Limiting duty of landowner generally.**

(a) Subject to the provisions of §19-25-4 of this code, an owner of land owes no duty of care to keep the premises safe for entry or use by others for recreational or wildlife propagation purposes, or to give any warning of a dangerous or hazardous condition, use, structure, or activity on such premises to persons entering for such purposes.



(b) Subject to the provisions of §19-25-4 of this code, an owner of land who either directly or indirectly invites or permits without charge as that term is defined in §19-25-5 of this code, any person to use such property for recreational or wildlife propagation purposes does not thereby:  
~~(a) Extend~~

(1) Extend any assurance that the premises are safe for any purpose; ~~or (b) confer~~

(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or ~~(c) assume~~

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

(c) Subject to the provisions of §19-25-4 of this code, an owner of land owes who invites or permits without charge, as that term is defined in §19-25-5 of this code, any person to enter onto the owner's land for the purpose of utilizing the owner's land for any agricultural purpose does not thereby:

(1) Extend any assurance that the premises are safe for any purpose;

(2) Confer upon such persons the legal status of an invitee or licensee to whom a duty of care is owed; or

(3) Assume responsibility for or incur liability for any injury to person or property caused by an act or omission of such persons.

#### **§19-25-5. Definitions.**

Unless the context used clearly requires a different meaning, as used in this article:

"Agricultural purposes" means the raising, cultivation, drying, harvesting, marketing, production, or storage of agricultural products, including both crops and livestock, for sale or use in agriculture or agricultural production, or the storage of machinery or equipment used in support of agricultural production;

"Charge" means:

(A) For purposes of limiting liability for recreational or wildlife propagation purposes set forth in §19-25-2 of this code, the amount of money asked in return for an invitation to enter or go upon the land, including a one-time fee for a particular event, amusement, occurrence, adventure, incident, experience, or occasion which may not exceed \$50 a year per recreational participant: *Provided*, That the monetary cap on charges imposed pursuant to this article does not apply to the provisions of §20-14-1 *et seq.* of this code pertaining to the Hatfield-McCoy regional recreational authority or activities sponsored on the Hatfield-McCoy recreation area;

(B) For purposes of limiting liability for military, law-enforcement, or homeland-defense training set forth in §19-25-6 of this code, the amount of money asked in return for an invitation to enter or go upon the land;

"Land" includes, but is not limited to, roads, water, watercourses, private ways, and buildings, structures, and machinery or equipment when attached to the realty;

“Noncommercial recreational activity” does not include any activity for which there is any charge which exceeds \$50 per year per participant;

“Owner” includes, but is not limited to, tenant, lessee, occupant, or person in control of the premises;

“Recreational purposes” includes, but is not limited to, any one or any combination of the following noncommercial recreational activities: hunting, fishing, swimming, boating, camping, picnicking, hiking, pleasure driving, motorcycle or all-terrain vehicle riding, bicycling, horseback riding, spelunking, nature study, water skiing, winter sports, and visiting, viewing, or enjoying historical, archaeological, scenic or scientific sites, aircraft or ultralight operations on private airstrips or farms or otherwise using land for purposes of the user;

“Wildlife propagation purposes” applies to and includes all ponds, sediment control structures, permanent water impoundments, or any other similar structure created in connection with surface mining activities as governed by §22-3-1 *et seq.* of this code or from the use of surface in the conduct of underground coal mining as governed by that article and any rules promulgated because of the article, which ponds, structures, or impoundments are designated and certified in writing by the Director of the Division of Environmental Protection and the owner to be necessary and vital to the growth and propagation of wildlife, animals, birds, and fish or other forms of aquatic life and finds and determines that the premises have the potential of being actually used by the wildlife for those purposes and that the premises are no longer used or necessary for mining reclamation purposes. The certification shall be in form satisfactory to the director and shall provide that the designated ponds, structures, or impoundments may not be removed without the joint consent of the director and the owner; and

“Military, law-enforcement, or homeland-defense training” includes, but is not limited to, training, encampments, instruction, overflight by military aircraft, parachute drops of personnel or equipment, or other use of land by a member of the Army National Guard or Air National Guard, a member of a reserve unit of the armed forces of the United States, a person on active duty in the armed forces of the United States, a state or federal law-enforcement officer, a federal agency or service employee, a West Virginia military authority employee or a civilian contractor supporting the military, and/or government employees acting in that capacity.

#### **ARTICLE 31. GUS R. DOUGLASS AGRICULTURAL CENTER AT GUTHRIE.**

##### **§19-31-1. Establishing the name.**

The Guthrie center, currently owned by the ~~Department of Health and Human Resources~~ Department of Agriculture, shall hereinafter be known as the Gus R. Douglass Agricultural Center at Guthrie.

#### **ARTICLE 35. FARMERS MARKETS.**

##### **§19-35-1. Legislative findings and purpose.**

(a) The Legislature hereby makes the following findings:

(1) Farmers markets are critical incubators for small farm and food businesses because they offer an inexpensive, accessible, entry-level market for reaching consumers directly, though

research has shown that the average vendor makes only a nominal dollar amount in sales on any given market day;

~~(b)~~ (2) The number of farmers markets and the variety of products sold at farmers markets has increased significantly in the past 10 years, adding millions of dollars to the state's economy;

~~(c)~~ (3) Encouraging locally grown and raised food is important to the health and welfare of the citizens of West Virginia;

~~(d)~~ (4) Permit fees and requirements for farmers market vendors can vary widely from county to county and from one regulatory official to the other. Current food permit categories are not designed for farmers markets and their vendors, but rather for restaurants, grocery stores, or concessioners; and

~~(e)~~ (5) Food permits required for farmers market vendors are currently not recognized across county lines.

(b) It is the purpose of this article:

(1) To reduce barriers on participants producing, preparing, and selling certain foods at farmers markets and elsewhere within West Virginia;

(2) To place regulation of farmers markets, vendors, and local food producers primarily within the Department of Agriculture; and

(3) To encourage the growth of the local food industry in West Virginia.

### **§19-35-2. Definitions.**

For purposes of this article:

"Acidified food" means a low-acid food item to which acid or acid foods are added with a water activity of greater than 0.85 and a finished equilibrium of pH 4.6 or below. Acidified foods are considered potentially hazardous foods.

~~"Consignment farmers market" means a farmers market in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors' products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location.~~

"Delivered" means transferred to the consumer, either immediately upon sale or at a time thereafter.

"Department" means the Department of Agriculture.

"Farm and food product" means any agriculture, horticulture, agroforestry, animal husbandry, dairy, livestock, ~~cottage food~~, beekeeping, or other similar product, and includes potentially hazardous foods and nonpotentially hazardous food produced or manufactured therefrom. Farm and food products are to be properly labeled.

"Farmers market" means:

(1) A traditional farmers market in which two or more vendors gather to sell farm and food products directly to consumers at a fixed location;

(2) An on-farm market or farm stand run by an individual producer that sells farm and food products;

(3) An online farmers market in which two or more vendors collectively market farm and food products and retain ownership of those products until they are sold; or

(4) A consignment farmers market as defined herein in which two or more vendors deliver their own farm and food products to a common location maintained by a third party that markets the vendors' products and receives a percentage share of the profits from sales, with the individual vendor retaining ownership of the farm and food product until it is sold. A consignment farmers market may be mobile or in a stationary location;

(5) A mobile farmers market;

(6) An area within a fair or festival at which farm and food products are sold; or

(7) Any other form of farmers market approved by the commissioner.

"Farmers market vendor" or "vendor" means a person or entity that sells farm and food products at a farmers market.

~~"Homemade food item" means a nonpotentially hazardous food item, including a nonalcoholic beverage, which is produced and/or packaged at the private residence of the producer.~~

"Nonpotentially hazardous" means a food item that does not require time/temperature control for safety to limit pathogenic microorganism growth or toxin formation.

"Potentially hazardous" means a food item that requires time/temperature control or other protocols for safety to limit pathogenic microorganism growth or toxin formation.

To ~~"Produce produce"~~ means to prepare a food item by cooking, baking, drying, mixing, cutting, fermenting, preserving, dehydrating, growing, raising, or other process.

"Producer" means the person who produces a ~~homemade~~ nonpotentially hazardous food item.

"Retailer" means and includes every person engaging in the business of selling, leasing, or renting tangible personal property.

"Seller" means the person who sells a ~~homemade~~ nonpotentially hazardous food item to a consumer. The seller of the ~~homemade~~ nonpotentially hazardous food item may be the producer of the item, an agent of the producer, or a third-party vendor, such as a retail shop or grocery store.

**§19-35-3. Farmers markets; ~~farmers market vendor permits; fees; scope.~~**

(a) All farmers markets operating within the state shall register with the department. Farmers markets shall register ~~with the~~ on a form prepared by the department and provide information to the department regarding:

- ~~(1) the The type of farmers market;~~
- ~~(2) The location, dates, and hours of operation;~~
- ~~(3) and its The farmers markets' vendors; and~~
- ~~(4) Any other information required by the department.~~

~~(b) Upon submission of all required items, each farmers market shall be issued a Farmers Market Registration. Each farmers market shall display its registration in a conspicuous manner.~~

~~(c) Except for consignment farmers markets, which are required to apply for and obtain a food establishment permit from a local health department, no other type of farmers market is required to apply for and obtain a food establishment permit from a local health department.~~

~~(d) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.~~

~~(e) The department may establish penalties for violation of this section by legislative rule, pursuant to the provisions of §29A-3-1 et seq. of this code.~~

~~(b) Vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit and pay the annual permit fee to the department. The permit is valid in all counties in this state. A farmers market vendor permit shall be required in lieu of the food establishment permit, notwithstanding any other provisions of code or rule that require a food establishment permit or any other permit from a local health department. The department shall take final action upon all completed permit applications within 30 days of receipt if the application is uncontested, or within 90 days if the application is contested.~~

~~(c) The annual farmers market vendor permit fee is \$35.~~

~~(d) The following vendors are exempt from obtaining a farmers market vendor permit:~~

- ~~(1) Producers delivering their products to a consignment farmers market only; or~~
- ~~(2) Vendors selling fresh, uncut produce.~~

~~(e) A consignment farmers market shall obtain a food establishment permit issued by the local health department. Certain farm and food product also require food establishment or other permits to be sold at farmers markets including, but not limited to, meat, poultry, dairy, fish, and sprouted seeds. Notwithstanding the provisions of this article, the local health department in the jurisdiction in which the farmers market is located has the right to inspect and suspend the food establishment permit of a farmers market vendor that sells or serves food for which a food establishment permit is required.~~

~~(f) All farmers market vendor permits shall be displayed in a conspicuous manner.~~

~~(g) Nothing in this article eliminates or limits other state and federal rules and regulations that apply to certain farm and food products sold at a farmers market or a consignment farmers market.~~

~~(h) The department may establish regulations permitting the sampling of certain farm and food products at farmers markets by vendors.~~

~~(i) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor's food product is misbranded pursuant to §19-35-5(c) of this code, or adulterated, or if a consumer complaint has been received: *Provided*, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.~~

~~(j) If the local health department in the jurisdiction in which the farmers market is located has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department: *Provided*, That a local health department that invokes cessation of production under this subsection shall do so in consultation with the Department of Agriculture.~~

### **§19-35-3a. Farmers Market Vendor Permits.**

(a) Except as provided in subsection (d) of this section, all vendors at a farmers market selling farm and food products shall apply for a farmers market vendor permit from the department.

