WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-FIFTH LEGISLATURE
REGULAR SESSION, 2022
FIFTY-SEVENTH DAY

Charleston, West Virginia, Wednesday, March 9, 2022

The Senate met at 11:16 a.m.

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

Prayer was offered by the Honorable Amy N. Grady, a senator from the fourth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Bill Hamilton, a senator from the eleventh district.

Pending the reading of the Journal of Tuesday, March 8, 2022,

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

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

The Senate then proceeded to the third order of business.

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

Eng. Com. Sub. for Com. Sub. for Senate Bill 181, Creating Core Behavioral Health Crisis Services System.

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

Eng. Senate Bill 213, Establishing licensed professional counseling compact.

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

Eng. Com. Sub. for Senate Bill 330, Authorizing DOT to promulgate legislative rules.

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

Eng. Senate Bill 427, Permitting WV Board of Medicine investigators to carry concealed weapon.

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

Eng. Com. Sub. for Senate Bill 466, Relating to limitations on civil actions or appeals brought by inmates.

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

Eng. Com. Sub. for Senate Bill 505, Updating laws on licensure and regulation of money transmitters.

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

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

Eng. Com. Sub. for Senate Bill 505—A Bill to amend and reenact §32A-2-1, §32A-2-2, §32A-2-3, §32A-2-4, §32A-2-8, §32A-2-10, §32A-2-11, §32A-2-13, §32A-2-24, and §32A-2-25 of the Code of West Virginia, 1931, as amended; and to amend said code by adding two new sections thereto, designated §32A-2-8a and §32A-2-8b, all relating to the licensure and regulation of money transmitters; updating definitions; eliminating outdated provisions; clarifying the financial institution exemption; permitting the Commissioner of Financial Institutions to participate in the multistate licensing and examination process and to conduct examinations; updating net worth requirements to use a sliding scale; providing information requirements for a change in control and updating the change in control process; specifying requirements for individuals in control of a licensee or applicant; requiring permissible investments to match outstanding obligations; and updating the due process procedure to eliminate the two-step process for revocations and suspensions while preserving the order and hearing requirement.

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

Engrossed Committee Substitute for Senate Bill 505, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 505) passed with its House of Delegates amended title.

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

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

Eng. Com. Sub. for Senate Bill 522, Combining offices of WV State Americans with Disabilities Act and WV Equal Employment Opportunity.

A message from the Clerk of the House of Delegates announced the passage by that body, without amendment, to take effect from passage, and requested the concurrence of the Senate in the changed effective date, as to

Eng. Com. Sub. for Senate Bill 553, Relating to powers of WV Health Care Authority.

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

On further motion of Senator Takubo, the Senate concurred in the changed effective date of the bill, that being to take effect from passage, instead of ninety days from passage.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: None.

Absent: Maynard and Roberts—2.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 553) takes effect from passage.

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

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

Eng. Com. Sub. for Senate Bill 575, Ensuring that imposition of certain sexual offenses apply to persons working in juvenile facilities.

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

Eng. Com. Sub. for Senate Bill 593, Allowing Marshall University's Forensic Analysis Laboratory access and participation in WV DNA database for certain purposes.

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

Eng. Senate Bill 603, Prohibiting licensure and re-licensure in WV if applicant is prohibited from practicing in another jurisdiction.

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

Eng. Com. Sub. for House Bill 4295, To transfer the State Office of the National Flood Insurance Program from the Offices of the Insurance Commissioner to the Division of Emergency Management.

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

Eng. Com. Sub. for House Bill 4324, To update collaborative pharmacy practice agreements.

A message from the Clerk of the House of Delegates announced that that body had agreed to the appointment of a committee of conference of three from each house on the disagreeing votes of the two houses, as to

Eng. Com. Sub. for House Bill 4333, Relating to the sunset of the Board of Hearing-Aid Dealers and Fitters.

The message further announced the appointment of the following conferees on the part of the House of Delegates:

Delegates Foster, Smith, and Young.

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

Eng. Com. Sub. for House Bill 4489, Require counties to post open positions on statewide job bank.

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

Eng. House Bill 4649, Transferring the operations of the West Virginia Children's Health Insurance Program to the Bureau for Medical Services.

Executive Communications

Senator Blair (Mr. President) laid before the Senate the following communication from His Excellency, the Governor, consisting of executive nominations for appointees:

Jim Justice
Governor of West Virginia

March 8, 2022

Senate Executive Message No. 2
Regular Session 2022

TO: The Honorable Members of the
West Virginia Senate

Ladies and Gentlemen:

I respectfully submit the following nominations for your advice and consent:

1. For Member, Veterans' Council, Adam Truex, Glen Dale, Marshall County, for the term ending June 30, 2025.

2. For Member, West Virginia Parole Board, Hollis T. Lewis, Charleston, Kanawha County, for the term ending June 30, 2024.

3. For Member, Purchase of Commodities and Services from the Handicapped, Anna Marie Hardy, Hinton, Summers County, for the term ending January 31, 2023.

4. For Member, Southern West Virginia Community and Technical College Board of Governors, Sydney Brown, Logan, Logan County, for the term ending June 30, 2023.

5. For Member, Mountwest Community and Technical College Board of Governors, David A. Earl, Huntington, Wayne County, for the term ending June 30, 2024.

6. For Member, Mountwest Community and Technical College Board of Governors, Mark A. Morgan, Barboursville, Cabell County, for the term ending June 30, 2024.

7. For Member, Mountwest Community and Technical College Board of Governors, Anthony E. Martin, Ona, Cabell County, for the term ending June 30, 2024.

8. For Member, Mountwest Community and Technical College Board of Governors, Jeffrey L. Blatt, Kenova, Wayne County, for the term ending June 30, 2024.

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9. For Member, West Virginia Medical Imaging and Radiation Therapy Technology Board of Examiners, Peter A. Chirico, Huntington, Cabell County, for the term ending June 30, 2023.

10. For Member, Shepherd University Board of Governors, Austin J. Slater, Jr., Shepherdstown, Jefferson County, for the term ending June 30, 2022.

11. For Member, West Virginia Investment Management Board of Trustees, Steve L. Smith, West Union, Doddridge County, for the term ending January 31, 2028.

12. For Member, West Virginia Investment Management Board of Trustees, Marie L. Prezioso, Charleston, Kanawha County, for the term ending January 31, 2028.

13. For Member, Coal Resource Transportation Designation Committee, Jason Bostic, Pratt, Kanawha County, for the term ending June 30, 2023.

14. For Member, West Virginia College and Jumpstart Savings Program Board of Trustees, Justin Williams, Charleston, Kanawha County, for the term ending June 30, 2027.

15. For Member, West Virginia College and Jumpstart Savings Program Board of Trustees, Marguerite Horvath, Morgantown, Monongalia County, for the term ending June 30, 2027.

16. For Member, West Virginia Public Energy Authority, Nicholas S. Preservati, Jr., Huntington, Cabell County, for the term ending June 30, 2024.

17. For Member, Consolidated Public Retirement Board, Woodrow W. Brogan III, Cool Ridge, Raleigh County, for the term ending June 30, 2027.

18. For Member, Workforce Development Board, Diane W. Strong-Treister, Charleston, Kanawha County, for the term ending June 30, 2024.

19. For Member, Workforce Development Board, Kimberly Tieman, South Charleston, Kanawha County, for the term ending June 30, 2024.

20. For Member, Workforce Development Board, Stephanie Ahart, Wallback, Clay County, for the term ending June 30, 2024.

21. For Member, Workforce Development Board, Heather Vanater, Milton, Cabell County, for the term ending June 30, 2024.

22. For Member, Workforce Development Board, Abby S. Reale, Hurricane, Putnam County, for the term ending June 30, 2024.

23. For Member, Workforce Development Board, The Honorable John D. O'Neal IV, Ghent, Raleigh County, for the term ending June 30, 2024.

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24. For Member, Workforce Development Board, Casey K. Sacks, South Charleston, Kanawha County, for the term ending June 30, 2024.

25. For Member, Workforce Development Board, Lisa Samples White, Charleston, Kanawha County, for the term ending June 30, 2023.

26. For Member, Housing Development Fund, Allen D. Retton, Fairmont, Marion County, for the term ending October 30, 2023.

27. For Director, Division of Natural Resources, Brett W. McMillion, Oak Hill, Fayette County, to serve at the will and pleasure of the Governor.

Notice of these appointments was previously provided to the appropriate legislative staff at the time the appointments were made.

Sincerely,

Jim Justice
Governor

JCJ: mrp

cc: Clerk of the Senate
Assistant Clerk of the Senate
Senate Confirmations Chair

Which communication was received and referred to the Committee on Confirmations.

On motion of Senator Boley, consideration of the nominations immediately hereinbefore reported was made a special order of business for Saturday, March 12, 2022, at 11 a.m.

Senator Blair (Mr. President) then laid before the Senate the following communication from His Excellency, the Governor, regarding annual reports, which communication was received and filed with the Clerk:

Jim Justice
Governor of West Virginia

March 8, 2022

Executive Message 3
2022 Regular Session

The Honorable Craig Blair
President, West Virginia State Senate
State Capitol, Rm 229M
Charleston, WV 25305

Dear Mr. President:

Pursuant to the provisions of section twenty, article one, chapter five of the Code of West Virginia, I hereby certify that the following annual reports have been received in the Office of the Governor:

211, West Virginia; 2020 Impact Report

Administration, West Virginia Department of; Real Estate Division "2020 Real Property and Lease Report"

Administration, West Virginia Department of; "Comprehensive Annual Financial Report for the Fiscal Year Ended June 30, 2020"

Administration, West Virginia Department of; State Building Commission Fund

Agriculture, West Virginia Department of; 2020 Annual Report

Agriculture, West Virginia Department of; Annual Report for the WV Farms-to Food Bank Tax Credit for calendar years 2019 and 2020

Agriculture, West Virginia Department of; Annual Report for the WV Farms-to Food Bank Tax Credit for calendar years 2020 and 2021

American Bar Foundation; 2019 Annual Report

Architects, West Virginia Board of; Annual Report FY 2020 & FY 2019

Attorney General's Office, West Virginia; "Seventy-Eighth Biennial Report and Official Opinions of the Attorney General of the State of West Virginia for the Fiscal Years Beginning July 1, 2018, and ending June 30, 2020"

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Attorney General's Office, West Virginia; "2020 Annual Report on the Activities of the Consumer Protection and Antitrust Division"

Attorney General's Office, West Virginia; Annual Report 2020

Barbers and Cosmetologists, State of West Virginia Board of; 2020 Annual Report

Board of Pharmacy, West Virginia; Annual Report on the West Virginia Controlled Substances Monitoring Program

Broadband Enhancement Council, West Virginia; 2020 Annual Report

Chiropractic Examiners, State of West Virginia Board of; Biennium Report July 1, 2018, to June 30, 2020

Coal Mine Health and Safety, State of West Virginia Board of; 2020 Annual Report

Commerce, West Virginia Department of; Tourism Development Act Report 2020

Commerce, West Virginia Department of; FY20 TIF Annual Report

Commercial Motor Vehicle Weight and Safety Enforcement Advisory Committee; 2020 Annual Report

Community Action of Southeastern West Virginia, Inc. (CASEWV); 2021 CASEWV Annual Report for its Head Start and Early Head Start Programs

Consolidated Public Retirement Board; West Virginia State Police Disability Experience Annual Report Fiscal Year 2020

Consolidated Public Retirement Board, West Virginia; 2020 Comprehensive Annual Financial Report

Consumer Advocate, Office of the West Virginia; Consumer Advocate Division 2021 Annual Report

Counseling, State of West Virginia Board of Examiners in; Biennium Report July 1,2018-June 30, 2020

Dentistry, West Virginia Board of; Report of the Biennium for Fiscal Years 2019 & 2020

Development Office, West Virginia; Annual Report 2019

Development Office, West Virginia; FY 2019 Neighborhood Investment Program Annual Report

Development Office, West Virginia; 2018 Final Report on the Assessment 2015-2017

Engineers, West Virginia State Board of Registration for Professional; Annual Report FY2020

Environmental Protection, West Virginia Department of; 2020 Monthly and Year to Date OOG Permit Issuance Averages

Equal Employment Opportunity, West Virginia; 2020 Annual Report

Fire Commission, West Virginia State; FY 2020 Annual Report

Fire Marshal's Office, West Virginia State; FY 2020 Annual Report

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Forestry, West Virginia Division of; Outdoor Heritage Conservation Funding Annual Report

Forestry, West Virginia Division of; 2020 Stewardship Projects Annual Report

Forestry, West Virginia Division of; Report on Managed Timberland Program

Government Accountability, Foundation for; 2019 Annual Report

Grievance Board, Public Employees; 2020 Annual Report

Health and Human Resources, West Virginia Department of; Annual Report on the Olmstead Plan July 1, 2019-June 30, 2020

Health and Human Resources, West Virginia Department of; "Family Protection Services Board 2020 Annual Report July 1, 2019-June 30, 2020"

Health and Human Resources, West Virginia Department of; Office of Maternal, Child and Family Health (West Virginia Birth Defects) Calendar Years 2018 and 2019 (January-December)

Health and Human Resources, West Virginia Department of; Bureau for Public Health- West Virginia Office of Medical Cannabis Biennial Report 2021

Health and Human Resources, West Virginia Department of; Bureau for Behavioral Health- West Virginia Family & Community Support Program FY 2020 Annual Report

Health and Human Resources, West Virginia Department of; West Virginia Women's Commission 2020 Annual Report

Highways, West Virginia Division of; Annual Report (The Complete Streets Advisory Board)

Homeland Security, West Virginia Department of; Accomplishments 2017-2020 Report

Human Rights Commission, West Virginia; Annual Report 2020

Independent Living Council, West Virginia Statewide; "The State of Education for Children with Disabilities in West Virginia-Education Task Force; Annual Report 2019-2020"

Insurance Commissioner, State of West Virginia Offices of the; Occupational Pneumoconiosis Board 2019-2020 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; West Virginia State Agency Workers' Compensation Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2019-2020 Annual Report

Insurance Commissioner, State of West Virginia Offices of the; Consumer Advocate Annual Report

Insurance Commissioner, State of West Virginia Offices of the; 2020 Annual Medical Malpractice Report

Judicial Compensation Commission, West Virginia; Report of the Judicial Compensation Commission 2020

Justice and Community Services, Division of Administrative; "Justice Reinvestment Initiative S.B. 371 July 1. 2019-June 30, 2020, Annual Report"

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Justice and Community Services, Division of Administrative; "Juvenile Justice Subcommittee September 1, 2019-August 31, 2020, Annual Report"

Justice and Community Services, Division of Administrative; "Sexual Assault Forensic Examination (SAFE) Commission Annual Report September 1, 2019-August 31, 2020"

Justice and Community Services, Division of Administrative; "West Virginia Community Corrections Act July 1, 2019-June 30, 2020, Annual Report"

Justice and Community Services, Division of Administrative; "Law Enforcement Professional Standards (LEPS) Subcommittee/Program July 1,2019-June 30, 2020"

Land Trust, West Virginia; Annual Report 2019

Legislative Claims Commission, West Virginia; Supplemental Report December 2020

Legislative Claims Commission, West Virginia; November 2020 Report of the Legislative Claims Commission

Lottery, West Virginia; "Comprehensive Annual Financial Report for the Fiscal Years Ended June 30, 2019, and 2018"

Lottery, West Virginia; 2020 Comprehensive Annual Financial Report for the Fiscal Years Ended June 30, 2020, and 2019

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending February 29, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending March 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending April 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending May 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending June 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending July 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending August 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending September 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending October 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending November 30, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending December 31, 2020

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending January 31, 2021

Lottery, West Virginia; Monthly Report on Lottery Operations Month Ending February 28, 2021

Medical Imaging and Radiation Therapy Technology Board of Examiners, West Virginia; Annual Report 2020

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Municipal Bond Commission, West Virginia; Annual Summary of Receipts and Disbursements July 1, 2019-June 30, 2020

National Coal Heritage Area Authority; 2020 Annual Report

Natural Resources, West Virginia Division of; 2019-2020 West Virginia Division of Natural Resources Annual Report

Nursing Home Administrators Licensing Board; Annual Report 2020

Occupational Therapy, West Virginia Board of; Annual Report 2019-2020

Osteopathic Medicine, West Virginia School of; Annual Report

Privacy Office, West Virginia State; 2018-2019 Annual Report

Psychologists, West Virginia Board of; 2019-2020 Annual Report

Public Service Commission, West Virginia; State of West Virginia Public Utility Assessments Tax Year 2021

Public Service Commission, West Virginia; 2020 Management Summary Report and the Electric and Natural Gas Utilities Supply-Demand Forecasts for 2021-2030

Public Transit, West Virginia Division of Transportation/Division; 2019 Annual State Safety Oversight Report to the Governor

Regional Councils, West Virginia Association of; 2019 Annual Report

Regional Intergovernmental Council; 2020 Annual Report Boone, Clay, Kanawha, and Putnam

Rehabilitation Services, West Virginia Division of; 2021 Annual Report

Risk and Insurance Management, State of West Virginia Department of Administration; BRIM Annual Report 2020

Ron Yost Personal Assistance Services; 2020 Annual Report

Southern States Energy Board; Annual Report 2020

Tax Department, West Virginia State; "Manufacturing Property Tax Adjustment Credit Report to the Joint Committee on Government and Finance July 1, 2020"

Tax Department, West Virginia State; Tax Credit Review and Accountability Report for the West Virginia Economic Opportunity Tax Credit and the West Virginia Manufacturing Investment Tax Credit

Tax Department, West Virginia State; West Virginia Tax Expenditure Study for 2021

Transportation, West Virginia Department of; Division of Public Transit- State Safety Oversight Program-2020 Annual Safety Report to the Governor

Transportation, West Virginia Department of; The Office of Administrative Hearings Annual Report Fiscal Year 2020

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Transportation, West Virginia Department of; Aeronautics Commission 2020 Annual Report to the Governor

Treasurer, West Virginia State; Cash Management Improvement Act CIMA Annual Report for fiscal years 2020

Treasury Investments, West Virginia Board of; "Audited Financial Statements with Supplementary & Other Financial Information Year Ended 6/30/20"

Treasury Investments, West Virginia Board of; Comprehensive Annual Financial Report Fiscal Year Ended

Veterinary Medicine, West Virginia Board of; Biennium Report 2019 and 2020

Water Development Authority, West Virginia; 2020 Annual Report

Water Sanitation Commission, Ohio River Valley; Annual Report

Sincerely,

Jim Justice
Governor

cc: Lee Cassis, Clerk, West Virginia State Senate
Division of Culture and History

Senator Blair (Mr. President) next laid before the Senate the following communication from His Excellency, the Governor, submitting the annual probation and parole report, which was received:

Jim Justice
Governor of West Virginia

March 8, 2022

EXECUTIVE MESSAGE NO. 4
2022 REGULAR SESSION

The Honorable Craig Blair
President, Senate of West Virginia
State Capitol, Rm 228M
Charleston, West Virginia 25305

Dear Mr. President:

In accordance with the provisions of section 11, article 7 of the Constitution of the State of West Virginia, and section 16, article 1, chapter 5 of the Code of West Virginia, I hereby report that I granted no pardons or reprieves, nor commuted punishment to any person, nor remitted any fines or penalties, during the period of April 8, 2021 through March 7, 2022.

Very truly yours,

Jim Justice
Governor

cc: Lee Cassis, Senate of West Virginia
Division of Archives and History

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The Senate proceeded to the fourth order of business.

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

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 9th day of March, 2022, 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. 419), Establishing pilot project to evaluate impact of certain post-substance use disorder residential treatments.

(S. B. 448), Developing policies and procedures for Statewide Interoperability Executive Committee.

(Com. Sub. for S. B. 520), Increasing financial penalties for ransomware attacks.

(Com. Sub. for S. B. 523), Transferring oversight of Jobs Investment Trust Fund to WV Economic Development Authority.

(Com. Sub. for S. B. 524), Placing duties and functions of certain boards and commissions under Department of Arts, Culture, and History.

(Com. Sub. for S. B. 537), Providing additional firefighters and security guards for National Guard.

(S. B. 542), Transferring Broadband Enhancement Council from Department of Commerce to Department of Economic Development.

(S. B. 597), Relating to PSC underground facilities damage prevention and one-call system.

(Com. Sub. for S. B. 598), Establishing partnerships and aid for at-risk veterans to combat suicide.

(S. B. 638), Changing hearing and notice provisions for failing or distressed public utilities.

(Com. Sub. for S. B. 650), Eliminating number of royalty owners required for utilization by operator for lawful use and development by co-tenants.

(Com. Sub. for H. B. 4084), Relating to advanced recycling.

(Com. Sub. for H. B. 4126), Authorizing certain agencies of the Department of Health and Human Resources to promulgate legislative rules.

And,

(H. B. 4773), Adoption of the FCC customer service and technical standards and requiring certain cable operators to operate an in-state customer call center.

Respectfully submitted,

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

Senator Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 4005, Relating to fetal body parts.

And reports the same back without recommendation as to passage; but under the original double committee reference first be referred to the Committee on the Judiciary.

Respectfully submitted,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4005) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on the Judiciary.

Senator Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 4012, Prohibiting the showing of proof of a COVID-19 vaccination.

And has amended same.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4012) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on the Judiciary, with amendments from the Committee on Health and Human Resources pending.

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4098, Relating to Geothermal Energy Development.

With an amendment from the Committee on Energy, Industry, and Mining pending;

And has also amended same.

And reports the same back with the recommendation that it do pass as last amended by the Committee on the Judiciary.

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4098) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Maroney, from the Committee on Health and Human Resources, submitted the following report, which was received:

Your Committee on Health and Human Resources has had under consideration

Eng. Com. Sub. for House Bill 4351, Relating to the implementation of an acuity-based patient classification system.

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

Respectfully submitted,

Michael J. Maroney,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4351) contained in the preceding report from the Committee on Health and Human Resources was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on the Judiciary.

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

Your Committee on Transportation and Infrastructure has had under consideration

House Concurrent Resolution 5, James "Big Jim" Shaffer Memorial Bridge.

House Concurrent Resolution 39, PFC Donald L. Stuckey Memorial Bridge.

House Concurrent Resolution 56, Roy Lee Shamblin Memorial Bridge.

House Concurrent Resolution 89, Hajash Brothers Memorial Bridge.

House Concurrent Resolution 90, U.S. Army PVT Robert (Bob) Mullins Sr. Memorial Bridge.

House Concurrent Resolution 95, Clemmer Brothers WWII Veterans Memorial Bridge.

And,

House Concurrent Resolution 96, U. S. Air Force Captain Perry Thomas Rose Memorial Road.

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

Respectfully submitted,

Charles H. Clements,

Chair.

At the request of Senator Clements, unanimous consent being granted, the resolutions (H. C. R. 5, 39, 56, 89, 90, 95, and 96) contained in the preceding report from the Committee on Transportation and Infrastructure were referred to the Committee on Rules.

The Senate proceeded to the sixth order of business.

Senator Phillips offered the following resolution:

Senate Resolution 52—Highlighting West Virginia's once-in-a-lifetime opportunity to strengthen national security and energy independence and supply world energy markets.

