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April 6, 2021  
FIFTY-SIXTH DAY



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Tuesday, April 6, 2021

**FIFTY-SIXTH DAY**

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

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

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

The Clerk proceeded to read the Journal of Monday, April 5, 2021, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Reordering of the Calendar**

Pursuant to the action of the Committee on Rules, Delegate Summers announced that S. B. 710, on Second reading, Special Calendar, had been transferred to the House Calendar; and Com. Sub. for S. B. 634, on Second reading, House Calendar, had been transferred to the Special Calendar, and Com. Sub. for S. B. 671 on First reading, House Calendar, had been transferred to the Special Calendar.

**Committee Reports**

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 7**, Limiting political activity by public employees,

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

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

Your Committee on the Judiciary has had under consideration:

**S. B. 537**, Relating generally to kidnapping,

**Com. Sub. for S. B. 657**, Relating to free expression on state institution of higher education campuses,

**Com. Sub. for S. B. 658**, Requiring sheriff's departments to participate and utilize Handle With Care Program for trauma-inflicted children,

And,

**S. B. 674**, Clarifying that unpaid restitution does not preclude person from obtaining driver's license,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 470**, Limiting release of certain personal information maintained by state agencies,

And,

**Com. Sub. for S. B. 569**, Relating to damages for medical monitoring,

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

#### **Messages from the Executive**

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on April 5, 2021, he approved **Com. Sub. for H. B. 2621**, **Com. Sub. for H. B. 2797**, **H. B. 2854**, **Com. Sub. for H. B. 2855** and **H. B. 2905**.

#### **Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2267**, Establishing an optional bus operator in residence program for school districts.

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

On page two, section fifteen, line twenty-two, after the semi-colon, by inserting the word "and".

On page two, section fifteen, line twenty-four, by changing the semicolon to a period.

And,

On page two, section fifteen, after line thirty-four, by adding thereto a new section, designated section fifteen-a, to read as follows:

**"ARTICLE 4. SALARIES, WAGES AND OTHER BENEFITS.**

**§18A-4-15a. Employment of retired bus operators as substitutes in areas of critical need and shortage.**

(a) The Legislature hereby finds and declares that due to a shortage of qualified substitute bus operators, a compelling state interest exists in expanding the use of retired bus operators to provide service as substitute bus operators in an area of critical need and shortage.

(b) The Legislature further finds and declares that this shortage is significant and overarching, and in order to comply with §18-5-13(f)(1) of this code, this need supersedes any preclusion of modification of rights codified in §18-7A-28(e) of this code.

(1) For the purposes of this subsection: 'Area of critical need and shortage for substitute bus operators' means that the number of available qualified substitute bus operators in the county who are not retired and are available and willing to accept substitute bus operator assignments is insufficient to meet the projected need for qualified substitute bus operators.

(2) A person receiving retirement benefits under article seven-a, chapter eighteen of this code, or who is entitled to retirement benefits during the fiscal year in which that person retired, may accept employment as a critical need substitute bus operator for an unlimited number of days each fiscal year without affecting the monthly retirement benefit to which the retirant is otherwise entitled, subject to satisfaction of the following conditions:

(A) The county board adopts a policy recommended by the superintendent to address a critical need and shortage for substitute bus operators;

(B) The superintendent of the county board submits the policy to the State Board of Education for approval in the first year of its utilization. After initial approval by the State Board of Education, the county board must annually renew the policy at the local level and provide confirmation to the State Board of Education of its intent to utilize the policy in the subsequent year;

(C) The policy sets forth the critical need and shortage for substitute bus operators in the county in accordance with the definition of area of critical need and shortage for substitute bus operators as provided in subdivision (1) of this subsection;

(D) The policy provides for the employment of retired bus operators as critical need substitute bus operators during the school year on an expanded basis in areas of critical need and shortage for substitute bus operators as provided in this subsection;

(E) The policy provides that a retired bus operator may be employed as a substitute bus operator in an area of critical need and shortage for substitute bus operators on an expanded basis as provided in this subsection only when no other qualified bus operator who is not retired is available and accepts the substitute assignment; and

(F) Prior to employment of a retired bus operator as a critical need substitute bus operator beyond the post-retirement employment limitations established by the Consolidated Public Retirement Board, the superintendent of the affected county submits to the state board in a form approved by the Consolidated Public Retirement Board and the state board, an affidavit signed by the superintendent stating the name of the county, the fact that the county has adopted a policy to employ retired bus operators as substitutes to address its critical need and shortage, the name or names of the person or persons to be employed as a critical need substitute pursuant to the policy, the date that the person gave notice to the county board of the person's intent to retire, and the effective date of the person's retirement. Upon verification of compliance with this section and the eligibility of the critical need substitute bus operator for employment beyond the post-

retirement limit, the state board shall submit the affidavit to the Consolidated Public Retirement Board.

(3) Any person who retires and begins work as a critical need substitute bus operator within the same fiscal year in which that person retired shall lose those retirement benefits attributed to the annuity reserve, effective from the first day of employment as a retiree critical need substitute bus operator in that fiscal year and ending with the month following the date the retiree ceases to perform service as a critical need substitute bus operator.

(4) Retired bus operators employed to perform expanded substitute service pursuant to this subsection are considered day-to-day, temporary, part-time employees. The substitutes are not eligible for additional pension or other benefits paid to regularly employed employees and may not accrue seniority.

(5) A retired bus operator is eligible to be employed as a critical need substitute bus operator to fill a vacant position without any loss of retirement benefits attributed to the annuity reserve only if the retired bus operator's retirement became effective before the first day of July preceding at least the fiscal year during which he or she is employed as a critical need substitute bus operator.

(6) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the county board shall continue to post the vacant position until it is filled with a regularly employed bus operator who is fully qualified for the position.

(7) When a retired bus operator is employed as a critical need substitute to fill a vacant position, the position vacancy shall be posted electronically and easily accessible to prospective employees as determined by the state board.

(8) The provisions of this subsection shall expire on June 30, 2026."

And,

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

**Com. Sub. for H. B. 2267** – "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18A-2-15; and to amend said code by adding thereto a new section, designated §18A-4-15a, all relating to bus operators; allowing retired bus operators to provide service as substitute bus operators in an area of critical need and shortage subject to certain conditions; providing that such substitute bus operators are considered day-to-day, temporary, part-time employees; allowing such substitute bus operators to fill a vacant position without loss of retirement benefits in certain circumstances; requiring the county board to post a vacant position until it is filled with a regularly employed bus operator; requiring the state board to post a vacant position electronically and easily accessible to prospective employees; establishing an optional bus operator in residence program for school districts; requiring certain steps in an application; establishing no entitlement to employment upon completion of the program; establishing wages or salaries paid to persons completing the program; establishing employment requirements after completing the program; and not permitting seniority to accrue during completion of the program."

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

A message from the Senate, by  
The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 2427**, Authorizing the Department of Health and Human Resources to promulgate legislative rules.

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

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

**“ARTICLE 5. AUTHORIZATION FOR DEPARTMENT OF HEALTH AND HUMAN RESOURCES TO PROMULGATE LEGISLATIVE RULES.**

**§64-5-1. Department of Health and Human Resources.**

(a) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §27-9-1 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (behavioral health centers licensure, 64 CSR 11), is authorized with the following amendments:

On page 1, subsection 1.7, after the words, “supports in the” by inserting the words, “state of”;

On page 11, subdivision 4.5.5 by striking out the word, “alternations” and inserting in lieu thereof the word, “alterations”;

On page 11, by adding a new subdivision 4.5.6 to read as follows:

“4.5.6. All plumbing shall meet the requirements of local plumbing codes or, in the absence thereof, the National Plumbing Code and be maintained and repaired in a state to conform with its intended purpose.”;

And,

By renumbering the remaining subdivisions;

On page 25, by striking out all of paragraph 9.5.1.f. and inserting in lieu thereof a new paragraph 9.5.1.f. to read as follows:

“9.5.1.f. Documentation that information on the Child Abuse and Neglect Registry created under W. Va. Code §15-13-1 *et seq.* was checked for that employee, student, or volunteer.”

And,

On page 4, subsection (f), line 83 by striking the period and adding the following:

“with the following amendment:

On page 50, after subsection 12.4., by adding a new section 13 to read as follows:

§64-48-13. Federal Model Program.

13.1. Any EMS agency licensed by the Bureau may seek approval from the Centers for Medicare and Medicaid Services of the United States Department of Health and Human Services to participate in the national Emergency Triage, Treat and Transport (ET3) Model program. Services under the ET3 Model program shall specifically include, but not be limited to, the transport of patients to alternative destinations such as federally qualified health centers, urgent care centers, physician offices and clinics, and behavioral health care facilities. The ET3 Model program has a five-year performance period and is not administered by the Bureau. Any EMS agency approved to participate in the ET3 Model program shall be governed solely by the standards and criteria established by the Centers for Medicare & Medicaid Services in its delivery of ET3 services thereunder.”

On page 28, paragraph 10.1.4.i, by striking out the word, “daily”;

On page 28, by striking out all of paragraph 10.1.4.l.:

On page 29, paragraph 10.1.4.m, after the word, “vermin” by inserting the words, “that stand to pose a threat to the health or safety of consumers or employees”;

And,

By renumbering the remaining paragraph;

On page 30, subdivision 10.2.11, by striking out the word, “sued” and inserting in lieu thereof the word, “used”;

On page 45, subdivision 12.16.5, by striking out the word, “uses” and inserting in lieu thereof the word, “use”;

On page 45, subdivision 12.16.5, by striking out the word, “made” and inserting in lieu thereof the word, “make”;

On page 52, paragraph 12.28.2.f, after the word, “immediate” by inserting a comma, and the words, “in-home”;

On page 52, paragraph 12.28.2.f, after the word, “record” by inserting the words, “in order to provide safe and appropriate care to consumers”;

And,

On page 55, subdivision 13.3.1 by changing the period and to a colon and inserting the following proviso: “*Provided*, That the Secretary may only suspend or revoke a license, if the licensee commits a violation which endangers the health, safety or welfare of a person;”;

(b) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-5B-8 of this code, relating to the Department of Health and Human Resources (hospital licensure, 64 CSR 12), is authorized with the following amendment:

‘On page 13, by inserting a new subdivision 4.3.7 to read as follows;



“4.3.7. A hospital shall post signage in every patient room, patient care area or department, and staff rest area information outlining the process for reporting patient safety concerns via the facility’s designated internal reporting mechanism and the process for reporting unresolved patient safety concerns or complaints to the West Virginia Office for Health Facility Licensure and Certification. The posting shall include the address and telephone number for the West Virginia Office for Health Facility Licensure and Certification. Signage color and text shall conform to the Office of Safety and Health Administration regulations for safety instruction signs as provided in standard §1910.145. Nothing in the provision precludes any patient, patient representative, or healthcare provider from making a good faith report pertaining to patient safety concerns and/or alleged wrongdoing or waste to any other appropriate authorities as provided §16-39-3”.’

(c) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §16-5C-5 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (nursing home licensure, 64 CSR 13), is authorized.

(d) The Legislature directs the Department of Health and Human Resources to promulgate the legislative rule effective of July 1, 2019, authorized under the authority of §16-1-4 of this code, relating to the Department of Health and Human Resources (food establishments, 64 CSR 17), with the following amendments:

On page 2, subsection 3.1, by adding a new subdivision 3.1.h, to read as follows:

‘3.1.h Chapter 6, section 6-501.115 is not applicable if the following conditions are met:

3.1.h.1. The dog is prohibited from entering any areas where food is being prepared.

3.1.h.2. An exterior play area is available for the dog;

3.1.h.3. The dog owner shall certify that his or her dog has a current rabies vaccination;

3.1.h.4. The dog owner will be asked to leave, if a dog creates a nuisance;

3.1.h.5. The establishment is licensed a private club, brew pub, or micro distillery;

3.1.h.6. The establishment has liability insurance for dog related incidents;

3.1.h.7. Dog accidents are cleaned and sanitized. Dog waste stations are available. A written procedure shall be established and posted concerning dog accident cleanup;

3.1.h.8. Signage is present indicating that the establishment is dog friendly;

3.1.h.9. Dog rules are provided to customers upon entrance.’

And,

By renumbering the remaining subdivisions.

(e) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-35-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State

Register on December 10, 2020, relating to the Department of Health and Human Resources (lead abatement licensing, 64 CSR 45), is authorized.

(f) The legislative rule filed in the State Register on November 20, 2020, authorized under the authority of §16-1-4 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on January 4, 2021, relating to the Department of Health and Human Resources (emergency medical services, 64 CSR 48), is authorized.

(g) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §27-5-9(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (client rights at state-operated mental health facilities, 64 CSR 59), is authorized.

(h) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-5O-11 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (delegation of medication administration and health maintenance tasks to approved medication assistive personnel, 64 CSR 60), is authorized.

(i) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §33-59-1(k) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (diabetes self-management education, 64 CSR 115), is authorized with the following amendment:

On page 1, subsection 1.2, by striking out, “53” and inserting in lieu thereof “59”.

(j) The legislative rule filed in the State Register on August 21, 2020, authorized under the authority of §16-49-9 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 20, 2020, relating to the Department of Health and Human Resources (West Virginia clearance for access, registry, and employment screening, 69 CSR 10), is authorized with the following amendment:

On page 2, by adding a new subsection 2.3 to read as follows:

“ 2.3. Covered Provider – means the following facilities or providers that are required to participate in the WV CARES program: skilled nursing facilities; nursing facilities; home health agencies; providers of hospice care; long-term care hospitals; providers of personal care services; providers of adult day care; residential care providers that arrange for or directly provide long-term care services including assisted living facilities; intermediate care facilities for individuals with intellectual disabilities; persons responsible for the care of children as described in W. Va. Code 49-2-114; chronic pain management clinics; behavioral health centers; neonatal abstinence syndrome centers; opioid treatment centers; and 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 in legislative rule.”;

And,

By renumbering the remaining subsections;

(k) The legislative rule filed in the State Register on July 1, 2020, authorized under the authority of §16-59-2(g) of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 9, 2020, relating to the Department of Health and Human Resources (recovery residence certification and accreditation program, 69 CSR 15), is authorized.

(l) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 16, 2020, relating to the Department of Health and Human Resources (child placing agencies licensure, 78 CSR 02), is authorized with the following amendments:

On page 11, by striking out paragraph 6.3.1.b;

And,

By renumbering the remaining paragraph;

On page 20, subsection 8.1, by striking out the sentence, "The agency shall require the following qualifications for each position."