(b) The farmers market vendor permit, once issued, is valid in all counties in this state.

(c) Notwithstanding any other provisions of code or rule to the contrary, a vendor is not required to obtain a food establishment permit to sell at a farmers market.

(d) The following vendors are exempt from obtaining a farmers market vendor permit:

(1) Vendors selling fresh, uncut produce;

(2) Vendors selling nonpotentially hazardous foods; and

(3) Vendors selling other farm and food products that are identified by the department.

(e) The department shall establish the conditions and procedures for issuance of farmers market vendor permits. As a condition of obtaining a farmers market vendor permit, a vendor may be required to satisfy additional requirements, including but not limited to, submitting to inspections, and obtaining and maintaining certain additional licenses or certifications.

(f) All farmers market vendor permits shall be displayed in a conspicuous manner.

(g) The department may establish penalties for violation of this section by legislative rule, pursuant to the provisions of §29A-3-1 *et seq.* of this code.

### **§19-35-3b. Role of local health departments in farmers markets.**

(a) No local health department may require a farmers market or a farmers market vendor to obtain a food establishment permit, except a consignment farmers market is required to obtain a food establishment permit: *Provided*, That nothing in this article shall be construed to exempt restaurants or other prepared food vendors from the requirement to obtain a food establishment permit.

(b) A vendor is subject to food sampling and inspection by the local health department in the jurisdiction in which the farmers market is located if the local health department determines that the vendor's food product is misbranded or adulterated, or if a consumer complaint has been

received: *Provided*, That all sampling and inspection shall be performed in consultation with the Department of Agriculture.

(c) If the local health department in the jurisdiction in which the farmers market is located has reason to believe that an imminent health hazard exists it may invoke cessation of production until it deems that the hazardous situation has been addressed to the satisfaction of the local health department: *Provided*, That a local health department that invokes cessation of production under this subsection shall do so in consultation with the Department of Agriculture.

#### **§19-35-4. Legislative rules.**

~~(a) The Department of Agriculture~~ department shall propose emergency or legislative rules for approval in accordance with the provisions of §29A-3-1 *et seq.* of this code for the purposes of implementing this article, including the setting of any fees.

~~(b) The Department of Agriculture shall consult with the Department of Health and Human Resources and shall consider the guidelines established in the Farmers Market Vendor Guide in promulgating the rules. The rules shall set forth quantity limitations for each type of farm and food product for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code.~~

#### **§19-35-5. Cottage foods; acidified foods; non-potentially hazardous foods; other exempted foods Potentially hazardous foods.**

~~(a) Notwithstanding any provision of §16-1-1 *et seq.* of this code or any rules or regulations to the contrary, the department shall regulate cottage foods, acidified foods, nonpotentially hazardous foods and other exempted foods~~ sold at farmers markets.

~~(b) A vendor of potentially hazardous foods shall apply for and obtain a farmers market vendor permit as required by §19-35-3a of this code.~~

~~(b) (c) Online farmers market sales shall be delivered in person and are not permitted to be shipped. A home, farm, community, or commercial kitchen may be used by a cottage~~ potentially hazardous foods vendor, as determined by the department.

~~(d) The department shall establish by legislative rule the requirements for obtaining a vendor permit for potentially hazardous foods, including acidified foods, and other categories identified and defined by the department.~~

~~(e) (e) All potentially hazardous foods for which a farmers market vendor permit is required pursuant to §19-35-5(d) of this code~~ sold at farmers markets shall be labeled in compliance with the department's labeling standards and provide information about its content and sources. The label shall include the words "MADE IN A WV \_\_\_\_\_ KITCHEN" in capital, bold, 10-point type or larger words, with the blank space to state whether the product was made in a home, farm, community, or commercial kitchen.

~~(d) A farmers market vendor permit is required to sell the following farm and food products at farmers markets: Certain canned acidified foods, including, but not limited to, pickled products, sauces, and salsas. Acidified foods are low-acid foods to which acid or acid foods are added with a water activity of greater than .085 and a finished equilibrium of pH 4.6 or below. The majority of the produce in canned acidified foods shall be sourced from the vendor's West Virginia farm or garden, and records of the source of the produce shall be maintained.~~

~~(e) A farmers market vendor permit is not required to sell the following farm and food products at farmers markets:~~

~~(1) Nonpotentially hazardous foods, including, but not limited to: Breads, cakes, and candies; honey, tree syrup, apple butter, and molasses; standardized, nondietary jams and jellies; and dehydrated fruits and vegetables; and~~

~~(2) Other foods that are exempted from certain regulations, including, but not limited to, certain fermented products, certain exempted condiments, commercially harvested mushrooms, and canned, whole, or chopped tomatoes, tomato sauce, and tomato juice having a finished equilibrium of pH 4.6 or below.~~

~~(f) The Department of Agriculture shall consult with the Department of Health and Human Resources to promulgate any rules deemed necessary by the Commissioner of Agriculture to ensure the health, sanitation, and safety of the products produced and sold pursuant to this section.~~

**§19-35-6. Direct sale of homemade food items Nonpotentially hazardous foods.**

(a) The production and sale of ~~homemade food items~~ nonpotentially hazardous foods, when done in conformity with this section and the accompanying legislative rules, are exempt from licensing, permitting, inspection, packaging, and labeling laws of this state.

(b) The following conditions apply to the sale and delivery of ~~homemade food items~~ nonpotentially hazardous foods:

(1) The ~~homemade~~ nonpotentially hazardous food item must be sold by the producer to the consumer, whether in person or remotely, or by an agent of the producer or a third-party vendor; and

(2) The ~~homemade~~ nonpotentially hazardous food items must be delivered to the consumer by the producer, an agent of the producer, a third-party vendor, or a third-party carrier.

(c) ~~The following information must be provided to the consumer, in the format required by subsection (d) of this section:~~ All nonpotentially hazardous foods shall be labeled in compliance with the department's labeling standards and provide information about their content and sources.

~~(1) The name, home address, and telephone number of the producer of the homemade food item;~~

~~(2) The common or usual name of the homemade food item;~~

~~(3) The ingredients of the homemade food item in descending order of predominance; and~~

~~(4) The following statement: "This product was produced at a private residence that is exempt from State licensing and inspection. This product may contain allergens."~~

~~(d) The information required by subsection (c) of this section must be provided:~~ A home, farm, community, or commercial kitchen may be used by a nonpotentially hazardous foods vendor, as determined by the department.



~~(1) On a label affixed to the package, if the homemade food item is packaged;~~

~~(2) On a label affixed to the container, if the homemade food item is offered for sale from a bulk container;~~

~~(3) On a placard displayed at the point of sale, if the homemade food item is neither packaged nor offered for sale from a bulk container;~~

~~(4) On the webpage on which the homemade food item is offered for sale, if the homemade food item is offered for sale on the Internet; or~~

~~(5) On a receipt or other document provided to the customer with the homemade food item.~~

~~(e) The homemade food item must not be meat, meat byproduct, meat food product, poultry, poultry byproduct, or poultry food product, as those terms are defined for purposes of the federal Meat Inspection Act and federal Poultry Products Inspection Act, unless the production and sale of the items are within the exemption in 9 C.F.R. §303.1(d), §381.10(c), or §381.10(d) and comply with other applicable federal regulations.~~

~~(f)~~ (e) This section shall not be construed to:

(1) Impede the authority of a local health department or the department to investigate or cease the production or sale of food items reported to have caused a foodborne illness;

(2) Preclude the department from providing assistance, consultation, or inspection at the request of the producer of a ~~homemade~~ nonpotentially hazardous food item;

(3) Preclude the production or sale of food items otherwise allowed by law;

(4) Exempt a producer, seller, third-party vendor, or third-party agent from any applicable tax law;

(5) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from any law that requires the producer, seller, third-party vendor, or third-party agent to register its business name, address, and other identification information with the state;

(6) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from any applicable law of the federal government, including any federal law prohibiting the sale of certain food items in interstate commerce; or

(7) Exempt producers or sellers of ~~homemade~~ nonpotentially hazardous food items from any applicable law of another state.

~~(g)~~ (f) This section preempts county, municipal, and other political jurisdictions from prohibiting and regulating the production and sale of ~~homemade~~ nonpotentially hazardous food items: *Provided*, That such preemption shall not include space rentals at government-owned or operated facilities, government-sanctioned or operated events, or product placement agreements with government-owned facilities, as well as temporary events 14 days or less in duration.

**ARTICLE 37. WEST VIRGINIA FRESH FOOD ACT.****§19-37-2. State-funded institutions to purchase food from in-state sources; exception.**

(a) Beginning July 1, 2019, all each state-funded institutions institution, such as including, but not limited to, schools, colleges, correctional facilities, governmental agencies, and state parks, shall purchase obtain a minimum of five percent of its food from in-state producers.

(b) To satisfy this requirement, state-funded institutions may purchase, either directly or indirectly fresh produce, meat and poultry products, milk and other dairy products, and other foods grown, produced, or processed from by in-state producers.