Whereas, The tragic events in Ukraine are bringing renewed attention to national security issues and world energy policies; and

Whereas, Multiple NATO countries remain dependent on Russian energy, i.e. coal, gas, and oil; and

Whereas, Remarkedly, even the United States is consuming shipments of Russian coal to generate electricity and oil to fuel its energy needs; and

Whereas, Dependence on Russian coal, gas, and oil throughout Europe is clearly limiting an effective response from NATO countries; and

Whereas, World sanctions against Russia are having limited effects because energy sales are exempt from sanctions; and

Whereas, Countries, including the United States, by purchasing Russian energy, are sending payments to Russia, funding their military actions; and

Whereas, Current national energy policies have and continue to jeopardize domestic national security and our ability to assist our allies overseas; and

Whereas, By shutting down coal-fired power plants, curtailing coal output, prohibiting natural gas production, and pipeline development, and importing Russian energy, current policies have weakened our energy security and our capacity to help our allies overseas; and

Whereas, The national security and energy independence of the United States is of paramount importance and has taken a second seat to climate policies and environmental interests; and

Whereas, West Virginia energy, such as coal and natural gas, shall hereinafter be referred to as 'Freedom Fuel,' and our coal workers referred to as 'Freedom Miners'; and

Whereas, Russia currently supplies about 30 percent of the metallurgical coal used by European steelmakers and about 60 percent of the thermal coal used to generate electricity; and

Whereas, West Virginia coal, already preferred by European electricity generators and steel manufacturers for its quality and stable supply history, can offset European needs for Russian coal; and

Whereas, If natural gas supplies are further disrupted, coal-fired power plants can generate more electricity to offset the lost generation from natural gas plants; and

Whereas, West Virginia coal can be converted to liquid fuels to address oil and diesel fuel shortages; therefore, be it

Resolved by the Senate:

That West Virginia's once-in-a-lifetime opportunity to strengthen national security and energy independence and supply world energy markets; and, be it

That the State Executive, State Legislature, and industry leaders convene immediately to discuss the situation; and, be it

Further Resolved, That the State Executive and State Legislature is urged to identify and remove barriers and obstacles to establish a path forward for West Virginia coal and natural gas to be extracted and transported to NATO countries; and, be it

Further Resolved, That the Legislature is urged to create a special committee under the leadership of the House of Delegates' and Senate's Energy Committee Chairmen and select committee members to develop policies, legislation, and regulatory reforms necessary to effectuate the intent and scope of the charge outlined herein; and, be it

Further Resolved, That the Legislature is urged to unleash the power of West Virginia's Freedom Fuels for a stronger nation and safer, more secure global community.

Which, under the rules, lies over one day.

Senator Takubo offered the following resolution:

Senate Resolution 53—Designating March 10, 2022, as World Kidney Day at the Legislature.

Whereas, There are an estimated 37 million adults in the U.S. who suffer from kidney disease, and one in three adults in the U.S. are at risk; and

Whereas, Most people are unaware that risk factors for kidney disease include diabetes, heart disease, high blood pressure, obesity, and a family history of diabetes; and

Whereas, People who are Black or African American and Hispanic or of Latino descent, are at an increased risk of developing kidney disease and it is critical that attention be brought to this often-overlooked health crisis; and

Whereas, The Senate furthermore recognizes the month of March as National Kidney Month; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 10, 2022, as World Kidney Day at the Legislature; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to the appropriate representatives of the National Kidney Foundation.

Which, under the rules, lies over one day.

Senators Caputo, Beach, Clements, and Maroney offered the following resolution:

Senate Resolution 54—Congratulating the Fairmont Senior High School Polar Bears football team for winning the 2021 Class AA state championship.

Whereas, The Fairmont Senior High School football team had another remarkable year on the gridiron, resulting in the Polar Bears winning back-to-back state titles for the first time in school history, and their third title in four years; and

Whereas, The Fairmont Senior High School football team qualified for the 2021 playoffs with a 26-7 victory over their rival East Fairmont and finished the regular season with a record of 5-4. The victory secured a playoff berth and the #16 seed for the Polar Bears; and

Whereas, The Fairmont Senior High School football team had a tough road to travel through the playoffs, which began with a hard-fought victory over the #1 seed, Herbert Hoover, 30-28; in the second round, the Polar Bears defeated the #8 seed, Robert C. Byrd, 33-28; in the semi-finals, the Polar Bears dominated the #5 seed, Poca, 41-7; and

Whereas, The Fairmont Senior High School football team lined up against the #2 seed, Independence, in the championship game. The Polar Bears and the Patriots endured a heavyweight contest which had all the makings of a great game, including solid defense, trick plays, and a close score; and

Whereas, In the end, the Polar Bears made history and defeated the Patriots 21-12, becoming only the second team to win the championship as a #16 seed since the advent of the 16-team playoff format; and

Whereas, The Polar Bear football team is led by head coach Nick Bartic, who hails from a football family. His father, Martin 'Sonny' Bartic played for Fairmont State in the 1967 NAIA Championship and went on to become a longtime coach at Rivesville High School; and

Whereas, The 2021 Polar Bears football team is a shining example to all West Virginians of what can be accomplished with dedication, commitment, and teamwork, and will be remembered as one of the best teams ever assembled in West Virginia high school football history; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Fairmont Senior High School Polar Bears football team for winning the 2021 Class AA state championship; and, be it

Further Resolved, That the Senate commends the team, coaches, staff, cheerleaders, students, and the community for their outstanding accomplishment; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this to the Fairmont Senior High School football team.

Which, under the rules, lies over one day.

Senator Romano offered the following resolution:

Senate Resolution 55—Congratulating the Bridgeport High School baseball team for winning the 2021 Class AAA state championship.

Whereas, The Bridgeport High School baseball team, also referred to as The Tribe, is led by Coach Robert Shields, and is one of the most successful high school baseball programs in state history; and

Whereas, Following six straight Class AA state baseball championships (2014-2019), the Bridgeport High school baseball team got bumped from Class AA to Class AAA by exceeding the limit by one student; and

Whereas, The Tribe baseball team, although being the smallest school in Class AAA, competed against the state's largest schools, including schools with over 1,000 more students, and fought their way to the 2021 Class AAA baseball championship, marking the school's seventh consecutive and ninth overall state baseball title; and

Whereas, The Bridgeport Indians overcame a 3-1 deficit in the championship game, scoring three runs in the fourth, fifth, and sixth innings to defeat the Number 1 ranked Hurricane Redskins 10-4, breaking a 32-game winning streak by the Redskins and ending The Tribe's championship season with a record of 34-4; and

Whereas, Coach Shields describes his players, over the years, as "grinders," and told The Bridgeport News after his seventh championship that his team had a great approach and demonstrated resilience playing with excellence both offensively and defensively; and

Whereas, The Tribe's centerfielder Nathan 'Nate' Paulsen was named 'State Baseball Player of the Year' by the West Virginia Sports Writers Association, a first time honor for a Bridgeport

player, and he also was named to the Class AAA All-State First Team as Captain along with teammates Ryan Goff and Cam Cole. Teammates Aiden Paulson and Ben McDougal were named to Class AAA All-State Second Team; and Chris Harbet, Drew Hogue, JD Love, and Frank Why were named Class AAA Honorable Mentions; therefore, be it

Resolved by the Senate:

That the Senate hereby congratulates the Bridgeport High School baseball team for winning the 2021 Class AAA state championship; and, be it

Further Resolved, That the Senate commends the Bridgeport High School baseball team for their outstanding accomplishments on the diamond and extends its sincere appreciation and gratitude to the coach, players, parents, and school community for their commitment to excellence; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Bridgeport High School and Coach Robert Shields.

Which, under the rules, lies over one day.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 58, Requesting Joint Committee on Government and Finance study common law cause of action for public nuisance.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

Senate Concurrent Resolution 59, Respectfully urging executive branches of US government and State of WV to provide adequate staffing for governmental agencies involved in infrastructure projects.

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

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

The roll being taken, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, a majority of those present and voting having voted in the affirmative, the President declared the resolution (S. C. R. 59) adopted.

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

Senate Concurrent Resolution 60, Requesting Joint Committee on Government and Finance study outdoor advertising and propose updates to state's outdoor advertising laws and regulations.

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

The question being on the adoption of the resolution, the same was put and prevailed.

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

Senate Resolution 35, Congratulating Tug Valley High School Lady Panthers for winning 2021 Class A State Championship in Girls Basketball.

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

The question being on the adoption of the resolution, the same was put and prevailed.

Senate Resolution 36, Recognizing Tug Valley Cheerleaders for winning 2021 Class A State Championship.

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

The question being on the adoption of the resolution, the same was put and prevailed.

Senate Resolution 51, Designating month of February as National Cancer Prevention Month at Legislature.

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

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

Thereafter, at the request of Senator Baldwin, and by unanimous consent, the remarks by Senators Stollings and Takubo regarding the adoption of Senate Resolution 51 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 2096, Reinstating the film investment tax credit.

On third reading, coming up in regular order, with the unreported Finance committee amendment pending, and with the right having been granted on yesterday, Tuesday, March 8, 2022, for further amendments to be received on third reading, was read a third time.

At the request of Senator Tarr, as chair of the Committee on Finance, and by unanimous consent, the unreported Finance committee amendment to the bill was withdrawn.

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

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

ARTICLE 13X. WEST VIRGINIA FILM INDUSTRY INVESTMENT ACT.

§11-13X-3. Definitions.

(a) *General.* — When used in this article, or in the administration of this article, terms defined in subsection (b) of this section have the meanings ascribed to them by this section, unless a different meaning is clearly required by the context in which the term is used.

(b) *Terms defined.* —

~~(1)~~ "Commercial exploitation" means reasonable intent for public viewing for the delivery medium used.

~~(2)~~ "Direct production expenditure" means a transaction that occurs in the State of West Virginia or with a West Virginia vendor and includes:

(A) Payment of wages, fees, and costs for related fringe benefits provided for talent, management or labor that are subject to West Virginia income tax;

(B) Payment to a personal services corporation for the services of a performing artist if:

(i) The personal services corporation is subject to West Virginia income tax on those payments; and

(ii) The performing artist receiving payments from the personal services corporation is subject to West Virginia income tax; and

(C) Any of the following provided by a West Virginia vendor:

(i) The story and scenario to be used by a qualified project;

(ii) Set construction and operations, wardrobe, accessories, and related services;

(iii) Photography, sound synchronization, lighting, and related services;

(iv) Editing and related services;

(v) Rental of facilities and equipment;

(vi) Leasing of vehicles;

(vii) Food or lodging;

(viii) Airfare if purchased through a West Virginia-based travel agency or travel company;

(ix) Insurance coverage and bonding if purchased through a West Virginia-based insurance agent; and

(x) Other direct costs of producing a qualified project in accordance with generally accepted entertainment industry practices: *Provided*, That "direct production expenditure" shall not include depreciation of any item that has less than one full year of depreciable life.

~~(3)~~ "Eligible company" means a person or business entity engaged in the business of producing film industry productions. The term excludes state agencies.

~~(4)~~ "Feature length" means in excess of 40 minutes.

~~(5)~~ "Film industry production" means a qualified project intended for reasonable national or international commercial exploitation.

~~(6) "Film office" means the West Virginia Film Office, which is a division of the West Virginia Department of Commerce~~

"Multi-state distribution" means reaching at least one other state besides West Virginia.

~~(7)~~ "Postproduction expenditure" means a transaction that occurs in West Virginia or with a West Virginia vendor after the completion of principal photography, including editing and negative cutting; Foley recording and sound effects; automatic dialogue replacement (also known as ADR or dubbing); special effects or visual effects, including computer-generated imagery or other effects; scoring and music editing; sound editing; beginning and end credits; soundtrack production; subtitling or addition of sound or visual effects; but not including an expenditure for advertising, marketing, distribution, or expense payments.

~~(8)~~ "Qualified project" means a feature length theatrical or direct-to-video motion picture, a made-for-television motion picture, ~~a commercial~~ a music video, commercial still photography, a television pilot program, a television series, and a television mini-series that incurs a ~~minimum of $25,000~~ cumulative amount of $50,000 in a calendar year in direct production expenditures and post-production expenditures ~~,as defined by this subsection,~~ in West Virginia or any combination of projects not previously claimed that would qualify for the credit except for cost, and that combined meets or exceeds the cumulative amount of $50,000 in a calendar year. The term excludes news or current affairs programming, a weather or market program, ~~an interview or~~ a talk show, a sporting event or show, an awards show, a gala, a production that solicits funds, a home shopping program, a program that primarily markets a product or service, political advertising, or a concert production.

A qualified project may be produced on any single media or multimedia program that:

(A) Is fixed on film, digital medium, videotape, computer disk, laser disc, or other similar delivery medium;

(B) Can be viewed or reproduced;

(C) Is not intended to and does not violate §61-8C-1 *et seq.* of this code;

(D) Does not contain obscene matter or sexually explicit conduct, as defined by §61-8A-1 *et seq.* of this code;

(E) Is intended for reasonable commercial exploitation for the delivery medium used whether delivery is in state or multi-state distribution; and

(F) Does not contain content that, in the sole discretion of the Office of Economic Development, negatively portrays the state of West Virginia. ~~in a significantly derogatory manner~~

~~(9)~~ "Tax Commissioner" means the West Virginia State Tax Commissioner or his or her designee.

§11-13X-4. Creation of the tax credit.

(a) An eligible company may apply for, and the Tax Commissioner shall allow, a nonrefundable tax credit in an amount equal to the percentage specified in §11-13X-5 of this code of:

(1) Direct production expenditures incurred in West Virginia that are directly attributable to the production in West Virginia of a qualified project ~~and that~~ which expenditures occur in West Virginia or with a West Virginia vendor; and

(2) Postproduction expenditures incurred in West Virginia that are:

(A) Directly attributable to the production of a qualified project; and

(B) For services performed in West Virginia.

(b) Expenditures utilized by an eligible company for purposes of calculating the tax credit authorized by this article shall in no event be utilized by the eligible company for the purpose of calculating or qualifying investment for claiming the economic opportunity tax credit authorized by §11-13Q-1 *et seq.* of this code or the manufacturing investment tax credit authorized by §11-13S-1 *et seq.* of this code.

§11-13X-5. Amount of credit allowed; limitation of the credits.

(a) *Base allowance.* — The amount of credit allowed to every eligible company, except as provided in subsection (b) of this section, is 27 percent.

(b) *Extra allowance for hiring of local workers*. — Any amount allowed in subsection (a) of this section shall be increased by an additional four percent if the eligible company, or its authorized payroll service company, employs 10 or more West Virginia residents as part of its full-time employees working in the state or as apprentices working in the state.

(c) *Application of the credits*. — The tax credit allowed under this section shall be applied to the eligible company's state tax liability as provided in §11-13X-7 of this code.

~~(d) *Limitation of the credits*. — No more than $5 million of the tax credits may be allocated by the film office in any given West Virginia state fiscal year office shall allocate the tax credits in the order the applications therefor are received.~~

§11-13X-6. Requirements for credit.

(a) In order for any eligible company to claim a tax credit under this article, it shall comply with the following requirements:

(1) If the qualified project contains production credits, the eligible company shall agree, upon request by the ~~film office~~ Office of Economic Development, to recognize the State of West Virginia

with the following acknowledgment in the end credit roll: "Filmed in West Virginia with assistance of the West Virginia Film Industry Investment Act";

(2) Apply to the ~~film office~~ Office of Economic Development on forms and in the manner the ~~film office~~ Office of Economic Development may prescribe; ~~and~~

(3) If an eligible company submits a proposal to perform a qualified project for a state agency, the eligible company shall indicate its intention to claim the tax credit provided by this article; and

~~(3)~~ (4) Submit to the ~~film office~~ Office of Economic Development information required by the ~~film~~ office to demonstrate conformity with the requirements of this section and shall agree in writing:

(A) To pay all obligations the eligible company has incurred in West Virginia; and

(B) To delay filing of a claim for the tax credit authorized by this article until the ~~film office~~ Office of Economic Development delivers written notification to the Tax Commissioner that the eligible company has fulfilled all requirements for the credit.

The ~~film office~~ Office of Economic Development shall determine the eligibility of the company and the qualification of each project, and shall report this information to the Tax Commissioner in a manner and at times the ~~film office~~ Office of Economic Development and the Tax Commissioner shall agree upon.

(b) Upon completion of a qualified project:

(1) An eligible company shall have filed all required West Virginia tax reports and returns and paid any balance of West Virginia tax due on those returns;

(2) All claims for the tax credit shall be filed with an expense verification report prepared by an independent certified public accountant, utilizing "agreed upon procedures" which are prescribed by the ~~film office~~ Office of Economic Development in accordance with generally accepted auditing standards in the United States. The certified public accountant will render a report as to the qualification of the credits, consistent with guidelines to be determined by the ~~film office~~ Office of Economic Development and approved by the Tax Commissioner; and

(3) An eligible company claiming an extra allowance for employing local workers shall submit to the ~~film office~~ Office of Economic Development documentation verifying West Virginia residency for all individuals claimed to qualify for the extra allowance. The documentation shall include the name, home address, and telephone number for all individuals used to qualify for the extra allowance.

(c) If the requirements of this section have been complied with, the ~~film office~~ Office of Economic Development shall approve the film tax credit and issue a document granting the appropriate tax credit to the eligible company and shall report this information to the Tax Commissioner.

§11-13X-7. Application of credit to state taxes.

(a) *Credit allowed. —*

Beginning in the taxable year that the expenditures permitted under section four of this article are incurred, eligible companies and owners of eligible companies, as described in subsection (d) of this section, are permitted a credit, as described in section five of this article, against the taxes imposed by articles ~~twenty-three,~~ twenty-four and twenty-one of this chapter, in that order, as specified in this section.

~~(b) *Business franchise tax. —*~~

~~The credit is first applied to reduce the taxes imposed by article twenty-three of this chapter for the taxable year, determined after application of the credits against tax provided in section seventeen of said article, but before application of any other allowable credits against tax.~~

~~(c)~~ (b) *Corporation net income taxes. —*

After application of subsection (b) of this section, any unused credit is next applied to reduce the taxes imposed by article twenty-four of this chapter for the taxable year, determined before application of allowable credits against tax.

~~(d)~~ (c) *Personal income tax. —*

(1) If the eligible taxpayer is an electing small business corporation (as defined in Section 1361 of the United States Internal Revenue Code of 1986, as amended), a partnership, a limited liability company that is treated as a partnership for federal income tax purposes or a sole proprietorship, then any unused credit, after application of subsections (b) and (c) of this subsection, is allowed as a credit against the taxes imposed by article twenty-one of this chapter on the income from business or other activity subject to tax under article twenty-three of this chapter or on income of a sole proprietor attributable to the business.

(2) Electing small business corporations, limited liability companies, partnerships and other unincorporated organizations shall allocate the credit allowed by this article among its members in the same manner as profits and losses are allocated for the taxable year.

§11-13X-8. Uses of credit; unused credit; carry forward; carry back prohibited; expiration and forfeiture of credit.

(a) No credit is allowed under this section against any employer withholding taxes imposed by §11-21-1 *et seq.* of this code.

(b) If the tax credit allowed under this article in any taxable year exceeds the sum of the taxes enumerated in subsections (b), (c), or (d) of §11-13X-7 of this code, for that taxable year, the excess may be applied against those taxes, in the order and manner stated in §11-13X-7 of this code, for succeeding taxable years until the earlier of the following:

(1) The full amount of the excess tax credit is used;

(2) The expiration of the second taxable year after the taxable year in which the expenditures occurred. The tax credit remaining thereafter is forfeited; or

(3) The excess tax credit is transferred or sold.

(c) No carryback is allowed to a prior taxable year that does not have qualified expenditures for the amount of any unused portion of any annual credit allowance.

(d) The transfer or sale of this credit does not extend the time in which the credit can be used. The carry forward period for credit that is transferred or sold begins on the date on which the credit was originally issued by the ~~film office~~ Office of Economic Development.

(e) Any tax credit certificate issued in accordance with this article, which has been issued to an eligible company, and to the extent not previously claimed against the tax of the eligible company or the owner of the certificate, may be transferred or sold by such eligible company to another West Virginia taxpayer, subject to the following conditions:

(1) A single transfer or sale may involve one or more transferees, assignees or purchasers. A transfer or sale of the credits may involve multiple transfers to one or more transferees, assignees or purchasers;

(2) Transferors and sellers shall apply to the ~~film~~ office for approval of any transfer, sale, or assignment of the tax credit. Any amount of the tax credit that has been transferred or assigned shall be subject to the same limitations and conditions that apply to the eligible company's or seller's entitlement, use and application of the credit. The application for sale, transfer or assignment of the credit shall include the transferor's tax credit balance prior to transfer, the credit certificate number, the name of the seller, the transferor's remaining tax credit balance after transfer, if any, all tax identification numbers for both transferor and transferee, the date of transfer, the amount transferred, a copy of the credit certificate and any other information required by the ~~film office~~ Office of Economic Development or the Tax Commissioner.

(3) The ~~film office~~ Office of Economic Development shall not approve the transfer or assignment of a tax credit if the seller or transferor has an outstanding tax obligation with the State of West Virginia for any prior taxable year.

(f) The transferee, assignee or purchaser shall apply such credits in the same manner and against the same taxes as specified in this article.

(g) For purposes of this chapter, any proceeds received by the eligible company or transferor for its assignment or sale of the tax credits allowed pursuant to this section are exempt from the West Virginia consumers sales and service tax, use tax, the corporate net income tax, and personal income tax.

(h) The Tax Commissioner shall not seek recourse against the transferee for any portion of the credit that may be subsequently disqualified.

Failure to comply with this section will result in the disallowance of the tax credit until the seller or transferor is in full compliance.

§11-13X-11. Tax credit review and accountability.

(a) Beginning on the first day of the third taxable year after the passage of this article and every two years thereafter, the ~~film office~~ Office of Economic Development shall submit to the Governor, the President of the Senate and the Speaker of the House of Delegates a tax credit review and accountability report evaluating the cost effectiveness of the Film Industry Investment

Act during the most recent two-year period for which information is available. The criteria to be evaluated shall include, but not be limited to, for each year of the two-year period:

(1) The number of eligible companies claiming the credit;

(2) The dollar amount of tax credit certificates issued to taxpayers;

(3) The number of new businesses created by the tax credit;

(4) The number of new jobs, if any, created by the tax credit;

(5) The amount of direct expenditures made on qualified projects; and

(6) The cost of the credit.

(b) Eligible companies claiming the credit shall provide any information the Tax Commissioner and the ~~film office~~ Office of Economic Development may require to prepare the report: *Provided,* That the information provided is subject to the confidentiality and disclosure provisions of §11-10-5d and §11-10-5s of this code~~. However,~~ ; *Provided, however,* That notwithstanding the provisions of §11-10-5d and §11-10-5s of this code, the Tax Department is hereby authorized to disclose to the ~~film and to the development office~~ Office of Economic Development such tax information as may be necessary to compile the report required by this section and the report required by §11-13X-12 of this code.

§11-13X-12. Economic development; utilization of state locations, talent, and production companies.

(a) The West Virginia ~~Development Office~~ Office of Economic Development , in consultation and coordination with the appropriate public and private entities, shall promote, foster, encourage, and monitor the development of the film industry in this state as part of its comprehensive economic development strategy for West Virginia and report recommendations for expanding the industry in the state to the Governor and the Joint Committee on Government and Finance annually on or before December 1.

(b) The West Virginia Office of Economic Development shall coordinate with property owners, musicians and other performers, and other managers of resources suitable for film production to develop a database of locations, music, and other resources available for incorporation into film projects. To the greatest feasible extent, the Economic Development Office shall establish methods for interface with national and international databases of these resources that are available to, or used by, film and video production teams in the identification and selection of location, music, and other resources. The Economic Development Office shall also implement means for property owners and for staff in the field to connect to the state's database and to submit entries or nominations thereto.

§11-13X-13. Effective date, elimination of film tax credits, preservation of film tax credits earned prior to the sunset date; cessation of the West Virginia Film Office.

(a) The credit allowed by this article shall be allowed upon eligible expenditures occurring after December 31, 2007 and before January 16, 2018, and shall be allowed upon eligible expenditures occurring on and after the date specified in subsection (d) of this section and before the termination date specified therein.