On page 20, by striking out subdivision 8.1.1,

And,

On page 20, by striking out subdivision 8.1.4. and inserting in lieu thereof a new subdivision 8.1.4 to read as follows:

"8.1.4. Case Managers shall have a bachelor's or master's degree in social work or a related human service field, or a Board of Regents degree with a human service concentration, or a Bachelor's degree who has completed department approved training provided by the child placing agency;

On page 21 by striking paragraph, 8.2.1.a:

And,

By renumbering the remaining paragraphs;

On page 36, by striking out subdivision, 11.4.5.;

And,

Renumbering the remaining subdivisions.

(m) The legislative rule filed in the State Register on August 25, 2020, authorized under the authority of §49-2-121 of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources

(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, 78 CSR 03), is authorized with the following amendments:

On page 23, by striking out all of subdivision 6.1.1.;

And,

By renumbering the remaining subdivisions;

On page 26, subsection 7.1., by striking out “governing body shall be one of the following:”

On page 26, by striking out all of subdivisions 7.1.1, 7.1.2, 7.1.3, 7.1.4, and 7.1.5;

On page 36, by striking out all of subsection 10.6.;

On page 40, by striking out all of subdivision 11.3.2;

And,

By renumbering the remaining subdivisions;

On page 41, by striking out all of subsection 12.1 and inserting in lieu thereof a new subsection 12.1. to read as follows:

12.1 The organization shall meet all applicable federal, state, and local, health, building, safety, and fire codes.”

On page 42, by striking out all of subdivision 12.2.1 and inserting in lieu thereof a new subsection 12.2.1 to read as follows:

“12.2.1 Food shall be stored, prepared, and served according to local health department regulations;

On page 43, by striking out all of subdivision 12.2.2.;

And,

On page 43, by striking out all of subsection 12.3.;

(n) The legislative rule filed in the State Register on August 26, 2020, authorized under the authority of §49-4-601b of this code, modified by the Department of Health and Human Resources to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on December 15, 2020, relating to the Department of Health and Human Resources (procedure to contest the substantiation of child abuse or neglect, 78 CSR 27), is authorized with the following amendments:

On page 2, after subsection 2.14, by adding two new sections designated sections 3 and 4 to read as follows:

**“§78-27-3. Substantiation of abuse and neglect.**

The Bureau may consider an allegation against a person of abuse or neglect of a child to have been substantiated for purposes of its records in either of the following two circumstances:

(a) The allegation of abuse or neglect has been the subject of a petition under chapter 49 of this code, that resulted in an adjudication finding that the person committed one or more acts of abuse or neglect of a child, and that adjudication has not been reversed or vacated on appeal; or

(b) The Bureau, as a result of its own investigation has determined that an allegation against a person of abuse or neglect of a child has been substantiated, whether or not there has been an adjudication under subsection (a) of this section: *Provided*, that when there has been no adjudication, sections four and five of this rule apply.

**§78-27-4. Allegations of abuse or neglect substantiated on or before July 1, 2021.**

(a) Any person may write to the Bureau and inquire if the Bureau has included him or her in its records of persons against whom there has been a substantiated claim of abuse or neglect of a child. The person making the inquiry shall provide the Bureau with his or her full name, date of birth, address, and social security number.

(b) Within 30 days of the request, the Bureau shall inform the person that: (1) the Bureau has no record of any substantiated claim against the person of abuse or neglect of a child; or (2) the Bureau does have a record of a substantiated allegation against the person of abuse or neglect of a child. If the substantiation is not based upon an adjudication described in subsection (a), section three of this rule, the Bureau shall provide the notice required under section five of this rule, and all of the rights and obligations of the Bureau and the person apply as if the Bureau's substantiation had occurred after July 1, 2021.”;

And,

By renumbering the remaining sections;

On page 2, section 3, by striking out all of subsection 3.1. and inserting in lieu thereof a new subsection 3.1 to read as follows:

“3.1. After July 1, 2021, if the Bureau determines that an allegation against a person of abuse or neglect of a child has been substantiated, the Bureau shall provide written notice to the maltreater of its determination.”;

And,

On page 3, subsection 3.4., after the words “The notice shall” by striking out the remainder of the sentence and inserting in lieu thereof “inform the maltreater that a finding of a substantiated abuse and neglect is recorded with the Bureau. The notice shall also inform the maltreater that the fact that a finding of a substantiated abuse and neglect is recorded with the Bureau may keep the maltreater from certain types of employment and may also prevent him or her from foster or kinship care of a child.”.

**§64-5-2. Health Care Authority.**

The legislative rule filed in the State Register on September 28, 2020, authorized under the authority of §16-2D-4 of this code, relating to the Health Care Authority (exemption from certificate of need, 65 CSR 29), is authorized with the following amendments:

On page 1, by striking out all of subsections 3.1 and 3.2 and inserting in lieu thereof a new subsection 3.1 and subsection 3.2 to read as follows:

3.1. A health service exempt from certificate of need review by W.Va. Code §16-2D-11 may not be acquired, offered, or developed within this state unless notification of the performance of the exemption is provided to the authority.

3.2. A person or health care facility may not knowingly charge or bill for a health service exempted from certificate of need review by W.Va. Code §16-2D-11 without first submitting a notification of performance of the exemption to the authority.'

On pages 2 and 3, by striking out all of section 5 in its entirety;

And,

By renumbering the remaining sections.

And,

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

**Com. Sub. for H. B. 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.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 436**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Paynter.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2427) passed.

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

On this question, the yeas and nays were taken (**Roll No. 437**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: McGeehan and Paynter.

Absent and Not Voting: Longanacre.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2427) takes effect from its passage.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 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 motion of Delegate Kessinger, the House of Delegates concurred in the following amendment of the bill by the Senate, with further title amendment:

On page one, after the enacting clause, by inserting the following:

**“CHAPTER 18. EDUCATION.**

**ARTICLE 8. COMUPULSORY SCHOOL ATTENDANCE.**

**§18-8-12. Issuance of a diploma or other appropriate credential by public, private, or home school administrator.**

A person who administers a program of secondary education at a public, private or home school that meets the requirements of this chapter may issue a diploma or other appropriate credential to a person who has completed the program of secondary education. Such diploma or credential is legally sufficient to demonstrate that the person meets the definition of having a high school diploma or its equivalent. No state agency or institution of higher learning in this state may reject or otherwise treat a person differently solely on the grounds of the source of such a diploma or credential. ~~Nothing in this section prevents any agency or institution of higher learning from inquiring into the substance or content of the program to assess the content thereof for the purposes of determining whether a person meets other specific requirements.~~ Nothing in this section prevents an institution, once a student has been fully admitted, from administering placement tests or other assessments to determine the appropriate placement of students into college-level course sequences or to assess the content thereof for the purposes of determining whether a person meets other requirements for a specific program.

#### CHAPTER 18B. HIGHER EDUCATION.”

And,

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

**Com. Sub. for H. B. 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.”

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

**Com. Sub. for H. B. 2529** – “A Bill to amend and reenact §18-8-12 and §18B-1-1e of the Code of West Virginia, 1931, as amended; all relating to nondiscrimination in the higher education admissions process; 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.”

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

On passage of the bill, the yeas and nays were taken (**Roll No. 438**), and there were—yeas 100, nays none, absent and not voting none.



So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2529) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2633**, Creating the 2021 Farm Bill.

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

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

**“ARTICLE 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.~~

(i) '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.

~~(u)~~ (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).

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

~~(w)~~ '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)~~ (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~~ and reviewing labels, consumer complaints, and papers relating to the manufacturing, distribution, sampling, testing, and sale of commercial feeds.

~~(b) (2)~~ (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)~~ (3) Issue permits and registrations pursuant to this article.

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

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

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

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

~~(h) (8)~~ (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) The applicant, permittee, or registrant~~ guarantor has violated the provisions of this article or any official rule promulgated hereunder; or ~~(b)(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 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;

~~(10)~~ (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;

~~(11)~~ (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

~~(12)~~ (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 potentially~~ 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.

~~(c) (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.”

And by amending the title of the bill to read as follows:

**Com. Sub. for H. B. 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.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 439**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2633) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2763**, Creating WV Cyber Incident Reporting.

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

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

**“ARTICLE 6C. WEST VIRGINIA CYBER INCIDENT REPORTING.**

**§5A-6C-1. Definitions.**

As used in this article:

‘Cybersecurity Office’ means the office created by §5A-6B-1 of this code.

‘Incident’ or ‘cybersecurity incident’ means a violation, or imminent threat of violation, of computer security policies, acceptable use policies, or standard security practices.

**§5A-6C-2. Scope.**

This article applies to all state agencies within the executive branch, constitutional officers, all local government entities as defined by §7-1-1 or §8-1-2 of this code, county boards of education as defined by §18-1-1 of this code, the Judiciary, and the Legislature.

**§5A-6C-3. Cyber Incident reporting; when required.**

(a) Qualified cybersecurity incidents shall be reported to the Cybersecurity Office before any citizen notification, but no later than 10 days following a determination that the entity experienced a qualifying cybersecurity incident.

(b) A qualified cybersecurity incident meets at least one of the following criteria:

(1) State or federal law requires the reporting of the incident to regulatory or law-enforcement agencies or affected citizens;

(2) The ability of the entity that experienced the incident to conduct business is substantially affected; or

(3) The incident would be classified as emergency, severe, or high by the U.S. Cybersecurity and Infrastructure Security Agency.

(c) The report of the cybersecurity incident to the Cybersecurity Office shall contain at a minimum:

(1) The approximate date of the incident;

(2) The date the incident was discovered;

(3) The nature of any data that may have been illegally obtained or accessed; and

(4) A list of the state and federal regulatory agencies, self-regulatory bodies, and foreign regulatory agencies to whom the notice has been or will be provided.

(d) The procedure for reporting cybersecurity incidents shall be established by the Cybersecurity Office and disseminated to the entities listed §5A-6C-2 of this code.

#### **§5A-6C-4. Cybersecurity Office annual report.**

(a) On or before December 31 of each year, and when requested by the Legislature, the Cybersecurity Office shall provide a report to the Joint Committee on Government and Finance containing the number and nature of incidents reported to it during the preceding calendar year.

(b) The Cybersecurity Office shall also make recommendations, if any, on security standards or mitigation that should be adopted.”

And,

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

**Com. Sub. for H. B. 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.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 440**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: McGeehan.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2763) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2765**, Relating to allowing emergency management and operations' vehicles operated by airports to use red flashing warning lights.

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

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

**"ARTICLE 1. WORDS AND PHRASES DEFINED.**

**§17C-1-6. Authorized emergency vehicle.**

'Authorized emergency vehicle' means vehicles of a fire department, duly chartered rescue squad, police department, ambulance service, hospital police department, state, county, or municipal agency, and such privately owned ambulances, tow trucks, wreckers, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, postal service vehicles, snow removal equipment, Class A vehicles of firefighters, Class A vehicles of members of ambulance services, ~~and~~ Class A vehicles of members of duly chartered rescue squads, emergency management and operations vehicles operated by airports and designated pursuant to §17C-15-26 of this code, and all other emergency vehicles as are designated by the agency responsible for the operation and control of these persons or organizations. Class A vehicles are as defined by §17A-10-1 of this code. Agency authorization and emergency equipment are provided in §17C-15-26 of this code. Agencies responsible for issuing authorization for emergency vehicle permits may promulgate such regulations that are necessary for the issuance of permits for emergency vehicles.

**ARTICLE 15. EQUIPMENT.**

**§17C-15-26. Special restrictions on lamps.**

(a) Any lighted lamp or illuminating device upon a motor vehicle other than head lamps, spot lamps, auxiliary lamps, or flashing front-direction signals which projects a beam of light of an intensity greater than 300 candlepower shall be so directed that no part of the beam will strike the level of the roadway on which the vehicle stands at a distance of more than 75 feet from the vehicle.

(b) No person may drive or move any vehicle or equipment upon any highway with any lamp or device on the vehicle displaying other than a white or amber light visible from directly in front of the center of the vehicle except as authorized by §17C-15-26(d) of this code.

(c) Except as authorized in §17C-15-26(d) and 17C-15-26(g) of this code and authorized in §17C-15-19 of this code, flashing lights are prohibited on motor vehicles: *Provided*, That any vehicle as a means for indicating right or left turn or any vehicle as a means of indicating the same is disabled or otherwise stopped for an emergency may have blinking or flashing lights.

(d) Notwithstanding any other provisions of this chapter, the following colors of flashing warning lights are restricted for the use of the type of vehicle designated:

(1) Blue flashing warning lights are restricted to police vehicles. Authorization for police vehicles shall be designated by the chief administrative official of each police department.

(2) Except for standard vehicle equipment authorized by §17C-15-19 of this code, red flashing warning lights are restricted to the following:

(A) Ambulances;

(B) Fire-fighting vehicles;

(C) Hazardous material response vehicles;

(D) Industrial fire brigade vehicles;

(E) Rescue squad vehicles not operating out of a fire department;

(F) School buses;

(G) Class A vehicles, as defined by §17A-10-1 *et seq.* of this code, of those firefighters who are authorized by their fire chiefs to have the lights;

(H) Class A vehicles of members of duly chartered rescue squads not operating out of a fire department;

(I) Class A vehicles of members of ambulance services or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(J) Class A vehicles of out-of-state residents who are active members of West Virginia fire departments, ambulance services, or duly chartered rescue squads who are authorized by their respective chiefs to have the lights;

(K) West Virginia Department of Agriculture emergency response vehicles;

(L) Vehicles designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management; ~~and~~

(M) Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security and the county commission of the county of residence; and

(N) Emergency management and operations vehicles operated by airports.

Red flashing warning lights attached to a Class A vehicle may be operated only when responding to or engaged in handling an emergency requiring the attention of the firefighters, members of the ambulance services, or chartered rescue squads.

(3) The use of red flashing warning lights is authorized as follows:

(A) Authorization for all ambulances shall be designated by the Department of Health and Human Resources and the sheriff of the county of residence.

(B) Authorization for all fire department vehicles shall be designated by the fire chief and the State Fire Marshal's Office.

(C) Authorization for all hazardous material response vehicles and industrial fire brigades shall be designated by the chief of the fire department and the State Fire Marshal's Office.

(D) Authorization for all rescue squad vehicles not operating out of a fire department shall be designated by the squad chief, the sheriff of the county of residence and the Department of Health and Human Resources.