(c) The commissioner shall establish by legislative rules the criteria for a food or food product to satisfy the requirements of this section, and may further identify food and food products that are eligible to be considered for in-state food credit.

(d) The commissioner shall further establish the criteria for determining when exceptions or exemptions should be granted to state institutions, including, but not limited to, situations in which the desired food, such as: ~~Provided, That~~ such produce, meat and poultry products, milk and other dairy products, can cannot be grown or is not available from in-state producers.

(e) The state-funded institution shall ensure that all contracts for the purchase of food, or that include the purchase of food as a component of the contract, contain provisions to ensure that the institution complies with the provisions of this article and any legislative rule promulgated pursuant thereto.

**ARTICLE 38. AGRICULTURE INVESTMENT PROGRAM.****§19-38-1. Legislative findings and purpose.**

(a) The Legislature finds that:

(1) It is an important public policy to attract new and expand existing agricultural businesses and value-added facilities producing or further developing the availability of locally grown food and locally produced products.

(2) Agriculture-based businesses are necessary for diversifying the state's economy.

(3) Because of the unique nature of these businesses, agriculture-based businesses struggle to obtain appropriate capital for development or expansion and require unique tools and guidance to navigate the hurdles associated with establishment and growth.

(b) Therefore, the Legislature hereby creates the West Virginia Agriculture Investment Program to accomplish these important public policy goals.

**§19-38-2. Definitions.**

(a) "Commissioner" means the Commissioner of Agriculture, or his or her designee.

(b) "Department" means the West Virginia Department of Agriculture.

(c) "Fund" means the Agriculture Investment Fund created by this article.

(d) "Program" means the West Virginia Agriculture Investment Program created by this article.

### **§19-38-3. Agriculture Investment Fund created.**

(a) There is hereby created in the State Treasury a special revenue account to be known as the West Virginia Agriculture Investment Fund. The fund shall be administered by the Department of Agriculture. The fund shall consist of all moneys that may be appropriated and designated for the fund by the Legislature, and all interest or other return earned from investment of the fund. The fund may receive any appropriations, gifts, grants, contributions, or other money from any source that is designated for deposit into the fund.

(b) Expenditures from the fund shall be for the purposes set forth in this article 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 fulfillment of the provisions of §11B-2-1 *et seq.* of this code. 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.

### **§19-38-4. West Virginia Agriculture Investment Program.**

(a) The West Virginia Agriculture Investment Program is hereby authorized. The purpose of this program is to attract and support new and expanding agriculture businesses and facilities producing or further developing products made, grown, or processed in West Virginia.

(b) The program shall be administered by the commissioner or his or her designee.

(c) Moneys may be awarded by the commissioner from the fund as either grants or loans.

(d) The criteria for awarding such grants or loans shall include, but are not limited to:

(1) The number of direct and indirect jobs expected to be created;

(2) The anticipated amount of private capital investment;

(3) The anticipated additional state tax revenue expected to accrue to the state and affected localities as a result of the capital investment and jobs created;

(4) The anticipated amount of West Virginia-grown, processed, or produced agricultural products utilized or promoted by the project; and

(5) The projected impact on agricultural producers.

(e) The commissioner may establish a committee to assist in the administration of the program. Members of the committee shall receive no compensation for their service on the committee but shall be entitled to receive reimbursement for expenses in accordance with the Department of Agriculture travel regulations.

### **§19-38-5. Legislative rules.**

The commissioner shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code. Those rules shall, at a minimum:

(1) Identify the types of individuals and entities that are eligible for grants or loans from the program;

(2) Provide for the selection of members of any committee established by the commissioner to assist in administration of the program;

(3) Establish criteria for making grants or loans: *Provided*, That the commissioner shall consult with the Department of Commerce before proposing such criteria;

(4) Establish procedures and requirements for grant or loan applications; and

(5) Establish the administration, record-keeping, and reporting requirements for entities that receive grants or loans from the program.

There being no further amendments offered,

Having been engrossed, the bill (Eng. Com. Sub. for H. B. 2633), 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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Beach—1.

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. 2633) passed.

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

**Eng. Com. Sub. for House Bill 2633**—A Bill to amend and reenact §19-1-2, §19-1-3a, and §19-1-7 of the Code of West Virginia, 1931, as amended; to amend and reenact §19-1C-2, §19-1C-3, §19-1C-4, and §19-1C-6 of said code; to amend said code by adding thereto a new section, designated §19-1C-7; to amend and reenact §19-9A-2 of said code; to amend and reenact §19-12A-5 of said code; to amend and reenact §19-14-1, §19-14-2, §19-14-3, §19-14-5, §19-14-6, §19-14-7, §19-14-8, §19-14-9, §19-14-10, §19-14-11, §19-14-12, and §19-14-14 of said code; to amend said code by adding thereto a new section, designated §19-14-16; to amend and reenact §19-21A-1, §19-21A-3, §19-21A-4, and §19-21A-8 of said code; to amend and reenact §19-25-1, §19-25-2, and §19-25-5 of said code; to amend and reenact §19-31-1 of said code; to amend and reenact §19-35-1, §19-35-2, §19-35-3, §19-35-4, §19-35-5, and §19-35-6 of said code; to amend said code by adding thereto two new sections, designated §19-35-3a and §19-35-3b; to amend and reenact §19-37-2 of said code; and to amend said code by adding thereto a new article, designated §19-38-1, §19-38-2, §19-38-3, §19-38-4, and §19-38-5, all relating to the 2021 Farm Bill; eliminating certain qualifications for Commissioner of Agriculture; eliminating certain references to Marketing and Development Division of Department of Agriculture; authorizing Department of Agriculture to undertake certain marketing, promotional, and economic development activities; authorizing coordination between Department of Economic Development

and Department of Agriculture; providing an exemption from disclosure under Freedom of Information Act for certain materials in connection with Department of Agriculture's marketing, promotional, and economic development duties; clarifying that raw milk can be sold for purposes other than human consumption; defining terms related to care of livestock; removing outdated information relating to appointment and composition of Livestock Care Standards Board; establishing length of term for appointments; authorizing reappointment of members for additional terms; providing for gubernatorial appointment of members of Livestock Care Standards Board, by and with consent of Senate; modifying membership of Livestock Care Standards Board; eliminating certain qualifications for members of Livestock Care Standards Board; authorizing Commissioner of Agriculture to promulgate certain legislative rules in consultation with Livestock Care Standards Board; providing an exemption from disclosure under Freedom of Information Act for certain materials in connection with complaints regarding inhumane treatment of livestock; directing board to review proposed rules on livestock care standards and provide recommendation to Legislative Rule-Making Review Committee; authorizing Commissioner of Agriculture to call additional meetings of Livestock Care Standards Board; authorizing Commissioner of Agriculture to file annual reports with Joint Committee on Government and Finance prior to a date certain; providing for administration and enforcement authority of Commissioner of Agriculture with respect to livestock care standards; directing law-enforcement officers to notify Commissioner of Agriculture of certain complaints and investigations; authorizing law-enforcement officers to seek advice of Commissioner of Agriculture concerning application of livestock care standards; requiring Commissioner of Agriculture to notify law-enforcement officers of changes made during 2021 Regular Legislative session respecting livestock care standards; eliminating fee for permit to feed untreated garbage to swine; removing certain procedural requirements for certain contracts, leases, sales, exchanges, and other dispositions; authorizing cancellation of certain leases and providing for written notice to lessee; amending name of West Virginia Commercial Feed Law; defining, amending, and removing terms related to commercial feed; modifying powers and duties of commissioner; removing certain references to registrant in West Virginia Commercial Feed Law; eliminating requirement to publish annual composite report; changing deadline to apply for permit or registration under West Virginia Commercial Feed Law; eliminating specific fee amounts in statute and authorizing rulemaking related thereto; updating requirements for Commercial Feed Manufacturing Permit and Commercial Feed Distributor Permit; setting forth requirements for individuals to possess Commercial Feed Guarantor Permit; eliminating certain registration requirements for commercial feed products; modifying registration requirements for pet food and specialty pet food; requiring new application for registration in certain circumstances; authorizing Commissioner of Agriculture to refuse to grant, suspend, or revoke permits or registrations in certain circumstances; modifying procedures for certain persons to amend application and appeal adverse determinations; requiring appeals to be in accordance with Administrative Procedures Act; modifying labeling requirements for certain commercial feed products; modifying requirements for tonnage reports and inspection fees; authorizing commissioner to inspect certain tonnage records; modifying meaning of commercial feed or feed ingredients; modifying meaning of misbranding of commercial feed; make technical modifications; modifying certain prohibited acts; defining additional prohibited acts; authorizing establishment of analytical variation rules; authorizing penalties for excessive deviations; providing for penalties to be returned to purchasers where possible; authorizing late payment penalties; modifying authority of West Virginia Conservation Agency and State Conservation Committee to address certain water quality issues; modifying legislative determinations; defining terms related to conservation districts; eliminating outdated language; modifying authority for conservation districts to address certain water quality issues; limiting liability of landowner who invites or permits persons to enter for agricultural purposes; defining terms related to landowner liability; clarifying ownership of Guthrie Center; modifying legislative findings and purpose; defining terms related to farmers markets and certain foods; eliminating certain definitions; modifying requirements for farmers