~~(b) The amendments to this article enacted in the year 2009 shall apply to all taxable years beginning after December 31, 2007, and shall apply with retroactive effect with relation to taxable years beginning prior to the date of passage of such amendments.~~

~~(c) No tax credits authorized under this article shall be issued following the effective date of legislation establishing this subsection, §11-13X-13(d), and §11-13X-13(e) of this code in the year 2018. Notwithstanding any provision of this article to the contrary, no entitlement to any tax credit under this article may result from, and no credit is available to any person for, expenditures incurred following the effective date of this subsection~~

~~(d)~~ (b) ~~Notwithstanding the provisions of §11-13X-13(c) of this code, film~~ Film tax credits to which a taxpayer has gained lawful entitlement ~~prior to the effective date of this subsection~~, afer December 31, 2007, and before January 16, 2018 may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement prior to the effective date of this subsection may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

~~(e)~~ (c) Effective July 1, 2018, all operations of the West Virginia Film Office shall cease. To the extent necessary to settle, finalize, and conclude business relating to outstanding film tax credits issued prior to the effective date of the bill, the Division of Tourism is hereby authorized to administer such duties for that limited purpose.

(d) The amendments to this article enacted in the year 2022 shall apply to all taxable years beginning on or after July 1, 2022: *Provided,* That, unless sooner terminated by law, the film investment tax credit will terminate on December 31, 2027. No entitlement to any tax credit authorized by this article may result from, and no credit is available to any person for, expenditures incurred subsequent to December 31, 2027. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before December 31, 2027, may continue to be applied against tax liabilities, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code. Film tax credits to which a taxpayer has gained lawful entitlement on or after July 1, 2022, and on or before December 31, 2027, may be transferred in accordance with §11-13X-8 of this code, subject to the conditions, limitations, and constraints applicable to such credit under this article, until exhausted or otherwise terminated in accordance with the terms of this article and this code.

Engrossed Committee Substitute for House Bill 2096, as just amended, was then put upon its passage.

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 2096 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—32.

The nays were: Karnes—1.

Absent: Roberts—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 2096) passed.

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

Eng. Com. Sub. for House Bill 2096—A Bill to amend and reenact §11-13X-3, §11-13X-4, §11-13X-5, §11-13X-6, §11-13X-7; §11-13X-8, §11-13X-11, §11-13X-12, and §11-13X-13 of the Code of West Virginia, 1931, as amended, all relating to the West Virginia Film Industry Investment Act; reinstating the film investment tax credit; providing the coordination and management by the West Virginia Office of Economic Development; defining terms; excluding commercials and promotional videos from the definition of qualified project; excluding short-term depreciation from credit; raising the minimum threshold of cumulative annual expenditures necessary to qualify for credit; eliminating limitation of credit; requiring the Economic Development Office to develop a database of locations, music, and other resources to be made available to film production teams; providing Economic Development Office discretion to determine if project negatively portrays West Virginia; providing and clarifying effective date; eliminating reference to business franchise tax; providing sunset provision; and making technical corrections.

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

Thereafter, at the request of Senator Stover, and by unanimous consent, the remarks by Senator Karnes as to the passage of Engrossed Committee Substitute for House Bill 2096 were ordered printed in the Appendix to the Journal.

Eng. Com. Sub. for House Bill 4113, Public Health definitions and powers of secretary and commissioner.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4113 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

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

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4113) takes effect from passage.

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

Eng. Com. Sub. for House Bill 4257, Require visitation immediately following a procedure in a health care facility.

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

At the request of Senator Takubo, and by unanimous consent, further consideration of the bill was deferred until the conclusion of bills on today's third reading calendar.

Eng. House Bill 4396, Reducing federal adjusted gross income relating to tolls for travel on West Virginia toll roads paid electronically.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

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

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

Eng. House Bill 4410, Specifying allocation, apportionment and treatment of income of flow-through entities.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard,

Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4410) passed with its title.

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

Eng. Com. Sub. for House Bill 4451, Eliminating the requirement that otherwise qualified investment assets be located or installed at or within 2 miles of a preexisting manufacturing facility.

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

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4451) passed with its title.

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

Eng. House Bill 4535, Repeal section relating to school attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

On third reading, coming up in regular order, with the amendment offered by Senator Karnes to the bill pending, and with the right having been granted on March 4, 2022, for further amendments to be received on third reading, was read a third time.

The question being on the adoption of the amendment offered by Senator Karnes to the bill *(shown in the Senate Journal of yesterday, Tuesday, March 8, 2022, pages 20 to 28, inclusive).*

At the request of Senator Karnes, and by unanimous consent, the amendment offered by Senator Karnes to the bill was withdrawn.

On motion of Senator Rucker, the following amendment to the bill (Eng. H. B. 4535) was reported by the Clerk:

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

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSE.

ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION, AND RENEWAL.

§17B-2-3a. Graduated driver's license.

(a) A person under the age of 18 may not operate a motor vehicle unless he or she has obtained a graduated driver's license in accordance with the three-level graduated driver's license system described in the following provisions.

(b) Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to §17C-5-2 and §17C-5A-2 of this code. Any person under the age of ~~18~~17, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code~~.~~: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(c) *Level one instruction permit*. — An applicant who is 15 years or older meeting all other requirements prescribed in this code may be issued a level one instruction permit.

(1) *Eligibility*. — The division may not issue a level one instruction permit unless the applicant:

(A) Presents a completed application, as prescribed by §17B-2-6 of this code, which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license, and executed by a parent or guardian entitled to custody of the applicant;

(B) Presents a certified copy of a birth certificate issued by a state or other governmental entity responsible for vital records unexpired, or a valid passport issued by the United States government evidencing that the applicant meets the minimum age requirement and is of verifiable identity;

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in §17B-2-7 of this code; and

~~(D) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code; and~~

~~(E)~~ (D) Pays a fee of $7.50, which permits the applicant one attempt at the written knowledge test. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of instruction permit*. — A level one instruction permit issued under this section is valid until 30 days after the date the applicant attains the age of 18 and is not renewable: *Provided,* That for an applicant who is an active member of any branch of the United States military, a level one instruction permit issued under the provisions of this section is valid until 180 days after the date the applicant attains the age of 18. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation, or cancellation of the instruction permit, may reapply for a new instruction permit under §17B-2-6

of this code. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days. However, after the expiration of 90 days, the person may retest if otherwise eligible. A holder of a level one instruction permit who is under the age of 18 years may not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

(A) The permit holder is under the direct supervision of a licensed driver, 21 years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) The permit holder is operating the vehicle between the hours of 5 a.m. and 10 p.m.;

(C) All occupants use safety belts in accordance with §17C-15-49 of this code;

(D) The permit holder is operating the vehicle without any measurable blood alcohol content, in accordance with §17C-5-2(h) of this code; and

(E) The permit holder maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code~~.~~: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(d) *Level two intermediate driver's license*. — An applicant 16 years of age or older, meeting all other requirements of this code, may be issued a level two intermediate driver's license.

(1) *Eligibility*. — The division may not issue a level two intermediate driver's license unless the applicant:

(A) Presents a completed application as prescribed in §17B-2-6 of this code;

(B) Has held the level one instruction permit conviction-free for the 180 days immediately preceding the date of application for a level two intermediate license;

(C) Has completed either a driver's education course approved by the State Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving, certified by a parent or legal guardian or other responsible adult over the age of 21 as indicated on the form prescribed by the division: *Provided,* That nothing in this paragraph may be construed to require any school or any county board of education to provide any particular number of driver's education courses or to provide driver's education training to any student;

~~(D) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code~~

~~(E)~~ (D) Passes the road skills examination as prescribed by §17B-2-7 of this code; and

(F) Pays a fee of $7.50 for one attempt. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U.S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year.

(2) *Terms and conditions of a level two intermediate driver's license*. — A level two intermediate driver's license issued under the provisions of this section expires 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first. A holder of a level two intermediate driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked, or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) The licensee operates a vehicle unsupervised between the hours of 5 a.m. and 10 p.m.;

(B) The licensee operates a vehicle only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10 p.m. and 5 a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

(iv) An emergency situation that requires the licensee to operate a motor vehicle to prevent bodily injury or death of another;

(C) All occupants of the vehicle use safety belts in accordance with §17C-15-49 of this code;

(D) For the first six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying any passengers less than 20 years old, unless these passengers are family members of the licensee; for the second six months after issuance of a level two intermediate driver's license, the licensee may not operate a motor vehicle carrying more than one passenger less than 20 years old, unless these passengers are family members of the licensee;

(E) The licensee operates a vehicle without any measurable blood alcohol content in accordance with §17C-5-2(h) of this code;

(F) The licensee maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with §18-8-11 of this code~~.~~: *Provided*, That a person may otherwise be eligible for a restricted license or instruction permit pursuant to §18-8-11.

(G) Upon the first conviction for a moving traffic violation or a violation of §17B-2-3a(d)(2) of this code of the terms and conditions of a level two intermediate driver's license, the licensee shall

enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under ~~§17B-2-3a(d)(2)(H)~~ §17B-2-3a(d)(2)(G) of this code; and

(H) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the Division of Motor Vehicles shall revoke or suspend the licensee's privilege to operate a motor vehicle for the applicable statutory period or until the licensee's 18th birthday, whichever is longer, unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of 18 years and if otherwise eligible, may reapply for an instruction permit, then a driver's license in accordance with §17B-2-5, §17B-2-6 and §17B-2-7 of this code.

(e) *Level three, full Class E license*. — The level three license is valid until 30 days after the date the licensee attains his or her 21st birthday. A holder of a level three driver's license who is under the age of 18 years shall not use a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

A level two intermediate licensee whose privilege to operate a motor vehicle has not been suspended, revoked, or otherwise canceled and who meets all other requirements of the code may be issued a level three full Class E license without further examination or road skills testing if the licensee:

(1) Has reached the age of 17 years; ~~and~~

~~(A)~~ (2) Presents a completed application as prescribed by §17B-2-6 of this code;

~~(B)~~ (3) Has held the level two intermediate license conviction free for the 12-month period immediately preceding the date of the application;

~~(C)~~ (4) Has completed any driver improvement program required under §17B-2-3a(d)(2)(G) of this code; and

~~(D)~~ (5) Pays a fee of $2.50 for each year the license is valid. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code.

~~(E) Presents a driver's eligibility certificate or otherwise shows compliance with §18-8-11 of this code; or~~

~~(2) Reaches the age of 18 years; and~~

~~(A) Presents a completed application as prescribed by §17B-2-6 of this code; and~~

~~(B) Pays a fee of $5 for each year the license is valid. The Division of Motor Vehicles may adjust this fee every five years on September 1, based on the U. S. Department of Labor, Bureau of Labor Statistics most current Consumer Price Index: *Provided*, That an increase in the fee may not exceed 10 percent of the total fee amount in a single year. An additional fee of 50 cents shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in §3-2-12 of this code~~

(f) A person violating the provisions of the terms and conditions of a level one instruction permit, level two intermediate driver's license, or level three license is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined $25; for a second offense be fined $50; and for a third or subsequent offense be fined $75.

ARTICLE 3. CANCELLATION, SUSPENSION, OR REVOCATION OF LICENSES.

§17B-3-6. Authority of division to suspend, restrict, or revoke license; hearing.

(a) The division is hereby authorized to suspend, restrict, or revoke the driver's license of any person without preliminary hearing upon a showing by its records or other sufficient evidence that the licensee:

(1) Has committed an offense for which mandatory revocation of a driver's license is required upon conviction;

(2) Has by reckless or unlawful operation of a motor vehicle, caused or contributed to an accident resulting in the death or personal injury of another or property damage;

(3) Has been convicted with such frequency of serious offenses against traffic regulations governing the movement of vehicles as to indicate a disrespect for traffic laws and a disregard for the safety of other persons on the highways;

(4) Is an habitually reckless or negligent driver of a motor vehicle;

(5) Is incompetent to drive a motor vehicle;

(6) Has committed an offense in another state which if committed in this state would be a ground for suspension or revocation;

(7) Has failed to pay or has defaulted on a plan for the payment of all costs, fines, forfeitures, or penalties imposed by a magistrate court or municipal court within 90 days, as required by ~~section two-a, article three, chapter fifty~~ §50-3-2a of this code or ~~section two-a, article ten, chapter eight~~ §8-10-2a of this code;

(8) Has failed to appear or otherwise respond before a magistrate court or municipal court when charged with a motor vehicle violation as defined in section three-a of this article;

(9) Is under the age of ~~eighteen~~ 17 and has withdrawn either voluntarily or involuntarily due to misconduct from a secondary school or has failed to maintain satisfactory academic progress, as provided in ~~section eleven, article eight, chapter eighteen~~ §18-8-11 of this code; or

(10) Has failed to pay overdue child support or comply with subpoenas or warrants relating to paternity or child support proceedings, if a circuit court has ordered the suspension of the license

as provided in ~~article five-a, chapter forty-eight-a~~ §48A-5A-1 *et seq.* of this code and the Child Support Enforcement Division has forwarded to the division a copy of the court order suspending the license, or has forwarded its certification that the licensee has failed to comply with a new or modified order that stayed the suspension and provided for the payment of current support and any arrearage due.

(b) The driver's license of any person having his or her license suspended shall be reinstated if:

(1) The license was suspended under the provisions of subdivision (7), subsection (a) of this section and the payment of costs, fines, forfeitures, or penalties imposed by the applicable court has been made;

(2) The license was suspended under the provisions of subdivision (8), subsection (a) of this section and the person having his or her license suspended has appeared in court and has prevailed against the motor vehicle violations charged; or

(3) The license was suspended under the provisions of subdivision (10), subsection (a) of this section and the division has received a court order restoring the license or a certification by the Child Support Enforcement Division that the licensee is complying with the original support order or a new or modified order that provides for the payment of current support and any arrearage due.

(c) Any reinstatement of a license under subdivision (1), (2) or (3), subsection (b) of this section shall be subject to a reinstatement fee designated in section nine of this article.

(d) Upon suspending, or restricting the driver's license of any person as hereinbefore in this section authorized, the division shall immediately notify the licensee in writing, sent by certified mail, return receipt requested, to the address given by the licensee in applying for license, and upon his or her request shall afford him or her an opportunity for a hearing as early as practical within not to exceed 20 days after receipt of such request in the county wherein the licensee resides unless the division and the licensee agree that such hearing may be held in some other county. Upon such hearing the commissioner or his or her duly authorized agent may administer oaths and may issue subpoenas for the attendance of witnesses and the production of relevant books and papers and may require a reexamination of the licensee. Upon such hearing the division shall either rescind its order of suspension, or restriction or, good cause appearing therefor, may extend the suspension, or restriction of such license or revoke such license. The provisions of this subsection providing for notice and hearing are not applicable to a suspension under subdivision (10), subsection (a) of this section. Any person whose driver's license is suspended, restricted, or revoked after hearing with the commissioner may seek judicial review of the final order or decision in accordance with §29A-5-4 of this code.

(e) Notwithstanding the provisions of legislative rule 91 CSR 5, the division may, upon completion of an approved defensive driving course, deduct three points from a licensee's point accumulation provided the licensee has not reached 14points. If a licensee has been notified of a pending 30-day driver's license suspension based on the accumulation of 12 or 13 points, the licensee may submit proof of completion of an approved defensive driving course to deduct three points and rescind the pending license suspension*: Provided,* That the licensee submits proof of prior completion of the course and payment of the reinstatement fee in accordance with section nine, article three of this chapter to the division prior to the effective date of the suspension.

CHAPTER 18. EDUCATION.

ARTICLE 18. COMPULSORY SCHOOL ATTENDANCE.

§18-8-11. School attendance and satisfactory academic progress as conditions of licensing for privilege of operation of motor vehicle.

~~(a) In accordance with the provisions of §17B-2-3a and §17B-2-5 of this code, the Division of Motor Vehicles shall deny a license or instruction permit for the operation of a motor vehicle to any person under the age of 18 who does not at the time of application present a diploma or other certificate of graduation issued to the person from a secondary high school of this state or any other state or documentation that the person: (1) Is enrolled and making satisfactory progress in a course leading to a general education development certificate (GED) from a state-approved institution or organization or has obtained the certificate; (2) is enrolled and is making satisfactory academic progress in a secondary school of this state or any other state; (3) is excused from the requirement due to circumstances beyond his or her control; or (4) is enrolled in an institution of higher education as a full-time student in this state or any other state.~~

~~(b) The attendance director or chief administrator shall, upon request, provide a driver's eligibility certificate on a form approved by the Department of Education to any student at least 15 but less than 18 years of age who is properly enrolled and is making satisfactory academic progress in a school under the jurisdiction of the official for presentation to the Division of Motor Vehicles on application for or reinstatement of an instruction permit or license to operate a motor vehicle: *Provided*, That a parent or legal guardian of a child who is being educated pursuant to §18-8-1(c) of this code may provide a signed statement in lieu of a driver's eligibility certificate issued by the attendance director or chief administrator affirming that the child is being educated in accordance with law, is making satisfactory academic progress, and meets the conditions to be eligible to obtain any permit or license under this section. The Division of Motor Vehicles may accept from a county board of education electronic notice of a student's compliance with the provisions of this section in lieu of any written form or written statement otherwise required from an applicant for an instruction permit or driver's license.~~

~~(c)~~ (a) Whenever a student at least 15 but less than ~~18~~ 17 years of age, except as provided in subsection ~~(g)~~ (e) of this section, withdraws from school, the attendance director or chief administrator shall notify the Division of Motor Vehicles of the student's withdrawal no later than five days from the date of the withdrawal. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license to operate a motor vehicle will be ~~suspended~~ restricted to driving for work or medical purposes or educational or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's withdrawal from school was due to a circumstance or circumstances beyond the control of the student. If ~~suspended~~ restricted, the division may not reinstate an instruction permit or license until the student returns to school and shows satisfactory academic progress or until the student attains ~~18~~ 17 years of age.

~~(d)~~ (b) Whenever a student at least 15 but less than ~~18~~ 17 years of age is enrolled in a secondary school and fails to maintain satisfactory academic progress, the attendance director or chief administrator shall follow the procedures set out in subsection ~~(c)~~ (a) of this section to

notify the Division of Motor Vehicles. Within five days of receipt of the notice, the Division of Motor Vehicles shall send notice to the student that the student's instruction permit or license will be ~~suspended~~ restricted to driving for work or medical purposes or educational or religious pursuits under the provisions of §17B-3-6 of this code on the 30th day following the date the notice was sent unless documentation of compliance with the provisions of this section is received by the Division of Motor Vehicles before that time. The notice shall also advise the student that he or she is entitled to a hearing before the county superintendent of schools or his or her designee or before the appropriate private school official concerning whether the student's failure to make satisfactory academic progress was due to a circumstance or circumstances beyond the control of the student. Once ~~suspension~~ the restriction is ordered, the division may not reinstate an instruction permit or license until the student shows satisfactory academic progress or until the student attains ~~18~~ 17 years of age.

~~(e)~~ (c) Upon written request of a student, within 10 days of receipt of a notice of ~~suspension~~ restriction as provided by this section, the Division of Motor Vehicles shall afford the student the opportunity for an administrative hearing. The scope of the hearing shall be limited to determining if there is a question of improper identity, incorrect age, or some other clerical error.

~~(f)~~ (d) For the purposes of this section:

(1) "Withdrawal" is defined as more than 10 consecutive or 15 total days unexcused absences during a school year, or suspension pursuant to §18A-5-1a(a) and §18A-5-1a(b) of this code.

(2) "Satisfactory academic progress" means the attaining and maintaining of grades sufficient to allow for graduation and course work in an amount sufficient to allow graduation in five years or by age 19, whichever is earlier.

(3) "Circumstances outside the control of the student" shall include, but not be limited to, medical reasons, familial responsibilities, and the necessity of supporting oneself or another.

(4) Suspension or expulsion from school or imprisonment in a jail or a West Virginia correctional facility is not a circumstance beyond the control of the student.

~~(g)~~ (e) Whenever the withdrawal from school of the student, the student's failure to enroll in a course leading to or to obtain a GED or high school diploma, or the student's failure to make satisfactory academic progress is due to a circumstance or circumstances beyond the control of the student, or the withdrawal from school is for the purpose of transfer to another school as confirmed in writing by the student's parent or guardian, no notice shall be sent to the Division of Motor Vehicles to ~~suspend~~ restrict the student's motor vehicle operator's license and if the student is applying for a license, the attendance director or chief administrator shall provide the student with documentation to present to the Division of Motor Vehicles to excuse the student from the provisions of this section. The school district superintendent (or the appropriate school official of any private secondary school) with the assistance of the county attendance director and any other staff or school personnel shall be the sole judge of whether any of the grounds for ~~denial or suspension~~ restriction of a license as provided by this section are due to a circumstance or circumstances beyond the control of the student.

~~(h)~~ (f) The state board shall promulgate rules necessary for uniform implementation of this section among the counties and as may otherwise be necessary for the implementation of this section. The rule may not include attainment by a student of any certain grade point average as a measure of satisfactory progress toward graduation.

Following discussion,

The question being on the adoption of Senator Rucker's amendment to the bill, the same was put and prevailed.

Engrossed House Bill 4535, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4535) passed.

At the request of Senator Rucker, as chair of the Committee on Education, and by unanimous consent, the unreported Education committee amendment to the title of the bill was withdrawn.

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

Eng. House Bill 4535—A Bill to amend and reenact §17B-2-3a of the Code of West Virginia, 1931, as amended; to amend and reenact §17B-3-6 of said code; and to amend and reenact §18-8-11 of said code, all relating to motor vehicle licensing; modifying requirements for a graduated driver's license; granting Division of Motor Vehicles authority to restrict and revoke a driver's license for certain reasons; allowing any person whose driver's license is suspended, restricted, or revoked after hearing with the Commissioner of the Division of Motor Vehicles to seek judicial review; removing requirement to deny a license or instruction permit to any person under 18 who does not meet one of certain academic related requirements; removing provisions pertaining to the provision of a driver's eligibility certificate; and replacing suspension of license with requiring restriction of license to driving for work or medical purposes or educational or religious pursuits whenever a student at least 15 but less than 17 years of age withdraws from school or fails to maintain satisfactory academic progress.

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

Eng. Com. Sub. for House Bill 4567, Relating to business and occupation or privilege tax.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4567 pass?"

On the passage of the bill, the yeas were: Azinger, Baldwin, Boley, Clements, Grady, Hamilton, Jeffries, Karnes, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano,

Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Woelfel, Woodrum, and Blair (Mr. President)—27.

The nays were: Beach, Brown, Caputo, Geffert, Lindsay, and Weld—6.

Absent: Roberts—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4567) passed.

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

Eng. Com. Sub. for House Bill 4567—A Bill to amend and reenact §8-13-5 of the Code of West Virginia, 1931, as amended, relating the limiting of the imposition of the municipal business and occupation or privilege tax on the business of selling automobiles; providing for a decreasing reduction in the tax on new automobiles that have never been registered in the name of an individual over a three year period; providing for complete elimination of the tax on new automobiles that have never been registered in the name of an individual; and defining terms.

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

The end of today's third reading calendar having been reached, the Senate returned to the consideration of

Eng. Com. Sub. for House Bill 4257, Require visitation immediately following a procedure in a health care facility.

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

Pending discussion,

The question being "Shall Engrossed Committee Substitute for House Bill 4257 pass?"

Senator Baldwin requested a ruling from the Chair as to whether he should be excused from voting under Rule 43 of the Rules of the Senate, as he is a pastor who does hospital visitation on a volunteer basis.

The Chair replied that any impact on Senator Baldwin would be as a member of a class of persons and that he would be required to vote.

On the passage of the bill, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4257) passed.

At the request of Senator Maroney, as chair of the Committee on Health and Human Resources, and by unanimous consent, the unreported Health and Human Resources committee amendment to the title of the bill was withdrawn.