(E) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(F) Authorization for firefighters to operate Class A vehicles shall be designated by their fire chiefs and the state Fire Marshal's office.

(G) Authorization for members of ambulance services or any other emergency medical service personnel to operate Class A vehicles shall be designated by their chief official, the Department of Health and Human Resources, and the sheriff of the county of residence.

(H) Authorization for members of duly chartered rescue squads not operating out of a fire department to operate Class A vehicles shall be designated by their squad chiefs, the sheriff of the county of residence, and the Department of Health and Human Resources.

(I) Authorization for out-of-state residents operating Class A vehicles who are active members of a West Virginia fire department, ambulance services, or duly chartered rescue squads shall be designated by their respective chiefs.

(J) Authorization for West Virginia Department of Agriculture emergency response vehicles shall be designated by the Commissioner of the Department of Agriculture.

(K) Authorization for vehicles for emergency response or emergency management by the Division of Corrections, Regional Jail and Correctional Facility Authority, Division of Juvenile Services, and Division of Homeland Security and Emergency Management shall be designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security.

(L) Authorization for Class A vehicles of emergency response or emergency management personnel as designated by the Secretary of the ~~Department of Military Affairs and Public Safety~~ Department of Homeland Security and the county commission of the county of residence.

(M) Authorization for emergency management and operations vehicles operated by airports shall be designated by the airport director and the Secretary of the Department of Homeland Security.

(4) Yellow or amber flashing warning lights are restricted to the following:

(A) All other emergency vehicles, including tow trucks and wreckers, authorized by this chapter and by §17C-15-27 of this code;

(B) Postal service vehicles and rural mail carriers, as authorized in §17C-15-19 of this code;

(C) Rural newspaper delivery vehicles;

(D) Flag car services;

(E) Vehicles providing road service to disabled vehicles;

(F) Service vehicles of a public service corporation;

(G) Snow removal equipment;

(H) School buses; and

(I) Automotive fire apparatus owned by a municipality or other political subdivision, by a volunteer or part-volunteer fire company or department, or by an industrial fire brigade.

(5) The use of yellow or amber flashing warning lights shall be authorized as follows:

(A) Authorization for tow trucks, wreckers, rural newspaper delivery vehicles, flag car services, vehicles providing road service to disabled vehicles, service vehicles of a public service corporation, and postal service vehicles shall be designated by the sheriff of the county of residence.

(B) Authorization for snow removal equipment shall be designated by the Commissioner of the Division of Highways.

(C) Authorization for school buses shall be designated as set out in §17C-14-12 of this code.

(D) Authorization for automotive fire apparatus shall be designated by the fire chief in conformity with the NFPA 1901 Standard for Automotive Fire Apparatus as published by the National Fire Protection Association (NFPA) on July 18, 2003, and adopted by the state Fire Commission by legislative rule (87 CSR 1, *et seq.*), except as follows:

(i) With the approval of the State Fire Marshal, used automotive fire apparatus may be conformed to the NFPA standard in effect on the date of its manufacture or conformed to a later NFPA standard; and

(ii) Automotive fire apparatus may be equipped with blinking or flashing headlamps.

(e) Notwithstanding the foregoing provisions of this section, any vehicle belonging to a county board of education, an organization receiving funding from the state or Federal Transit Administration for the purpose of providing general public transportation or hauling solid waste

may be equipped with a white flashing strobotron warning light. This strobe light may be installed on the roof of a school bus, a public transportation vehicle, or a vehicle hauling solid waste not to exceed one-third the body length forward from the rear of the roof edge. The light shall have a single clear lens emitting light 360 degrees around its vertical axis and may not extend above the roof more than six and one-half inches. A manual switch and a pilot light must be included to indicate the light is in operation.

(f) Notwithstanding the foregoing provisions of this section, any waste service vehicle as defined in §17C-6-11 of this code may be equipped with yellow or amber flashing warning lights.

(g) It is unlawful for flashing warning lights of an unauthorized color to be installed or used on a vehicle other than as specified in this section, except that a police vehicle may be equipped with either or both blue or red warning lights.”

And,

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

**Com. Sub. for H. B. 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.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 441**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2765) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2785**, Relating to public school enrollment for students from out of state.

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

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



**“ARTICLE 8. COMPULSORY SCHOOL ATTENDANCE.****§18-8-1a. Commencement and termination of compulsory school attendance; public school entrance requirements; exceptions.**

~~(a) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and, subject to subdivision (3) of this subsection, continues to the sixteenth birthday or for as long as the student continues to be enrolled in a school system after the sixteenth birthday. Compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a full-time publicly funded kindergarten program, and continues to the 17th birthday or for as long as the student continues to be enrolled in a school system after the 17th birthday.~~

~~(1) A child may be removed from such kindergarten program when the principal, teacher and parent or guardian ~~concur~~ determines that the best interest of the child would not be served by requiring further attendance. *Provided*, That the principal shall make the final determination with regard to compulsory school attendance in a publicly supported kindergarten program.~~

~~(2) The compulsory school attendance provision of this article shall be enforced against a person 18 years of age or older for as long as the person continues to be enrolled in a school system and may not be enforced against the parent, guardian, or custodian of the person.~~

~~(3) Notwithstanding the provisions of section one of this article, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to September 1 of such year or upon enrolling in a publicly supported kindergarten program and continues to the seventeenth birthday or for as long as the student continues to be enrolled in a school system after the seventeenth birthday: *Provided*, That beginning in the school year 2019-2020, compulsory school attendance begins with the school year in which the sixth birthday is reached prior to July 1 of such year or upon enrolling in a publicly supported kindergarten program.~~

~~(b) Attendance at a state approved or Montessori kindergarten, as provided in §18-5-18 of this code, is deemed school attendance for purposes of this section. Prior to entrance into the first grade in accordance §18-2-5 of this code, each child must have either:~~

~~(1) Successfully completed such publicly or privately supported, state approved kindergarten program, or Montessori kindergarten program; or~~

~~(2) Successfully completed an entrance test of basic readiness skills approved by the county in which the school is located. The test may be administered in lieu of kindergarten attendance only under extraordinary circumstances to be determined by the county board.~~

~~(b) A parent, as defined in §18-31-2 of this code, shall have the option, prior to enrolling in a publicly supported kindergarten program, to apply for a Hope Scholarship on behalf of his or her child as set forth in §18-31-1 *et seq.* of this code. Every year thereafter, a parent shall have the option to renew his or her child's enrollment in the Hope Scholarship Program pursuant to §18-31-8 of this code.~~

~~(c) Attendance at a state-approved, nonpublic kindergarten program, including a Montessori kindergarten program as provided in §18-5-18 of this code, homeschool kindergarten program,~~

Hope Scholarship kindergarten program, or private, parochial, or church kindergarten program recognized under §18-8-1(k) of this code is deemed school attendance for the purposes of this section. Students entering the public school system after such kindergarten program shall be placed in the developmentally and academically appropriate grade level.

(d) Notwithstanding the provisions of this section ~~section five, article two of this chapter and section eighteen, article five of this chapter and §18-5-18 of this code~~, a county board may provide for advanced entrance or placement under policies adopted by said board for any child who has demonstrated sufficient mental and physical competency for such entrance or placement.

~~(e) This section does not prevent a~~ A student from another state, or who is eligible to enroll in a public school in this state, from enrolling in the shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled at the school from which the student transferred. A transcript or other credential provided pursuant to §18-8-12 of this code shall be accepted by a public school in this state as a record of a student's previous academic performance for the purposes of placement and credit assignment."

And,

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

**Com. Sub. for H. B. 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.”

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

On page 3, section §18-8-1a, line 48, by striking subsection (e) and inserting in lieu thereof a new subsection (e) to read as follows:

~~“(e) (d) This section does not prevent~~ A student from another state, or who is eligible to enroll in a public school in this state, from enrolling in the shall be enrolled in the same grade in a public school in West Virginia as the student was enrolled at the school or program from which the student transferred. A transcript or other credential provided by a public school program, private school program, homeschool program or HOPE scholarship program shall be accepted by a public school in this state as a record of a student's previous academic performance for the purposes of placement and credit assignment."

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

On passage of the bill, the yeas and nays were taken (**Roll No. 442**), and there were—yeas 78, nays 22, absent and not voting none, with the nays being as follows:

Nays: Barach, Boggs, Brown, Diserio, Doyle, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Pethtel, Pushkin, Rowe, Skaff, Thompson, Toney, Walker, Williams, Young and Zukoff.

So, a majority of the members elected to the House of Delegates having voted on the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2785) passed.

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

A message from the Senate, by

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

**H. B. 2906**, Relating to the School Building Authority's allocation of money.

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

On page one, by striking out the title and substituting therefor a new title, to read as follows:

**H. B. 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.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 443**), and there were—yeas 90, nays 10, absent and not voting none, with the nays being as follows:

Nays: Clark, Dean, Gearheart, Hanna, J. Jeffries, Kimes, Mazzocchi, McGeehan, Miller and Paynter.

So, a majority of the members elect having voted in the affirmative, the Speaker declared the bill (H. B. 2906) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2916**, Creating the Semiquincentennial Commission for the celebration of the 250th anniversary of the founding of the United States of America.

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

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

**“ARTICLE 13A. WEST VIRGINIA SEMIQUINCENTENNIAL COMMISSION AND FUND.**

**§4-13A-1. Findings; West Virginia Semiquincentennial Commission established; purpose.**

(a) The Legislature finds that the 250th anniversary of our nation’s founding is of such historical significance as to warrant its commemoration.

(b) There is hereby created the West Virginia Semiquincentennial Commission.

(c) The purpose of the commission is to prepare for and commemorate the semiquincentennial of our nation’s founding.

**§4-13A-2. Membership; terms; filling vacancies; election of chair and vice chair.**

(a) The Governor shall appoint 10 members as follows:

(1) Three academic historians;

(2) Five citizens members, no more than one of whom may be from any one state senatorial district;

(3) A member of the National Society of the Sons of the American Revolution;

(4) A member of the National Society of the Daughters of the American Revolution;

(b) The following shall serve as ex-officio voting members;

(5) The State Superintendent of Schools, or a designee;

(6) The Cabinet Secretary of Commerce, or a designee;

(7) The Curator of the Department of Arts, Culture, and History, or a designee;

(8) The Commissioner of the Division of Tourism, or a designee;

(9) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(10) The West Virginia State Archivist;

(11) The Director of the West Virginia State Museums;

(12) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(13) One member of the State Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission;

(14) Members of the United States Senate from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(15) Members of the United States House of Representatives from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(c) All appointed members shall serve at the will and pleasure of the Governor;

(d) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(e) The curator of the West Virginia Department of Arts, Culture and History shall serve as the chair of the commission. The commission shall elect a vice chair and secretary from among its members.

#### **§4-13A-3. Expense reimbursement.**

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel management office of the Department of Administration, subject to availability of funds received pursuant to §4-13A-6(a)(1). No provision of this section may be construed to require any appropriation of funds by the Legislature.

#### **§4-13A-4. Quorum; meetings.**

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of §6-9A-1 et seq., of this code.

#### **§4-13A-5. Advisory council.**

The commission may establish an advisory council composed of citizens at large who have knowledge of American history and interest in its semiquincentennial celebration to assist the commission in its work.

#### **§4-13A-6. Powers; duties; limitation on duration of contracts.**

(a) The commission may:

(1) Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of §12-2-2 of this code;

(2) Procure supplies, services, and property and make or enter into contracts, leases, or other legal agreement as necessary to carry out its duties: *Provided*, That no contract, lease or other

legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;

(3) Plan, develop and carry out programs and activities appropriate to commemorate the semiquincentennial of the founding of our nation;

(4) Encourage civic, historical, educational, economic, and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the United States of America;

(5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the semiquincentennial of the founding of our nation;

(6) Develop programs and facilities to ensure that the semiquincentennial commemoration of the founding of our nation results in a positive legacy and long-term public benefit; and

(7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the semiquincentennial of the founding of our nation.

(b) The commission shall report to the Legislature at each regular session and at the same time report to the Governor concerning the action taken by the commission during the previous year in carrying out the provisions of this article and make such special reports as may be required by the Legislature and Governor.

#### **§4-13A-7. Termination of the commission.**

The commission shall terminate on June 30, 2027.”

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

On page 1, by striking out everything after the enacting clause and inserting in lieu thereof the following:

#### **“ARTICLE 13A. WEST VIRGINIA SEMIQUINCENTENNIAL COMMISSION AND FUND.**

##### **§4-13A-1. Findings; West Virginia Semiquincentennial Commission established; purpose.**

(a) The Legislature finds that the 250th anniversary of our nation’s founding is of such historical significance as to warrant its commemoration.

(b) There is hereby created the West Virginia Semiquincentennial Commission.

(c) The purpose of the commission is to prepare for and commemorate the semiquincentennial of our nation’s founding.

##### **§4-13A-2. Membership; terms; filling vacancies; election of chair and vice chair.**

(a) The Governor shall appoint 10 members as follows:

(1) Three academic historians;

(2) Five citizens members, no more than one of whom may be from any one state senatorial district;

(3) A member of the National Society of the Sons of the American Revolution;

(4) A member of the National Society of the Daughters of the American Revolution;

(b) The following shall serve as ex-officio voting members;

(1) The State Superintendent of Schools, or a designee;

(2) The Cabinet Secretary of Commerce, or a designee;

(3) The Curator of the Department of Arts, Culture, and History, or a designee;

(4) The Secretary of the Department of Tourism, or a designee;

(5) The Executive Director of the Herbert Henderson Minority Affairs Office, or a designee;

(6) The West Virginia State Archivist;

(7) The Director of the West Virginia State Museums;

(8) One member of the House of Delegates, to be appointed by the Speaker of the House of Delegates, who shall serve as an ex officio nonvoting member of the commission; and

(9) One member of the State Senate, to be appointed by the President of the Senate, who shall serve as an ex officio nonvoting member of the commission;

(10) Members of the United States Senate from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(11) Members of the United States House of Representatives from the State of West Virginia, or their designees shall serve as ex officio nonvoting members of the commission;

(c) All appointed members shall serve at the will and pleasure of the Governor;

(d) Appointments to fill vacancies shall be for the unexpired terms. Vacancies shall be filled in the same manner as the original appointments.

(e) The curator of the West Virginia Department of Arts, Culture and History shall serve as the chair of the commission. The commission shall elect a vice chair and secretary from among its members.