market registration; requiring that registration be conspicuously displayed; clarifying that certain farmers markets are not required to obtain food establishment permit; providing for department to establish sampling regulations; authorizing rulemaking to establish penalties; modifying requirements for farmers market vendor permits; providing that farmers market vendor permit is valid in all counties; establishing requirements for farmers market vendor permits; clarifying that farmers market vendors are not required to obtain food establishment permit; exempting certain vendors from farmers market vendor permit requirement; directing department to establish conditions and procedures for issuance of vendor permits; authorizing inspections and additional license or certifications as condition of issuing vendor permits; requiring vendor permits be displayed in a conspicuous manner; authorizing rulemaking to establish penalties; clarifying role of local health departments in farmers markets; prohibiting local health department from requiring food establishment permits for farmers markets or vendors except for consignment farmers markets; clarifying that restaurants and prepared food vendors remain subject to food establishment permitting requirements; authorizing food sampling and inspection of a farmers market vendor by local health departments in certain conditions; authorizing local health department to invoke cessation of production in certain conditions; requiring vendor food sampling and inspection and invocation of cessation of production by local health departments at farmers markets to be in consultation with department of agriculture; directing department to promulgate rules; eliminating certain requirements for promulgation of legislative rules; establishing requirements for regulation of potentially hazardous foods and nonpotentially hazardous foods sold at farmers markets; requiring vendors of potentially hazardous foods to obtain vendor permit; directing department to establish requirements for obtaining vendor permits; eliminating certain labeling requirements for potentially hazardous and nonpotentially hazardous; establishing requirements for sale of potentially hazardous and nonpotentially hazardous foods; expanding permissible kitchens for potentially hazardous foods and nonpotentially hazardous foods; modifying West Virginia Fresh Food Act to include additional categories of foods grown, produced, or processed by in-state producers; modifying requirements for state-funded institutions to obtain food from in-state producers; directing commissioner to establish criteria for food or food products to satisfy in-state requirement; directing commissioner to establish criteria for granting exceptions or exemptions; requiring state-funded institutions to ensure that all contracts related to purchase of food include provisions to ensure compliance with Fresh Food Act; establishing Agriculture Investment Program; setting forth legislative findings and purpose; defining terms; establishing special revenue account in State Treasury to be known as Agriculture Investment Fund; defining source of funds and permissible expenditures from fund; authorizing West Virginia Agriculture Investment Program; providing for program administration; authorizing either grants or loans from fund; establishing certain criteria for awarding grants or loans; authorizing commissioner to establish committee to assist in program administration; and authorizing rulemaking related to Agriculture Investment Program and Agriculture Investment Fund.

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

At the request of Senator Takubo, unanimous consent being granted, the Senate returned to the second order of business and the introduction of guests.

The Senate again proceeded to the eighth order of business, the next bill coming up in numerical sequence being

**Eng. Com. Sub. for House Bill 2763,** Creating WV Cyber Incident Reporting.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2763) passed.

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

**Eng. Com. Sub. for House Bill 2763**—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5A-6C-1, §5A-6C-2, §5A-6C-3, and §5A-6C-4, all relating to “West Virginia Cyber Incident Reporting;” providing definitions; requiring all state agencies within the executive branch, constitutional officers, all local governmental entities, county boards of education, Judiciary, and Legislature to report cybersecurity incidents; establishing criteria for reporting incidents; mandating Cybersecurity Office develop and disseminate procedure for reporting incidents; and requiring annual report.

*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 2765**, Relating to allowing emergency management and operations’ vehicles operated by airports to use red flashing warning lights.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2765) passed.

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

**Eng. Com. Sub. for House Bill 2765**—A Bill to amend and reenact §17C-1-6 of the Code of West Virginia, 1931, as amended; and to amend and reenact §17C-15-26 of said code, all relating to emergency management and operations vehicles operated by airports; allowing such vehicles to be equipped with and use red flashing warning lights; authorizing airport director and Secretary of the Department of Homeland Security to designate emergency management and operations

vehicles operated by airports; and specifying that such designated vehicles are authorized emergency vehicles.

*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 2785**, Relating to public school enrollment for students from out of state.

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, Beach, Boley, Caputo, Clements, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Baldwin and Ihlenfeld—2.

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. 2785) 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 2785**—A Bill to amend and reenact §18-8-1a of the Code of West Virginia, 1931, as amended, relating to requirements for compulsory school attendance; providing that parent and guardian make determination to remove child from kindergarten program; updating references and removing outdated language; providing option to parent to apply for Hope Scholarship for child prior to enrollment in kindergarten and every year thereafter; allowing students who successfully complete publicly or privately supported, state-approved kindergarten program, Montessori kindergarten program, homeschool kindergarten program, Hope Scholarship Program, or private, parochial, or church kindergarten program recognized under subsection (k) of §18-8-1 of this code to be placed into the developmentally and academically appropriate grade level; requiring enrollment in same grade level as state or program from which student transferred; and requiring certain transcripts or credentials to be accepted as record of student's previous performance for placement and credit assignment.

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

**Eng. House Bill 2791**, Relating to enrollment and costs of homeschooled or private school students at vocational schools .

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2791) 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 2877**, Expand direct health care agreements beyond primary care to include more medical care services.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2877) passed with its title.

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

**Eng. House Bill 2906**, Relating to the School Building Authority's allocation of money.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2906) 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 2906**—A Bill to amend and reenact §18-9D-15 of the Code of West Virginia, 1931, as amended, relating to the allocation of money among categories of projects; and providing that the School Building Authority's discretion be increased to allow them to allocate up to ten percent of their funds available for distribution, except funds from the School Major Improvement fund and the School Access Safety Fund, for projects that service the educational community

statewide, for school facilities under the direct supervision of the state board or an administrative council of an area vocational educational center, and for other purposes.

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

**Eng. House Bill 2915**, Relating to public records management and preservation.

On third 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 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2916) 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 2957**, Relating to the repeal of outdated code sections.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 2957) passed with its title.

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

**Eng. House Bill 2958**, Relating to repealing outdated sections of state code.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: Beach—1.

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. 2958) passed with its title.

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

**Eng. House Bill 3045**, Relating to firefighter disability claims.

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, Boley, Caputo, Clements, Grady, Hamilton, Ihlenfeld, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Unger, Weld, Woelfel, Woodrum, and Blair (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. 3045) 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.

**Com. Sub. for Senate Bill 125**, Budget Bill.

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

At the request of Senator Takubo, and by unanimous consent, the bill was advanced to third reading with the right for amendments to be considered on that reading.

**Eng. Com. Sub. for House Bill 2005**, Relating to health care costs.

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 2093**, Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes.

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:

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

**ARTICLE 5E. REGISTRATION AND INSPECTION OF SERVICE PROVIDERS IN LEGALLY UNLICENSED HEALTH CARE HOMES.**

**§16-5E-3a. Exemption for the United States Department of Veterans Affairs Medical Foster Homes; reporting.**

(a) The provisions of this article do not apply to any home or facility approved and annually reviewed by the United States Department of Veterans Affairs as a Medical Foster Home, pursuant to 38 CFR §17.73, in which care is provided exclusively to three or fewer veterans.

(b) The West Virginia Department of Veterans Affairs shall report annually by December 1, to the Governor, outlining the scope and effectiveness of the Medical Foster Home Program for veterans in West Virginia.

**ARTICLE 49. WEST VIRGINIA CLEARANCE FOR ACCESS: REGISTRY AND EMPLOYMENT SCREENING ACT.**

**§16-49-1. Definitions.**

As used in this article:

“Applicant” means an individual who is being considered for employment or engagement with the department, a covered provider or covered contractor.

“Background check” means a prescreening of registries specified by the secretary by rule and a fingerprint-based search of state and federal criminal history record information.

“Bureau” means a division within the Department of Health and Human Resources.

“Covered contractor” means an individual or entity, including their employees and subcontractors, that contracts with a covered provider to perform services that include any direct access services.

“Covered provider” means the following facilities or providers:

- (i) A skilled nursing facility;
- (ii) A nursing facility;
- (iii) A home health agency;
- (iv) A provider of hospice care;
- (v) A long-term care hospital;

(vi) A provider of personal care services;

(vii) A provider of adult day care;

(viii) A residential care provider that arranges for, or directly provides, long-term care services, including an assisted living facility;

(ix) An intermediate care facility for individuals with intellectual disabilities; ~~and~~

(x) Any other facility or provider required to participate in the West Virginia Clearance for Access: Registry and Employment Screening program as determined by the secretary by legislative rule; ~~and~~

(xi) Excludes medical foster home approved and annually reviewed by the United States Department of Veterans Affairs pursuant to 38 CFR §17.73.

“Department” means the Department of Health and Human Resources.

“Department employee” means any prospective or current part-time employee, full-time employee, temporary employee, independent contractor, or volunteer of the department.

“Direct access” means physical contact with a resident, member, beneficiary, or client, or access to their property, personally identifiable information, protected health information, or financial information.

“Direct access personnel” means an individual who has direct access by virtue of ownership, employment, engagement or agreement with the department, a covered provider, or covered contractor. Direct access personnel does not include volunteers or students performing irregular or supervised functions or contractors performing repairs, deliveries, installations or similar services for the covered provider. The secretary shall determine by legislative rule whether the position in question involves direct access.

“Disqualifying offense” means:

(A) A conviction of any crime described in 42 U. S. C. §1320a-7(a); or

(B) A conviction of any other crime specified by the secretary in rule, which shall include crimes against care-dependent or vulnerable individuals, crimes of violence, sexual offenses, and financial crimes.

“Negative finding” means a finding in the prescreening that excludes an applicant from direct access personnel positions.

“Notice of ineligibility” means a notice pursuant to §16-49-3 of this code that the secretary’s review of the applicant’s criminal history record information reveals a disqualifying offense.

“Prescreening” means a mandatory search of databases and registries specified by the secretary in legislative rule for exclusions and licensure status prior to the submission of fingerprints for a criminal history record information check.

“Rap back” means the notification to the department when an individual who has undergone a fingerprint-based, state or federal criminal history record information check has a subsequent state or federal criminal history event.

“Secretary” means the Secretary of the West Virginia Department of Health and Human Resources, or his or her designee.

“State Police” means the West Virginia State Police Criminal Identification Bureau.

The bill (Eng. Com. Sub. for H. B. 2093), as amended, was then ordered to third reading.

**Eng. House Bill 2379**, Make criminal invasion of privacy a felony.

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 2760**, Relating to economic development incentive tax credits.