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

Eng. Com. Sub for House Bill 4257—A Bill to amend and reenact §16-39-3 and §16-39-8 of the Code of West Virginia, 1931, as amended, all relating to requiring visitation of a patient in a health care facility; defining terms; permitting visitation when the patient is stable following a surgical procedure; permitting visitation of a patient by a member of clergy; and establishing parameters for clergy visitation.

Senator Takubo moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Baldwin, Beach, Boley, Brown, Caputo, Clements, Geffert, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Romano, Rucker, Smith, Stollings, Stover, Swope, Sypolt, Takubo, Tarr, Trump, Weld, Woelfel, Woodrum, and Blair (Mr. President)—33.

The nays were: None.

Absent: Roberts—1.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4257) takes effect from passage.

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

Thereafter, at the request of Senator Baldwin, and by unanimous consent, the remarks by Senator Rucker as to the passage of Engrossed Committee Substitute for House bill 4257 were ordered printed in the Appendix to the Journal.

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

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

Your Committee on Economic Development has had under consideration

Eng. Com. Sub. for House Bill 4001, Generally relating to broadband.

And has amended same.

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

Respectfully submitted,

Chandler Swope,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4001) contained in the preceding report from the Committee on Economic Development was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on Finance, with an amendment from the Committee on Economic Development pending.

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

Your Committee on Economic Development has had under consideration

Eng. House Bill 4827, Relating to the promotion and development of public-use vertiports.

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

Respectfully submitted,

Chandler Swope,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4827) contained in the preceding report from the Committee on Economic Development was taken up for immediate consideration, read a first time, ordered to second reading, and, under the original double committee reference, was then referred to the Committee on the Judiciary.

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 12:30 p.m., the Senate recessed until 5 p.m. today.

The Senate reconvened at 5:40 p.m. and, without objection, returned to the third order of business.

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

Eng. Com. Sub. for Senate Bill 694, Relating to oil and gas conservation.

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

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

After the enacting clause by striking out the remainder of the bill in its entirety and inserting in lieu thereof the following:

CHAPTER 22C. ENVIRONMENTAL RESOURCES; BOARDS, AUTHORITIES, COMMISSIONS AND COMPACTS.

ARTICLE 9. OIL AND GAS CONSERVATION.

§22C-9-1. Declaration of public policy; legislative findings.

(a) It is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage, and promote exploration for and development, production, utilization, and conservation of oil and gas resources;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; ~~and~~

(4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners in a pool of oil or gas to the end that each such operator and royalty owner may obtain his or her just and equitable share of production from ~~such~~ that pool, unit or unconventional reservoir of oil or gas; and

(5) Safeguard, protect, and enforce the property rights and interests of surface owners and the owners and agricultural users of other interests in the land.

(b) The Legislature hereby determines and finds that oil and natural gas found in West Virginia in shallow sands or strata have been produced continuously for more than 100 years; that oil and gas deposits in ~~such~~ shallow sands or strata have geological and other characteristics different than those found in deeper formations and unconventional reservoirs; and that in order to encourage the maximum recovery of oil and gas from all productive formations in this state, it is not in the public interest, with the exception of shallow wells utilized in a secondary recovery program, to enact statutory provisions relating to the exploration for or production ~~from~~ of oil and gas from vertical shallow wells, ~~as defined in section two of this article~~ but that it is in the public interest to enact statutory provisions establishing regulatory procedures and principles to be applied to the exploration for or production of oil and gas from deep wells, as defined in ~~said~~ section two and oil and gas produced from horizontal wells.

§22C-9-2. Definitions.

~~(a) As used in this article:~~

~~(1) "Commission" means the Oil and Gas Conservation Commission and "commissioner" means the Oil and Gas Conservation Commissioner as provided for in section four of this article;~~

~~(2) "Director" means the Secretary of the Department of Environmental Protection and "chief" means the Chief of the Office of Oil and Gas;~~

~~(3) "Person" means any natural person, corporation, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;~~

~~(4) "Operator" means any owner of the right to develop, operate and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, the owner of the oil and gas rights therein is the "operator" to the extent of seven-eighths of the oil and gas in that portion of the pool underlying the tract owned by such owner, and as "royalty owner' as to one-eighth interest in such oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool is the "operator" as to that pool;~~

~~(5) "Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in subdivision (4) of this section;~~

~~(6) "Independent producer" means a producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on July 1, 1997;~~

~~(7) "Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;~~

~~(8) "Gas" means all natural gas and all other fluid hydrocarbons not defined as oil in subdivision (7) of this section;~~

~~(9) "Pool" means an underground accumulation of petroleum or gas in a single and separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;~~

~~(10) "Well" means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;~~

~~(11) "Shallow well" means any well other than a coalbed methane well, drilled no deeper than one hundred feet below the top of the "Onondaga Group": *Provided,* That in no event may the "Onondaga Group" formation or any formation below the "Onondaga Group" be produced, perforated or stimulated in any manner;~~

~~(12) "Deep well" means any well, other than a shallow well or coalbed methane well, drilled to a formation below the top of the uppermost member of the "Onondaga Group;"~~

~~(13) "Drilling unit" means the acreage on which one well may be drilled;~~

~~(14) "Waste" means and includes:~~

~~(A) Physical waste, as that term is generally understood in the oil and gas industry;~~

~~(B) The locating, drilling, equipping, operating or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from~~

~~a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or~~

~~(C) The drilling of more deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool. Waste does not include gas vented or released from any mine areas as defined in section two, article one, chapter twenty-two-a of this code or from adjacent coal seams which are the subject of a current permit issued under article two of chapter twenty-two-a of this code: *Provided,* That this exclusion does not address ownership of the gas;~~

~~(15) "Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his tract or tracts, or the equivalent thereof; and~~

~~(16) "Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool underlying the person's tract or tracts.~~

~~(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" are interchangeable, as, for example, "oil and gas" means oil or gas or both.~~

(a) As used in this article:

"Commission" means the Oil and Gas Conservation Commission and "commissioner" means the Oil and Gas Conservation Commissioner as provided for in §22C-9-4 of this code;

"Correlative rights" means the reasonable opportunity of each person entitled thereto to recover and receive without waste the oil and gas in and under his or her tract or tracts, or the equivalent thereof;

"Deep well" means any well, other than a shallow well, deep horizontal well, or a coalbed methane well, drilled to a formation below the top of the uppermost member of the "Onondaga Group";

"Director" means the Secretary of the Department of Environmental Protection and "chief" means the Chief of the Office of Oil and Gas;

"Drilling unit" or "unit" means the acreage on which one ~~well~~ or more wells may be drilled;

"Gas" means all natural gas and all other fluid hydrocarbons not defined as oil as that term is defined in this section;

"Horizontal drilling" means a method of drilling a well for the production of oil and gas that is intended to maximize the length of wellbore that is exposed to the formation and in which the wellbore is initially vertical but is eventually curved to become horizontal, or nearly horizontal, to be in a particular geologic formation;

"Horizontal well" means an oil and gas well, other than a coalbed methane well, where the wellbore is initially drilled using a horizontal drilling method. A horizontal well may include multiple horizontal side laterals drilled into the same formation. A horizontal well may have completions into multiple formations from the same well. Multiple horizontal wells may be drilled from the same

well pad. A horizontal well may be either a shallow well or a deep well so long as it is initially drilled using a horizontal drilling method;

"Independent producer" means a producer of crude oil or natural gas whose allowance for depletion is determined under Section 613A of the federal Internal Revenue Code in effect on July 1, 1997;

"Just and equitable share of production" means, as to each person, an amount of oil or gas or both substantially equal to the amount of recoverable oil and gas in that part of a pool, unit, or unconventional reservoir in the person's tract or tracts within a unit.

"Natural gas liquids" means the liquid hydrocarbons removed from the natural gas through the process of fractionation or condensation.

"Oil" means natural crude oil or petroleum and other hydrocarbons, regardless of gravity, which are produced at the well in liquid form by ordinary production methods and which are not the result of condensation of gas after it leaves the underground reservoir;

"Operator" means any owner of the right to develop, operate, and produce oil and gas from a pool and to appropriate the oil and gas produced therefrom, either for that person or for that person and others; in the event that there is no oil and gas lease in existence with respect to the tract in question, for all sections in this article other than section 7a, the owner of the oil and gas rights therein is the "operator" to the extent of seven eighths of the oil and gas in that portion of the pool underlying the tract owned by ~~such~~ the owner, and as "royalty owner" as to one-eighth interest in ~~such~~ the oil and gas; and in the event the oil is owned separately from the gas, the owner of the substance being produced or sought to be produced from the pool or the unit ~~is the~~ is the "operator" as to that pool or acreage included in a unit; the term operator includes owners of working interests in a lease but does not include owners whose interest is limited to working interests in a wellbore only, overriding royalties, or net profits interests;

"Person" means any natural person, corporation, limited liability company, partnership, receiver, trustee, executor, administrator, guardian, fiduciary or other representative of any kind, and includes any government or any political subdivision or any agency thereof;

"Pool" means an underground accumulation of petroleum or gas in a single and separate reservoir (ordinarily a porous sandstone or limestone). It is characterized by a single natural-pressure system so that production of petroleum or gas from one part of the pool affects the reservoir pressure throughout its extent. A pool is bounded by geologic barriers in all directions, such as geologic structural conditions, impermeable strata, and water in the formations, so that it is effectively separated from any other pools that may be presented in the same district or on the same geologic structure;

"Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as that term is defined in this section;

"Shallow well" means any well other than a shallow horizontal well or a coalbed methane well, drilled no deeper than 100 feet below the top of the "Onondaga Group": *Provided*, That in no event may the "Onondaga Group" formation or any formation below the "Onondaga Group" be produced, perforated or stimulated in any manner;

"Unconventional reservoir" means any geologic formation that contains or is otherwise productive of oil or natural gas that generally cannot be produced at economic flow rates or in economic volumes except by wells stimulated by multiple hydraulic fracture treatments, a horizontal wellbore, or by using multilateral wellbores or some other technique to expose more of the formation to the wellbore;

"Vertical well" means an oil and gas well that does not utilize horizontal drilling methods. A vertical well may be either a shallow well or a deep well so long as it is initially drilled not using a horizontal drilling method;

"Waste" means and includes:

(1) Physical waste, as that term is generally understood in the oil and gas industry;

(2) The locating, drilling, equipping, operating, or producing of any oil or gas well in a manner that causes, or tends to cause, a reduction in the quantity of oil or gas ultimately recoverable from a pool under prudent and proper operations, or that causes or tends to cause unnecessary or excessive surface loss of oil or gas; or

(3) The drilling of more horizontal wells or deep wells than are reasonably required to recover efficiently and economically the maximum amount of oil and gas from a pool, unit, or an unconventional reservoir. Waste does not include gas vented or released from any mine areas as defined in §22A-1-2 of this code or from adjacent coal seams which are the subject of a current permit issued under §22A-2-1 *et seq.* of this code: *Provided*, That this exclusion does not address ownership of the gas;

"Well" means any shaft or hole sunk, drilled, bored or dug into the earth or underground strata for the extraction of oil or gas;

(b) Unless the context clearly indicates otherwise, the use of the word "and" and the word "or" are interchangeable, as, for example, "oil and gas" means "oil or gas or both".

(c) A person with an interest in oil and gas in a unit formed under this article who does not consent to the unit shall have no liability in connection with well site preparation, drilling, completion, maintenance, reclamation, plugging, and other operations with respect to wells drilled in the unit: *Provided,* That this subsection shall not apply to any operator in a horizontal well unit, including but not limited to any nonconsenting party who elects to participate in the horizontal well unit on a carried basis pursuant to §22C-9-7a of this code.

§22C-9-3. Application of article; exclusions.

(a) Except as provided in subsection (b) of this section, the provisions of this article shall apply to all lands located in this state, however owned, including any lands owned or administered by any government or any agency or subdivision thereof, over which the state has jurisdiction under its police power. The provisions of this article are in addition to and not in derogation of or substitution for the provisions of §22-6-1 *et seq.* of this code.

(b) This article shall not apply to or affect:

(1) Shallow wells other than shallow horizontal wells and those utilized in secondary recovery programs as set forth in in §22C-9-8 of this code and those provided for in §22C-9-4 of this code;

(2) Any well commenced or completed prior to March 9, 1972, unless ~~such~~ the well is, after completion (whether ~~such~~ the completion is prior or subsequent to that date):

(A) Deepened or drilled laterally subsequent to that date to a formation at or below the top of the uppermost member of the Onondaga Group; ~~or~~

(B) Involved in secondary recovery operations for oil under an order of the commission entered pursuant to §22C-9-8 of this code; or

(C) Drilled laterally as a horizontal well at any depth;

(3) Gas storage operations or any well employed to inject gas into or withdraw gas from a gas storage reservoir or any well employed for storage observation; ~~or~~

(4) Free gas rights; or

(5) Coalbed methane wells.

(c) The provisions of this article shall not be construed to grant to the commissioner or the commission authority or power to:

(1) Limit production or output, or prorate production of any oil or gas well, except as provided in §22C-9-7(a)(6) of this code; or

(2) Fix prices of oil or gas.

(d) Nothing contained in either this chapter or §22-1-1 *et seq.* of this code may be construed so as to require, prior to commencement of plugging operations, a lessee under a lease covering a well to give or sell the well to any person owning an interest in the well, including, but not limited to, a respective lessor, or agent of the lessor, nor shall the lessee be required to grant to a person owning an interest in the well, including, but not limited to, a respective lessor, or agent of a lessor, an opportunity to qualify under §22-6-26 of this code to continue operation of the well.

§22C-9-4. Oil and gas conservation commissioner and commission; commission membership; qualifications of members; terms of members; vacancies on commission; meetings; compensation and expenses; appointment and qualifications of commissioner; general powers and duties.

(a) The "oil and gas conservation commission" ~~shall be~~ is composed of ~~five~~ seven members. The director of the Department of Environmental Protection, and the Chief of the Office of Oil and Gas ~~shall be~~ are members of the commission ex officio. The remaining ~~three~~ five members of the commission shall be appointed by the Governor, by and with the advice and consent of the Senate, and may not be employees of the Department of Environmental Protection. Of the ~~three~~ five members appointed by the Governor, one shall be an independent producer and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the Federal Energy Regulatory Commission. ~~and at least one shall be a public member not engaged in an activity under the jurisdiction of the Public Service Commission or the federal energy regulatory commission~~ The third appointee shall possess a degree from an accredited college or university in engineering or geology and must be a registered professional engineer with particular knowledge and experience in the oil and gas industry and shall serve as commissioner and as chair of the commission. The fourth appointee shall be an individual who

has substantial experience in the agricultural industry, who is engaged in the business of farming in this state, and who is not and never has been, either himself or herself nor through a member of his or her immediate family, engaged in the business of oil and gas other than as a royalty recipient. When this member is to be appointed, the Governor shall request from the primary organization representing the agriculture industry in this state a list of three nominees for the member to be appointed. The fifth appointee shall be a resident owner of minerals in this state who is not and never has been affiliated with an operator of oil or gas wells. The term "affiliated", as used in the immediately preceding sentence, means someone who directly, or indirectly through one or more intermediaries, controls, or is controlled by, or is under common control with an operator of oil and gas wells by virtue of the power to direct or cause the direction of the management and policies of that operator, whether through the ownership of voting shares, by contract or otherwise.

(b) The members of the commission appointed by the Governor shall be appointed for overlapping terms of six years each, ~~except that the original appointments shall be for terms of two, four, and six years, respectively~~ except that any initial appointments shall be for terms of two, four, or six years to achieve staggered ends of terms. Each member appointed by the Governor shall serve until the members successor has been appointed and qualified. Members may be appointed by the Governor to serve any number of terms. The members of the commission appointed by the Governor, before performing any duty hereunder, shall take and subscribe to the oath required by section 5, article IV of the Constitution of West Virginia. Vacancies in the membership appointed by the Governor shall be filled by appointment by the Governor for the unexpired term of the member whose office is vacant and ~~such~~ the appointment shall be made by the Governor within 60 days of the occurrence of such vacancy. Any member appointed by the Governor may be removed by the Governor in case of incompetency, neglect of duty, gross immorality, or malfeasance in office. A commission member's appointment ~~shall be~~ is terminated as a matter of law if that member fails to attend three consecutive meetings. The Governor shall appoint a replacement within 30 days of the termination.

(c) The commission shall meet at such times and places as ~~shall be~~ are designated by the chair. The chair may call a meeting of the commission at any time, and shall call a meeting of the commission upon the written request of two members or upon the written request of the oil and gas conservation commissioner or the Chief of the Office of Oil and Gas. Notification of each meeting shall be given in writing to each member by the chair at least 14 calendar days in advance of the meeting. ~~Three~~ Four members of the commission, at least two of whom are appointed members, ~~shall~~ constitute a quorum for the transaction of any business.

(d) The commission shall pay each member the same compensation as is paid to members of the Legislature for their interim duties as recommended by the citizens legislative compensation commission and authorized by law for each day or portion thereof engaged in the discharge of official duties and shall reimburse each member for actual and necessary expenses incurred in the discharge of official duties.

(e) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer and enforce the provisions of this article in the manner provided herein. Subject to the provisions of §22C-9-3 of this code, the commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission ~~deems~~ considers proper. In the event of a conflict between the duty to prevent waste and the duty to protect correlative rights, the commission's duty to prevent waste ~~shall be~~ is paramount.

(f) Without limiting the commission's general authority, the commission ~~shall have~~ has specific authority to:

(1) Regulate the spacing of deep wells;

(2) Issue horizontal well unit orders;

~~(2)~~(3) Make and enforce reasonable rules and orders reasonably necessary to prevent waste, protect correlative rights, govern the practice and procedure before the commission and otherwise administer the provisions of this article;

~~(3)~~(4) Issue subpoenas for the attendance of witnesses and subpoenas duces tecum for the production of any books, records, maps, charts, diagrams, and other pertinent documents, and administer oaths and affirmations to ~~such~~ the witnesses, whenever, in the judgment of the commission, it is necessary to do so for the effective discharge of the commission's duties under the provisions of this article; and

~~(4)~~(5) Serve as technical advisor regarding oil and gas to the Legislature, its members and committees, to the Chief of Office of Oil and Gas, to the Department of Environmental Protection and to any other agency of state government having responsibility related to the oil and gas industry.

(g) The commission may delegate to the commission staff the authority to approve or deny an application for new well permits, to establish drilling units or special field rules if:

(1) The application conforms to the rules of the commission; and

(2) No request for hearing has been received.

(h) The commission may not delegate its authority to:

(1) Propose legislative rules;

(2) Approve or deny an application for new well permits, to establish drilling units or special field rules if the conditions set forth in subsection (g) of this section are not met; or

(3) Approve or deny an application for the pooling of interests within a drilling unit.

(i) Any exception to the field rules or the spacing of wells which does not conform to the rules of the commission, and any application for the pooling of interests within a drilling unit, must be presented to and heard before the commission.

(j) The commission is hereby empowered and it is the commission's duty to execute and carry out, administer, and enforce the relevant provisions of §37B-1-1 *et seq.* of this code concerning mineral development by cotenants for all wells at all depths and §22-11B-1 *et seq.* of this code concerning underground carbon dioxide sequestration storage facilities at all depths. The commission has jurisdiction and authority over all persons and property necessary therefor. The commission is authorized to make such investigation of records and facilities as the commission deems proper.

§22C-9-5. Rules; notice requirements.

(a) The commission may propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code, to implement and make effective the provisions of this article and the powers and authority conferred and the duties imposed upon the commission under the provisions of this article.

(b) Notwithstanding the provisions of §29A-7-2 of this code, any notice required under the provisions of this article shall be given at the direction of the commission by personal or substituted service or by certified United States mail, addressed, postage prepaid, to the last-known mailing address, if any, of the person being served, with the direction that the same be delivered to addressee only, return receipt requested. In the case of providing notice upon the filing of an application with the commission, the commission ~~shall cause~~ shall, within 14 days of the filing of an application, submit for publication notice of the application notice to be 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 ~~such~~ the publication shall be the county or counties wherein any land which may be affected by ~~such~~ the order is situate.

In addition, the commission shall mail a copy of ~~such~~ the notice to all other persons who have specified to the commission an address to which all such notices may be mailed. The notice shall issue in the name of the state, shall be signed by the one of the commission members, shall specify the style and number of the proceeding, the time and place of any hearing and shall briefly state the purpose of the proceeding. Each notice of a hearing must be provided no fewer than 20 days preceding the hearing date. Personal or substituted service and proof thereof may be made by an officer authorized to serve process or by an agent of the commission in the same manner as is now provided by the ~~"West Virginia Rules of Civil Procedure for Trial Courts of Record"~~ West Virginia Rules of Civil Procedure for service of process in civil actions in the various courts of this state.

A certified copy of any pooling or unit order entered under the provisions of this article shall be presented by the commission to the clerk of the county commission of each county wherein all or any portion of the pooled or unit tract is located, for recordation in the record book of ~~such~~ the county in which oil and gas leases are normally recorded. The recording of the order from the time noted thereon by ~~such~~ the clerk shall be notice of the order to all persons.

§22C-9-7a. Unitization of interests in horizontal well drilling units.

(a) *Declaration of public policy; legislative findings regarding unitization for all horizontal wells.*

The Legislature finds that horizontal drilling is a technique that effectively and efficiently recovers natural resources and should be encouraged as a means of production of oil and gas and it is hereby declared to be the public policy of this state and in the public interest to:

(1) Foster, encourage, and promote exploration for and development, production, utilization, and conservation of oil and gas resources by horizontal drilling in deep and shallow formations;

(2) Prohibit waste of oil and gas resources and unnecessary surface loss of oil and gas and their constituents;

(3) Encourage the maximum recovery of oil and gas; and

(4) Safeguard, protect, and enforce the correlative rights of operators and royalty owners of oil and gas in a horizontal well unit to the end that each such operator and royalty owner may obtain his or her just and equitable share of production from that pool, horizontal well unit or unconventional reservoir of oil or gas; and

(5) Safeguard, protect, and enforce the property rights and interests of surface owners and the owners and agricultural users of other interests in the land.