#### **§4-13A-3. Expense reimbursement.**

(a) Members shall serve without compensation.

(b) The commission may reimburse members for all reasonable and necessary expenses actually incurred in the performance of his or her duties as a commission member, in a manner consistent with the guidelines of the travel management office of the Department of

Administration, subject to availability of funds received pursuant to §4-13A-6(a)(1). No provision of this section may be construed to require any appropriation of funds by the Legislature.

**§4-13A-4. Quorum; meetings.**

(a) A simple majority of the members serving on the board at a given time constitutes a quorum for the transaction of business.

(b) Meetings shall be held in accordance with the provisions of §6-9A-1 et seq., of this code.

**§4-13A-5. Advisory council.**

The commission may establish an advisory council composed of citizens at large who have knowledge of American history and interest in its semiquincentennial celebration to assist the commission in its work.

**§4-13A-6. Powers; duties; limitation on duration of contracts.**

The commission may:

(1) Solicit, accept, use, and dispose of gifts, grants, donations, bequests, or other funds or real or personal property for the purpose of aiding or facilitating the work of the commission, upon compliance with the provisions of §12-2-2 of this code;

(2) Procure supplies, services, and property and make or enter into contracts, leases, or other legal agreement as necessary to carry out its duties: *Provided*, That no contract, lease or other legal agreement may be entered into by the commission with terms which would extend beyond the termination date of the commission;

(3) Plan, develop and carry out programs and activities appropriate to commemorate the semiquincentennial of the founding of our nation;

(4) Encourage civic, historical, educational, economic, and other organizations throughout West Virginia to organize and participate in activities to expand the understanding and appreciation of the United States of America;

(5) Provide technical assistance to localities and nonprofit organizations to further the commemoration of the semiquincentennial of the founding of our nation;

(6) Develop programs and facilities to ensure that the semiquincentennial commemoration of the founding of our nation results in a positive legacy and long-term public benefit; and

(7) Encourage the development and conduct of programs designed to involve all citizens in activities that commemorate the semiquincentennial of the founding of our nation.

**§4-13A-7. Termination of the commission.**

The commission shall terminate on June 30, 2027.”

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



On passage of the bill, the yeas and nays were taken (**Roll No. 444**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Kimes.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2916) passed.

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

On this question, the yeas and nays were taken (**Roll No. 445**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Kimes and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2916) takes effect from its passage.

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

### **Resolutions Introduced**

Delegates Storch, Bridges, Forsht, Howell, Kimes and Miller offered the following resolution, which was read by its title and referred to the Committee on Health and Human Resources then Rules:

**H. C. R. 96** - "Requesting that the Joint Committee on Government and Finance study childcare in the State of West Virginia."

Whereas, The Legislature recognizes the importance of excellent child care to the working residents in this state; and

Whereas, The Legislature acknowledges the need to have quality, efficient child care providers to build West Virginia's population; and

Whereas, The Legislature recognizes there are challenges experienced by families and child care providers; and

Whereas, These challenges include burdensome childcare costs to families, a lack of support and consideration of childcare as a critical need by the state, and stringent operating regulations for childcare centers; and

Whereas, The West Virginia Department for Health and Human Resources administers the Child Care Development Block Grant to give financial assistance to low income families for childcare costs. Centers are reimbursed for childcare on a monthly basis based on what tier they have achieved. Centers are either Tier 1, Tier 2 or Tier 3 (accredited institution), with higher tiered centers receive greater reimbursement; and

Whereas, Centers report that accepting these grants, also known as Title XX funds, create a loss of income for childcare centers because reimbursed funds are less than costs charged for noneligible children; and

Whereas, Childcare centers are only reimbursed based if the eligible child attends for the day, which is permitted only if the child's parent is working or in school. Eligible children are also required to be in the center's care for greater than four hours per day, 13 days per month for the center to be eligible for full reimbursement; and

Whereas, The regulations surrounding child care operations and staff are demanding. Childcare is typically a low paying job with minimal benefits, high demands, and long days which lead to high staff turnover and difficulty in retaining quality staff; and

Whereas, The COVID-19 pandemic created unique childcare burdens for childcare centers and families for which COVID Relief funds were dedicated; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Joint Committee on Government and Finance study issues surrounding childcare in the State of West Virginia. The study should examine how COVID Relief funds dedicate to childcare centers are being utilized; and, be it

*Further Resolved*, That the study shall examine regulations surrounding childcare centers, and what benefits and burdens those regulations created on childcare centers and employees; and, be it

*Further Resolved*, That the study examine categorizing early education and childcare as a critical need in the state budget; and, be it

*Further Resolved*, That the study shall examine how support for childcare centers, such as behavioral health specialists, are currently being utilized and compensated; and, be it

*Further Resolved*, That the study examine the stipulations for Child Care Development Block Grants, including what stipulations are currently required and if such requirements are necessary for the administration of the program; and, be it

*Further Resolved*, That not later than sixty days prior to the beginning of the 2022 regular session of the Legislature, the Joint Committee on Government and Finance report 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 a study, prepare reports, and draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Delegate Barrett offered the following resolution, which was read by its title and referred to the Committee on Finance then Rules:

**H. C. R. 97** - "Requesting the Joint Committee on Government and Finance study the ways to attract and keep existing distribution centers across the State of West Virginia."

Whereas, Now is the time to attract distribution centers (i.e. Amazon fulfillment centers, Wal-Mart/CostCo distribution centers, etc.) to the State of West Virginia, given the current economic climate and the resiliency of the West Virginia economy, even given the events of the pandemic; and

Whereas, The State of West Virginia can be a role model for other states through leading a comeback from the COVID-19 pandemic by attracting new business distribution centers to the state; and

Whereas, The best way to attract new business distribution centers to the State of West Virginia shall be to study the effects of creating a favorable business climate in order to attract those businesses considering relocating to West Virginia; and

Whereas, The study of how to attract new business distribution centers shall include examining all available avenues to create such a favorable business climate, including, but not limited to, potential tax breaks for businesses who open in West Virginia with the explicit purpose of opening a distribution center and hiring West Virginians to work there; and

Whereas, The State of West Virginia will also be well served by considering a proposed "Business Retention Task Force" as laid out in a separate study resolution, which will incorporate the following to retain existing native businesses:

Founders House: Establishing 'Entrepreneur in Residence' program to allow entrepreneurs to have housing and an environment to found startup businesses;

Student Loan Forgiveness: Granting student loan forgiveness for state school graduates who start a new business in the state within five years of graduation;

CRA Tax Credit: Extending tax credits for CRA eligible activity;

State guaranteed loans: Loans targeted at sole proprietorships and LLCs;

West Virginia Produced Bidding Credit: Tighten regulations to actual West Virginia produced or value-added products and add points for bidding contracts;

Business and Inventory Tax: Defer capital investments from BIT tax for one year to allow generation of income before taxation; and

Business and Operating Tax: Assess B&O tax on net income through startup years to establish new businesses; and

Whereas, All of the proposed initiatives for attracting new distribution centers, as well as the proposed initiatives to keep and retain existing distribution centers, may establish new centers and keep the old centers in place; therefore, be it

*Resolved by the Legislature of West Virginia:*

Requesting the Joint Committee on Government and Finance study the ways to attract and keep existing distribution centers across the State of West Virginia; 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.

### Motions

The following written motion was submitted:

Delegate Pushkin moves that the Committee on Health and Human Services be discharged from consideration of **Com. Sub. for S. B. 590**, Removing restriction preventing medical marijuana from being in edible form.

The Delegate subsequently clarified that the committee to be discharged was Health and Human Resources.

Delegate Summers moved that the motion be tabled.

On this question, the yeas and nays were demanded, which demand was sustained.

On this question, the yeas and nays were taken (**Roll No. 446**), and there were—yeas 73, nays 27, absent and not voting none, with the nays being as follows:

Nays: Barach, Bates, Boggs, Brown, Capito, Dean, Diserio, Doyle, Evans, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, J. Jeffries, Lovejoy, McGeehan, Nestor, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

So, a majority of the members present having voted in the affirmative, the motion was laid upon the table.

### Special Calendar

#### Unfinished Business

**H. C. R. 24**, Urging Congress to extend federal tax incentives to participants in Jumpstart Savings programs that are similar to those that are currently provided to participants in College Savings plans, pursuant to 26 U.S.C. §529; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

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

**Com. Sub. for H. C. R. 84**, Requesting the Joint Committee on Government and Finance to study the declining population of military service veterans in West Virginia; coming up in regular order, as unfinished business, was reported by the Clerk and adopted.

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

### Third Reading

**Com. Sub. for S. B. 263**, Permitting online raffles to benefit charitable and public service organizations; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 447**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Booth, Bruce, Burkhammer, Conley, Fast, Ferrell, D. Jeffries, Jennings, Kimes, Longanacre, Mazzocchi, L. Pack, Pinson, Rohrbach, Toney, B. Ward and G. Ward.

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 263) passed.

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

On this question, the yeas and nays were taken (**Roll No. 448**), and there were—yeas 86, nays 13, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Bruce, Burkhammer, Conley, Fast, Ferrell, Jennings, Kimes, Longanacre, Mazzocchi, Pinson, Toney, B. Ward and G. Ward.

Absent and Not Voting: Worrell.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 263) takes effect from its passage.

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

**Com. Sub. for S. B. 294**, Relating generally to savings and investment programs offered by state; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 449**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Longanacre.

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 294) passed.

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

On this question, the yeas and nays were taken (**Roll No. 450**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Longanacre.

Absent and Not Voting: Worrell.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 294) takes effect from its passage.

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

**Com. Sub. for S. B. 297**, Relating generally to modernizing Board of Treasury Investments; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 451**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Kimes.

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 297) passed.

A title amendment, recommended by the Committee on Finance, was reported by the Clerk.

Whereupon,

Delegate Householder obtained unanimous consent that the amendment be withdrawn.

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

**Com. Sub. for S. B. 297** - "A Bill to amend and reenact §12-6C-4 and §12-6C-9 of the Code of West Virginia, 1931, as amended, all relating generally to the Board of Treasury Investments; authorizing the board to provide compensation to appointed directors for each meeting attended and establishing the rate thereof; authorizing the board to invest in commercial paper with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in corporate debt with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in state and local government securities with certain nationally recognized ratings and weighted maturity; authorizing the board to invest in certain asset-backed securities with certain nationally recognized ratings; removing the limitation on the percentage of the Consolidated Fund that the board may invest in evidence of indebtedness of any private corporation or association; and eliminating the requirement that the board invest a certain percentage of the Consolidated Fund in obligations guaranteed by the United States."

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

**S. B. 307**, Relating generally to in-state tuition rates for certain persons; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 452**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Graves and Miller.

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 307) passed.

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

**Com. Sub. for S. B. 318**, Relating generally to public notice of unclaimed property held by State Treasurer; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 453**), and there were—yeas 69, nays 29, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Barach, Boggs, Brown, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hanna, Hansen, Hornbuckle, Longanacre, Lovejoy, Miller, Nestor, Pethtel, Pushkin, Rowe, Skaff, Summers, Thompson, Walker, B. Ward, Williams, Young and Zukoff.

Absent and Not Voting: Bridges and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 318) passed.

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

**Com. Sub for S. B. 318** – “A Bill to amend and reenact §36-8-9 of the Code of West Virginia, 1931, as amended, relating generally to requirements for public notice of unclaimed property held by the State Treasurer; eliminating the requirement that the Treasurer annually publish a list of all unclaimed properties received the previous year in newspapers; requiring the Treasurer to annually publish a newspaper bulletin in each county of the state listing apparent owners of up to 15,000 recently received unclaimed properties; providing that the Treasurer is not required to publish said bulletin in a county if the Treasurer makes a determination that the bulletin is not a cost-effective method of promoting awareness of unclaimed property in that county; providing criteria for making a determination of cost-effectiveness; requiring the Treasurer to annually publish an advertisement regarding unclaimed property in a newspaper in each county in which the bulletin is not published; setting forth required content for said advertisement; and requiring the Treasurer to maintain a searchable online database of persons appearing to be the owners of unclaimed property.”

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

**Com. Sub. for S. B. 343**, Authorizing DMV to process online driver’s license or identification card change of address; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 454**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Bridges and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 343) passed.

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

**Com. Sub. for S. B. 361**, Extending supervision for conviction of soliciting minor and using obscene matter with intent to seduce minor; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 455**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Graves.

Absent and Not Voting: Linville and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 361) passed.

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

**S. B. 376**, Removing obsolete provisions regarding DOH standards for studded tires and chains; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 456**), and there were—yeas 95, nays 2, absent and not voting 3, with the nays and the absent and not voting being as follows:

Nays: Miller and Rowe.

Absent and Not Voting: Espinosa, Linville and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 376) passed.

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

**S. B. 397**, Relating to health care provider tax; on third reading, coming up in regular order, was read a third time.



The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 457**), and there were—yeas 94, nays 4, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Kimes, McGeehan, Miller and Pritt.

Absent and Not Voting: Linville and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 397) passed.

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

**S. B. 397** - "A Bill to amend and reenact §11-27-39 of the Code of West Virginia, 1931, as amended, relating to certain health care provider taxes; modifying definition of "eligible acute care hospital" for purposes of certain tax; modifying effective date; and removing expiration date for the tax."

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

On this question, the yeas and nays were taken (**Roll No. 458**), and there were—yeas 94, nays 2, absent and not voting 4, with the nays and the absent and not voting being as follows:

Nays: Kimes and McGeehan.

Absent and Not Voting: Foster, Linville, Maynard and Worrell.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 397) takes effect from its passage.

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

**Com. Sub. for S. B. 401**, Relating to WV Consumer Credit and Protection Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 459**), and there were—yeas 79, nays 19, absent and not voting 2, with the nays and the absent and not voting being as follows:

Nays: Barrett, Bates, Brown, Bruce, Doyle, Fleischauer, Fluharty, Garcia, Hansen, Hornbuckle, Lovejoy, Pushkin, Rowe, Skaff, Steele, Thompson, Walker, Williams and Young.

Absent and Not Voting: Maynard and Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 401) passed.

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

**Com. Sub. for S. B. 434**, Requiring training for law-enforcement officers responsible for investigating crimes of sexual assault; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 460**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 434) passed.

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

**Com. Sub. for S. B. 460**, Relating to Deputy Sheriff Retirement System Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 461**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 460) passed.