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

**Eng. House Bill 2768**, Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways.

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

**Eng. Com. Sub. for House Bill 2769**, Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles.

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

**Eng. Com. Sub. for House Bill 2770**, Including home confinement officers in definition of law-enforcement officers.

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 15A DEPARTMENT OF HOMELAND SECURITY.**

#### **ARTICLE 7. BUREAU OF COMMUNITY CORRECTIONS.**

##### **§15A-7-5. Powers and duties of state parole officers.**

(a) Each state probation and parole officer employed by the Division of Corrections and Rehabilitation shall:

(1) Investigate all cases referred to him or her for investigation by the Commissioner of Corrections and Rehabilitation and report in writing on the investigation;

(2) Update the standardized risk and needs assessment adopted by the Division of Corrections and Rehabilitation pursuant to §62-12-13(h) of this code for each parolee for whom an assessment has not been conducted for parole by a specialized assessment officer;

(3) Supervise each parolee according to the assessment and supervision standards determined by the Commissioner of Corrections and Rehabilitation;

(4) Furnish to each parolee under his or her supervision a written statement of the conditions of his or her parole together with a copy of the rules prescribed by the Commissioner of Corrections and Rehabilitation for the supervision of parolees;

(5) Keep informed concerning the conduct and condition of each parolee under his or her supervision and report on the conduct and condition of each parolee in writing as often as required by the Commissioner of Corrections and Rehabilitation;

(6) Use all practicable and suitable methods to aid and encourage a parolee and to bring about improvement in his or her conduct and condition;

(7) Keep detailed records of his or her work;

(8) Keep accurate and complete accounts of, and give receipts for, all money collected from parolees under his or her supervision, and pay over the money to persons designated by a circuit court or the Commissioner of Corrections and Rehabilitation;

(9) Give bond with good security, to be approved by the Commissioner of Corrections and Rehabilitation, in a penalty of not less than \$1,000 nor more than \$3,000, as determined by the Commissioner of Corrections and Rehabilitation; and

(10) Perform any other duties required by the Commissioner of Corrections and Rehabilitation.

(b) Each probation and parole officer, as described in this article, may, with or without an order or warrant: (1) Arrest or order confinement of any parolee or probationer under his or her supervision; and (2) search a parolee or probationer, or a parolee or probationer's residence or property, under his or her supervision. A probation and parole officer may apply for a search warrant, and execute the search warrant, in connection to a parolee's whereabouts, or a parolee's activities. He or she has all the powers of a notary public, with authority to act anywhere within the state.

(c) The Commissioner of Corrections and Rehabilitation may issue a certificate authorizing any state parole officer who has successfully completed the Division of Corrections and Rehabilitation's training program for firearms certification, which is the equivalent of that required of any correctional employee under §15A-3-10 of this code, to carry firearms or concealed weapons. Any parole officer authorized by the Commissioner of Corrections and Rehabilitation may, without a state license, carry firearms and concealed weapons. Each state parole officer, authorized by the Commissioner of Corrections and Rehabilitation, shall carry with him or her a certificate authorizing him or her to carry a firearm or concealed weapon bearing the official signature of the Commissioner of Corrections and Rehabilitation.

(d) In recognition of their duties in their employment which constitute law enforcement, state parole officers are determined to be qualified law enforcement officers as that term is used in §30-29-12 of this code.

(e) Any state parole officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §92B if the following criteria are met:

(A) The Division of Corrections and Rehabilitation has a written policy authorizing a state parole officer to carry a concealed firearm for self-defense purposes;

(B) There shall be in place in the Division of Corrections and Rehabilitation a requirement that state parole officers must annually qualify in the use of a firearm with standards which are equal to or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(C) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection includes provisions which: (i) Preclude or remove a person from participation in the concealed firearm program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defined in §17C-5-2 of this code.

(5) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state parole officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(f) The privileges authorized by the amendments in this section enacted during the 2021 regular session of the legislature are wholly within the discretion of the Commissioner of Corrections and Rehabilitation.

## **CHAPTER 61. CRIMES AND THEIR PUNISHMENT.**

### **ARTICLE 7. DANGEROUS WEAPONS.**

#### **§61-7-11a. Possessing deadly weapons on premises of educational facilities; reports by school principals; suspension of driver's license; possessing deadly weapons on premises housing courts of law and family law courts.**

(a) The Legislature finds that the safety and welfare of the citizens of this state are inextricably dependent upon assurances of safety for children attending and persons employed by schools in this state and for persons employed by the judicial department of this state. It is for the purpose of providing assurances of safety that §61-7-11a(b), §61-7-11a(g), and §61-7-11a(h), of this code and §61-7-11a(b)(2)(l) of this code, are enacted as a reasonable regulation of the manner in which



citizens may exercise the rights accorded to them pursuant to section 22, article III of the Constitution of the State of West Virginia.

(b) (1) It is unlawful to possess a firearm or other deadly weapon:

(A) On a school bus as defined in §17A-1-1 of this code;

(B) In or on the grounds of any primary or secondary educational facility of any type: *Provided*, That it shall not be unlawful to possess a firearm or other deadly weapon in or on the grounds of any private primary or secondary school, if such institution has adopted a written policy allowing for possession of firearms or other deadly weapons in the facility or on the grounds ~~thereof~~ of the facility; or

(C) At a school-sponsored function that is taking place in a specific area that is owned, rented, or leased by the West Virginia Department of Education, the West Virginia Secondary Schools Activities Commission, a county school board, or local public school for the actual period of time the function is occurring;

(2) This subsection does not apply to:

(A) A law-enforcement officer employed by a federal, state, county, or municipal law-enforcement agency;

(B) Any probation officer appointed pursuant to §62-12-5 or chapter 49 of this code, in the performance of his or her duties;

(C) Any home incarceration supervisor employed by a county commission or a sheriff pursuant to §61-11B-7a of this code in the performance of his or her duties;

(D) A state parole officer appointed pursuant to §15A-7-5 of this code, while in performance of his or he official duties;

~~(C)~~ (F) A retired law-enforcement officer who meets all the requirements to carry a firearm as a qualified retired law-enforcement officer under the Law-Enforcement Officer Safety Act of 2004, as amended, pursuant to 18 U.S.C. §926C(c), carries that firearm in a concealed manner, and has on his or her person official identification in accordance with that act;

~~(D)~~ (G) A person, other than a student of a primary and secondary facility, specifically authorized by the board of education of the county or principal of the school where the property is located to conduct programs with valid educational purposes;

~~(E)~~ (H) A person who, as otherwise permitted by the provisions of this article, possesses an unloaded firearm or deadly weapon in a motor vehicle or leaves an unloaded firearm or deadly weapon in a locked motor vehicle;

~~(F)~~ (I) Programs or raffles conducted with the approval of the county board of education or school which include the display of unloaded firearms;

~~(G)~~ (J) The official mascot of West Virginia University, commonly known as the Mountaineer, acting in his or her official capacity;

~~(H)~~ ~~(K)~~ The official mascot of Parkersburg South High School, commonly known as the Patriot, acting in his or her official capacity; or

~~(H)~~ ~~(L)~~ Any person, 21 years old or older, who has a valid concealed handgun permit. That person may possess a concealed handgun while in a motor vehicle in a parking lot, traffic circle, or other areas of vehicular ingress or egress to a public school: *Provided, That:*

(i) When he or she is occupying the vehicle the person stores the handgun out of view from persons outside the vehicle; or

(ii) When he or she is not occupying the vehicle the person stores the handgun out of view from persons outside the vehicle, the vehicle is locked, and the handgun is in a glove box or other interior compartment, or in a locked trunk, or in a locked container securely fixed to the vehicle.

(3) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(c) A school principal subject to the authority of the State Board of Education who discovers a violation of §61-7-11a(b) of this code shall report the violation as soon as possible to:

(1) The State Superintendent of Schools. The State Board of Education shall keep and maintain these reports and may prescribe rules establishing policy and procedures for making and delivering the reports as required by this subsection; and

(2) The appropriate local office of the State Police, county sheriff or municipal police agency.

(d) In addition to the methods of disposition provided by §49-5-1 *et seq.* of this code, a court which adjudicates a person who is 14 years of age or older as delinquent for a violation of §61-7-11a(b) of this code, may order the Division of Motor Vehicles to suspend a driver's license or instruction permit issued to the person for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. If the person has not been issued a driver's license or instruction permit by this state, a court may order the Division of Motor Vehicles to deny the person's application for a license or permit for a period of time as the court considers appropriate, not to extend beyond the person's nineteenth birthday. A suspension ordered by the court pursuant to this subsection is effective upon the date of entry of the order. Where the court orders the suspension of a driver's license or instruction permit pursuant to this subsection, the court shall confiscate any driver's license or instruction permit in the adjudicated person's possession and forward it to the Division of Motor Vehicles.

(e)(1) If a person 18 years of age or older is convicted of violating §61-7-11a(b) of this code, and if the person does not act to appeal the conviction within the time periods described in §61-7-11a(e)(2) of this code, the person's license or privilege to operate a motor vehicle in this state shall be revoked in accordance with the provisions of this section.

(2) The clerk of the court in which the person is convicted as described in §61-7-11a(e)(1) of this code shall forward to the commissioner a transcript of the judgment of conviction. If the conviction is the judgment of a magistrate court, the magistrate court clerk shall forward the transcript when the person convicted has not requested an appeal within 20 days of the sentencing for the conviction. If the conviction is the judgment of a circuit court, the circuit clerk shall forward a transcript of the judgment of conviction when the person convicted has not filed a

notice of intent to file a petition for appeal or writ of error within 30 days after the judgment was entered.

(3) If, upon examination of the transcript of the judgment of conviction, the commissioner determines that the person was convicted as described in §61-7-11a(e)(1) of this code, the commissioner shall make and enter an order revoking the person's license or privilege to operate a motor vehicle in this state for a period of one year or, in the event the person is a student enrolled in a secondary school, for a period of one year or until the person's twentieth birthday, whichever is the greater period. The order shall contain the reasons for the revocation and the revocation period. The order of suspension shall advise the person that because of the receipt of the court's transcript, a presumption exists that the person named in the order of suspension is the same person named in the transcript. The commissioner may grant an administrative hearing which substantially complies with the requirements of the provisions of §17C-5A-2 of this code upon a preliminary showing that a possibility exists that the person named in the notice of conviction is not the same person whose license is being suspended. The request for hearing shall be made within 10 days after receipt of a copy of the order of suspension. The sole purpose of this hearing is for the person requesting the hearing to present evidence that he or she is not the person named in the notice. If the commissioner grants an administrative hearing, the commissioner shall stay the license suspension pending the commissioner's order resulting from the hearing.

(4) For the purposes of this subsection, a person is convicted when he or she enters a plea of guilty or is found guilty by a court or jury.