(b) *Definitions.*— Unless the context in which used clearly requires a different meaning, as used in this section:

"Bonded operator" means a person that has posted a bond under §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code; is registered as an oil and gas well operator with the West Virginia Department of Environmental Protection, Office of Oil and Gas; and operates eight or more oil and gas wells, as defined in §22-6-1 *et seq.* or §22-6A-1 *et seq.* of this code, in West Virginia that are active, producing oil and gas wells;

"Executive interest" and "executory interest" means the interest entitling the owner to lease the oil and gas estate or amend an existing oil and gas lease. For purposes of this section, the owner of the executive interest is considered to be the royalty owner and interested party for purposes of notice and participation in proceedings here in this article, and all horizontal well unit orders are binding on the owners of executive interests and nonexecutive interests in a horizontal well unit. The owners of the executive interest and the associated nonexecutive interest owners are considered to be the same interest for purposes of computing percentages pursuant to §22C-9-7a(c)(2)(A) and §22C-9-7a(c)(2)(B) of this code;

"Horizontal well unit" means an area in which horizontal drilling may occur, and that is designated for the allocation of production from one or more horizontal wells drilled in the unit to oil and gas tracts, or portions of the tracts, included in the unit for production of oil and gas and payment of royalty and proceeds of production regardless of the tract or tracts in which the horizontal well is drilled or completed, and the corresponding authorization to drill and produce oil and gas from that area as a unit, notwithstanding the lack of adequate consensual rights allowing pooling or unitization of oil and gas or allowing drilling horizontally across tract lines. When a horizontal well unit is formed, that portion of the production allocated to each tract or portion of the unit included in the horizontal well unit shall, when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed and producing on the tract;

"Lateral" means the portion of a well bore that deviates from approximate vertical orientation to approximate horizontal orientation and all wellbore beyond the initial deviation to total depth or terminus of the wellbore;

"Overriding royalty" means an interest carved out of the leasehold or out of the working interest and is not included within the meaning of royalty;

"Royalty owner" means any owner of oil and gas in place, or oil and gas rights, to the extent that the owner is not an operator as defined in §22C-9-2(a) of this code. A royalty owner does not include a person whose interest is limited to: (A) A working interest in a wellbore only; (B) overriding royalties; (C) nonparticipating royalty interests; (D) nonexecutive mineral interests; or (E) net profits interests;

"Target formation" means the primary geologic formation from which oil or gas is intended to be produced from a horizontal drilling operation and, where completions can reasonably be expected to produce from formations above or below the target formation, includes the formations from which production can reasonably be expected;

"Unitization" means the combination of two or more tracts of oil and gas, or portions thereof, or leases, for drilling of horizontal wells and production of oil and gas from the unit with allocation of production to the net acreage of each tract included in the unit to operate as a consolidated horizontal well unit;

"Unitization consideration" means consideration provided as set forth in subsection (f) of this section. Unitization consideration relates to the net acreage of the nonconsenting royalty owner included in a horizontal well unit;

"Unknown and unlocatable interest owner" means a royalty owner, executive interest owner, operator or other person vested with an interest in oil and gas in the target formation to be included in a horizontal well unit, whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission for the county or counties where the oil and gas is located and any immediately adjacent counties within this state;

(B) Diligent inquiry to known interest owners in the same tract;

(C) Inquiry to the sheriff's and assessor's offices of the county or counties in which the oil and gas interest is located;

(D) A reasonable inquiry utilizing available internet resources that could reasonably lead to the identification of the person; and

(E) A mailing to the last known address, if available, of the person as reflected in the records of the sheriff's or assessor's office, and includes the unknown heirs, representatives, successors and assigns of the person.

"Weighted average sales price" means a weighted average sales price obtained each month for amounts received at the applicant's various delivery points to unaffiliated, third-party purchasers accessible by the owner's production, without deduction of post-production, third-party costs and expenses charged to or incurred by applicant and/or its affiliates other than costs and expenses charged to or incurred by applicant and/or its affiliates after the first liquid trading point or, if the production does not undergo processing, after delivery to the first interstate pipeline.

(c) *Applicability*. —

(1) For all horizontal wells, including shallow horizontal wells and deep horizontal wells, the commission may unitize tracts, or portions of tracts, in a horizontal well unit established under this section upon the filing of an application with the commission by a person that controls the horizontal well unit and upon the issuance of a horizontal well unit order pursuant to this section.

(2) Before filing an application under this section, an applicant must have:

(A) With respect to the royalty interest, for shallow horizontal wells and deep horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with §37B-1-

1, *et seq.* of this code with respect to unknown or unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to pool or unitize the acreage to be included in the horizontal well unit from executory interest royalty owners of 75 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit, as provided and determined in subdivision (3) of this subsection; and

(B) With respect to the operator interest:

(i) For shallow horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, contract, or other agreement, the right, consent or agreement to pool or unitize as to 55 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit owned, leased, or operated by operators and the applicant, collectively, by ownership, lease, farmout, assignment, contract or other agreement, as provided and determined in subdivision (3) of this subsection; or

(ii) For deep horizontal wells, obtained by ownership, lease, lease amendment, assignment, farmout, compliance with §37B-1-1, *et seq.* of this code with respect to unknown or unlocatable interest owners defined in §37B-1-3 of this code only, contract or other agreement the right, consent or agreement to develop the acreage to be included in the horizontal well unit from executory interest royalty owners of 55 percent or more of the net acreage in the target formation proposed to be included in the horizontal well unit, as provided and determined in subdivision (3) of this subsection;

(C) (i) Made good faith offers to consent or agree to pool or unitize, and has negotiated in good faith with, all known and locatable royalty owners having executory interests in the oil and gas in the target formation within the acreage to be included in the proposed horizontal well unit who have not previously consented or agreed to the pooling or unitization of the interests and whose interests are not subject to development under §37B-1-1, *et seq.* of this code; and

(ii) Made good faith offers to participate or consent or agree to the proposed horizontal well unit, and has negotiated in good faith with, all known and locatable operators who have not previously agreed to participate or consent or agree to pool or unitize the acreage to be included in a proposed horizontal well unit.

(iii) A person who satisfies the conditions of paragraphs (A) through (C) of this subdivision is referred to in this section as a person that controls the horizontal well unit.

(3) For purposes of determining whether a person has obtained the requisite control of the proposed horizontal well unit, the commission may not include overriding royalty owners, nonexecutive interest royalty owners or acreage owned or otherwise held by unleased unknown and unlocatable interest owners whose acreage is not subject to development pursuant to §37B-1-1, *et seq.* of this code, or acreage owned or otherwise held by operators who are not bonded operators, unless such operators have consented or otherwise agreed to develop their operator interest in the net acreage in the target formation proposed to be included in the horizontal well unit. Furthermore, for purposes of determining whether a person has the requisite control of the proposed horizontal well unit, the identity and rights of royalty owners and operators shall be determined as of the date on which the application for a horizontal well unit is filed.

(4) If the applicant has not met all the provisions of this subsection, the application shall be dismissed without prejudice.

(5) If the applicant meets all of the provisions of this subsection, the commission shall authorize unitization of tracts, or portions of the tracts, as to all interests in oil and gas in the target formation acreage proposed to be unitized for horizontal drilling, including interests of unknown and unlocatable interest owners, for production of oil and gas from the target formation as a horizontal well unit, and shall issue a horizontal well unit order in accordance with this section.

(d) *Application requirements.* —

(1) An applicant who is a person that controls the horizontal well unit proposed for a horizontal well unit order and has drilled or plans to drill one or more horizontal wells in the proposed horizontal well unit may file an application with the commission for a horizontal well unit order. The application shall contain:

(A) A description of the proposed horizontal well unit and identification of the target formation or formations;

(B) A statement of the nature of the operations contemplated;

(C) A plat that depicts the boundaries and acreage of the proposed horizontal well unit, the tracts in the horizontal well unit, the surface tax map and parcel numbers of the surface tracts above the tracts to be included in the horizontal well unit in accordance with county assessor's records, and the district(s) and county or counties where the proposed horizontal well unit is located. The plat shall show the surface location of the vertical borehole of the horizontal well(s) to be included in the proposed horizontal well unit determined by survey, the courses and distances of the surface location from two permanent points or landmarks on those tracts, the deviation from vertical, and also the proposed horizontal lateral portion of each proposed horizontal well to be included in the proposed horizontal well unit. The plat shall show the proposed horizontal well unit name, the proposed horizontal well names, and if known, the well number of each horizontal well to be drilled in the horizontal well unit. The plat shall also show the location of each permitted, active oil and gas well located in the horizontal well unit, and the name of the operator of the well as shown by the records of the Department of Environmental Protection, Office of Oil and Gas: *Provided*, That the applicant is not required to depict or identify any abandoned or plugged well that is not required to be depicted or identified on the plat required by §22-6A-5(a)(6) of this code;

(D) A listing of all oil and gas tracts, or portions thereof, within the proposed horizontal well unit, the size of each tract, and the extent to which each tract is leased;

(E) The names and last known addresses of royalty owners of the target formation of each tract within the proposed horizontal well unit, specifying:

(i) Which, if any, of them are unknown and unlocatable;

(ii) Which of them hold executive rights; and

(iii) With respect to owners of an executory interest, whether they have consented to pooling or unitization of the acreage proposed to be included in the horizontal well unit;

(F) The names and last known addresses of operators of proposed horizontal well unit target formation acreage whose interest is of record in the county where the property is located, specifying:

(i) Which, if any, of them are unknown and unlocatable; and

(ii) Which, if any of them, are bonded operators, and if a bonded operator, whether he or she has consented to pooling or unitization as to the acreage proposed to be included in the horizontal well unit;

(G) Information regarding the applicant's actions to identify and locate unknown and unlocatable interest owners of target formation acreage to be included in the horizontal well unit;

(H) The percentage of the net acreage in the proposed horizontal well unit owned by executory interest target formation royalty owners who have consented to pooling or unitization;

(I) The percentage of the net acreage in the proposed horizontal well unit held by bonded operators and the applicant, collectively, as to which consent or agreement to pool or unitize has been granted;

(J) A percentage allocation to the separately owned tracts, or portions thereof, in the proposed horizontal well unit of the oil and gas that will be produced from the horizontal well unit as determined by the proportion that each tract's net acreage within the horizontal well unit bears to the total net acreage in the horizontal well unit;

(K) A certification that the applicant meets the requirements of subsection (c) of this section with respect to the proposed horizontal well unit, a list of the instruments granting the control and a certification that the applicant has mailed a copy of the application to all known and locatable interested parties by United States certified mail, return receipt requested, to their last known address and to the most current address filed with the West Virginia Department of Environmental Protection, Office of Oil and Gas, if any;

(L) A statement whether the applicant has submitted, either previously or contemporaneously with the application filed pursuant to this section, an application for a well work permit with the Department of Environmental Protection for one or more horizontal wells to be completed within the boundaries of the proposed horizontal well unit; and

(M) A proposed joint operating agreement that will govern the contractual relationship between the applicant and any unleased royalty owners following an election by the executive interest owners to participate in the drilling in the horizontal well unit on a carried basis under §22C-9-7a(f)(9) of this code.

(2) Upon the filing of an application for a horizontal well unit order, the commission shall provide notice of a hearing to all interested parties, as defined in this section, in accordance with §22C-9-5 of this code and subsection (g) of this section.

(e) *Standard of review*. —

(1) The commission shall evaluate the application and shall consider:

(A) The ownership and control of the tracts, or portions of the tracts, in the proposed horizontal well unit;

(B) Whether the tracts, or portions of the tracts, proposed to be made subject to a horizontal well unit order are owned, in whole or in part, by unknown and unlocatable interest owners;

(C) Information regarding the applicant's actions to locate unknown and unlocatable interest owners for the tracts, or portions of the tracts, sought to be included in the horizontal well unit;

(D) The percentage of executory interest royalty owner target formation acreage to be included in the horizontal well unit as to which consent or agreement for pooling or unitization has been granted;

(E) The percentage of proposed horizontal well unit target formation acreage held, collectively, by the applicant and bonded operators who have consented or agreed to the unit in accordance with subsection (c) of this section;

(F) Whether the applicant is a person that controls the horizontal well unit proposed for unitization;

(G) The area to be drained by well(s) completed or to be completed in the horizontal well unit;

(H) Correlative rights;

(I) The extent to which the application will prevent waste including the stranding of acreage of oil and gas formations between units that would be uneconomical to produce;

(J) Whether the applicant has complied with subsection (c) of this section;

(K) Whether notice has been provided in accordance with this section; and

(L) Whether the applicant demonstrates the intent and ability to drill all the wells proposed in the unit.

(2) The commission may not issue a horizontal well unit order pursuant to this section unless it finds that the applicant has before the filing of the application met the requirements of subsection (c) of this section.

(3) The commission may not change the operator of an existing well drilled in the proposed horizontal well unit, or a well actually being drilled within the proposed horizontal well unit as of the date the application is filed under this section and shall consider and protect the interests of owners of the well when issuing a horizontal well unit order.

(f) *Horizontal well unit orders*. —

(1) A horizontal well unit order under this section shall specify:

(A) The size and boundaries of the horizontal well unit giving due regard for maximization of the amount of oil and gas produced to prevent waste and protect correlative rights: *Provided*, That a horizontal well unit's size may not exceed 640 acres: *Provided, however*, That the commission may exceed the acreage limitation if the applicant demonstrates that the proposed horizontal well unit area would be drained efficiently and economically by a larger horizontal well unit: *Provided further,* That a horizontal well unit containing one or more horizontal wells may not contain more than 128 net acres controlled by nonconsenting royalty owners determined as of the date that the application for the horizontal well unit application is filed.

(B) The horizontal wells which may be drilled in the horizontal well unit, and whether the horizontal wells to be drilled are shallow or deep;

(C) If there are vertical wells completed in the target formation in the horizontal well unit, the area where a horizontal well may not be completed;

(D) The target formation or target formations to which the horizontal well unit applies; and

(E) Any unitization consideration due.

(2) An order authorizing unitization of tracts with unknown and unlocatable interest owners shall contain a finding that identifies the persons as unknown and unlocatable.

(3) An order shall specify that the allocation of the percentage of production of the horizontal wells drilled in the horizontal well unit to the separately owned tracts, or portions of the tracts, included within the horizontal well unit shall be in the proportion that each tract's net acreage within the horizontal well unit bears to the total net acreage within the horizontal well unit.

(4) A horizontal well unit order shall authorize and perfect unitization of all interests in the target formation as to the tracts, or portions of the tracts, included in the horizontal well unit.

(5) If the applicant is a person that controls the horizontal well unit proposed for a horizontal well unit order under this section, the commission shall form a horizontal well unit pursuant to this section and authorize the drilling and operation of one or more horizontal wells in the unit for the production of oil or gas from the target formation from any tract within the horizontal well unit.

(6) With respect to royalty owners of leased tracts who have not consented to pooling or unitization, the commission shall require that unitization consideration be paid to executive interest royalty owners in an amount equal to 25 percent of the weighted average monetary bonus amount on a net mineral acre basis and a production royalty percentage equal to 80 percent of the weighted average production royalty percentage rounded to the nearest one tenth of one percent paid to other executive interest owners of leased tracts in the unit in the same target formation: *Provided*, That the weighted average calculation shall not include any fixed amounts paid to royalty owners or payments made on any basis other than a net mineral acre basis. Further, the royalty percentage cannot be less than the production royalty percentage in the existing lease or twelve and one-half percent for a flat rate lease. The applicant, all royalty owners, and owners of leasehold, working interest, overriding royalty interest and other interests in the oil and gas are bound by the order and the remaining lease terms, including other terms related to the payment of royalties. Unitization consideration shall be paid by the participating operators, including the applicant, to the extent of their interest in the horizontal well unit.

(7) With respect to interests in oil and gas as to which there is no lease in existence:

(A) Executive interest owners may elect to surrender the oil and gas underlying the tract to the participating operators, including the applicant, to the extent of their interest in the horizontal well unit for consideration, which if not agreed upon, shall be an amount equal to the weighted average amount paid, per net mineral acre, by the applicant to executive interest owners in bona fide, third-party transactions for the acquisition of the oil and gas mineral estate in the same target formation underlying the horizontal well unit: *Provided*, That the weighted average calculation shall not include any fixed amounts paid to royalty owners or payments made on any basis other than a net mineral acre basis; or

(B) Executive interest owners may make an election for unitization consideration, and if the executive interest owner elects unitization consideration, the interests of the executive interest owner and the associated nonexecutive interest owners shall be considered leased to the participating operators, including the applicant, to the extent of their interest in the horizontal well unit on terms which, if not agreed upon, shall consist of the following:

(i) A bonus payment per net mineral acre equal to the weighted average monetary bonus paid, per net mineral acre, to executive interest owners by the applicant in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit: *Provided*, That the weighted average calculation shall not include any fixed amounts paid as bonus payments to executive interest owners or payments made on any basis other than a net mineral acre basis; and

(ii) A production royalty for the natural gas, oil and natural gas liquids produced and sold equal to the highest production royalty percentage in connection with other leases in the same target formation controlled by the applicant within the horizontal well unit and dated within the twenty four months preceding the application date. Executive interest owners may make a one-time election prior to the issuance of a horizontal well unit order by the commission to be paid production royalties for natural gas based on either: (a) An index price in effect at the beginning of each calendar month, as published in an independent, third-party publication reflecting arm's-length, market-based sales, for natural gas applicable to the first interstate pipeline into which the natural gas is delivered, and shall not be reduced by post-production expenses; or (b) the weighted average sales price.

Production royalties for natural gas liquids will be calculated using the sum of the proceeds received at the tailgate of the processing facility for each natural gas liquid product during each month divided by the volume of such natural gas liquid product that was sold during such month and shall not be reduced by post-production expenses. If an executive interest owner does not make the one-time election regarding the price on which royalties for natural gas shall be paid prior to the issuance of a horizontal well unit order by the commission, the applicant shall determine whether it will pay royalties to the executive interest owner and the associated nonexecutive interest owners based on either the index price described in this subparagraph or the weighted average sales price, and such determination shall be binding on the applicant, operators, executive interest owners and the associated nonexecutive interest owners for the term of the lease. The applicant and all royalty owners and owners of leasehold, working interest, overriding royalty interest and other interests in the associated unleased oil and gas shall be bound by the order. Nothing contained in paragraph (B) applies to any lease in this state now in existence or entered into in the future, or to any award of unitization consideration made by the commission other than unitization consideration awarded to an executive interest owner of an unleased tract who elects to be considered leased pursuant to this paragraph; or

(C) Executive interest owners may make an election to participate in a horizontal well unit consistent with §22C-9-7a(f)(9) and §22C-9-7a(f)(10) of this code.

(D) Owners of oil and gas interests as to which there is no lease in existence who do not elect (A), (B) or (C) of this subdivision shall be considered to have made an election to receive unitization consideration and lease their interest in the oil and gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code.

(8) No unitization consideration may be required to be paid to any royalty owner who has consented or agreed to pooling or unitization by virtue of the terms contained in an oil and gas lease, or other agreement which permits pooling or unitization.

(9) An operator may elect to consent to and participate in a horizontal well unit after an application is filed. Subject to subdivision (7) of this subsection, when the commission issues a horizontal well unit order pursuant to this section, the commission shall consider each nonconsenting operator, who does not elect to participate in the risk and cost of drilling in the horizontal well unit through a voluntary agreement with the applicant, to participate in the drilling in the horizontal well unit on a carried basis on terms and conditions which, if not agreed upon, shall be consistent with the terms and conditions contained in the proposed joint operating agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code: *Provided,* That the commission determines that the proposed terms and conditions of the joint operating agreement are consistent with terms typically found in other similarly situated, arm's-length joint operating agreements within the horizontal well unit that were entered into by the applicant for the same target formation prior to the filing of the application for the horizontal well unit.

(10) If a nonconsenting operator participates in the drilling in the horizontal well unit on a carried basis under the horizontal well unit order and an owner of any operating interest in any portion of the horizontal well unit drills and operates, or pays the costs of drilling, completing, equipping and operating a horizontal well for the benefit of a nonconsenting operator as provided in the horizontal well unit order, then the operating owner is entitled to the share of production from the tracts or portions thereof subject to the horizontal well unit order accruing to the interest of the nonconsenting operator, exclusive of any unitization consideration, and royalty and overriding royalty reserved in any leases, assignments thereof or agreements relating thereto, of the tracts or portions of the tracts, until the net revenue from the nonconsenting operator's share of the production, exclusive of the unitization consideration, royalty and overriding royalty, equals double the share of the costs payable by or charged to the interest of the nonconsenting operator, as set forth in the accounting procedures included within the joint operating agreement submitted by the applicant in accordance with §22C-9-7a(d)(1)(M) of this code.

(11) If all wells proposed in a horizontal well unit approved by the commission are not drilled and completed as approved in the horizontal well unit order, the applicant shall file a request to modify the horizontal well unit with the commission within 60 days from the later of: Completion of all drilling activities within the horizontal well unit; or the date that is five years after the most recent drilling activity in the horizontal well unit occurs.

(12) Any interested party may file an application to correct a clerical error in a horizontal well unit order at any time.

(13) The applicant may file a request to modify a horizontal well unit order at any time.

(14) If an operator has not drilled and completed a well in a horizontal well unit formed by the commission within three years after the latter of either the drilling and completion of the initial horizontal well in the horizontal well unit or the drilling and completion of the most recent horizontal well within the horizontal well unit, as the case may be, an interested party may file a request to modify the horizontal well unit, and the commission may modify the horizontal well unit. Upon the modification of the horizontal well unit, the commission shall recalculate the allocation of production from the tracts in the modified horizontal well unit from and after the modification order date and the modification order shall be binding on the property subject to the horizontal well unit

order, and all owners thereof, their heirs, representatives, successors and assigns for so long as the horizontal well unit order remains in effect. Following the entry of a modified horizontal well unit order containing the commission's recalculation of the allocation of production from the tracts in the modified horizontal well unit order, the applicant and all other operators shall have no liability whatsoever to pay royalty in any manner other than that set forth in the modified horizontal well unit order.

(15) All operations, including, but not limited to, the commencement, drilling, or operation of a horizontal well upon any portion of a horizontal well unit for which a unit order has been entered pursuant to this section, shall be considered for all purposes the conduct of the operations upon each separate tract or portion of the tract in the horizontal well unit. That portion of the production allocated to each tract or portion of the tract included in a horizontal well unit shall, when produced, be considered for all purposes to have been actually produced from the tract by an oil and gas well drilled, completed, and producing on the tract.

(16) Subject to the provisions of subsection (o) of this section, where the commission finds that the interest of one or more unknown and unlocatable interest owners are included in the horizontal well unit, the horizontal well unit operator shall deposit the moneys payable to unknown and unlocatable interest owners into an escrow account bearing a market rate of interest to be held, administered and disbursed in accordance with an order of the commission and this section.

(17) A horizontal well unit order under this section shall expire if a horizontal well has not been drilled in the horizontal well unit within three years of the date the order is final and is nonappealable, unless the commission extends the order for good cause, and if a well has been drilled within three years the horizontal well unit shall continue in force and effect until the last producing horizontal well in the horizontal well unit is no longer capable of producing oil and gas.

(18) So long as the order remains in effect, a horizontal well unit order shall be binding on the property subject to the horizontal well order and all owners of the property and their heirs, representatives, successors, and assigns.

(g*) Notice, timelines, hearings, and orders*. —

(1)(A) For purposes of this section and the West Virginia Administrative Procedures Act, "interested parties" and "parties" mean owners of the executive interest in the oil and gas in the target formation within the horizontal well unit, including the unknown and unlocatable interest owner of the executive interest in the tracts, or portions of the tracts, to be included in the horizontal well unit subject to an application for a horizontal well unit order; owners of unleased oil and gas to be included in the horizontal well unit; operators of all target formation acreage in the horizontal well unit; and operators of all oil and gas wells located in the unit that have been drilled to or through the target formation.

(B) Bonded operators of wells drilled to or through the target formation that are not within the horizontal well unit but are located within 500 feet of a proposed horizontal well unit boundary and executive interest owners owning an interest in the target formation that is not located within the horizontal well unit but is located within 500 feet of a proposed horizontal well unit boundary may submit written comments regarding the horizontal well unit application at any time before the start of any hearing regarding the application, but are not interested parties and may not participate in the hearing nor have the right to appeal the commission's decision regarding the application.

(2) Each notice issued in accordance with this section shall describe the area for which a horizontal well unit order is proposed in recognizable, narrative terms and contain such other information as is essential to the giving of proper notice, including the time and date and place of a hearing. As soon as practicable the commission shall establish a website. Within three business days of the filing of an application under this section, the commission shall publish on its website a copy of: (i) The horizontal well unit application notice required to be published pursuant to this section and section five of this article; and (ii) the proposed horizontal well unit plat filed with the application, both identified as a horizontal well unit application and indexed by county and district where the majority of the acreage to be included in the proposed horizontal well unit is located, so that the plat and notice of the application are readily accessible. Timely publication on the website for a period of 10 business days shall be notice to all operators.