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

**Com. Sub. for S. B. 460** – “A Bill to amend and reenact §7-14D-2, §7-14D-11, §7-14D-13, §7-14D-19, §7-14D-20 and §7-14D-24 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §7-14D-32, all relating to the Deputy Sheriff Retirement System Act; defining terms; amending and removing conflicting statutory provisions; removing obsolete restriction on type of annuity required of married members; clarifying preretirement death benefits; clarifying survivor death benefit; authorizing the purchase of service credit for time served as an appointed sheriff in certain circumstances; and adding a severability clause.”

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

**Com. Sub. for S. B. 466**, Relating generally to appraisal management companies; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 462**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Howell and Jennings.

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 466) passed.

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

**Com. Sub. for S. B. 479**, Relating to WV veterans service decoration and WV Service Cross; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 463**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 479) passed.

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

**S. B. 494**, Authorizing transfer of moneys from Insurance Commission Fund to Workers' Compensation Old Fund; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 464**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 494) passed.

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

**S. B. 577**, Exempting certain fire departments from licensure requirements for providing rapid response services; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 465**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Worrell.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 577) passed.

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

On this question, the yeas and nays were taken (**Roll No. 466**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Worrell.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 577) takes effect from its passage.

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

**Com. Sub. for S. B. 626**, Updating regulation for purchase of automobile catalytic converters; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 467**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Hardy, Horst, Howell and Paynter.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 626) passed.

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

**Com. Sub for S. B. 626** – “A Bill to amend and reenact §61-3-49 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §61-3-49c, all relating to the purchase and possession of certain scrap metal; updating the regulation of the purchase of automobile catalytic converters; requiring certain evidence and documentation from a seller of an automobile catalytic converter; placing restrictions on the payment for automobile catalytic converters; placing restrictions on the sale or transfer of an automobile catalytic converter by a scrap metal dealer; requiring scrap metal dealer to make a good faith effort to record identifying information on a catalytic convertor; creating the criminal offense of possession of a catalytic converter without proof of ownership or authority to possess; requiring that persons charged with possession of a single catalytic convertor are to be charged by citation and not be subject to arrest; establishing an absolute defense to the criminal action; creating the criminal offense of a person making an internet-based ad soliciting the sale or purchase of a catalytic converter under certain conditions; and establishing criminal penalties.”

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

**S. B. 651**, Allowing county boards of education to publish financial statements on website; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 468**), and there were—yeas 52, nays 48, absent and not voting none, with the nays being as follows:

Nays: Anderson, Barach, Barnhart, Bates, Boggs, Brown, Clark, Cooper, Dean, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hanna, Hansen, Hornbuckle, D. Kelly, J. Kelly, Kimble, Lovejoy, Maynard, McGeehan, Miller, Nestor, Paynter, Pethtel, Phillips,

Pritt, Pushkin, Queen, Reynolds, Riley, Rowan, Rowe, Skaff, Storch, Summers, Thompson, Toney, Walker, B. Ward, Williams, Young and Zukoff.

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

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

**S. B. 651** – “A Bill to amend and reenact §18-9-3a of the Code of West Virginia, 1931, as amended, relating to giving county boards of education the option of publishing their financial statements on their websites rather than publishing as a Class I-0 legal advertisement; increasing the number of days for preparation for publication; requiring county boards to hold a public hearing before publishing on their websites; requiring county boards to provide public notice of the availability of such website posting; requiring county boards to include certain additional information if they publish their financial statements on their websites; providing maximum time period for filing statement with state auditor and superintendent; providing that the changes made by amendments to this section become effective for the fiscal year commencing on July 1, 2023; and making technical updates.”

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

**Com. Sub. for S. B. 673**, Relating to venue for bringing civil action or arbitration proceedings under construction contracts; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 469**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Williams.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 673) passed.

Delegate Summers moved that the bill take effect July 1, 2021.

On this question, the yeas and nays were taken (**Roll No. 470**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Williams.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 673) takes effect July 1, 2021.

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

**S. B. 680**, Allowing State Superintendent of Schools define classroom teachers certified in special education; on third reading, coming up in regular order, was read a third time.

Delegates Criss, Evans, Barnhart, Ferrell and Longanacre requested to be excused from voting under the provisions of House Rule 49.

The Speaker ruled that the Delegates were members of a class of persons possibly to be affected and refused to excuse the Members from voting.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 471**), and there were—yeas 66, nays 33, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Barach, Bates, Boggs, Brown, Dean, Diserio, Doyle, Evans, Ferrell, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Keaton, Lovejoy, Maynard, Nestor, Paynter, Pethtel, Pushkin, Queen, Rowe, Skaff, Thompson, Toney, Walker, Wamsley, Williams, Worrell, Young and Zukoff.

Absent and Not Voting: Pritt.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 680) passed.

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

**S. B. 713**, Relating generally to inmate good time; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 472**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Foster, Kimes, McGeehan, J. Pack and Steele.

Absent and Not Voting: Pritt.

So, a majority of the members present having voted in the affirmative, the Speaker declared the bill (S. B. 713) passed.

Delegate Summers moved that the bill take effect April 30, 2021.

On this question, the yeas and nays were taken (**Roll No. 473**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Kimes.

Absent and Not Voting: Dean.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 713) takes effect April 30, 2021.

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

**H. B. 2895**, Supplementing and amending the appropriations of public moneys to the Department of Veterans' Assistance; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 474**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Dean.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2895) passed.

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

On this question, the yeas and nays were taken (**Roll No. 475**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Dean and Maynard.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2895) takes effect from its passage.

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

**H. B. 2900**, Expiring funds to the balance of the Department of Education – State Board of Education – School Building Authority – School Construction Fund; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 476**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Hanna.

Absent and Not Voting: Maynard.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2900) passed.

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

On this question, the yeas and nays were taken (**Roll No. 477**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Hanna.

Absent and Not Voting: Maynard.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 2900) takes effect from its passage.

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

**H. B. 3313**, Making supplemental appropriation to the Division of Motor Vehicles; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 478**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: Kimes, McGeehan and Paynter.

Absent and Not Voting: Maynard.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3313) passed.

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

On this question, the yeas and nays were taken (**Roll No. 479**), and there were—yeas 97, nays 3, absent and not voting none, with the nays being as follows:

Nays: Kimes, McGeehan and Paynter.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3313) takes effect from its passage.

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

**H. B. 3314**, Making supplemental appropriation to West Virginia State Police; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 480**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3314) passed.

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

On this question, the yeas and nays were taken (**Roll No. 481**), and there were—yeas 100, nays none, absent and not voting none.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3314) takes effect from its passage.

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

**H. B. 3315**, Making supplemental appropriation to Division of Environmental Protection - Oil and Gas Reclamation Fund; on third reading, coming up in regular order, was read a third time.



On the passage of the bill, the yeas and nays were taken (**Roll No. 482**), and there were—yeas 96, nays 4, absent and not voting none, with the nays being as follows:

Nays: Foster, Longanacre, Paynter and Steele.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3315) passed.

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

On this question, the yeas and nays were taken (**Roll No. 483**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Longanacre and Steele.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3315) takes effect from its passage.

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

**H. B. 3316**, Supplemental appropriation to the Department of Education, State Board of Education; on third reading, coming up in regular order, was read a third time.

On the passage of the bill, the yeas and nays were taken (**Roll No. 484**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: McGeehan.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3316) passed.

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

On this question, the yeas and nays were taken (**Roll No. 485**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and the absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Burkhammer.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 3316) takes effect from its passage.

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

### **Second Reading**

**S. J. R. 4**, Incorporation of Churches or Religious Denominations Amendment; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk, on page 1, immediately following the resolved clause by striking everything after the resolved clause and inserting in lieu thereof the following:

“That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in the year 2022, which proposed amendment is that section 47, article VI thereof, be amended to read as follows:

#### **ARTICLE VI. THE LEGISLATURE.**

##### **§47. Incorporation of religious denominations prohibited institutions permitted.**

~~No charter of incorporation shall be granted to any church or religious denomination.~~ Provisions may be made by general laws for securing the title to church property, and for the sale and transfer thereof, so that it shall be held, used, or transferred for the purposes of such church or religious denomination institution. Provision may also be made by general law for the incorporation of churches or religious institutions.

*Resolved further,* That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such amendment is hereby numbered “Amendment No. 1” and designated as the “Incorporation of Churches or Religious Institutions Amendment” and the purpose of the proposed amendment is summarized as follows: “To authorize the incorporation of churches or religious institutions.”

On motion of Delegate Capito, the strike and insert amendment was amended, on page 1, line 2, immediately following the words “the voters of the state”, by striking out “at the next general election to be held in the year 2022” and inserting in lieu thereof “at a special election to be held on July 24, 2021”.

The question before the House now being the amendment recommended by the Committee on the Judiciary, the Speaker declared the amendment adopted.

The resolution was ordered to third reading.

**Com. Sub. for S. B. 387**, Relating to drug screening of applicants for cash assistance; on second reading, coming up in regular order, was read a second time.

An amendment recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page 2, section 6, line 27, by striking out “2022” and inserting “2026”.

Delegate Pushkin moved to amend the bill on page 1, section 6, line 16, by striking out the word “marijuana”.

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

The yeas and nays having been ordered, they were taken (**Roll No. 486**), and there were— yeas 27, nays 71, absent and not voting 2, with the yeas and the absent and not voting being as follows:

Yeas: Barach, Barrett, Bates, Boggs, Brown, Criss, Dean, Diserio, Doyle, Evans, Fleischauer, Fluharty, Garcia, Griffith, Hansen, Hornbuckle, Lovejoy, Nestor, Pethtel, Pushkin, Rowe, Skaff, Thompson, Walker, Williams, Young and Zukoff.

Absent and Not Voting: Linville and Riley.

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

Delegate Pushkin moved to amend the bill on page 1, section 6, line 3, following the word "Program", by striking out the period and inserting "or pursuant to §18-31-1 *et seq.* of this code."

Delegate J. Pack arose to inquire of the Chair as to the germaneness of the amendment.

The Speaker ruled that the amendment was not germane.

The bill was ordered to third reading.

**Com. Sub. for S. B. 392**, Creating penalty for impersonating law-enforcement officer or official; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, line ten, after the words "Department of", by striking out the words "Military Affairs and Public Safety" and substituting therefore the following words "Homeland Security".

The bill was then ordered to third reading.

**Com. Sub. for S. B. 483**, Allowing oaths be taken before any person authorized to administer oaths; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 496**, Relating to punishment for second or third degree felony; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 562**, Relating to juvenile competency proceedings; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk on page 1, immediately following the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

#### **"ARTICLE 4. COURT ACTIONS.**

**§49-4-712. Intervention and services by the department pursuant to initial disposition for status offenders or juvenile found incompetent to stand trial; enforcement; further disposition; detention; out-of-home placement; department custody; least restrictive alternative; appeal; prohibiting placement of status offenders or a juvenile found incompetent to stand trial in a Division Bureau of Juvenile Services facility. ~~on or after~~ **January 1, 2016****

(a) ~~The services~~ Services provided by the department ~~to~~ for juveniles adjudicated as status offenders shall be consistent with §49-2-1001 *et seq.* of this code. ~~and Services provided by the department for juveniles adjudicated as status offenders pursuant to §49-4-711 of this code and juveniles found to be incompetent to stand trial and in need of services pursuant to §49-4-734(b)(2) of this code~~ shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational, or other social services, as appropriate to the needs of the juvenile and his or her family.

(b) If the juvenile, or his or her parent, guardian, or custodian, fails to comply with the services provided in subsection (a) of this section, the department may petition the circuit court:

(1) For a valid court order, as defined in §49-1-207 of this code, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

(2) For a valid court order to place a juvenile out of home in a nonsecure or staff-secure setting, and/or to place a juvenile in custody of the department: *Provided*, That a juvenile adjudicated as a status offender may not be placed in an out-of-home placement, excluding placements made for abuse and neglect, if that juvenile has had no prior adjudications for a status or delinquency offense, or no prior disposition to a pre-adjudicatory improvement period or probation for the current matter: *Provided, however*, That if the court finds by clear and convincing evidence the existence of a significant and likely risk of harm to the juvenile, a family member, or the public and continued placement in the home is contrary to the best interests of the juvenile, ~~such~~ the juvenile may be ordered to an out-of-home placement: *Provided further*, That the court finds the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that such reasonable efforts are not required due to an emergent situation.

(c) In ordering any further disposition under this section, the court is not limited to the relief sought in the department's petition and shall make reasonable efforts to prevent removal of the juvenile from his or her home or, as an alternative, to place the juvenile in a community-based facility which is the least restrictive alternative appropriate to the needs of the juvenile and the community. The disposition may include reasonable and relevant orders to the parents, guardians, or custodians of the juvenile ~~as is~~ that are necessary and proper to effectuate the disposition.

(d) (1) If the court finds that placement in a residential facility is necessary to provide the services under subsection (a) of this section, except as prohibited by subdivision (2), subsection (b) of this section, the court shall make findings of fact as to the necessity of this placement, stated on the record or reduced to writing and filed with the record or incorporated into the order of the court.

(2) The findings of fact shall include the factors that indicate:

(A) The likely effectiveness of placement in a residential facility for the juvenile; and

(B) The community services which were previously attempted.

(e) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any order providing disposition other than mandatory referral to the department for services is subject to appeal to the Supreme Court of Appeals.

(f) Following any further disposition by the court, the court shall inquire of the juvenile whether or not appeal is desired and the response shall be transcribed; a negative response may not be construed as a waiver. The evidence shall be transcribed as soon as practicable and made available to the juvenile or his or her counsel if it is requested for purposes of further proceedings. A judge may grant a stay of execution pending further proceedings.

(g) A juvenile adjudicated solely as a status offender or a juvenile found to be incompetent to stand trial on or after January 1, 2016 may not be placed in a Bureau Division of Juvenile Services facility.

#### **§49-4-727. Juvenile competency proceedings.**

(a) Subject to the provisions of subsection (c) of this section, a juvenile's attorney, the prosecuting attorney, or the court may raise the issue of his or her competency to participate in the proceeding any time during proceedings under this article. Once competency is raised, all proceedings unrelated to competency shall be stayed until the issue of competency is resolved. A juvenile presumed incompetent under subsection (c) of this section shall not be adjudicated unless the presumption of incompetency has been rebutted as provided in subsections (b) and (c) of this section.

(b) In any delinquency proceeding pursuant to this article, a juvenile 14 years or older is presumed to be competent. A juvenile has the burden of proof to rebut this presumption by showing incompetency by a preponderance of the evidence.