(f)(1) It is unlawful for a parent, guardian, or custodian of a person less than 18 years of age who knows that the person is in violation of §61-7-11a(b) of this code or has reasonable cause to believe that the person's violation of §61-7-11a(b) of this code is imminent to fail to immediately report his or her knowledge or belief to the appropriate school or law-enforcement officials.

(2) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(g)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts.

(2) This subsection does not apply to:

(A) A law-enforcement officer acting in his or her official capacity; and

(B) A person exempted from the provisions of this subsection by order of record entered by a court with jurisdiction over the premises or offices.

(3) A person violating this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000, or shall be confined in jail not more than one year, or both fined and confined.

(h)(1) It is unlawful for a person to possess a firearm or other deadly weapon on the premises of a court of law, including family courts, with the intent to commit a crime.

(2) A person violating this subsection is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for a definite term of years of not less than two years nor more than 10 years, or fined not more than \$5,000, or both fined and imprisoned.

(i) Nothing in this section may be construed to be in conflict with the provisions of federal law.

## CHAPTER 62. CRIMINAL PROCEDURE.

### ARTICLE 11B. HOME INCARCERATION ACT.

#### §62-11B-7a. Employment by county commission of home incarceration supervisors; authority of supervisors.

(a) The county commission may employ one or more persons with the approval of the circuit court and who ~~shall be~~ is subject to the supervision of the sheriff as a home incarceration supervisor or may designate the county sheriff to supervise offenders ordered to undergo home incarceration and to administer the county's home incarceration program. Any ~~person so supervising~~ supervisor shall have authority, equivalent to that granted to a probation officer pursuant to §62-12-10 of this code, to arrest a home incarceration participant when reasonable cause exists to believe that ~~such~~ the participant has violated the conditions of his or her home incarceration. Unless otherwise specified, the use of the term "supervisor" in this article shall refer to a home incarceration supervisor.

(b) In recognition of their duties in their employment which constitute law enforcement, home confinement supervisors are determined to be qualified law enforcement officers as that term is used in §30-29-12 of this code.

(c) Any home incarceration supervisor may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(A) The home incarceration program has a written policy authorizing home incarceration supervisors to carry a concealed firearm for self-defense purposes.

(B) There is in place in the home incarceration program a requirement that the home incarceration supervisors must regularly qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies in the county in which the home incarceration supervisors are employed; and

(C) The home incarceration program issues a photographic identification and certification card which identify the home incarceration supervisors as law-enforcement employees of the home incarceration program pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which: (i) Preclude or remove a person from participation in the concealed firearm program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any home incarceration supervisor who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the supervising authority over the home confinement supervisors.

(7) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize home incarceration programs wishing to do so to allow home incarceration supervisors to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

## **ARTICLE 12. PROBATION AND PAROLE.**

### **§62-12-5. Probation officers and assistants.**

(a) Each circuit court, subject to the approval of the Supreme Court of Appeals and in accordance with its rules, is authorized to appoint one or more probation officers and clerical assistants.

(b) The appointment of probation officers and clerical assistants shall be in writing and entered on the order book of the court by the judge making such appointment and a copy of ~~said the~~ order of appointment shall be delivered to the Administrative Director of the Supreme Court of Appeals. The order of appointment shall state the annual salary, fixed by the judge and approved by the Supreme Court of Appeals, to be paid to the appointed probation officer or clerical ~~assistants so~~ ~~appointed~~.

(c) The salary of probation officers and clerical assistants shall be paid at least twice per month, as the Supreme Court of Appeals by rule may direct and they shall be reimbursed for all reasonable and necessary expenses actually incurred in the line of duty in the field. The salary and expenses shall be paid by the state from the judicial accounts thereof. The county commission shall provide adequate office space for the probation officer and his or her assistants to be approved by the appointing court. The equipment and supplies as may be needed by the probation officer and his or her assistants shall be provided by the state and the cost thereof shall be charged against the judicial accounts of the state.

(d) ~~No~~ A judge may not appoint any probation officer, assistant probation officer or clerical assistant who is related to him or her either by consanguinity or affinity.

(e) Subject to the approval of the Supreme Court of Appeals and in accordance with its rules, a judge of a circuit court whose circuit comprises more than one county may appoint a probation officer and a clerical assistant in each county of the circuit or may appoint the same persons to serve in these respective positions in two or more counties in the circuit.

(f) Nothing contained in this section alters, modifies, affects or supersedes the appointment or tenure of any probation officer, medical assistant or psychiatric assistant appointed by any court under any special act of the Legislature heretofore enacted, and the salary or compensation of those persons shall remain as specified in the most recent amendment of any special act until changed by the court, with approval of the Supreme Court of Appeals, by order entered of record, and any such salary or compensation shall be paid out of the State Treasury.

(g) In order to carry out the supervision responsibilities set forth in §62-26-12 of this code, the Administrative Director of the Supreme Court of Appeals, or his or her designee, in accordance with the court's procedures, ~~is authorized~~ may to hire multijudicial-circuit probation officers, to be

employed through the court's Division of Probation Services. Such officers may also supervise probationers who are on probation for sexual offences with the approval of the administrative director of the Supreme Court of Appeals or his or her designee.

(h) In recognition of their duties in their employment which constitute law enforcement, state probation officers are determined to be qualified law enforcement officers as that term is used in §30-29-12 of this code.

(i) Any state probation officer may carry a concealed firearm for self-defense purposes pursuant to the provisions of 18 U.S.C. §926B if the following criteria are met:

(A) The Supreme Court of Appeals has a written policy authorizing probation officers to carry a concealed firearm for self-defense purposes.

(B) There is in place a requirement that the probation officers annually qualify in the use of a firearm with standards for qualification which are equal to, or exceed those required of sheriff's deputies by the Law-Enforcement Professional Standards Program;

(C) The Supreme Courts of Appeals issues a photographic identification and certification card which identify the home incarceration supervisors as qualified law-enforcement employees pursuant to the provisions of §30-29-12 of this code.

(4) Any policy instituted pursuant to paragraph (A), subdivision (3) of this subsection shall include provisions which: (i) Preclude or remove a person from participation in the concealed firearm program; (ii) preclude from participation persons prohibited by federal or state law from possessing or receiving a firearm and; (iii) prohibit persons from carrying a firearm pursuant to the provisions of this subsection while in an impaired state as defines in §17C-5-2 of this code.

(5) Any probation officer who participates in a program authorized by the provisions of this subsection is responsible, at his or her expense, for obtaining and maintaining a suitable firearm and ammunition.

(6) It is the intent of the Legislature in enacting the amendments to this section during the 2021 regular session of the Legislature to authorize state probation officers wishing to do so to meet the requirements of the federal Law-Enforcement Officer's Safety Act, 18 U.S.C. §926B.

(j) The privileges authorized by the amendments to this section enacted during the 2021 regular session of the Legislature are wholly within the discretion of the Supreme Court of Appeals.

The bill (Eng. Com. Sub. for H. B. 2770), as amended, was then ordered to third reading.

**Eng. House Bill 2790**, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways.

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

**Eng. Com. Sub. for House Bill 2823**, Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code.

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

**Eng. House Bill 2829**, Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds.

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

**Eng. House Bill 3130**, Relating to elimination of sunset provisions concerning towing rates.

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 2. COMMON CARRIERS BY MOTOR VEHICLES.**

### **§24A-2-2b. Rule-making authority; establishing rates for recovering, towing, hauling, carrying, or storing wrecked or disabled vehicles; complaint process; and required Legislative Audit.**

(a) On or before July 1, 2016, the Commission shall promulgate rules to effectuate the provisions of this article.

(b) The rules promulgated pursuant to the provisions of this section shall describe:

(1) Factors determining the fair, effective, and reasonable rates levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle. The commission shall consider, but shall not be limited to:

(A) Tow ~~vehicle(s)~~ vehicle or vehicles and the special equipment required to complete ~~recovery/tow~~ recovery or tow;

(B) Total time to complete the recovery or tow;

(C) Number of regular and extra employees required to complete the recovery or tow;

(D) Location of vehicle recovered or towed;

(E) Materials or cargo involved in recovery or tow;

(F) Comparison with reasonable prices in the region;

(G) Weather conditions; and

(H) Any other relevant information having a direct effect on the pricing of the recovery, towing, and storage of a recovered or towed vehicle;

(2) The process for filing a complaint, and the review and investigation process to ensure it is fair, effective, and timely: *Provided*, That in any formal complaint against a carrier relating to a third-party tow, the burden of proof to show that the carrier's charges are just, fair, and reasonable ~~shall be upon~~ is on the carrier;

(3) The process for aggrieved parties to recover the cost, from the carrier, for the charge or charges levied by a carrier for recovering, towing, hauling, carrying, or storing a wrecked or disabled vehicle where the commission determines that such charge or charges are not otherwise just, fair, or reasonable; and

(4) The process to review existing maximum statewide wrecker rates and special rates for the use of special equipment in towing and recovery work to ensure that rates are just, fair, and reasonable: *Provided*, That the commission shall generally disapprove hourly and flat rates for ancillary equipment.

(c) All carriers regulated under this article shall list their approved rates, fares, and charges on every invoice provided to an owner, operator, or insurer of a wrecker or disabled motor vehicle.

(d) The rules promulgated pursuant to this ~~article~~ section shall sunset on July 1, ~~2024~~ 2023, unless reauthorized.

(e) On or before December 31, ~~2020~~ 2022, the Legislative Auditor shall review the rules promulgated by the Public Service Commission under this section. The audit shall evaluate the rate-making policy for reasonableness, the complaint process for timeliness, the penalties for effectiveness, and any other metrics the Legislative Auditor deems appropriate. The Legislative Auditor may recommend that the rule be reauthorized, reauthorized with amendment, or repealed.

The bill (Eng. H. B. 3130), as amended, was then ordered to third reading.

**Eng. House Bill 3175**, Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license.

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 6E. MOTOR VEHICLE SALESPERSON LICENSE.**

### **§17A-6E-1. Findings and purpose.**

[Repealed.]

### **§17A-6E-2. Definitions.**

[Repealed.]

### **§17A-6E-3. License required.**

[Repealed.]



**§17A-6E-4. Eligibility and issuance of license.**

[Repealed.]

**§17A-6E-5. Expiration of license, renewal and expired license.**

[Repealed.]