(3) Upon request of any interested party or the commission, the commission shall conduct a hearing and receive evidence regarding the application. All interested parties may participate in any hearing. If a hearing has been held regarding an application, the order shall be a final order. If no hearing has been requested by the commission or an interested party within 15 days after notice of the application is posted on the commission website in accordance with subdivision (2) of this subsection, the commission may issue a proposed order and provide a copy of the proposed order, together with notice of the right to appeal to the commission and request a hearing, to all interested parties. Any interested party aggrieved by the proposed order may appeal the proposed order to the commission and request a hearing. Notice of appeal and request for hearing shall be made within 15 days of entry of the proposed order. If no appeal and request for hearing have been received within 15 days, the proposed order shall become final. If a hearing is requested, the hearing shall commence within 45 days of issuance of the initial notice. The commission may, upon written request, extend the date for the hearing: *Provided*, That the hearing must be convened within 45 days of the initial notice issued by the commission. The commission shall, within 20 days of the hearing, enter an order authorizing the unit, dismiss the application, or for good cause continue the process.

(4) At least 10 days prior to a hearing to consider an application for a horizontal well unit order, the applicant shall file with an independent, third-party attorney, or accountant selected by the chair of the commission a summary of:

(A) The prevailing economic terms of the leases within the proposed horizontal well unit relating to the target formation where the applicant is the operator, including the bonus payment per net mineral acre and production royalty rate, including whether the production royalty is subject to reduction for post-production expenses; and

(B) The prevailing amounts paid to the executive interest royalty owners, per net mineral acre, for the modification of leases relating to the target formation within the proposed unit where the applicant is the operator to allow the lessee to unitize the leased tract with other tracts for purposes of drilling horizontal wells.

(C) The independent, third-party selected by the chair of the commission shall review the economic information filed by the applicant to determine its accuracy and, upon completion of his or her review, shall submit a report to the commission specifying the following information for inclusion by the commission in the horizontal well unit order:

(i) The weighted average monetary bonus paid, per net mineral acre, to executive interest owners by the applicant in connection with other leases in the same target formation controlled

by the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) and §22C-9-7a(f)(7)(B)(ii) of this code;

(ii) The weighted average production and highest royalty percentage, calculated on a net mineral acre basis, of the leases in the same target formation controlled by the applicant within the horizontal well unit, as provided in §22C-9-7a(f)(6) of this code; and

(iii) The highest production royalty percentage in the unit in connection with other leases in the same target formation controlled by the applicant within the horizontal well until and dated within the 24 months preceding the application date, as provided in §22C-9-7a(f)(7)(B)(ii) of this code.

(D) The reasonable fees and expenses of the independent, third-party selected by the chair of the commission to review the information filed by the applicant and render his or her report to the commission pursuant to this subsection shall be paid by the applicant.

(E) When filing information with the independent third-party selected by the chair of the commission, the applicant may mark the summary of the prevailing economic terms of leases and amounts paid for lease modifications, and any associated documents or information, as "CONFIDENTIAL" to the extent that the documents contain confidential, commercial information. Any information marked "CONFIDENTIAL" may only be used by the independent third-party selected by the chair of the commission for the purpose of performing his or her review and preparation and submission of his or her report to the commission, and by the court for the purpose of any appeal pursuant to §22C-9-7a(g)(5) of this code. All information marked "CONFIDENTIAL" pursuant to this subdivision shall retain that character in any court of competent jurisdiction on appeal, and the applicant may file a motion with the court seeking to have the documents sealed and withheld from the public record throughout the appeal from a final order of the commission pertaining to a horizontal well unit order. Furthermore, any information marked "CONFIDENTIAL" pursuant to this subdivision is exempt from disclosure under §29B-1-1 *et seq.* of this code.

(5) An order establishing a horizontal well drilling unit or dismissing an application shall be a final order. Any interested party aggrieved by the order may seek judicial review pursuant to section eleven of this article. Notice of appeal shall be made in accordance with §22C-9-11 of this code within 15 days of entry of the order. If no appeal has been received within 15 days, the order shall become final.

(h) *Unit order does not grant surface rights*. — A horizontal well unit order under this section does not grant or otherwise affect surface use rights: *Provided*, That without limiting the foregoing, in no event shall drilling be initiated upon, or other surface disturbance occur upon, the surface of or above a tract of minerals that was forced into the unit pursuant to this section without the owner's consent.

(i) *Commission approval required for certain additional drilling*. — After the filing of an application for a horizontal well unit order, no well may be drilled or completed to or through the target formation of the proposed horizontal well unit unless authorized by the commission.

(j) *Contemporaneous permit applications authorized.*— Notwithstanding anything to the contrary in §22-6A-1 *et seq.* of this code, upon the filing of an application for a horizontal well unit order pursuant to this section, an applicant may file an application for a well work permit under

§22-6A-1 *et seq.* of this code for any proposed development within the horizontal well unit for which the unit order is sought.

(k) *A party may appear in person*. — At any hearing an interested party may represent themselves or be represented by an attorney-at-law.

(l) No provision of this section alters the common law of this state regarding the deduction of post-production expenses for the purpose of calculating royalty.

(m) *Conflict resolution*. — After the effective date of this section, all applications requesting unitization for horizontal wells shall be filed pursuant to this section. Deep well horizontal unit applications filed before the effective date of this section shall continue to proceed under and be governed by the provisions of section seven of this article. With respect to horizontal well unit applications filed after the effective date of this section, if this section conflicts with section seven of this article, the provisions of this section shall prevail. When considering an application pursuant to this section, rules regarding deep wells promulgated before the effective date of this section shall not apply.

(n) *Unknown and unlocatable interest owners*. — Notwithstanding the existence of unknown and unlocatable interest owners, a horizontal well unit order may be entered and development, drilling and production may occur in the horizontal well unit. Unknown and unlocatable interest owners of oil and gas in place not subject to lease shall be considered to have made an election to receive unitization consideration and lease their interest in the oil and gas mineral estate in the target formation to the applicant pursuant to §22C-9-7a(f)(7)(B) of this code. Unknown and unlocatable interest owners of working interest in property subject to lease before an application for a horizontal well unit is filed pursuant to this section shall be considered to have elected to participate in the drilling in the horizontal well unit on a carried basis pursuant to §22C-9-7a(f)(9) and §22c-9-7a(f)(10) of this code.

(o) *Opportunity of surface owners to acquire interests of unknown and unlocatable interest owners in oil and gas underlying horizontal well unit*. —

(1) When the interests of unknown and unlocatable interest owners' property is included in a horizontal well unit, if the applicant has not filed a proceeding pursuant to §55-12A-1 *et seq.* of this code (entitled Lease and Conveyance of Mineral Interests Owned by Missing or Unknown Owners or Abandoning Owners) with respect to the interest of an unknown and unlocatable interest owner in the horizontal well unit, and taxes on the unknown and unlocatable interest owners' property are not delinquent, then, after a horizontal well unit order is entered by the commission, the applicant shall inform the parties paying taxes on the surface overlying that portion of the oil and gas included in the horizontal well unit that the surface owner(s) (TSO) may acquire the underlying interest of the unknown and unlocatable interest owners in the horizontal well unit in a proceeding pursuant to this subsection and that information about the interest may be obtained from the applicant. Upon written request to the applicant by any TSO, the applicant shall, to the extent practicable under the circumstances, furnish the requesting TSO the following information: *Provided,* That applicant is not required to provide confidential, trade secret, attorney client communications or attorney work product:

(A) An identification of the last known owner, and information in the possession of the applicant regarding the last known identity and address of, the interest believed to be held by unknown and unlocatable interest owners,

(B) The efforts to locate unknown and unlocatable interest owners,

(C) Such other information known to the applicant which might be helpful in identifying or locating the present owners thereof,

(D) A copy of the most recent recorded instrument embracing the interest of the unknown and unlocatable interest owners as necessary to show the vesting of title to the minerals in the last record owner of the title to the minerals.

(E) The acreage of the tract and the net acreage of the unknown or unlocatable mineral owner or owners in the tract.

(F) The amount of money at any point to which the surface owners would be entitled upon written request.

(2) When an unknown and unlocatable interest in oil and gas is included in a horizontal well unit an owner of the surface overlying the interest may file a verified petition with respect to all the interests of unknown and unlocatable interest owners included in a horizontal well unit and underlying the surface owner's property. The circuit court in which the majority of the property subject to the petition authorized by this subsection is located has jurisdiction of the proceeding. The petition shall refer to this subsection and identify the oil and gas property subject to the petition. The prayer in any such petition shall be for the court to order, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest for five years after the date the unit order is filed, a conveyance of the defendants' oil and gas mineral interest under this subsection, subject to the horizontal well unit order and lease terms approved by the commission, to the petitioners.

(3) In any proceeding authorized in this subsection the circuit court in which the petition is filed shall consider the property subject to the petition leased to the participating operators in the horizontal well unit on the terms determined by the commission.

(4) The person filing a petition under this subsection shall join as defendants to the action all unknown and unlocatable interest owners having record title to the particular oil and gas minerals subject to the petition, and the unknown heirs, successors and assigns of all such owners not known to be alive. All persons not in being who might have some contingent or future interest therein, and all persons whether in being or not in being, having any interest, present, future or contingent, in the mineral interests subject to the petition, shall be fully bound by the proceedings under this subsection.

(5) Any other owner of an overlying surface tract shall be joined as a petitioner in the proceeding. Any other person purporting to be the unknown and unlocatable interest owner, or any heir, successor or assign of an unknown and unlocatable interest owner, may appear as a matter of right at any time prior to the entry of judgment confirming the deed authorized by this subsection, for the purpose of establishing his or her title to a mineral interest subject to the petition. If the appearing unknown and unlocatable interest owner's claim is established to the satisfaction of the court, the court shall dismiss the action as to the appearing owner's interest without cost, fees or damages: *Provided,* That if the appearance of the formerly unknown and unlocatable interest owner was as a result of the filing of the petition by the surface owner pursuant to this subsection, then the court may order the petitioner's reasonable proportionate attorneys' fees and costs to be paid to the petitioner out of the amounts payable to the formerly unknown and unlocatable interest owner.

(6) The court may appoint a special commissioner at any time to deliver a deed to the petitioners in the form provided herein five years after first production reported to the state occurs or one year after the first publication service of a petition under this subsection is made, whichever is later. The special commissioner shall be an attorney duly admitted to practice before the West Virginia Supreme Court of Appeals and in good standing, but may not be required to give bond. If the petitioners do not agree as to the interest each is to acquire by the deed contemplated herein, or the division of any moneys associated therewith, the court shall equitably determine the interests of the petitioners.

(7) In any action under this subsection, if personal service of process is possible, it shall be made as provided by the West Virginia Rules of Civil Procedure. In addition, immediately upon the filing of the petition, the petitioner shall: (1) Publish a Class II legal advertisement in compliance with the provisions of §59-3-1 *et seq.* of this code, and in the county wherein any part of the oil and gas mineral estate described in the petition lies and any immediately adjacent counties; and (2) no later than the first day of publication, file a lis pendens notice in the county clerk's office of the county where the petition is filed and the county wherein the larger part of the oil and gas mineral estate described in the petition lies. Both the advertisement and the lis pendens notice shall set forth: (1) The names of the petitioner and the defendants, as they are known to be by the exercise of reasonable diligence by the petitioner, and their last known addresses; (2) the date and record data of the instrument or other conveyance which immediately created the oil and gas mineral interest; (3) an adequate description of the land as contained therein; (4) the source of title of the last known owners of the oil and gas mineral interests; and (5) a statement that the action is brought for the purpose of authorizing payments from a horizontal well unit, and thereafter, in the case of any defendant or heir, successor or assign of any defendant who does not appear to claim ownership of the defendant's interest within five years after the date of the court ordering a conveyance of the defendant's oil and gas mineral interest under this subsection, subject to the lease terms determined by the commission and horizontal well unit order, to the owners of the surface overlying the oil and gas mineral interest. In addition, the petitioner shall send notice by certified mail, return receipt requested, to the last known address, if there is one, of all named defendants. In addition, the court may order advertisement elsewhere or by additional means if there is reason to believe that additional advertisement might result in identifying and locating the unknown and unlocatable interest owners.

(8) Upon a finding by the court of the present ownership of the petitioners of the surface estate, the court shall order the special commissioner to convey to the proven surface owners, subject to the horizontal well unit order and lease terms approved by the commission, the mineral interest specified in the petition authorized herein, by a deed substantially in the form as follows:

This deed, made the day of , 20 , between , special commissioner, grantor and , grantee,

Witnesseth, that whereas, grantor, in pursuance of the authority vested in him or her by an order of the circuit court of county, West Virginia, entered on the day of , 20 , in civil action no. therein pending, to convey the mineral interest more particularly described below to the grantee,

Now, therefore, this deed witnesseth: That grantor grants unto grantee, subject to the provisions of the horizontal well unit order of the Oil and Gas Conservation Commission in and lease terms provided therein, and further subject to all other liens and encumbrances of record, that certain oil and gas mineral interest in County,

West Virginia, more particularly described in the cited order of the circuit court as follows: (here insert the description in the order).

Witness the following signature.

_____

Special Commissioner

(9) Prior to the delivery of the special commissioner's deed, no deed from owners of the surface to another party shall sever any benefits from this subsection from ownership of the surface. A deed doing so is void and unenforceable.

(10) After the date of the special commissioner's deed authorized herein, the surface owner grantee is entitled to receive all proceeds due and payable under a horizontal well unit order attributable to the mineral interests specified in the special commissioner's deed accruing before and after the date of the special commissioner's deed.

(11) The applicant may not be joined as a party, but shall be served with copies of all pleadings and other papers filed in the proceeding, and may intervene at any time. A surface owner must provide a copy of the recorded Special Commissioner deed to the applicant and any other necessary information reasonably requested by the applicant before the applicant or any other operator has an obligation to provide payment to the surface owner.

(12) Payment by the applicant shall relieve the participating operators of all liability whatsoever that the participating operators may have had to any unknown and unlocatable interest owners, their heirs, successors and assigns with respect to the payment and all operations in the horizontal well unit, all operations therein and all production from the operations.

(13) If a surface owner does not file a petition pursuant to this subsection within six years of the date notice is given to a TSO as provided herein, amounts payable with respect to the unknown and unlocatable interest owners' interests included in a horizontal well unit shall be paid to the Oil and Gas Reclamation Fund established pursuant to §22-6-29 of this code, and the payment shall relieve the participating operators of all liability of the participating operators with respect to the horizontal well unit and all operations therein and production therefrom to any unknown and unlocatable interest owners, their heirs, successors and assigns and to any owners of surface overlying the unknown and unlocatable interest owners' interest, their heirs, successors and assigns, with respect to the payment.

(14) After the recording of the special commissioner's deed, no action may be brought by any unknown and unlocatable interest owner or any heir, successor or assign thereof either to recover any past or future proceeds accrued or to be accrued from the property subject to the deed, or to recover any right, title or interest in and to the mineral interest subject to the deed.

(15) If any unknown and unlocatable interest owner or heir, successor or assign thereof appears in the proceeding in circuit court, the unknown and unlocatable interest owner, if he or she establishes his or her claim to the satisfaction of the circuit court, shall only be entitled to receive amounts payable in connection with the horizontal well unit or production therefrom after the date of appearance in the proceeding. Further, the participating operators and the petitioning surface owners shall have no liability to the unknown and unlocatable interest owner or their heirs,

successors or assigns for any amount paid with respect to the unknown and unlocatable interest or the horizontal well unit or production therefrom paid in accordance with this subsection.

(p) If any part of this section is adjudged to be unconstitutional or invalid, the invalidation shall not affect the validity of the remaining parts of this section; and to this end, the provisions of this section are hereby declared to be severable.;

And,

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

Eng. Com. Sub. for Senate Bill 694—A Bill to amend and reenact §22C-9-1, §22C-9-2, §22C-9-3, §22C-9-4, and §22C-9-5 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §22C-9-7a, all relating to oil and gas conservation; expanding the membership of the Oil and Gas Conservation Commission; expanding the jurisdiction of the Oil and Gas Conservation Commission; expanding duties of the commission to include unitization of shallow and deep horizontal wells; amending and providing further declarations of public policy and legislative findings; defining terms; providing for conditions of applicability of the statute; establishing a horizontal well unit application process; requiring certain conditions be met prior to filing and approval of an application including defining percentages of interests of landowners and operators to establish unit control; requiring good faith negotiations by operators; providing for hearings on applications; setting out factors to be considered in the hearing and documents to be filed before a hearing; providing for notice and publication at various stages of the process; defining interested parties and their involvement in the hearing processes; providing for standards of review and factors to be considered by the commission; providing for maximum unit sizes with limited exceptions; providing for an independent third party review of certain information and reporting of the same to the commission; providing for confidentiality of certain information; setting forth time frames and time limits; providing for a horizontal well unit orders and required contents of the orders; defining order terms; providing limitations on surface usage above non-consenting mineral owners; providing for payment terms for leased mineral interest owners without unitization clauses; providing for payment term options for non-leased mineral interest owners; providing payment term options for nonconsenting operators; allowing for modifications of the horizontal well unit order under specified conditions; providing for compensation for unknown and unlocatable mineral interest owners and defining the same; establishing a process using the courts for surface owners to acquire the mineral interests and funds held by the operator of unknown or unlocatable interest owners after a specified time period, notices, and court proceedings; providing applicability of the existing and new statutory sections for deep wells based on the effective date; providing a severability clause; and establishing and modifying rulemaking authority.

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

Engrossed Committee Substitute for Senate Bill 694, as amended by the House of Delegates, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Boley, Grady, Hamilton, Jeffries, Karnes, Lindsay, Maroney, Martin, Maynard, Nelson, Phillips, Plymale, Roberts, Rucker, Smith, Stover, Swope, Takubo, Tarr, Trump, Weld, Woodrum, and Blair (Mr. President)—24.

The nays were: Baldwin, Brown, Caputo, Clements, Geffert, Romano, Stollings, and Sypolt—8.

Absent: Beach and Woelfel—2.

So, a majority of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for S. B. 694) passed with its House of Delegates amended title.

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

The Senate proceeded to the ninth order of business.

Eng. House Bill 2631, Provide for WVDNR officers to be able to work "off duty".

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

Eng. Com. Sub. for House Bill 4020, Relating to reorganizing the Department of Health and Human Resources.

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

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

Eng. Com. Sub. for House Bill 4050, Defining terms related to livestock trespassing.

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

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

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

ARTICLE 18. GENERAL STOCK LAW.

§19-18-1. Livestock trespassing on property of another; damages for injuries to person or property; notice to livestock owner; containment of livestock; costs for containment.

(a) If livestock enters the property of a landowner without that landowner's consent, the owner of the livestock is liable for damages for personal injury or property damage in a civil action in magistrate or circuit court.

(b) The landowner must attempt to contact the owner of the trespassing livestock within 48 hours of the trespass. If the owner cannot be contacted within 48 hours, the landowner shall notify the county sheriff.

(c) The landowner may contain the trespassing livestock on his or her property, but is not required to do so. If the landowner is able to contact the owner of the trespassing livestock

pursuant to subsection (a) of this section, he or she shall also inform the owner of the costs of containment and shall allow the owner to retrieve the livestock.

(d) The owner of the trespassing livestock and the landowner shall attempt to mutually agree upon a fair cost for any containment. A fair cost for containment is an amount which would be allowed for the sheriff for containing similar livestock. If the negotiation fails, or if the landowner is not otherwise reimbursed for the costs for containment, the landowner may seek monetary damages in a civil action for these costs.

(e) "Livestock" is defined as an animal of the bovine, equine, porcine, ovine or caprine specie, domestic poultry, peafowl, guineafowl, leporidae, camelid, emu, and captive cervid as defined in §19-2H-2 of this code.

The bill (Eng. Com. Sub. for H. B. 4050), as amended, was then ordered to third reading.

Eng. House Bill 4296, To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers' compensation.

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

Eng. Com. Sub. for House Bill 4311, Creating criminal penalties for illegal voting activity.

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

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

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

ARTICLE 7. CONTESTED ELECTIONS.

§3-9-17. Illegal voting; deceiving voters; penalties.

(a) Any person who knowingly and willfully votes or attempts to vote more than once at the same election held in this state; in more than one county in this state at the same or equivalent election; or, in this state and another state or territory at the same or equivalent election, irrespective of different offices, questions, or candidates on the ballot, knowing the same to be illegal, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than $10,000, or both, in the discretion of the court.

(b) ~~If any~~ Any person who knowingly and willfully votes or attempts to vote when the person knows he or she is not legally entitled to do so; ~~or votes more than once in the same election; or knowingly votes or attempts to vote more than one ballot for the same office, or on the same question~~ or procures or assists in procuring an illegal vote to be admitted, or received, at an election, knowing the same to be illegal; or causes or assists in causing a legal vote to be rejected, knowing the same to be legal~~; or~~, is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than $10,000, or both, in the discretion of the court.

(c) Any person who knowingly and willfully, with intent to deceive, alters the ballot of a voter by marking out the name of any person for whom such voter desires to vote; or, with like intent, writes the name of any person on such ballot other than those directed by the voter; or with like intent, makes any alteration thereof, whether such ballot be voted or not; or defrauds any voter at any election, by deceiving and causing him or her to vote for a different person for any office than he or she intended or desired to vote for, ~~he shall be guilty of a misdemeanor, and, on conviction thereof, shall for each offense be fined not more than $1,000 or confined in the county jail for not more than one year,~~ is guilty of a felony and, on conviction thereof, shall be imprisoned for not less than one year but not more than 10 years, or fined not more than $10,000, or both, in the discretion of the court.

The bill (Eng. Com. Sub. for H. B. 4311), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4329, To clarify the definition of an "interested person" for purposes of the West Virginia Small Estate Act.

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

Eng. House Bill 4331, West Virginia's Urban Mass Transportation Authority Act.

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

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

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

ARTICLE 27. INTERGOVERNMENTAL RELATIONS — URBAN MASS TRANSPORTATION SYSTEMS.

§8-27-21a. Federal grants; wage deductions.

Notwithstanding any provision of this code to the contrary, the term "deductions", as defined in §21-5-1 of this code and applied to the wages of an employee of an urban mass transportation authority under this article which is a direct or indirect recipient of federal funding from the Federal Transit Administration pursuant to the Urban Mass Transportation Act of 1964, as amended, includes amounts authorized for union or labor organization dues or fees. This section applies only to urban mass transportation authorities under this article.

Following discussion,

The question being on the adoption of the Judiciary committee amendment to the bill, the same was put and prevailed.

The bill (Eng. H. B. 4331), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4441, Creating a Class M air rifle stamp.

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

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

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

ARTICLE 2. WILDLIFE RESOURCES.

§20-2-5k. Use of air rifles to hunt.

(a) Notwithstanding any other provision of this code to the contrary, any person lawfully entitled to hunt may hunt with an air rifle during small game and big game firearms season: *Provided*, That air rifles may only be used for deer hunting in counties open to firearm deer hunting.

(b) An air rifle may not be substituted for a muzzleloader during any muzzleloader season or during the Mountaineer Heritage season.

(c) No person may be afield with an air rifle and bow, or with an air rifle or any arrow at the same time.

(d) No person may hunt with an air bow at any time.

(e) Any person hunting with an air rifle is subject to all other rifle and firearm hunting regulations according to this chapter and rules promulgated thereunder.

(f) Only air rifles meeting the following specifications may be used for hunting big game:

(1) No person may hunt big game with an air rifle of less than .45 caliber and with a bullet of less than 200 grains, except that wild turkey may be hunted with an air rifle of .22 caliber or larger.

(2) No person may hunt small game with an air rifle of less than .22 caliber.

(g) Air rifles may be shot within 500 feet of a dwelling.

The bill (Eng. Com. Sub. for H. B. 4441), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4466, Relating to School Building Authority's review of school bond applications.

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

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

On page eight, section fifteen, lines one hundred sixty-five through one hundred eighty, by striking out all of subdivision (2) and inserting in lieu thereof a new subdivision (2), to read as follows:

(2) A county board may apply to the authority for funding under this article as a part of the county's bond finance plan for a proposed capital improvement bond levy to be submitted to the voters of that county. The county board shall first submit a request for the funding to the executive director of the authority prior to the county board's proposed bond levy election. After initial

consultation with the executive director, the county board shall prepare a written outline of the bond finance plan, the capital improvements to be made with levy funds, and the amount and timing of funding requested from the authority. The county board shall then present its request at a meeting of the members of the authority.