(c) In any delinquency proceeding pursuant to this article, if the juvenile is under 14 years of age, there exists a rebuttable presumption that he or she is incompetent to proceed beyond the stage of the proceeding resolving the issue of competency, unless judicially determined to be competent pursuant to the procedures set forth in §49-4-728 through §49-4-734 of this code. The state has the burden of proof to rebut this presumption by showing competency by a preponderance of the evidence.

(d) Regardless of the age of the juvenile, the court may dismiss the petition without ordering a competency evaluation or competency hearing if the prosecuting attorney, the juvenile's attorney, and the guardian ad litem, if previously appointed, agree that there is compelling evidence that the juvenile is not competent to participate in the proceedings: *Provided*, That a court may not order services authorized by §49-4-733 of this code without a competency evaluation.

(e) If and when the issue of a juvenile's competency is raised under subsection (a) or a rebuttable presumption of incompetency exists under subsection (c), the court shall appoint a guardian ad litem for the juvenile. The Supreme Court of Appeals is requested to establish a training program for persons acting as guardians ad litem in juvenile competency matters.

#### **§49-4-728. Definitions for juvenile competency proceedings.**

As used in §49-4-727 through §49-4-734 of this code:

'Competent' and 'competency' refer to whether or not a juvenile has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and has a rational as well as factual understanding of the proceedings against him or her. A juvenile is incompetent if, due to developmental disability, intellectual disability, or mental illness, the juvenile is presently incapable of understanding the nature and objective of proceedings against him or her or of assisting in his or her defense.

'Competency attainment services' means services provided to a juvenile to assist the juvenile in attaining competency.

'Department' means the Department of Health and Human Resources.

'Developmental disability' means a severe and chronic disability that is attributable to a mental or physical impairment, including, but not limited to, neurological conditions that lead to impairment of general intellectual functioning or adaptive behavior.

'Developmental immaturity' means a condition based on a juvenile's chronological age and significant lack of developmental skills when the juvenile has no significant mental illness or intellectual disability.

'Intellectual disability' means a disability characterized by significant limitations both in intellectual functioning and in adaptive behavior as expressed in conceptual, social, and practical domains.

'Mental illness' means a manifestation in a person of significantly impaired capacity to maintain acceptable levels of functioning in the areas of intellect, emotion, and physical well-being.

'Proceeding' means any delinquency proceeding under this article.

'Qualified forensic evaluator' means a licensed psychologist or psychiatrist with the necessary education, training, and experience to perform juvenile competency evaluations, and who has been approved to render opinions for the court pursuant to the requirements of §49-4-729 of this code.

#### **§49-4-729. Motion for determination of competency, time frames, order for evaluation.**

(a) When the prosecuting attorney, the juvenile's attorney, or the guardian ad litem has reasonable basis to believe that:

(1) A juvenile age 14 or older is incompetent to proceed in the delinquency action, that party shall file a motion for a determination of competency. The motion shall state any known facts to the movant of in support thereof. If the court raises the issue sua sponte, it shall, by written order, set forth the basis for ordering a competency evaluation.

(2) A juvenile under the age of 14 is competent to proceed in the delinquency action, the prosecuting attorney shall file a motion for determination of competency. The motion shall state the basis to believe the juvenile is competent to proceed despite the presumption of incompetency due to age and shall state any known facts to the prosecuting attorney in support of the motion. If the court raises the issue sua sponte, the court by written order shall set forth the factual basis supporting the finding that the juvenile is competent to proceed.

(b) Within 10 judicial days after a motion is made, the court shall make one of the following determinations regardless of which presumption applies:

(1) Find that there is compelling evidence that the juvenile is not competent to participate in the proceedings and dismiss the case pursuant to §49-4-727(d) of this code;

(2) Without conducting a hearing, find that there exists a reasonable basis to conduct a competency evaluation; or

(3) Schedule a hearing to determine whether there exists a reasonable basis to conduct a competency evaluation. The hearing shall be held within 30 judicial days. The court's determination shall be announced no later than three judicial days after the conclusion of the hearing.

(c) If the court determines there is a reasonable basis to order a competency evaluation pursuant to §49-4-731 of this code, or if the prosecutor and the juvenile's attorney agree to the evaluation, the court shall order a competency evaluation. If the court orders a competency evaluation, the court shall order that the competency evaluation be conducted in the least restrictive environment, taking into account the public safety and the best interests of the juvenile.

(1) Notwithstanding any other provisions of this code, the court shall provide in its order that the qualified forensic evaluator shall have access to all relevant confidential and public records related to the juvenile, including competency evaluations and reports conducted in prior delinquent proceedings. The court shall provide to the qualified forensic evaluator a copy of the petition and the names and contact information for the judge, prosecutor, juvenile's attorney, and parents or legal guardians.

(2) Within five judicial days after the court orders an evaluation, the prosecutor shall deliver to the evaluator copies of relevant police reports and other background information relevant to the juvenile that are in the prosecutor's possession.

(3) Within five judicial days after the court orders an evaluation, the juvenile's attorney shall deliver to the qualified forensic evaluator copies of police reports and other records including, but not limited to, educational, medical, psychological, and neurological records that are relevant to the evaluation and that are in the attorney's possession. Upon good cause shown, the court may extend the time frame to deliver these documents noting that time is of the essence.

**§49-4-730. Juvenile competency qualified forensic evaluator; qualifications.**

An evaluation ordered by the court shall be conducted by a qualified forensic evaluator.

(1) A qualified forensic evaluator shall have education and training in the following areas:

(A) Forensic evaluation procedures for juveniles, including accepted criteria used in evaluating competency;

(B) Evaluation, diagnosis, and treatment of children and adolescents with developmental disability, developmental immaturity, intellectual disability, or mental illness;

(C) Clinical understanding of child and adolescent development; and

(D) Familiarity with competency standards in this state.

(2) The department shall establish procedures for ensuring the training and qualifications of qualified forensic evaluators. Annually, the department shall provide a list of qualified forensic evaluators to the Administrative Office of the Supreme Court of Appeals of West Virginia.

**§49-4-731. Juvenile competency evaluation.**

(a) The qualified forensic evaluator shall file with the court a written competency evaluation report within 30 days after the date of entry of the order requiring the juvenile to be evaluated and appointing the qualified forensic evaluator. For good cause shown, the court may extend the time for filing for a period not to exceed an additional 30 days. The report shall include the evaluator's opinion as to whether or not a juvenile, due to developmental disability, intellectual disability, or mental illness, has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding and whether the juvenile has a rational as well as factual understanding of the proceedings against him or her. The report shall not include the evaluator's opinion as to whether the juvenile committed the alleged offense or recite or reference any self-incriminating or inculpatory statements as reported by the juvenile. A self-incrimination or inculpatory statement made by a juvenile during an evaluation or hearing conducted pursuant to this article shall not be admissible on the issue of responsibility or guilt in subsequent court proceedings, including adjudication and disposition or transfer hearings.

(b) A competency evaluation report shall include:

(1) A statement of the procedures used, including psychometric tests administered, records reviewed, and the identity of persons interviewed;

(2) Pertinent background information, including a history of educational performance, psychiatric or psychological history, developmental and family history;

(3) Results of the mental status examination;

(4) A diagnosis, if one has been made, which shall address any psychological or psychiatric conditions or cognitive deficiencies determined to exist; and

(5) An opinion as to the juvenile's developmental maturity or developmental immaturity as it would affect his or her ability to proceed.

(c) If the qualified forensic evaluator determines that the juvenile is not competent to participate in the proceedings, the competency evaluation report shall address the following questions:

(1) Whether the juvenile has a developmental disability, intellectual disability, or mental illness;

(2) Whether the juvenile has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational understanding;

(3) Whether a juvenile has a rational as well as factual understanding of the proceedings against him or her; and



(4) Whether the juvenile can attain competency in the foreseeable future if provided with a course of treatment, therapy, or training.

(d) If the qualified forensic evaluator determines that the juvenile is incompetent, but that there is a reasonable probability that he or she can attain competency within the periods set forth in §49-4-733(c)(3) of this code, the report shall include the following recommendations:

(1) A recommendation as to the treatment or therapy; and

(2) The least restrictive setting for juvenile competency attainment services consistent with the juvenile's ability to attain competency and the safety of both the juvenile and the public.

(e) The court shall provide a copy of each competency evaluation report it receives to the prosecutor, the juvenile's attorney, and guardian ad litem and may provide a copy upon request to the juvenile's parents or legal guardian.

(f) The department shall pay qualified forensic evaluators for all matters related to conducting a court-ordered competency evaluation. The department shall develop and implement a process for prompt payment of qualified forensic evaluators including a rate schedule. The amount of payment for court-ordered evaluations shall reasonably compensate qualified forensic evaluators for the work performed in a particular case.

**§49-4-732. Hearing to determine juvenile's competency to participate in the proceedings.**

(a) Not more than 15 judicial days after receiving the evaluator's report, the court shall conduct a hearing to determine the juvenile's competency to participate in the proceedings. The court may continue the hearing for good cause shown.

(b) The competency evaluation report is admissible as evidence in the competency proceedings. The qualified forensic evaluator may be called as a witness and is subject to cross examination by all parties. If authorized by the court, hearings held pursuant to this section may be conducted by or participated in using teleconference or video conference technology. If the court contacts the qualified forensic evaluator to obtain clarification of the report contents, the court shall promptly inform all parties and allow each party to participate in each contact.

(c) In determining the competency of the juvenile to participate in the proceedings, the court shall consider the content of all competency evaluation reports admitted as evidence. The court may consider additional evidence introduced at the hearing by the prosecuting attorney, the juvenile's attorney, or guardian ad litem.

(d) (1) Except as otherwise provided, the court shall make a written determination as to the juvenile's competency based on a preponderance of the evidence within 10 judicial days after completion of the hearing. The applicable burden of proof shall be set forth in section 49-4-727, subsections (b) and (c).

(2) The court shall not find a juvenile competent to proceed solely because the juvenile is receiving or has received in-patient treatment or is receiving or has received psychotropic or other medication, even if the juvenile might become incompetent to proceed without that medication.

**§49-4-733. Procedure after determination of juvenile's competency to participate in the proceedings.**

(a) After a hearing pursuant to §49-4-732 of this code, if the court determines by a preponderance of the evidence that the juvenile is competent to proceed despite any presumption that may have applied, the delinquency proceedings shall resume as provided by law.

(b) If the court determines by a preponderance of the evidence that a juvenile is incompetent to proceed, but is likely to attain competency within a reasonable time with services, the court shall stay the proceedings and order the juvenile to receive services designated to assist the juvenile in attaining competency, based upon the recommendations in the competency evaluation report, unless the court makes specific findings that the recommended services are not justified. The court shall order the juvenile's parent or legal guardian to contact a court-designated provider by a specified date to arrange for services.

(1) The competency attainment services provided to a juvenile shall be based on the recommendations contained in the qualified forensic evaluator's report described in §49-4-731(d) of this code, and are subject to the conditions and time periods required pursuant to this section measured from the date the court approves the plan.

(2) The court shall order that the competency attainment services ordered are provided in the least restrictive environment, taking into account the public safety and the best interests of the juvenile. If the juvenile has been released on temporary orders and refuses or fails to cooperate with the service provider, the court may modify the orders to require a more appropriate setting for further services. A juvenile may not be placed in a Bureau of Juvenile Services facility to receive competency attainment services. Additionally, a juvenile presumed incompetent under §49-4-727(c) of this code shall not be placed in a Bureau of Juvenile Services facility, except in compliance with §49-4-705 and §49-4-706 of this code, and corresponding Rules of Juvenile Procedure as adopted by the Supreme Court of Appeals of West Virginia.

(3) A juvenile shall not be required to participate in competency attainment services for longer than is necessary to attain competency or after the court determines that there is no reasonable likelihood that competency can be attained. The following maximum time limits apply to the participation of a juvenile:

(A) A juvenile charged with an act which would constitute a misdemeanor or nonviolent felony if committed by an adult shall not be required to participate in competency attainment services beyond his or her 19th birthday and there shall be a rebuttable presumption that competency is not attainable if the juvenile has not attained competency after 90 days of services.

(B) A juvenile charged with an act which would constitute a felony crime of violence if committed by an adult shall not be required to participate in competency attainment services beyond his or her 21st birthday and there shall be a rebuttable presumption that competency is not attainable if the juvenile has not attained competency after 180 days of services.

(4) Not later than 10 judicial days after the court orders competency attainment services, the department shall identify the appropriate entity and location to provide those services.

(5) Within 10 judicial days after the department identifies the appropriate entity and location, the provider responsible for the juvenile's competency attainment services shall commence. The court shall deliver to that provider:

(A) The name and address of the juvenile's counsel;

(B) A copy of the juvenile's petition;

(C) A copy of the competency evaluation report;

(D) The name, address, and phone number of the juvenile's parents or legal guardian;

(E) The name of the department's caseworker, if any; and

(F) Any other relevant documents or reports concerning the juvenile's health that have come to the attention of the court.

(c) The court shall order and conduct review hearings no less often than every 90 days as determined appropriate by the court. The multidisciplinary team shall meet prior to any review hearing and provide a written status report to the court prior to the hearing. Unless sooner ordered by the court, the qualified forensic evaluator shall submit a report to the court prior to any review hearing, and upon completion or termination of services, and shall include the following:

(1) The services provided to the juvenile, including medication, education, and counseling;

(2) The likelihood that the competency of the juvenile to proceed will be restored within the applicable period of time set forth in subdivision (3), subsection (b) of this section; and

(3) The progress made toward the goals and objectives for the restoration of competency identified in the recommendations from the competency evaluation adopted by the court.

(d) The provider responsible for the juvenile's competency attainment services shall report to the court within three judicial days if he or she determines that:

(1) The juvenile is failing to cooperate, and the lack of cooperation is significantly impeding or precluding the attainment of competency; or

(2) The current setting is no longer the least restrictive setting that is consistent with the juvenile's ability to attain competency taking into account public safety and the best interests of the juvenile. The provider shall include in the report an assessment of the danger the juvenile poses to himself, herself or others and an assessment of the appropriateness of the placement.

(e) The provider responsible for the juvenile's competency attainment services shall request a subsequent evaluation when the provider has reason to believe:

(1) The juvenile has achieved the goals of the plan and would be able to understand the nature and objectives of the proceedings against him or her, to assist in his or her defense, and to understand and appreciate the consequences that may be imposed or result from the proceedings with or without reasonable accommodations; and

(2) The juvenile will not achieve the goals of the plan within the applicable period of time pursuant to subdivision (3), subsection (b) of this section.