**§17A-6E-6. Change of employer.**

[Repealed.]

**§17A-6E-7. Change of address, lost or stolen license, duplicate license.**

[Repealed.]

**§17A-6E-8. Display of license.**

[Repealed.]

**§17A-6E-9. Revocation, suspension, or refusal to renew license.**

[Repealed.]

**§17A-6E-10. Administrative due process.**

[Repealed.]

**§17A-6E-11. Investigation, matters,, confidential.**

[Repealed.]

**§17A-6E-12. Injunctive relief.**

[Repealed.]

**§17A-6E-13. Authority for rules.**

[Repealed.]

**§17A-6E-14. Motor Vehicle Salesperson License Fund.**

[Repealed.]

The bill (Eng. H. B. 3175), as amended, was then ordered to third reading.

**Eng. House Bill 3191**, Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees.

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

The following amendment to the bill, from the Committee on Pensions, 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 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.**

**§5-10-19. Employers to file information as to employees' service.**

(a) Each participating public employer shall file with the board of trustees, in such form as the board shall from time to time prescribe, a detailed statement of all service rendered to participating public employers by each of its employees and by any retirant who retired under section twenty-two-c of this article and who is working for the employer on a contract basis, as defined in section twenty-two-c of this article, and such other information as the board shall require in the operation of the retirement system.

(b) Prior to any retirant subsequently becoming employed on a temporary full-time or temporary part-time basis by a participating public employer, the employer shall notify the board and the retirant, in writing, if and when the retirant's potential temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either temporary full-time or temporary part-time employment, the employer shall notify the board, in writing, of the retirant's subsequent employment.

**CHAPTER 18. EDUCATION.**

**ARTICLE 7A. STATE TEACHERS RETIREMENT SYSTEM.**

**§18-7A-13a. Resumption of service by retired teachers.**

(a) For the purpose of this section, reemployment of a former or retired teacher as a teacher shall in no way impair the teacher's eligibility for a prior service pension or any other benefit provided by this article.

(b) Retired teachers who qualified for an annuity because of age or service may not receive prior service allowance from the retirement board when employed as a teacher and when regularly employed by the State of West Virginia. The payment of the allowance shall be discontinued on the first day of the month within which such employment begins and shall be resumed on the first day of the month succeeding the month within which such employment ceases. The annuity paid the teacher on first retirement resulting from the Teachers' Accumulation Fund and the Employers' Accumulation Fund shall continue throughout the governmental service and thereafter according to the option selected by the teacher upon first retirement.

(c) Retired teachers who qualified for an annuity because of disability shall receive no further retirement payments if the retirement board finds that the disability of the teacher no longer exists; payment shall be discontinued on the first day of the month within which the finding is made. If the retired teacher returns to service as a teacher, he or she shall contribute to the Teachers' Accumulation Fund as a member of the system. His or her prior service eligibility, if any, shall not

be impaired because of his or her disability retirement. His or her accumulated contributions which were transferred to the benefit fund upon his or her retirement shall be returned to his or her individual account in the Teachers' Accumulation Fund, minus retirement payments received which were not supported by such contributions and interest. Upon subsequent retirement, he or she shall receive credit for all of his or her contributory experience, anything to the contrary in this article notwithstanding.

(d) Notwithstanding any provision of this code to the contrary, a person who retires under the system provided by this article may subsequently become employed on either a full-time basis, part-time basis or contract basis by any institution of higher education without any loss of retirement annuity or retirement benefits if the person's retirement commences between the effective date of the enactment of this section in 2002 and December 31, 2002: *Provided, That* the person shall not be eligible to participate in any other state retirement system provided by this code.

(e) The retirement board is herewith authorized to require of the retired teachers and their employers such reports as it deems necessary to effectuate the provisions of this section.

(f) Prior to any retirant subsequently becoming employed on a substitute or temporary basis which if full-time would qualify the retirant as a teacher member or a nonteaching member, the employer shall notify the retirement board and the retirant, in writing, if and when the retirant's potential substitute or temporary employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of either substitute or temporary employment, the employer shall notify the retirement board, in writing, of the retirant's subsequent employment.

The bill (Eng. H. B. 3191), as amended, was then ordered to third reading.

**Eng. House Bill 3298**, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund.

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

**Eng. House Bill 3300**, Relating to reducing personal income tax rates generally.

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

At the request of Senator Tarr, and by unanimous consent, the bill was advanced to third reading with the unreported Finance committee amendment pending and the right for further amendments to be considered on that reading.

**Eng. Com. Sub. for House Joint Resolution 1**, Education Accountability Amendment.

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

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

**Eng. House Joint Resolution 2**, Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate.

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

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

The Senate proceeded to the tenth order of business.

At the request of Senator Takubo, unanimous consent being granted, the following bills on first reading were considered read a first time and ordered to second reading:

**Eng. Com. Sub. for House Bill 2722**, Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals.

**Eng. Com. Sub. for House Bill 2758**, Requiring the Insurance Commissioner to regulate professional bondsmen.

**Eng. Com. Sub. for House Bill 2793**, Permit out of state residents to obtain West Virginia concealed carry permits.

**Eng. Com. Sub. for House Bill 2834**, Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission.

**Eng. House Bill 2874**, Extend the current veteran's business fee waivers to active duty military members and spouses.

**Eng. Com. Sub. for House Bill 2890**, To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services.

**Eng. House Bill 2914**, To remove certain ex officio, voting members from the Archives and History Commission and update formatting.

**Eng. House Bill 2969**, To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility.

**Eng. Com. Sub. for House Bill 3293**, Relating to single-sex participation in interscholastic athletic events.

And,

**Eng. House Bill 3294**, Relating to unemployment insurance.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Weld.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 11:11 a.m., the Senate recessed until 5:30 p.m. today.

The Senate reconvened at 6:26 p.m. today and, without objection, returned to the third order of business.

**Executive Communications**

The Clerk then presented the following communication from His Excellency, the Governor, regarding bills approved by him:



*Jim Justice*  
*Governor of West Virginia*

April 5, 2021

The Honorable Stephen J. Harrison, Clerk  
West Virginia House of Delegates  
State Capitol  
Charleston, West Virginia 25305

Dear Mr. Clerk:

Enclosed for filing in your office, pursuant to the provisions of law, are the following bills:

Committee Substitute for House Bill No. Two Thousand Six Hundred Twenty-One (2621), which was presented to me on March 30, 2021.

Committee Substitute for House Bill No. Two Thousand Seven Hundred Ninety-Seven (2797), which was presented to me on March 30, 2021.

House Bill No. Two Thousand Eight Hundred Fifty-Four (2854), which was presented to me on March 30, 2021.

Committee Substitute for House Bill No. Two Thousand Eight Hundred Fifty-Five (2855), which was presented to me on March 30, 2021.

House Bill No. Two Thousand Nine Hundred Five (2905), which was presented to me on March 30, 2021.

You will note that I have approved these bills on April 5, 2021.

Sincerely,

A handwritten signature in black ink that reads "Jim Justice".

Jim Justice  
Governor

JJ/mh  
cc: The Honorable Lee Cassis

The Senate again proceeded to the fourth order of business.

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

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 63** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the proposal of permitting members of certain groups to hunt, fish, and/or trap, within the state of West Virginia without obtaining a license or waiving the fees associated with such a license.

Whereas, All individuals who desire to obtain a license to hunt, fish, or trap within the state of West Virginia shall obtain a license to do so and shall pay the prescribed rate for such license; and

Whereas, There have been bills proposed in recent sessions of the West Virginia Legislature to permit members of certain groups to hunt, fish, or trap within the state of West Virginia without obtaining a license and/or waiving the fees incident to obtaining such licenses; and

Whereas, The specific groups of people that have been named in these proposed bills are veterans who were honorably discharged from the armed services of the United States or municipal volunteer firefighters to hunt, fish, or trap within this state without obtaining a license or permitting members of said groups to obtain such licenses without paying the prescribed fee; and

Whereas, There may be a significant number of people who desire to hunt, fish, or trap in West Virginia that are also members of the groups specifically named by this proposed legislation; and

Whereas, The enactment of such proposed legislation would likely have an impact on the revenue of the West Virginia Division of Natural Resources and/or other governmental entities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the proposal of permitting members of certain groups to hunt, fish, and/or trap, within the state of West Virginia without obtaining a license or waiving the fees associated with such a license; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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, prepare the report, and 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; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 63) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

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

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 64** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the proposal of regulating, through the passage of legislation, issues that have traditionally been within the purview of regulations adopted by the West Virginia Division of Natural Resources, including, but not necessarily limited to, bag limits for wild game, the protection of albino wild game, and/or assessment of a fee for wildlife injured or killed by wind power projects.

Whereas, It is the public policy of the State of West Virginia that the wildlife resources of this state shall be protected for the use and enjoyment of all the citizens of this state; and

Whereas, There have been bills proposed in recent sessions of the West Virginia Legislature to legislate issues that have traditionally been governed by regulations adopted by the West Virginia Division of Natural Resources; and

Whereas, One or more of the bills recently presented sought to establish seasonal bag limits for antlered deer; and

Whereas, One or more of the bills recently presented sought to prohibit the harvesting of albino deer; and

Whereas, Wind power projects utilize the use of wind turbines and towers to generate electricity throughout this state; and

Whereas, The components of wind power projects pose a collision risk to certain wildlife and have been known to injure or kill certain protected species within the state; and

Whereas, One or more of the bills recently presented sought to assess a fee to the operator of a wind-powered electricity generation facility whose operation resulted in the injuring or killing of protected species of animal, including, but not limited to, bald eagles, golden eagles, ravens, hawks, owls, and woodcocks; and

Whereas, Regulating the length of hunting or trapping seasons, bag limits for wild game, the protection of albino wild game, and/or the assessment of a fee for wildlife injured or killed has traditionally been within the purview of wildlife biologists and others with specialized knowledge within the West Virginia Division of Natural Resources; and

Whereas, The enactment of such proposed legislation would likely have an impact on the revenue of the West Virginia Division of Natural Resources and/or other governmental entities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the proposal of regulating, through the passage of legislation, issues that have traditionally been within authority of regulations adopted by the West Virginia Division of Natural Resources, including, but not necessarily limited to, bag limits for wild game, the protection of albino wild game, and/or assessment of a fee for wildlife injured or killed by wind power projects; and, be it

*Further Resolved*, That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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, prepare the report, and 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; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 64) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

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

Your Committee on Natural Resources has had under consideration

**Senate Concurrent Resolution 65** (originating in the Committee on Natural Resources)—Requesting the Joint Committee on Government and Finance study the proposal of permitting primitive camping in secluded, remote areas of state-owned property managed by the West Virginia Division of Natural Resources.