Grants of financial assistance that have received initial approval under this section are contingent upon passage of the bond levy and final approval by the School Building Authority of the county's bond finance plan. Any materials produced by the county or its county board that refer to the authority shall include a statement of this contingency and terms. Notwithstanding any other provision of this subsection, financial assistance to be provided by the authority may only be used to pay costs of capital improvements and may not be pledged as security for or repayment of any bonds issued by the county board.

Upon passage of bond levy, the county board shall have four years to finalize the project: *Provided,* That the authority may grant an extension to the four years in extenuating circumstances.

The provisions of this subsection do not apply to any proposed capital improvement bond levy that is scheduled to be submitted to the voters on or before December 31, 2022.

The bill (Eng. Com. Sub. for H. B. 4466), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4540, To update all retirement plans to comport with federal law.

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

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

Eng. Com. Sub. for House Bill 4560, Relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers.

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

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

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

ARTICLE 6A. MOTOR VEHICLE DEALERS, DISTRIBUTORS, WHOLESALERS, AND MANUFACTURERS.

§17A-6A-2. Governing law.

(a) In accord with the settled public policy of this state to protect the rights of its citizens, each franchise or agreement between a manufacturer or distributor and a dealer or dealership which is located in West Virginia, or is to be performed in substantial part in West Virginia, shall be construed and governed by the laws of the State of West Virginia, regardless of the state in which it was made or executed and of any provision in the franchise or agreement to the contrary. The

public policy of this state is to protect the rights of its citizens and each new motor vehicle dealer for any agreement governed by this article.

(b) The provisions of this article apply only to any franchises and agreements entered into, continued, modified, or renewed subsequent to the effective date of this article.

§17A-6A-3. Definitions.

For the purposes of this article, the words and phrases defined in this section have the meanings ascribed to them, except where the context clearly indicates a different meaning.

(1) "Dealer agreement" means the franchise, agreement, or contract in writing between a manufacturer, distributor, and a new motor vehicle dealer which purports to establish the legal rights and obligations of the parties to the agreement or contract with regard to the operation and business of a new motor vehicle dealer, including, but not limited to, the purchase, lease, or sale of new motor vehicles, accessories, service, and sale of parts for motor vehicles where applicable.

(2) "Designated family member" means the spouse, child, grandchild, parent, brother, or sister of a ~~deceased~~ new motor vehicle dealer who is entitled to inherit the ~~deceased~~ dealer's ownership interest in the new motor vehicle dealership under the terms of the dealer's will, or who has otherwise been designated in writing by a deceased dealer to succeed the deceased dealer in the new motor vehicle dealership, or is entitled to inherit under the laws of intestate succession of this state. With respect to an incapacitated new motor vehicle dealer, the term means the person appointed by a court as the legal representative of the new motor vehicle dealer's property. The term also includes the appointed and qualified personal representative and the testamentary trustee of a deceased new motor vehicle dealer. However, the term means only that designated successor nominated by the new motor vehicle dealer in a written document filed by the dealer with the manufacturer or distributor, if ~~such~~ a document is filed.

(3) "Distributor" means any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer or who maintains a factor representative, resident, or nonresident, or who controls any person, resident, or nonresident who, in whole or in part, offers for sale, sells, or distributes any new motor vehicle to a new motor vehicle dealer.

(4) "Established place of business" means a permanent, enclosed commercial building located within this state easily accessible and open to the public at all reasonable times and at which the business of a new motor vehicle dealer, including the display and repair of motor vehicles, may be lawfully carried on in accordance with the terms of all applicable building codes, zoning, and other land-use regulatory ordinances and as licensed by the Division of Motor Vehicles.

(5) "Factory branch" means an office maintained by a manufacturer or distributor for the purpose of selling or offering for sale vehicles to a distributor, wholesaler, or new motor vehicle dealer, or for directing or supervising, in whole or in part, factory or distributor representatives. The term includes any sales promotion organization maintained by a manufacturer or distributor which is engaged in promoting the sale of a particular make of new motor vehicles in this state to new motor vehicle dealers.

(6) "Factory representative" means an agent or employee of a manufacturer, distributor, or factory branch retained or employed for the purpose of making or promoting the sale of new motor

vehicles or for supervising or contracting with new motor vehicle dealers or proposed motor vehicle dealers.

(7) "Good faith" means honesty in fact and the observation of reasonable commercial standards of fair dealing in the trade.

(8) "Manufacturer" means any person who manufactures or assembles new motor vehicles; or any distributor, factory branch, or factory representative and, in the case of a school bus, truck tractor, road tractor, or truck as defined in ~~section one, article one of this chapter,~~ §17A-1-1 of this code, also means a person engaged in the business of manufacturing a school bus, truck tractor, road tractor or truck, their engines, power trains, or rear axles, including when engines, power trains or rear axles are not warranted by the final manufacturer or assembler, and any distributor, factory branch, or representative.

(9) "Motor vehicle" means that term as defined in ~~section one, article one of this chapter,~~ §17A-1-1 of this code, including a motorcycle, school bus, truck tractor, road tractor, truck, or recreational vehicle, all-terrain vehicle and utility terrain vehicle as defined in subsections (c), (d), (f), (h), (l), (nn) and (vv), respectively, of in said section, but not including a farm tractor or farm equipment. The term "motor vehicle" also includes a school bus, truck tractor, road tractor, truck, its component parts, including, but not limited to, its engine, transmission, or rear axle manufactured for installation in a school bus, truck tractor, road tractor, or truck.

(10) "New motor vehicle" means a motor vehicle which is in the possession of the manufacturer, distributor, or wholesaler, or has been sold only to a new motor vehicle dealer and on which the original title has not been issued from the new motor vehicle dealer.

(11) "New motor vehicle dealer" means a person who holds a dealer agreement granted by a manufacturer or distributor for the sale of its motor vehicles, who is engaged in the business of purchasing, selling, leasing, exchanging, or dealing in new motor vehicles, service of said vehicles, warranty work, and sale of parts who has an established place of business in this state and is licensed by the Division of Motor Vehicles.

(12) "The operation and business of a new motor vehicle dealer or dealership" includes selling, leasing, exchanging, or otherwise conveying a new motor vehicle at retail and performing warranty and recall work for a motor vehicle: *Provided,* That the provisions of this subdivision do not apply to over the air updates.

~~(12)~~ (13) "Person" means a natural person, partnership, corporation, association, trust, estate, or other legal entity.

~~(13)~~ (14) "Proposed new motor vehicle dealer" means a person who has an application pending for a new dealer agreement with a manufacturer or distributor. "Proposed motor vehicle dealer" does not include a person whose dealer agreement is being renewed or continued.

~~(14)~~ (15) "Relevant market area" means the area located within a 20 air mile radius around an existing same line-make new motor vehicle dealership: *Provided*, That a 15 mile relevant market area as it existed prior to the effective date of this statute shall apply to any proposed new motor vehicle dealership as to which a manufacturer or distributor and the proposed new motor vehicle dealer have executed on or before the effective date of this statute a written agreement, including a letter of intent, performance agreement, or commitment letter concerning the establishment of the proposed new motor vehicle dealership.

§17A-6A-5. Circumstances not constituting good cause.

Notwithstanding any agreement, the following alone does not constitute good cause for the termination, cancellation, nonrenewal, or discontinuance of a dealer agreement under ~~subdivision (d), subsection (1), section four of this article:~~ §17A-6A-4 of this code.

~~(a)~~ (1) A change in ownership of the new motor vehicle dealer's dealership. This ~~subdivision~~ section does not authorize any change in ownership which would have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent which may not be unreasonably or untimely withheld.

~~(b)~~ (2) The refusal of the new motor vehicle dealer to purchase or accept delivery of any new motor vehicle parts, accessories, or any other commodity or services not ordered by the new motor vehicle dealer.

~~(c)~~ (3) The fact that the new motor vehicle dealer owns, has an investment in, participates in the management of, or holds a dealer agreement for the sale of another make or line of new motor vehicles, or that the new motor vehicle dealer has established another make or line of new motor vehicles in the same dealership facilities as those of the manufacturer or distributor: *Provided,* That the new motor vehicle dealer maintains a reasonable line of credit for each make or line of new motor vehicles, and that the new motor vehicle dealer remains in substantial compliance with the terms and conditions of the dealer agreement and with any reasonable facilities' requirements of the manufacturer or distributor.

~~(d)~~ (4) The fact that the new motor vehicle dealer designates as an executive manager or sells or transfers ownership of the dealership or sells or transfers capital stock in the dealership to the new motor vehicle dealer's spouse, son, or daughter: *Provided,* That the sale or transfer shall not have the effect of a sale or an assignment of the dealer agreement or a change in the principal management of the dealership without the manufacturer's or distributor's prior written consent, which may not be unreasonably or untimely withheld or refused in a manner inconsistent with §17A-6A-11 of this code.

~~(e)~~ (5) This section does not apply to any voluntary agreement entered into after a disagreement or civil action has arisen for which the dealer has accepted separate and valuable consideration. Any prospective agreement is void as a matter of law.

§17A-6A-8a. Compensation to dealers for service rendered.

~~(1)~~ (a) Every motor vehicle manufacturer, distributor, or wholesaler, factory branch or distributor branch, or officer, agent, or representative thereof, shall:

~~(a)~~ (1) Specify in writing to each of its motor vehicle dealers, the dealer's obligation for delivery, preparation, warranty, and factory recall services on its products;

~~(b)~~ (2) Compensate the motor vehicle dealer for warranty and factory recall service required of the dealer by the manufacturer, distributor or wholesaler, factory branch or distributor branch or officer, agent, or representative thereof;

~~(c)~~ (3) Provide the dealer the schedule of compensation, which shall be reasonable, to be paid the dealer for parts, work, and service, including reasonable and adequate allowances for

diagnostic time necessary for a qualified technician to perform the service, in connection with warranty and recall services and the time allowance for the performance of the diagnosis, work, and service. If a disagreement arises between the manufacturer, distributor, or wholesaler, factory branch or distributor branch and the new motor vehicle dealer about the time allowance for the performance of the diagnosis, work, or service, the new motor vehicle dealer shall submit a written request for modification of the time allowance. A manufacturer, distributor, or wholesaler, factory branch or distributor branch shall not unreasonably deny a written request submitted by a new motor vehicle dealer for modification of a time allowance for a specific warranty repair, or a request submitted by a new motor vehicle dealer for an additional time allowance for either diagnostic or repair work on a specific vehicle covered under warranty, provided the request includes any information and documentation reasonably required by the manufacturer, distributor, or wholesaler, factory branch or distributor branch to assess the merits of the request; and

(4) Provide compensation to a new motor vehicle dealer for assistance requested by a customer whose vehicle was subjected to an over the air or remote change, repair, or update to any part, system, accessory, or function by the vehicle manufacturer or distributor and performed at the dealership to satisfy the customer.

~~(2)~~ (b) In no event may:

~~(a)~~ (1) The schedule of compensation fail to compensate the dealers for the diagnosis, work, and services they are required to perform in connection with the dealer's delivery and preparation obligations, or fail to adequately and fairly compensate the dealers for labor time or rate, parts, and other expenses incurred by the dealer to perform under and comply with manufacturer's warranty agreements and factory recalls;

~~(b)~~ (2) Any manufacturer, distributor or wholesaler, or representative thereof, pay its dealers an amount of money for warranty or recall work that is less than that charged by the dealer to the retail customers of the dealer for nonwarranty and nonrecall work of the like kind; and

~~(c)~~ (3) Any manufacturer, distributor or wholesaler, or representative thereof, compensate for warranty and recall work based on a flat-rate figure that is less than what the dealer charges for retail work.

~~(3)~~ (c) It is a violation of this section for any manufacturer, distributor, wholesaler, or representative to require any dealer to pay in any manner, surcharges, limited allocation, audits, charge backs, or other retaliation if the dealer seeks to recover its nonwarranty retail rate for warranty and recall work.

~~(4)~~ (d) The retail rate charged by the dealer for parts is established by the dealer submitting to the manufacturer or distributor 100 sequential nonwarranty customer-paid service repair orders that contain warranty-like parts or 90 consecutive days of nonwarranty customer-paid service repair orders that contain warranty-like parts covering repairs made no more than 180 days before the submission and declaring the average percentage markup. A dealer may decide to submit a single set of repair orders for the purpose of calculating both the labor rate and parts mark-up, or submit separate sets of repair orders for a labor rate and parts mark-up calculation .

~~(5)~~ (e) The retail rate customarily charged by the dealer for labor rate must be established using the same process as provided under subsection ~~(4)~~(d) of this section and declaring the average labor rate. The average labor rate must be determined by dividing the amount of the dealer's total labor sales by the number of total hours that generated those sales. If a labor rate

and parts markup rate simultaneously declared by the dealer, the dealer may use the same repair orders to complete each calculation as provided under subsection ~~(4)~~(d) of this section. A reasonable allowance for labor for diagnostic time shall be either included in the manufacturer's labor time allowance or listed as a separate compensable item. A dealer may request additional time allowance for either diagnostic or repair time for a specific repair, which request shall not be unreasonably denied by the manufacturer.

~~(6)~~ (f) In calculating the retail rate customarily charged by the dealer for parts and labor, the following work may not be included in the calculation:

~~(a)~~ (1) Repairs for manufacturer or distributor special events, specials, or promotional discounts for ~~retain~~ customer repairs;

~~(b)~~ (2) Parts sold at wholesale;

~~(c)~~ (3) Routine maintenance not covered under any retail customer warranty, including bulbs, batteries, fluids, filters, and belts not provided in the course of repairs;

~~(d)~~ (4) Nuts, bolts, fasteners, and similar items that do not have an individual part number;

~~(e)~~ (5) Tires; and

~~(f)~~ (6) Vehicle reconditioning.

~~(7)~~ (g) The average of the parts markup rates and labor rate is presumed to be reasonable and must go into effect 30 days following the manufacturer's approval. A manufacturer or distributor ~~may~~ must approve or rebut the presumption by demonstrating that the submitted parts markup rate or labor rate is: (1) fraudulent or inaccurate; (2) not established in accordance with this section; or (3) the submitted parts markup rate or labor rate is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles, not later than 30 days after submission. If the average parts markup rate or average labor rate is ~~rebutted, or both~~ disputed by the manufacturer or distributor, the manufacturer or distributor shall provide written notice to the new motor vehicle dealer stating the specific reasons for the rebuttal, providing a full explanation of the reasons for the allegation, and providing a copy of all calculations used by the manufacturer or distributor in determining the manufacturer or distributor's position if the manufacturer's or distributor's objection is based on the accuracy or reasonableness of the new motor vehicle dealer's rate submission, propose an adjustment of the average percentage parts markup or labor rate based on that rebuttal not later than 30 days after submission. If the new motor vehicle dealer does not agree with the manufacturer's proposed average percentage parts markup or labor rate, the new motor vehicle dealer may file a civil action in the circuit court for the county in which it operates not later than 90 days after receipt of that proposal by the manufacturer or distributor. In the event a civil action is filed, the manufacturer or distributor has the burden of proof to establish by a preponderance of the evidence that the new motor vehicle dealer's submitted parts markup rate or labor rate was fraudulent, inaccurate, not established in accordance with this section, or is unreasonable in light of the practices of all other same line-make franchised motor vehicle dealers in an economically similar area of the state offering the same line-make vehicles.

~~(8)~~ (h) Each manufacturer, in establishing a schedule of compensation for warranty work, shall rely on the vehicle dealer's declaration of hourly labor rates and parts as stated in subsections ~~(4), (5) and (6)~~ (d), (e) and (f) of this section and may not obligate any vehicle dealer to engage

in unduly burdensome or time-consuming documentation of rates or parts, including obligating vehicle dealers to engage in transaction-by-transaction or part-by-part calculations.

~~(9)~~ (i) A dealer or manufacturer may demand that the average parts markup or average labor rate be calculated using the process provided under subsections ~~(4) and (5)~~ (d) and (e) of this section; however, the demand for the average parts markup may not be made within 12 months of the last parts markup declaration and the demand for the average labor rate may not be made within 12 months of the last labor rate declaration. If a parts markup or labor rate is demanded by the dealer or manufacturer, the dealer shall determine the repair orders to be included in the calculation under subsections ~~(4) and (5)~~ (d) and (e) of this section.

~~(10)~~ (j) As it applies to a school bus, truck tractor, road tractor, and truck as defined in ~~section one, article one of this chapter~~, §17A-1-1 of this code with a gross vehicle weight ~~on~~ in excess of 26,001 pounds the manufacturer, distributor and/or O. E. M. supplier shall pay the dealer its incurred actual time at the retail labor rate for retrieving a motor vehicle and returning a motor vehicle to the dealer's designated parking area. The dealer shall be paid $50 minimum for each operation that requires the use of each electronic tool (i.e. laptop computer). The manufacturer or distributor may not reduce what is paid to a dealer for this retrieval or return time, or for the electronic tool charge. The dealer is allowed to add to a completed warranty repair order three hours for every 24 hours the manufacturer, distributor, and/or O. E. M. supplier makes the dealer stop working on a vehicle while the manufacturer, distributor, and/or O. E. M. supplier decides how it wants the dealer to proceed with the repairs.

~~(11)~~ (k) All claims made by motor vehicle dealers pursuant to ~~the~~ this section for compensation for delivery, preparation, warranty, and recall work, including labor, parts, and other expenses, shall be paid by the manufacturer within 30 days after approval and shall be approved or disapproved by the manufacturer within 30 days after receipt. When any claim is disapproved, the dealer shall be notified in writing of the grounds for disapproval. ~~No~~ A claim which has been approved and paid may not be charged back to the dealer unless it can be shown that the claim was false or fraudulent, that the repairs were not properly made or were unnecessary to correct the defective condition or the dealer failed to reasonable substantiate the claim in accordance with the reasonable written requirements of the manufacturer or distributor in effect at the time the claim arose. No charge back may be made until the dealer has had notice and an opportunity to support the claim in question. ~~No~~ An otherwise valid reimbursement claims may not be denied once properly submitted within manufacturers' submission guidelines due to a clerical error or omission, a dealer's incidental failure to comply with a specific non-material claim processing requirement or administrative technicality, or based on a different level of technician technical certification or the dealer's failure to subscribe to any manufacturer's computerized training programs. The dealer shall have 30 days to respond to any audit by a manufacturer or distributor.

~~(12)~~ (l) Notwithstanding the terms of a franchise agreement or provision of law in conflict with this section, the dealer's delivery, preparation, warranty, and recall obligations constitutes the dealer's sole responsibility for product liability as between the dealer and manufacturer and, except for a loss caused by the dealer's failure to adhere to the obligations, a loss caused by the dealer's negligence or intentional misconduct or a loss caused by the dealer's modification of a product without manufacturer authorization, the manufacturer shall reimburse the dealer for all loss incurred by the dealer, including legal fees, court costs, and damages, as a result of the dealer having been named a party in a product liability action.

(m) When calculating the compensation that must be provided to a new motor vehicle dealer for labor and parts used to fulfill warranty and recall obligations under this section, all of the following apply:

(1) The manufacturer shall use time allowances for the diagnosis and performance of the warranty and recall work and service that are reasonable and adequate for the work or services to be performed by a qualified technician;

(2) At the request of the new motor vehicle dealer, the manufacturer shall use any retail labor rate and any retail parts markup percentage established in accordance with this section in calculating the compensation;

(3) If the manufacturer provided a part or component to the new motor vehicle dealer at no cost to use in performing repairs under a recall, campaign service action, or warranty repair, the manufacturer shall provide to the new motor vehicle dealer an amount equal to the retail parts markup for that part or component, which shall be calculated by multiplying the dealer cost for the part or component as listed in the manufacturer's price schedule by the retail parts markup percentage; and

(4) A manufacturer shall not assess penalties, surcharges, or similar costs to a new motor vehicle dealer, transfer or shift any costs to a franchisee, limit allocation of vehicles or parts to a new motor vehicle dealer, or otherwise take retaliatory action against a new motor vehicle dealer based on any new motor vehicle dealer's exercise of its rights under this section. This section does not prohibit a manufacturer or distributor from increasing the price of a vehicle or part in the ordinary course of business.

§17A-6A-10. Prohibited practices.

~~(1)~~ (a) A manufacturer or distributor may not require any new motor vehicle dealer in this state to do any of the following:

~~(a)~~ (1) Order or accept delivery of any new motor vehicle, part or accessory of the vehicle, equipment, or any other commodity not required by law which was not voluntarily ordered by the new motor vehicle dealer. This section does not prevent the manufacturer or distributor from requiring that new motor vehicle dealers carry a reasonable inventory of models offered for sale by the manufacturer or distributor;

~~(b)~~ (2) Order or accept delivery of any new motor vehicle with special features, accessories, or equipment not included in the list price of the new motor vehicle as publicly advertised by the manufacturer or distributor;

~~(c)~~ (3) Unreasonably participate monetarily in any advertising campaign or contest, or purchase any promotional materials, display devices, display decorations, brand signs and dealer identification, nondiagnostic computer equipment and displays, or other materials at the expense of the new motor vehicle dealer;

~~(d)~~ (4) Enter into any agreement with the manufacturer or distributor or do any other act prejudicial to the new motor vehicle dealer by threatening to terminate a dealer agreement, limit inventory, invoke sales and service warranty, or other types of audits or any contractual agreement or understanding existing between the dealer and the manufacturer or distributor, or any manufacturer or distributor's required or designated vendor or supplier. Notice in good faith

to any dealer of the dealer's violation of any terms or provisions of the dealer agreement is not a violation of this article;

~~(e)~~ (5) Change the capital structure or financial requirements of the new motor vehicle dealership without reasonable business justification in light of the dealer's market, historical performance and compliance with prior capital structure or financial requirements and business necessity, or the means by or through which the dealer finances the operation of the dealership if the dealership at all times meets any reasonable capital standards determined by the manufacturer in accordance with uniformly applied criteria. The burden of proof is on the manufacturer to prove business justification by a preponderance of the evidence;

~~(f)~~ (6) Refrain from participation in the management of, investment in, or the acquisition of any other line of new motor vehicle or related products, provided that the dealer maintains a reasonable line of credit for each make or line of vehicle, remains in compliance with reasonable facilities requirements, and makes no change in the principal management of the dealer. Notwithstanding the terms of any franchise agreement, a manufacturer or distributor may not enforce any requirements, including facility or image requirements, that a new motor vehicle dealer establish or maintain exclusive facilities, personnel, or display space, when the requirements are unreasonable considering current economic conditions and are not otherwise justified by reasonable business considerations. The burden of proving that current economic conditions or reasonable business considerations justify ~~exclusive facilities~~ such actions is on the manufacturer or distributor and must be proven by a preponderance of the evidence;

~~(g)~~ (7) Change the location of the new motor vehicle dealership or make any substantial alterations to the dealership premises, where to do so would be unreasonable. The burden is on the manufacturer or distributor to prove reasonableness by a preponderance of the evidence;

~~(h)~~ (8) Prospectively assent to a waiver of trial by jury release, arbitration, assignment, novation, waiver, or estoppel which would relieve any person from liability imposed by this article or require any controversy between a new motor vehicle dealer and a manufacturer or distributor to be referred to a person other than the duly constituted courts of this state or the United States District Courts of the Northern or Southern Districts of West Virginia. Nothing in this article prevents a motor vehicle dealer, after a civil action is filed, from entering into any agreement of settlement, arbitration, assignment, or waiver of a trial by jury;

~~(i)~~ (9) ~~To~~ Coerce or require any dealer, whether by agreement, program, incentive provision, or otherwise, to construct improvements to its facilities or to install new signs, or other franchisor image elements that replace or substantially alter those improvements, signs or franchisor image elements completed within the ~~proceeding ten~~ preceding 15 years that were required and approved by the manufacturer, factory branch, distributor or distributor branch, or one of its affiliates. If a manufacturer, factory branch, distributor or distributor branch offers incentives or other payments to a consumer or dealer paid on individual vehicle sales under a program offered after the effective date of this subdivision and available to more than one dealer in the state that are premised, wholly or in part, on dealer facility improvements or installation of franchiser image elements required by and approved by the manufacturer, factory branch, distributor or distributor branch and completed within ~~ten~~ 15 years preceding the program shall be ~~deemed~~ determined to be in compliance with the program requirements pertaining to construction of facilities or installation of signs or other franchisor image elements that would replace or substantially alter those previously constructed or installed ~~with~~ within that ~~ten~~ 15 year period. This subdivision shall not apply to a program that is in effect with more than one dealer in the state on the effective date

of this subsection, nor to any renewal of such program, nor to a modification that is not a modification of a material term or condition of such program;

~~(j)~~ (10) ~~To~~ Condition the award, sale, transfer, relocation, or renewal of a franchise or dealer agreement or to condition sales, service, parts, or finance incentives upon site control or an agreement to renovate or make substantial improvements to a facility: *Provided*, That voluntary and noncoerced acceptance of such conditions by the dealer in writing, including, but not limited to, a written agreement for which the dealer has accepted separate and valuable consideration, does not constitute a violation; and

~~(k)~~ (11) ~~To~~ Enter into a contractual requirement imposed by the manufacturer, distributor, or a captive finance source as follows:

~~(i)~~ (A) In this section, "captive finance source" means any financial source that provides automotive-related loans or purchases retail installment contracts or lease contracts for motor vehicles in this state and is, directly or indirectly, owned, operated, or controlled by such manufacturer, factory branch, distributor or distributor branch.