(f) The evaluator shall assess the observation of the provider and provide a written report to the court within 10 days of receiving a report from the provider pursuant to subsection (e) of this section.

(g) The court shall provide copies of any report made by the provider to the prosecuting attorney, the juvenile's attorney, the juvenile's case worker, and the juvenile's guardian ad litem, if any. The court shall provide copies of any reports made by the provider to the juvenile's parents or legal guardians, unless the court finds that doing so is not in the best interest of the juvenile.

(h) Within 15 judicial days after receiving an evaluator's report, the court may hold a hearing to determine if new, additional, or further orders are necessary.

(i) If the court determines that the juvenile is not making progress toward competency or is so uncooperative that attainment services cannot be effective, the court may order a change in setting or services that would help the juvenile attain competency within the relevant period of time as set forth in subdivision (3), subsection (b) of this section.

#### **§49-4-734. Disposition alternatives for incompetent juveniles.**

(a) If the court determines that the juvenile has attained competency, the court shall proceed with the delinquent juvenile's proceeding in accordance with this article.

(b) After a hearing pursuant to §49-4-732 of this code, if the court determines by the preponderance of the evidence that the juvenile is incompetent to proceed and cannot attain competency within the period of time set forth in §49-4-733(b)(3) of this code, the court may dismiss the petition without prejudice, or may take the following actions or any combination thereof the court determines to be in the juvenile's best interest and the interest of protecting the public:

(1) Refer the matter to the department and request a determination on whether a child abuse or neglect petition, pursuant to §49-4-601 *et seq.* of this code, should be filed;

(2) Refer the juvenile to the department for services pursuant to §49-4-712 of this code. Services may include, but are not limited to, referral of the juvenile and his or her parents, guardians, or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, education, or other social services, as appropriate to the needs of the juvenile and his or her family;

(3) Place the juvenile in the custody of his or her parents or other suitable person or private or public institution or agency under terms and conditions as determined to be in the best interests of the juvenile and the public, which conditions may include the provision of out-patient services by any suitable public or private agency; or

(4) Upon motion by the prosecuting attorney, stay the proceeding for no more than 20 days to allow the prosecuting attorney to initiate proceedings for civil commitment pursuant to §27-5-1 *et seq.* of this code if the juvenile has attained majority.

(c) A circuit court may, sua sponte or upon a motion by any party direct that a dangerous assessment be performed prior to directing the resolutions set forth in subsection (b) of this section.

#### **§49-4-735. Stay of transfer to criminal jurisdiction.**

If a juvenile is presumed incompetent under §49-4-727(c) of this code, or if the issue of the juvenile's competency to participate in the proceedings is raised at any time during the proceedings for a juvenile presumed competent under §49-4-727(b) of this code, the procedures

outlined in §49-4-727 through §49-4-734 of this code shall be used to determine the juvenile's competency and if appropriate, restore the juvenile's competency regardless of whether the case is to proceed under the court's juvenile jurisdiction or transfer to adult criminal jurisdiction pursuant to §49-4-710 of this code and corresponding Rules of Juvenile Procedure adopted by the Supreme Court of Appeals of West Virginia."

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

**Com. Sub. for S. B. 634**, Requiring training of certain officers for persons with autism spectrum disorder; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 668**, Creating Psychology Interjurisdictional Compact; on second reading, coming up in regular order, was read a second time and ordered to third reading.

### First Reading

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

**Com. Sub. for S. B. 34**, Creating exemption to state sales and use tax for rental and leasing of equipment,

**Com. Sub. for S. B. 314**, Regulating pawnbrokers,

**Com. Sub. for S. B. 335**, Relating to WV Invests Grant Program for students at accredited community and technical college,

**Com. Sub. for S. B. 368**, Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program,

**Com. Sub. for S. B. 419**, Redefining "firearm" to match federal code,

**Com. Sub. for S. B. 458**, Relating to possession of firearms by individuals during state of emergency,

**S. B. 486**, Relating to powers and duties of Chief Technology Officer,

**S. B. 488**, Relating to distributing hotel occupancy tax to convention and visitor's bureaus,

**Com. Sub. for S. B. 492**, Establishing program for bonding to reclaim abandoned wind and solar generation facilities,

**Com. Sub. for S. B. 502**, Providing lifetime hunting, fishing, and trapping license to residents, adopted, and foster children under 15,

**S. B. 521**, Extending licensure renewal term of certain private investigators, security guards, and associated firms,

**S. B. 529**, Correcting improper citation relating to DMV registration,

**Com. Sub. for S. B. 534**, Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds,

**Com. Sub. for S. B. 610**, Providing tuition and fee waivers at state higher education institutions for volunteers who have completed service in AmeriCorps programs in WV,

**Com. Sub. for S. B. 613**, Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory,

**Com. Sub. for S. B. 655**, Eliminating sunset and legislative audit provisions for certain PSC rules,

**Com. Sub. for S. B. 671**, Appointing Director of Office of Emergency Medical Services,

**Com. Sub. for S. B. 684**, Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission,

**Com. Sub. for S. B. 695**, Providing procedures for decreasing or increasing corporate limits by annexation,

**S. B. 714**, Relating to physician assistant practice act,

**S. B. 717**, Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account,

And,

**S. B. 718**, Relating generally to Coal Severance Tax Rebate.

At 2:01 p.m., on motion of Delegate Summers, the House of Delegates recessed until 6:00 p.m.

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### Evening Session

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

Unanimous consent having been obtained, the House returned to further consideration of S. J. R. 4.

Due to an error earlier today when putting the question of adoption of the amendment recommended by the Committee on the Judiciary, as amended, the Speaker restated the question, which question prevailed.

The resolution was then ordered to third reading.

At the request of Delegate Summers, and by unanimous consent, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

### Committee Reports

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

Your Committee on Energy and Manufacturing has had under consideration:

**H. C. R. 90**, To study the commercial discrimination of producers of coal, gas, oil, carbon-based energy, and other products in the State of West Virginia,

And reports back a committee substitute therefor, with the same title, as follows:

**Com. Sub. for H. C. R. 90** – “Requesting the Joint Committee on Government and Finance study the commercial discrimination of producers of coal, gas, oil, carbon-based energy, and other productions in the State of West Virginia,”

With the recommendation that the committee substitute be adopted, but that it first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolution was referred to the Committee on Rules.

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

Your Committee on Energy and Manufacturing has had under consideration:

**Com. Sub. for S. B. 542**, Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants,

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

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 478**, Permitting use of established federal marketplace programs to purchase supplies,

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

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 641**, Allowing counties to use severance tax proceeds for litter cleanup programs,

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

Delegate Steele, Chair of the Committee on Government Organization, submitted the following report, which was received:

Your Committee on Government Organization has had under consideration:

**H. C. R. 95**, Requesting Joint Committee and Government and Finance study the effect losing a Congressional district would have on boards, commissions and others,

And reports the same back with the recommendation that it be adopted, but that it first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolution was referred to the Committee on Rules.

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 509**, Removing requirement that determination of medical stability be found prior to admission to mental health facility,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 660**, Providing for cooperation between law-enforcement agencies and military authorities,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 677**, Relating generally to miners' safety, health, and training standards,

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

Mr. Speaker (Mr. Hanshaw), Chair of the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration:

**H. C. R. 91**, To study considering methods of retaining native businesses,



**H. C. R. 98**, For West Virginia's Public Employee Insurance Agency (PEIA) Finance Board to examine how they can enhance reimbursement rates to providers,

**H. C. R. 99**, Requesting the Joint Committee on Government and Finance study childcare in the state of West Virginia,

**H. C. R. 100**, Requesting study on how Local Health Departments are funded and supported,

And,

**H. C. R. 101**, Requesting a study of the state's laboratory needs and the utilization of private laboratories,

And reports the same back with the recommendation that they each be adopted.

On motion for leave a resolution was introduced (Originating in the Committee on Education and reported with the recommendation that it be adopted, but that it first be referred to the Committee on Rules), which was read by its title, as follows:

**By Delegates Clark, Ellington, Hanna, Higginbotham, Kimble, Longanacre, Tully, Griffith, Evans and Thompson:**

**H. C. R. 103** – "Allowing for an interim study to determine how Section 18 and Section 18A of the code could be improved to allow teachers, administrators, and service personnel to better perform their jobs and evaluating our current methods and procedures so that the overall education system in West Virginia may be improved."

Whereas, The legislature recognizes that overall education system in West Virginia may have areas that could be improved by our educators if they are given increased latitude to perform their jobs by the structure provided by the West Virginia Code; and

Whereas, The best way to determine those areas for improvement is to encourage members of the Legislature to reach out to teachers and educators throughout the state to learn what areas of the Code may be changed or added to allow them the opportunity to improve the quality of education provided in West Virginia; and

*Resolved by the Legislature of West Virginia:*

That members of the West Virginia Legislature from the House of Delegates and the Senate form an advisory committee to study and recommend how the Code may be reformed to accomplish the goals outlined herein; and, be it

*Further Resolved*, That the members of this advisory committee form as soon as possible after the close of the 2021 Regular Session and begin scheduling town hall meetings and other collaborative meetings with educators across the state to gather information and suggestions that will be compiled into a report that the advisory committee will provide to the House and Senate Education Committees prior to the start of the 2022 West Virginia Legislative Session and that said report may include suggested code changes and or additions that may be incorporated into legislation during the 2022 Regular Session.

The Speaker referred the resolution to the Committee on Rules.

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

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 642**, Requiring legal advertisements by State Auditor be posted to central website,

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

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

Your Committee on Finance has had under consideration:

**S. B. 661**, Permitting retailers to assume sales or use tax assessed on tangible personal property,

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

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

Your Committee on Finance has had under consideration:

**Com. Sub. for S. B. 398**, Limiting eligibility of certain employers to participate in PEIA plans,

And,

**S. B. 532**, Limiting claims for state tax credits and rebates,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 485**, Relating to use or presentation of firearm during commission of felony,

And,

**Com. Sub. for S. B. 702**, Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes,

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

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled and, on the 6<sup>th</sup> 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 S. B. 346**, Authorizing DMV use electronic means when providing notice for licensees and vehicle owners,

**Com. Sub. for S. B. 429**, Exempting Division of Emergency Management from Purchasing Division requirements for certain contracts,

**Com. Sub. for S. B. 587**, Making contract consummation with state more efficient,

And,

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**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.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**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.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**H. B. 2790**, Supplementing, amending, decreasing, and increasing items of existing appropriation to Division of Highways.

A message from the Senate, by

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

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

A message from the Senate, by

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

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates, as follows:

**H. B. 3298**, Making a supplemental appropriation to Dept. of Commerce, Dept. of Education, Senior Services and Civil Contingent Fund.

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate, without amendment, of a concurrent resolution of the House of Delegates as follows:

**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.

A message from the Senate, by

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

**S. B. 644**, Exempting certain persons pursuing degree in speech pathology and audiology from license requirements.

At the request of Delegate Summers, and by unanimous consent, the House of Delegates returned to the Seventh Order of Business for the purpose of introducing resolutions.

### **Resolutions Introduced**

Delegates Fleischauer, Pethtel, Hansen, Williams, Walker, Statler, Summers, Garcia, G. Ward, Mallow, Sypolt, Jennings, Barach, Barnhart, Bates, Boggs, Brown, Conley, Cooper, Diserio, Doyle, Evans, Fluharty, Griffith, Hamrick, Hanna, Hornbuckle, Lovejoy Pushkin, Skaff, Smith, Young, Zatezalo, and Zukoff offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. R. 24** – "Urging the Governor of West Virginia to form a task force with our congressional representatives, labor organizations, and other industry leaders to call upon the President of the United States to invoke the Defense Production Act of 1950, to order the Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals to be retrofitted and placed into production for manufacturing, packaging, and shipping of critical, life-saving medical supplies including vaccines, medications, and personal protective equipment, and empower the Governor of West Virginia to save the lives of our friends, neighbors, and fellow citizens."

Whereas, The Defense Production Act of 1950 grants the President of the United States a broad set of authorities to influence domestic industry in the interest of national defense and can be used across the federal government to shape the domestic industrial base and provide essential materials and goods needed for the national defense; and

Whereas, The State of West Virginia and the entire United States currently face a severe shortage of medical supplies, including life-saving vaccines, medications, and personal protective

equipment, which are vital in responding to the ongoing Coronavirus Disease (COVID-19) pandemic; and

Whereas, The failure to massively and expeditiously increase production of vaccines, medications, and personal protective equipment endangers the lives of our fellow citizens; and

Whereas, It is critical that the State of West Virginia utilize its citizens, resources, and facilities to their maximum potential to defeat this COVID-19 virus and protect the health, safety, and welfare of our friends and neighbors; and

Whereas, The Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals, a vital facility, is scheduled to shut down on July 31, 2021; and

Whereas, This vital facility could be quickly repurposed to produce life-saving medical supplies including COVID-19 vaccines, medications, and personal protective equipment, while also preserving over 1,500 West Virginian jobs; and

Whereas, West Virginians always answer the call for assistance from our nation, whether that means service in our armed forces, producing the energy needed to power our homes, or stepping up to do our part in responding to the needs of the COVID-19 pandemic; and

Whereas, The employees of the Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals will rise to this new challenge, continue their decades of proven labor, empower the Governor of West Virginia to continue his mission of saving the lives of West Virginians, and be able to, once again, demonstrate to the State of West Virginia, colleagues and fellow workers, and industry leaders their value by their hard work, expertise, and resolve; therefore, be it

*Resolved by the House of Delegates:*

That the House of Delegates hereby urges the Governor of West Virginia to form a task force with our congressional representatives, labor organizations, and other industry leaders to call upon the President of the United States to invoke the Defense Production Act of 1950, to order the Morgantown plant at the Chestnut Ridge facility of the former Mylan Pharmaceuticals to be retrofitted and placed into production for manufacturing, packaging, and shipping of critical, life-saving medical supplies including vaccines, medications, and personal protective equipment,, and empower the Governor of West Virginia to save the lives of our friends, neighbors, and fellow citizens; and, be it

*Further Resolved*, That the Clerk forward a copy of this resolution to the Governor of West Virginia, the Honorable James C. Justice II.