Whereas, “Primitive camping” means being without neighbors, electricity, running water, bathroom facilities, and, often times, cell service. Primitive camping requires a stamp with an annual fee to be set by the director; and

Whereas, The parks and recreation program within the State of West Virginia is an integral part of the state’s identity; and

Whereas, The parks and recreation program is vital to the tourism industry of this state; and



Whereas, The administration of the parks and recreation program in this state is entrusted to the West Virginia Division of Natural Resources, which has traditionally done so by regulations; and

Whereas, There have been bills proposed in recent sessions of the West Virginia Legislature to permit primitive camping in secluded, remote areas of state-owned property managed by the West Virginia Division of Natural Resources; and

Whereas, Primitive camping generally means camping without electricity, running water, and bathroom facilities; and

Whereas, The enactment of such proposed legislation would likely have an impact on the revenue of the West Virginia Division of Natural Resources and/or other governmental entities; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance is hereby requested to study the proposal of permitting primitive camping in secluded, remote areas of state-owned property managed by the West Virginia Division of Natural Resources; and, be it

*Further Resolved,* That the Joint Committee on Government and Finance report to the regular session of the Legislature, 2022, 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, prepare the report, and 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; but with the further recommendation that it first be referred to the Committee on Rules.

Respectfully submitted,

Bill Hamilton,  
*Chair.*

At the request of Senator Takubo, unanimous consent being granted, the resolution (S. C. R. 65) contained in the foregoing report from the Committee on Natural Resources was then referred to the Committee on Rules.

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 2017, Rewriting the Criminal Code.**

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.*

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 2730**, Relating to persons filing federal bankruptcy petition to exempt certain property of the estate.

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.*

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

Your Committee on Natural Resources has had under consideration

**Eng. Com. Sub. for House Bill 2773**, Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake.

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

Respectfully submitted,

Bill Hamilton,  
*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 2842**, Preventing cities from banning utility companies in city limits.

With amendments from the Committee on Energy, Industry, and Mining pending;

And reports the same back with the recommendation that it do pass as amended by the Committee on Energy, Industry, and Mining to which the bill was first referred.

Respectfully submitted,

Charles S. Trump IV,  
*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. House Bill 2918**, Relating to Family Drug Treatment Court.

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

Respectfully submitted,

Charles S. Trump IV,  
*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 3254**, Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis.

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.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**Eng. House Bill 3286**, Making a supplementary appropriation to the Division of Human Services – Child Care and Development.

**Eng. House Bill 3287**, Making a supplementary appropriation to the Department of Homeland Security.

**Eng. House Bill 3288**, Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR.

**Eng. House Bill 3289**, Supplementary appropriation to the Department of Commerce, Geological and Economic Survey.

**Eng. House Bill 3291**, Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services.

**Eng. House Bill 3292**, Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health.

**Eng. Com. Sub. for House Bill 3295**, Making a supplemental appropriation to Division of Human Services and Division of Health Central Office.

And,

**Eng. Com. Sub. for House Bill 3297**, Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home.

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

Respectfully submitted,

Eric J. Tarr,  
*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. House Bill 3310**, Relating to the jurisdiction of the Public Service Commission.

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.*

Senator Tarr, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

**House Concurrent Resolution 68**, Providing for the issuance of not to exceed \$22 million of refunding bonds pursuant to the Safe Roads Amendment of 1996.

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

Respectfully submitted,

Eric J. Tarr,  
*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 on April 2, 2021:

**Senate Concurrent Resolution 45:** Senator Caputo;

**Senate Resolution 38:** Senators Stollings, Lindsay, and Hamilton;

And,

**Senate Resolution 39:** Senators Tarr, Lindsay, Stollings, and Hamilton.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Takubo, at 6:34 p.m., the Senate adjourned until tomorrow, Tuesday, April 6, 2021, at 10 a.m.

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## **SENATE CALENDAR**

**Tuesday, April 06, 2021  
10:00 AM**

### **UNFINISHED BUSINESS**

- S. C. R. 61 - Requesting study on consolidating county boards of education to provide efficiencies and direct cost savings
- S. R. 40 - Recognizing 150th anniversary of Summers County
- H. C. R. 68 - Providing for the issuance of not to exceed \$22 million of refunding bonds pursuant to the Safe Roads Amendment of 1996

### **THIRD READING**

- Com. Sub. for S. B. 125 - Budget Bill - (With right to amend)
- Eng. Com. Sub. for H. B. 2093 - Relating to exemptions for the United States Department of Veterans Affairs Medical Foster Homes
- Eng. Com. Sub. for H. B. 2760 - Relating to economic development incentive tax credits (original similar to SB447)
- Eng. H. B. 2768 - Supplementing, amending and increasing an existing item of appropriation from the State Road Fund, to the Department of Transportation, Division of Highways
- Eng. Com. Sub. for H. B. 2769 - Supplementing, amending and increasing items of existing appropriation from the State Road Fund to the Department of Transportation, Division of Motor Vehicles
- Eng. Com. Sub. for H. B. 2770 - Including home confinement officers in definition of law-enforcement officers - (Com. title amend. pending)
- Eng. H. B. 2790 - Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways
- Eng. Com. Sub. for H. B. 2823 - Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code
- Eng. H. B. 2829 - Providing for the amortization of annual funding deficiencies for municipal police or firefighter pension and relief funds (original similar to SB625)
- Eng. H. B. 2915 - Relating to public records management and preservation
- Eng. H. B. 3130 - Relating to elimination of sunset provisions concerning towing rates
- Eng. H. B. 3175 - Relating to removing certain felonies than can prohibit vehicle salespersons from receiving a license - (Com. title amend. pending)
- Eng. H. B. 3191 - Requiring employers to send certain notifications when retirants are hired as temporary, part-time employees

Eng. H. B. 3298 - Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund

Eng. H. B. 3300 - Relating to reducing personal income tax rates generally - (Com. amend. and title amend. pending) - (With right to amend)

## **SECOND READING**

Eng. Com. Sub. for H. B. 2005 - Relating to health care costs - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2022 - Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution

Eng. H. B. 2379 - Make criminal invasion of privacy a felony - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2722 - Prohibiting the use of class B fire-fighting foam for testing purposes if the foam contains a certain class of fluorinated organic chemicals

Eng. Com. Sub. for H. B. 2758 - Requiring the Insurance Commissioner to regulate professional bondsmen - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2793 - Permit out of state residents to obtain West Virginia concealed carry permits - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2834 - Adding the Curator of the West Virginia Division of Arts, Culture and History as an ex officio voting member of the commission (original similar to SB557)

Eng. H. B. 2874 - Extend the current veteran's business fee waivers to active duty military members and spouses

Eng. Com. Sub. for H. B. 2890 - To clarify the regulatory authority of the Public Service Commission of West Virginia over luxury limousine services - (Com. title amend. pending)

Eng. H. B. 2914 - To remove certain ex officio, voting members from the Archives and History Commission and update formatting

Eng. H. B. 2969 - To clarify the procedures for the sale and operation of a municipally owned toll bridge by a private toll transportation facility - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 3293 - Relating to single-sex participation in interscholastic athletic events - (Com. amend. pending)

Eng. H. B. 3294 - Relating to unemployment insurance - (Com. title amend. pending)

Eng. Com. Sub. for H. J. R. 1 - Education Accountability Amendment - (Com. amend. and title amend. pending)

Eng. H. J. R. 2 - Providing that courts have no authority or jurisdiction to intercede or intervene in, or interfere with, any impeachment proceedings of the House of Delegates or the Senate

## **FIRST READING**

Eng. Com. Sub. for H. B. 2002 - Relating to Broadband - (Com. amend. pending)

Eng. Com. Sub. for H. B. 2017 - Rewriting the Criminal Code - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2507 - Remove the limitations on advertising and promotional activities by limited video lottery retailers - (Com. amend. pending)

Eng. H. B. 2730 - Relating to persons filing federal bankruptcy petition to exempt certain property of the estate - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2773 - Permitting DNR to issue up to 100 permits for boats greater than 10 horsepower on Upper Mud River Lake

Eng. H. B. 2830 - Relating generally to sex trafficking - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2842 - Preventing cities from banning utility companies in city limits - (Com. amend. and title amend. pending)

Eng. H. B. 2918 - Relating to Family Drug Treatment Court

Eng. Com. Sub. for H. B. 3254 - Authorizing members of development authorities to accept federally authorized reimbursement for services which the members rendered on a voluntary basis - (Com. amend. and title amend. pending)

Eng. H. B. 3286 - Making a supplementary appropriation to the Division of Human Services – Child Care and Development

Eng. H. B. 3287 - Making a supplementary appropriation to the Department of Homeland Security

Eng. H. B. 3288 - Supplementing and amending appropriations by decreasing and increasing existing items of appropriation in the DHHR

Eng. H. B. 3289 - Supplementary appropriation to the Department of Commerce, Geological and Economic Survey

Eng. H. B. 3291 - Making a supplementary appropriation to the Department of Homeland Security, Division of Administrative Services

Eng. H. B. 3292 - Making a supplementary appropriation to the Department of Health and Human Resources, Division of Health

Eng. Com. Sub. for H. B. 3295 - Making a supplemental appropriation to Division of Human Services and Division of Health Central Office

Eng. Com. Sub. for H. B. 3297 - Making a supplemental appropriation to the Department of Veterans' Assistance - Veterans Home

Eng. H. B. 3310 - Relating to the jurisdiction of the Public Service Commission - (Com. amend. and title amend. pending)



**ANNOUNCED SENATE COMMITTEE MEETINGS**

**Regular Session 2021**

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**Tuesday, April 6, 2021**

9 a.m.

Transportation & Infrastructure

(Room 451M)