Delegates Graves, Anderson, Barnhart, Barrett, Booth, Bridges, Bruce, Burkhammer, Clark, Cooper, Criss, Dean, Ellington, Espinosa, Fast, Ferrell, Forsht Foster, Gearheart, Hanna, Hardy, Haynes, Holstein, Horst, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, Keaton, J. Kelly, Kessinger, Kimble, Kimes, Linville, Longanacre, Mallow, Mandt, Martin, Mazzocchi, McGeehan, Nestor, J. Pack, Paynter, Phillips, Pinson, Pritt, Reynolds, Rohrbach, Rowan, Smith, Statler, Steele, Storch, Summers, Sypolt, Tully, Wamsley, B. Ward, G. Ward, Worrell and Zatezalo offered the following resolution, which was read by its title as follows:

**H. C. R. 104** - "Providing for the expiration of certain emergency orders issued during the coronavirus pandemic declared on March 16, 2020 in West Virginia."

Whereas, The global coronavirus (COVID-19) pandemic of 2020, which is continuing at this time, has presented unprecedented challenges for the citizens of West Virginia, which have required response of the government of the State of West Virginia; and

Whereas, Exercising the authority and power provided by our State Code, the Governor of West Virginia has marshalled the resources of the state and the full authority and response of the government of West Virginia to address the COVID-19 pandemic; and

Whereas, As of April 6, 2021, the total number of confirmed COVID-19 cases in West Virginia is 113,819; and

Whereas, As of April 6, 2021, there have been 530,328 initial vaccinations for COVID-19 administered and 355,892 completed vaccinations for COVID-19 administered; and

Whereas, By May 17, 2021, the number total number of complete vaccinations and partial vaccinations for COVID-19 in West Virginia will be substantially increased from current numbers; and

Whereas, By May 17, 2021, the vast majority of West Virginians will have immunity from COVID-19 through either having recovered from the disease or from being fully or partially vaccinated; and

Whereas, The Legislature is mindful of the continuing challenges that the pandemic presents, but recognizes that West Virginia must not prolong emergency measures which might unduly harm the economic and psychological well-being of our citizens; and

Whereas, It is our sworn duty to protect the individual liberties of the citizens of West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That is the intent of the Legislature to provide a time limit for the emergency orders that have been made by the Governor of West Virginia during the current COVID-19 pandemic; and, be it

*Further Resolved*, That all such orders in effect on April 6, 2021 issued as a result of the COVID-19 pandemic hereby expire on May 17, 2021, with the exception of Executive Orders 57-20, 79-20, 82-20, 26-20, 11-20, 11-21, 13-20, 17-20, 19-20, 27-20, 35-20, 54-20, 63-20, 66-20, 7-20, 72-20, 73-20, 83-20, 31-20 and 10-21; and, be it

*Further Resolved*, That the Clerk of the House forward copies of this resolution to the Governor of the State of West Virginia.

At the request of Delegate Summers, and by unanimous consent, the resolution was taken up for immediate consideration and reference of the resolution (H. C. R. 104) to the Committee on Rules was abrogated.

**Miscellaneous Business**

Pursuant to House Rule 132, consent was obtained to print the following in the Appendix to the Journal:

- Vote explanation by Delegate Fleischauer regarding Roll No. 446

Delegate Espinosa noted to the Clerk, that he was absent when the vote was taken on S. B. 376, and had he been present he would have voted "Yea" thereon.

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

**H. C. R. 96:** Delegates Clark, Walker, Young and Zukoff.

At 6:27 p.m., the House of Delegates adjourned until 11:00 a.m., Wednesday, April 7, 2021.

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





## **SPECIAL CALENDAR**

**Wednesday, April 7, 2021**

**57<sup>th</sup> Day**

**11:00 A. M.**

### **UNFINISHED BUSINESS**

- H. C. R. 91 - To study considering methods of retaining native businesses
- H. C. R. 98 - For West Virginia's Public Employee Insurance Agency (PEIA) Finance Board to examine how they can enhance reimbursement rates to providers
- H. C. R. 99 - Requesting the Joint Committee on Government and Finance study childcare in the state of West Virginia
- H. C. R. 100 - Requesting study on how Local Health Departments are funded and supported
- H. C. R. 101 - Requesting a study of the state's laboratory needs and the utilization of private laboratories
- H. C. R. 104 - Providing for the expiration of certain emergency orders issued during the coronavirus pandemic declared on March 16, 2020 in West Virginia

### **THIRD READING**

- S. J. R. 4 - Incorporation of Churches or Religious Denominations Amendment (CAPITO)
- Com. Sub. for S. B. 387 - Relating to drug screening of applicants for cash assistance (J. PACK) (REGULAR)
- Com. Sub. for S. B. 392 - Creating penalty for impersonating law-enforcement officer or official (CAPITO) (REGULAR)
- Com. Sub. for S. B. 483 - Allowing oaths be taken before any person authorized to administer oaths (CAPITO) (REGULAR)
- S. B. 496 - Relating to punishment for second or third degree felony (CAPITO) (REGULAR)
- Com. Sub. for S. B. 562 - Relating to juvenile competency proceedings (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 634 - Requiring training of certain officers for persons with autism spectrum disorder (CAPITO) (REGULAR)

Com. Sub. for S. B. 668 - Creating Psychology Interjurisdictional Compact (J. PACK)  
(REGULAR)

### **SECOND READING**

Com. Sub. for S. B. 34 - Creating exemption to state sales and use tax for rental and leasing of equipment (HOUSEHOLDER) (JULY 1, 2021) [FINANCE COMMITTEE AMENDMENT PENDING]

Com. Sub. for S. B. 314 - Regulating pawnbrokers (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]

Com. Sub. for S. B. 335 - Relating to WV Invests Grant Program for students at accredited community and technical college (ELLINGTON) (JULY 1, 2021)

Com. Sub. for S. B. 368 - Authorizing DEP to develop Reclamation of Abandoned and Dilapidated Properties Program (HOUSEHOLDER) (JULY 1, 2021) [FINANCE COMMITTEE AMENDMENT PENDING]

Com. Sub. for S. B. 419 - Redefining "firearm" to match federal code (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]

Com. Sub. for S. B. 458 - Relating to possession of firearms by individuals during state of emergency (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]

S. B. 486 - Relating to powers and duties of Chief Technology Officer (STEELE) (REGULAR)

S. B. 488 - Relating to distributing hotel occupancy tax to convention and visitor's bureaus (STEELE) (REGULAR)

Com. Sub. for S. B. 492 - Establishing program for bonding to reclaim abandoned wind and solar generation facilities (ANDERSON) (REGULAR)

Com. Sub. for S. B. 502 - Providing lifetime hunting, fishing, and trapping license to residents, adopted, and foster children under 15 (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 521 - Extending licensure renewal term of certain private investigators, security guards, and associated firms (STEELE) (REGULAR)

S. B. 529 - Correcting improper citation relating to DMV registration (STEELE) (REGULAR)

Com. Sub. for S. B. 534 - Permitting Economic Development Authority to make working capital loans from revolving loan fund capitalized with federal grant funds (HOUSEHOLDER) (REGULAR) [FINANCE COMMITTEE AMENDMENT PENDING]

- Com. Sub. for S. B. 610 - Providing tuition and fee waivers at state higher education institutions for volunteers who have completed service in AmeriCorps programs in WV (HOUSEHOLDER) (REGULAR) [FINANCE COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 613 - Adding classification and base salaries of certain civilian employees of State Police Forensic Laboratory (HOUSEHOLDER) (REGULAR) [FINANCE COMMITTEE TITLE AMENDMENT PENDING]
- Com. Sub. for S. B. 655 - Eliminating sunset and legislative audit provisions for certain PSC rules (STEELE) (REGULAR)
- Com. Sub. for S. B. 671 - Appointing Director of Office of Emergency Medical Services (J. PACK) (REGULAR)
- Com. Sub. for S. B. 684 - Adding Curator of Division of Arts, Culture, and History as ex officio voting member to Library Commission (STEELE) (REGULAR) [GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 695 - Providing procedures for decreasing or increasing corporate limits by annexation (STEELE) (EFFECTIVE FROM PASSAGE) [GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING]
- S. B. 714 - Relating to physician assistant practice act (J. PACK) (REGULAR) [HEALTH AND HUMAN RESOURCES COMMITTEE AMENDMENT PENDING]
- S. B. 717 - Supplemental appropriation from General Revenue to WV Community and Technical College Education, Control Account (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- S. B. 718 - Relating generally to Coal Severance Tax Rebate (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

### **FIRST READING**

- Com. Sub. for S. B. 7 - Limiting political activity by public employees (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 398 - Limiting eligibility of certain employers to participate in PEIA plans (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE) [FINANCE COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 470 - Limiting release of certain personal information maintained by state agencies (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 478 - Permitting use of established federal marketplace programs to purchase supplies (STEELE) (REGULAR) [GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING]

- Com. Sub. for S. B. 485 - Relating to use or presentation of firearm during commission of felony (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 509 - Removing requirement that determination of medical stability be found prior to admission to mental health facility (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- S. B. 532 - Limiting claims for state tax credits and rebates (HOUSEHOLDER) (JULY 1, 2021) [FINANCE COMMITTEE AMENDMENT PENDING]
- S. B. 537 - Relating generally to kidnapping (CAPITO) (REGULAR)
- Com. Sub. for S. B. 542 - Relating generally to public electric utilities and facilities fuel supply for existing coal-fired plants (ANDERSON) (REGULAR)
- Com. Sub. for S. B. 569 - Relating to damages for medical monitoring (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- Com. Sub. for S. B. 641 - Allowing counties to use severance tax proceeds for litter cleanup programs (STEELE) (JULY 1, 2021)
- Com. Sub. for S. B. 642 - Requiring legal advertisements by State Auditor be posted to central website (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 657 - Relating to free expression on state institution of higher education campuses (CAPITO) (REGULAR)
- Com. Sub. for S. B. 658 - Requiring sheriff's departments to participate and utilize Handle With Care Program for trauma-inflicted children (CAPITO) (REGULAR)
- Com. Sub. for S. B. 660 - Providing for cooperation between law-enforcement agencies and military authorities (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]
- S. B. 661 - Permitting retailers to assume sales or use tax assessed on tangible personal property (HOUSEHOLDER) (JULY 1, 2021)
- S. B. 674 - Clarifying that unpaid restitution does not preclude person from obtaining driver's license (CAPITO) (REGULAR)
- Com. Sub. for S. B. 677 - Relating generally to miners' safety, health, and training standards (CAPITO) (REGULAR)
- Com. Sub. for S. B. 702 - Relating to involuntary hospitalization, competency, and criminal responsibility of persons charged or convicted of certain crimes (CAPITO) (REGULAR) [JUDICIARY COMMITTEE AMENDMENT PENDING]

## HOUSE CALENDAR

Wednesday, April 7, 2021

57<sup>th</sup> Day

11:00 A. M.

### THIRD READING

- Com. Sub. for H. B. 2224 - Relating to complaints against public agencies to obtain records through the Freedom of Information Act (CAPITO) (REGULAR) [RIGHT TO AMEND]
- H. B. 2741 - Relating to expansion of the alcohol test and lock program to offenders with a drug related offense (CAPITO) (REGULAR)
- H. B. 3306 - Relating to virtual instruction (ELLINGTON) (REGULAR)

### SECOND READING

- Com. Sub. for S. B. 585 - Requiring BOE create and provide course in family and consumer sciences in secondary schools (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 636 - Requiring certain history and civics courses be taught in schools (ELLINGTON) (REGULAR) [EDUCATION COMMITTEE AMENDMENT PENDING]
- S. B. 710 - Requiring impact statement in certain instances of school closing or consolidation (ELLINGTON) (REGULAR) [EDUCATION COMMITTEE AMENDMENT PENDING]
- Com. Sub. for H. B. 2004 - Permit a licensed health care professional from another state to practice in this state through telehealth when registered with the appropriate West Virginia board (J. PACK) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2015 - Requiring rules of local boards of health to be approved by the county commission except in cases of a public health emergency (J. PACK) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 2177 - Permitting the issuance of a state issued identification card without a photo on the card under certain conditions (STEELE) (REGULAR)
- H. B. 2536 - Relating to expressions of legislative intent regarding equivalent instruction time (ELLINGTON) (REGULAR)
- Com. Sub. for H. B. 2628 - Relating to the removal of the prohibition on having ATMs in the area where racetrack video lottery machines are located (CAPITO) (REGULAR)

- H. B. 2721 - Providing electronic notice of school attendance and satisfactory progress to the Division of Motor Vehicles in lieu of requiring each student to provide a paper notice (STEELE) (REGULAR)
- Com. Sub. for H. B. 2959 - Relating to the financing of environmental pollution control equipment for coal-fired power plants (ANDERSON) (REGULAR)
- Com. Sub. for H. B. 3009 - Relating to the publication of county board financial statements (ELLINGTON) (REGULAR)
- H. B. 3079 - Relating to exempting recovery residences from certain standards (J. PACK) (REGULAR)
- H. B. 3131 - Relating to correcting internal code references and citations (CAPITO) (REGULAR)
- H. B. 3305 - Relating to required course of study (ELLINGTON) (REGULAR)
- H. B. 3309 - Creating and funding a Video Lottery Terminals Modernization Fund (HOUSEHOLDER) (REGULAR)

#### **FIRST READING**

- H. B. 2582 - Relating to creating a third set of conditions for the professional teaching certificate (ELLINGTON) (REGULAR)
- H. B. 2590 - Relating to the West Virginia Employment Law Worker Classification Act (CAPITO) (REGULAR)
- Com. Sub. for H. B. 2620 - Relating to a departmental study of the child protective services and foster care workforce (J. PACK) (REGULAR)
- H. B. 2719 - Relating to the Division of Motor Vehicles use of electronic means and other alternate means to provide notice (STEELE) (REGULAR)
- H. B. 3059 - Making contract consummation with state more efficient (STEELE) (REGULAR)
- Com. Sub. for H. B. 3102 - Requiring Director of transportation to have experience in transportation department (ELLINGTON) (REGULAR)

**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**WEDNESDAY, APRIL 7, 2021**

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**HOUSE CONVENES AT 11:00 A.M.**

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**COMMITTEE ON THE JUDICIARY  
8:15 A.M. – ROOM 418 M**

**COMMITTEE ON FINANCE  
9:00 A.M. – ROOM 462 M**

**COMMITTEE ON RULES  
10:45 A.M. – ROOM 434 M**

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