~~(ii)~~ (B) It ~~shall be~~ is unlawful for any manufacturer, factory branch, captive finance source, distributor or distributor branch, or any field representative, officer, agent, or any representative of them, notwithstanding the terms, provisions, or conditions of any agreement or franchise, to require any of its franchised dealers located in this state to agree to any terms, conditions, or requirements in subdivisions ~~(a) through (j),~~ (1) through (10), inclusive, of this subsection in order for any such dealer to sell to any captive finance source any retail installment contract, loan, or lease of any motor vehicles purchased or leased by any of the dealer's customers, or to be able to participate in, or otherwise, directly or indirectly, obtain the benefits of the consumer transaction incentive program payable to the consumer or the dealer and offered by or through any captive finance source as to that incentive program.

~~(iii)~~ (C) The applicability of this section is not affected by a choice of law clause in any agreement, waiver, novation, or any other written instrument.

~~(iv)~~ (D) It ~~shall be~~ is unlawful for a manufacturer or distributor to use any subsidiary corporation, affiliated corporation, or any other controlled corporation, partnership, association, or person to accomplish what would otherwise be illegal conduct under this section on the part of the manufacturer or distributor.

~~(2)~~ (b) A manufacturer or distributor may not do any of the following:

~~(a)~~ ~~(i)~~ (1) Fail to deliver new motor vehicles or new motor vehicle parts or accessories within a reasonable time and in reasonable quantities relative to the new motor vehicle dealer's market area and facilities, unless the failure is caused by acts or occurrences beyond the control of the manufacturer or distributor, or unless the failure results from an order by the new motor vehicle dealer in excess of quantities reasonably and fairly allocated by the manufacturer or distributor. ~~No~~ A manufacturer or distributor may not penalize a new motor vehicle dealer for an alleged failure to meet sales quotas where the alleged failure is due to actions of the manufacturer or distributor;

~~(ii)~~ (2) Refuse to offer to its same line-make new motor vehicle dealers all models manufactured for that line-make, including, but not limited to, any model that contains a separate

label or badge indicating an upgraded version of the same model. This provision does not apply to motorhome, travel trailer, or fold-down camping trailer manufacturers;

~~(iii)~~ (3) Require as a prerequisite to receiving a model or series of vehicles that a new motor vehicle dealer pay an extra unreasonable acquisition fee or surcharge, or purchase unreasonable advertising displays or other materials, or conduct unreasonable facility or image remodeling, renovation, or reconditioning of the dealer's facilities, or any other type of unreasonable upgrade requirement;

(4) Use motor vehicles in transit but not yet in the new motor vehicle dealer's physical possession in any sales effective or efficiency formula to the detriment of the new motor vehicle dealer;

~~(b)~~ (5) Refuse to disclose to a new motor vehicle dealer the method and manner of distribution of new motor vehicles by the manufacturer or distributor, including any numerical calculation or formula used, nationally or within the dealer's market, to make the allocations within 30 days of a request. Any information or documentation provided by the manufacturer may be subject to a reasonable confidentiality agreement;

~~(c)~~ (6) Refuse to disclose to a new motor vehicle dealer the total number of new motor vehicles of a given model, which the manufacturer or distributor has sold during the current model year within the dealer's marketing district, zone, or region, whichever geographical area is the smallest within 30 days of a request;

~~(d)~~ (7) Increase prices of new motor vehicles which the new motor vehicle dealer had ordered and then eventually delivered to the same retail consumer for whom the vehicle was ordered, if the order was made prior to the dealer's receipt of the written official price increase notification. A sales contract signed by a private retail consumer and binding on the dealer which has been submitted to the vehicle manufacturer is evidence of each order. In the event of manufacturer or distributor price reductions or cash rebates, the amount of any reduction or rebate received by a dealer shall be passed on to the private retail consumer by the dealer. Any price reduction in excess of $5 shall apply to all vehicles in the dealer's inventory which were subject to the price reduction. A price difference applicable to new model or series motor vehicles at the time of the introduction of the new models or the series is not a price increase or price decrease. This subdivision does not apply to price changes caused by the following:

~~(i)~~ (A) The addition to a motor vehicle ~~of~~ required or optional equipment pursuant to state or federal law;

~~(ii)~~ (B) In the case of foreign-made vehicles or components, revaluation of the United States dollar; or

~~(iii)~~ (C) Any increase in transportation charges due to an increase in rates charged by a common carrier and transporters;

~~(e)~~ (8) Offer any refunds or other types of inducements to any dealer for the purchase of new motor vehicles of a certain line-make to be sold to this state or any political subdivision of this state without making the same offer available upon request to all other new motor vehicle dealers of the same line-make;

~~(f)~~ (9) Release to an outside party, except under subpoena or in an administrative or judicial proceeding to which the new motor vehicle dealer or the manufacturer or distributor are parties, any business, financial, or personal information which has been provided by the dealer to the manufacturer or distributor, unless the new motor vehicle dealer gives his or her written consent;

~~(g)~~ (10) Deny a new motor vehicle dealer the right to associate with another new motor vehicle dealer for any lawful purpose;

~~(h)~~ (11) Establish, operate, or engage in the business of a new motor vehicle dealership. A manufacturer or distributor is not considered to have established, operated, or engaged in the business of a new motor vehicle dealership if the manufacturer or distributor is:

(A) Operating a preexisting dealership temporarily for a reasonable period;

(B) Operating a preexisting dealership which is for sale at a reasonable price; and

(C) Operating a dealership with another person who has made a significant investment in the dealership and who will acquire full ownership of the dealership under reasonable terms and conditions;

~~(i)~~ (12) A manufacturer may not, except as provided by this section, directly or indirectly:

(A) Own an interest in a dealer or dealership: *Provided,* That a manufacturer may own stock in a publicly held company solely for investment purposes;

(B) Operate a new or used motor vehicle dealership, including, but not limited to, displaying a motor vehicle intended to facilitate the sale of new motor vehicles other than through franchised dealers, unless the display is part of an automobile trade show that more than two automobile manufacturers participate in; or

(C) Act in the capacity of a new motor vehicle dealer;

~~(j)~~ (13) A manufacturer or distributor may own an interest in a franchised dealer, or otherwise control a dealership, for a period not to exceed 12 months from the date the manufacturer or distributor acquires the dealership if:

~~(i)~~ (A) The person from whom the manufacturer or distributor acquired the dealership was a franchised dealer; and

~~(ii)~~ (B) The dealership is for sale by the manufacturer or distributor at a reasonable price and on reasonable terms and conditions;

~~(k)~~ (14) The 12 month period may be extended for an additional 12 months. Notice of any such extension of the original twelve-month period must be given to any dealer of the same line-make whose dealership is located in the same county, or within 20 air miles of, the dealership owned or controlled by the manufacturer or distributor prior to the expiration of the original 12 month period. Any dealer receiving the notice may protest the proposed extension within 30 days of receiving notice by bringing a declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the extension;

~~(l)~~ (15) For the purpose of broadening the diversity of its dealer body and enhancing opportunities for qualified persons who are part of a group who have historically been under represented in its dealer body, or other qualified persons who lack the resources to purchase a dealership outright, but for no other purpose, a manufacturer or distributor may temporarily own an interest in a dealership if the manufacturer's or distributor's participation in the dealership is in a bona fide relationship with a franchised dealer who:

~~(i)~~ (A) Has made a significant investment in the dealership, subject to loss;

~~(ii)~~ (B) Has an ownership interest in the dealership; and

~~(iii)~~ (C) Operates the dealership under a plan to acquire full ownership of the dealership within a reasonable time and under reasonable terms and conditions;

~~(m)~~ (16) Unreasonably withhold consent to the sale, transfer, or exchange of the dealership to a qualified buyer capable of being licensed as a new motor vehicle dealer in this state;

~~(n)~~ (17) Fail to respond in writing to a request for consent to a sale, transfer, or exchange of a dealership within 60 days after receipt of a written application from the new motor vehicle dealer on the forms generally utilized by the manufacturer or distributor for such purpose and containing the information required therein. Failure to respond to the request within the 60 days is consent;

~~(o)~~ (18) Unfairly prevent a new motor vehicle dealer from receiving reasonable compensation for the value of the new motor vehicle dealership;

~~(p)~~ (19) Audit any motor vehicle dealer in this state for warranty parts or warranty service compensation, service compensation, service or sales incentives, manufacturer rebates, or other forms of sales incentive compensation more than 12 months after the claim for payment or reimbursement has been made by the automobile dealer. ~~No~~ A chargeback ~~may~~ not be made until the dealer has had notice and an opportunity to support the claim in question within 30 days of receiving notice of the chargeback. ~~No~~ An otherwise valid reimbursement~~s~~ claims may not be denied once properly submitted in accordance with ~~the~~ material and reasonable manufacturer~~'s submission~~ guidelines unless the factory can show that the claim was false or fraudulent or that the new motor vehicle dealer failed to reasonably substantiate the claim consistent with the manufacturer's written reasonable and material guidelines. ~~due to clerical error or omission~~ This subsection does not apply where a claim is fraudulent. In addition, the manufacturer or distributor is responsible for reimbursing the audited dealer for all documented copying, postage, and administrative and personnel costs reasonably incurred by the dealer during the audit. Any charges to a dealer as a result of the audit must be separately billed to the dealer;

~~(q)~~ (20) Unreasonably restrict a dealer's ownership of a dealership through noncompetition covenants, site control, sublease, collateral pledge of lease, right of first refusal, option to purchase, or otherwise. A right of first refusal is created when:

~~(i)~~ (A) A manufacturer has a contractual right of first refusal to acquire the new motor vehicle dealer's assets where the dealer owner receives consideration, terms and conditions that are either the same as or better than those they have already contracted to receive under the proposed change of more than ~~fifty~~ 50 percent of the dealer's ownership;

~~(ii)~~ (B) The proposed change of the dealership's ownership or the transfer of the new vehicle dealer's assets does not involve the transfer of assets or the transfer or issuance of stock by the dealer or one of the dealer's owners to one of the following:

~~(A)~~ (i) A designated family member of one or more of the dealer owners;

~~(B)~~ (ii) A manager employed by the dealer in the dealership during the previous five years and who is otherwise qualified as a dealer operator;

~~(C)~~ (iii) A partnership or corporation controlled by a designated family member of one of the dealers; or

~~(D)~~ (iv) A trust established or to be established for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer's or distributor's standards, or to provide for the succession of the franchise agreement to designated family members or qualified management in the event of the death or incapacity of the dealer or its principle owner or owners;

~~(i) for the purpose of allowing the new vehicle dealer to continue to qualify as such under the manufacturer□s or distributor's standards; or~~

~~(ii) to provide for the succession of the franchise agreement to designated family members or qualified management in the event of death or incapacity of the dealer or its principle owner or owners.~~

~~(iii)~~ (C) Upon exercising the right of first refusal by a manufacturer, it eliminates any requirement under its dealer agreement or other applicable provision of this statute that the manufacturer evaluate, process, or respond to the underlying proposed transfer by approving or rejecting the proposal, is not subject to challenge as a rejection or denial of the proposed transfer by any party;

~~(iv)~~ (D) Except as otherwise provided in this ~~subsection~~ section, the manufacturer or distributor agrees to pay the reasonable expenses, including reasonable out-of-pocket professional fees which shall include, but not be limited to, accounting, legal, or appraisal services fees that are incurred by the proposed owner or transferee before the manufacturer's or distributor's exercise of its right of first refusal. Payment of the expenses and fees for professional services are not required if the dealer fails to submit an accounting of those expenses and fees within 20 days of the dealer's receipt of the manufacturer's or distributor's written request for such an accounting. Such a written account of fees and expenses may be requested by a manufacturer or distributor before exercising its right of first refusal;

~~(r)~~ (21) Except for experimental low-volume not-for-retail sale vehicles, cause warranty and recall repair work to be performed by any entity other than a new motor vehicle dealer;

~~(s)~~ (22) Make any material or unreasonable change in any franchise agreement, including, but not limited to, the dealer's area of responsibility without giving the new motor vehicle dealer written notice by certified mail of the change at least 60 days prior to the effective date of the change, and shall include an explanation of the basis for the alteration. Upon written request from the dealer, this explanation shall include, but is not limited to, a reasonable and commercially acceptable copy of all information, data, evaluations, and methodology relied on or based its decision on, to propose the change to the dealer's area of responsibility. Any information or documentation provided by the manufacturer or distributor may be produced subject to a

reasonable confidentiality agreement. At any time prior to the effective date of an alteration of a new motor vehicle dealer's area of responsibility and after the completion of any internal appeal process pursuant to the manufacturer's or distributor's policy manual, the motor vehicle dealer may petition the court to enjoin or prohibit the alteration within 30 days of receipt of the manufacturer's internal appeal process decision. The court shall enjoin or prohibit the alteration of a motor vehicle dealer's area of responsibility unless the franchisor shows, by a preponderance of the evidence, that the alteration is reasonable and justifiable in light of market conditions. If a motor vehicle dealer petitions the court, no alteration to a motor vehicle dealer's area of responsibility shall become effective until a final determination by the court. If a new motor vehicle dealer's area of responsibility is altered, the manufacturer shall allow 24 months for the motor vehicle dealer to become sales effective prior to taking any action claiming a breach or nonperformance of the motor vehicle dealer's sales performance responsibilities;

~~(t)~~ (23) Fail to reimburse a new motor vehicle dealer, at the dealer's regular rate, or the full and actual cost of providing a loaner vehicle to any customer who is having a vehicle serviced at the dealership if the provision of the loaner vehicle is required by the manufacturer;

~~(u)~~ (24) Compel a new motor vehicle dealer through its finance subsidiaries to agree to unreasonable operating requirements or to directly or indirectly terminate a franchise through the actions of a finance subsidiary of the franchisor. This subsection does not limit the right of a finance subsidiary to engage in business practices in accordance with the usage of trade in retail or wholesale vehicle financing;

~~(v)~~ (25) Discriminate directly or indirectly between dealers on vehicles of like grade, line, model, or quantity where the effect of the discrimination would substantially lessen competition;

~~(w)~~ (26) Use or employ any performance standard that is not fair and reasonable and based upon accurate and verifiable data made available to the dealer;

~~(x)~~ (27) ~~To~~ Require or coerce any new motor vehicle dealer to sell, offer to sell, or sell exclusively extended service contract, maintenance plan, or similar product, including gap or other products, offered, endorsed, or sponsored by the manufacturer or distributor by the following means:

~~(i)~~ (A) By an act of statement that the manufacturer or distributor will adversely impact the dealer, whether it is express or implied;

~~(ii)~~ (B) By a contract made to the dealer on the condition that the dealer shall sell, offer to sell, or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

~~(iii)~~ (C) By measuring the dealer's performance under the franchise agreement based on the sale of extended service contracts, extended maintenance plans, or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

~~(iv)~~ (D) By requiring the dealer to actively promote the sale of extended service contracts, extended maintenance plans or similar products offered, endorsed, or sponsored by the manufacturer or distributor;

~~(v)~~ (E) Nothing in this paragraph prohibits a manufacturer or distributor from providing incentive programs to a new vehicle dealer who makes the voluntary decision to offer to sell, sell,

or sell exclusively an extended service contract, extended maintenance plan, or similar product offered, endorsed, or sponsored by the manufacturer or distributor;

~~(y)~~ (F) Require a dealer to purchase goods or services from a vendor selected, identified, or designated by a manufacturer, factory branch, distributor, distributor branch, or one of its affiliates by agreement, program, incentive provision, or otherwise without making available to the dealer the option to obtain the goods or services of substantially similar quality and overall design from a vendor chosen by the dealer and approved by the manufacturer, factory branch, distributor, or distributor branch: *Provided,* That such approval may not be unreasonably withheld :*Provided*, *however*, That the dealer's option to select a vendor is not available if the manufacturer or distributor provides substantial reimbursement for the goods or services offered. Substantial reimbursement is equal to the difference in price of the goods and services from manufacturer's proposed vendor and the motor vehicle dealer's selected vendor: *Provided further,* That the goods are not subject to the manufacturer or distributor's intellectual property or trademark rights, or trade dress usage guidelines.

~~(3)~~ (c) A manufacturer or distributor, either directly or through any subsidiary, may not terminate, cancel, fail to renew, or discontinue any lease of the new motor vehicle dealer's established place of business except for a material breach of the lease.

~~(4)~~ (d) Except as may otherwise be provided in this article, ~~no~~ a manufacturer or franchisor may ~~sell,~~ not directly or indirectly, sell, lease, exchange, or convey a new motor vehicle to a retail customer, offer for retail sale, lease, exchange, or other conveyance a new motor vehicle; or directly finance the retail sale, lease, exchange, or other conveyance of a new motor vehicle ~~any new motor vehicle~~ to a retail customer or consumer in this state, except through a new motor vehicle dealer holding a franchise for the line-make covering such new motor vehicle. This subsection does not apply to manufacturer or franchisor sales of new motor vehicles to charitable organizations, qualified vendors, or employees of the manufacturer or franchisor.

~~(5)~~ (e) Except when prevented by an act of God, labor strike, transportation disruption outside the control of the manufacturer or time of war, a manufacturer or distributor may not refuse or fail to deliver, in reasonable quantities and within a reasonable time, to a dealer having a franchise agreement for the retail sale of any motor vehicle sold or distributed by the manufacturer, any new motor vehicle or parts or accessories to new motor vehicles as are covered by the franchise if the vehicles, parts and accessories are publicly advertised as being available for delivery or are actually being delivered.

(f) It is be unlawful for any manufacturer, factory branch, distributor, or distributor branch, when providing a new motor vehicle to a new motor vehicle dealer for offer, sale, or lease to the public, to fail to provide to the dealer a written disclosure that may be provided to a potential buyer or lessor of the new motor vehicle of each accessory or function of the vehicle that may be initiated, updated, changed, or maintained by the manufacturer or distributor through over the air or remote means, and the charge to the customer for the initiation, update, change, or maintenance that is known at the time of sale. A manufacturer or distributor may comply with this subdivision by notifying the new motor vehicle dealer that the information is available on a website or by other digital means.

(g) A manufacturer or distributor shall not attempt to coerce, threaten, or take any act prejudicial against a new motor vehicle dealer arising from the retail price at which a new motor vehicle dealer sells a new motor vehicle.

(h)Notwithstanding the terms of any franchise or agreement, or the terms of any program or policy, a manufacturer or distributor may not do any of the following if it has a dealer agreement with any new motor vehicle dealer in this state and if the manufacturer or distributor permits retail customers the option of reserving the purchase or lease of a vehicle through a manufacturer or distributor reservation system:

(1) Fail to assign any retail vehicle reservation or request to purchase or lease received by the manufacturer or distributor from a resident of this state to the franchised dealer authorized to sell that make and model which is designated by the customer, or if none is designated, to its franchised dealer authorized to sell that make and model located in closest proximity to the customer's location: *Provided*, That if the customer does not purchase or lease the vehicle from that dealer within 10 days of the vehicle being received by the dealer, or if the customer requests that the transaction be assigned to another dealer, then the manufacturer or distributor may assign the transaction to another franchised dealer authorized to sell that make and model;

(2) Prohibit or unreasonably interfere with a new motor vehicle dealer negotiating the final purchase price of the vehicle with a retail customer that has reserved the purchase or lease through a manufacturer or distributor reservation system;

(3) Prohibit or unreasonably interfere with a new motor vehicle dealer offering and negotiating directly with the customer the terms of vehicle financing or leasing through all sources available to the dealer for the retail customer that has reserved the purchase or lease of a vehicle through a manufacturer or distributor reservation system;

(4) Prohibit or unreasonably interfere with a new motor vehicle dealer's ability to offer to sell or sell any service contract, extended warranty, vehicle maintenance contract, or guaranteed asset protection (GAP) agreement, or any other vehicle-related products and services offered by the dealer with a retail customer that has reserved to purchase or lease through a manufacturer or distributor reservation system: *Provided,* That a manufacturer, distributor, or captive finance source shall not be required to finance the product or service;

(5) Prohibit or unreasonably interfere with a new motor vehicle dealer directly negotiating the trade-in value the customer will receive, or prohibit the dealer from conducting an on-site inspection of the condition of a trade-in vehicle before the dealer becomes contractually obligated to accept the trade-in value to negotiated with a retail customer that has reserved to purchase or lease a vehicle through the manufacturer or distributor reservation system;

(6) Use a third party to accomplish what would otherwise be prohibited by this subdivision;

(7) Nothing contained in this subdivision shall:

(A) Require that a manufacturer or distributor allocate or supply additional or supplemental inventory to a franchised dealer located in this state in order to satisfy a retail customer's vehicle reservation or request submitted directly to the manufacturer or distributor as provided in this section;

(B) Apply to the generation of sales leads: *Provided*, That for purposes of this subdivision the term "sales leads" shall not include any reservation or request to purchase or lease a vehicle submitted directly by a customer or potential customer to a manufacturer or distributor reservation system; or

(C) Apply to a reservation or request to purchase or lease a vehicle through the manufacturer or distributor received from the customer that is a resident of this state if the customer designates a dealer outside of this state to be assigned the reservation or request to purchase or lease or if the dealer in closest proximity to the customer's location is in another state and the manufacturer or distributor assigns the reservation or request to purchase or lease to that dealer.

(8) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any new motor vehicle dealer in this state, offer new motor vehicles through a subscription directly to a retail customer or consumer. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering new motor vehicles through a subscription program through a new motor vehicle dealer for retail sales to a customer.

(i) Notwithstanding the terms of any dealer agreement, or the terms of any manufacturer or distributor program or policy, a manufacturer or distributor may not, if it has a dealer agreement with any new motor vehicle dealer in this state, offer direct financing for the purchase, lease, or other conveyance of a motor vehicle to a retail customer. However, this subsection is not intended to prevent a manufacturer or distributor from providing or offering a financing program through a new motor vehicle dealer which is available for retail customers.

§17A-6A-11. ~~Where motor vehicle dealer deceased or incapacitated~~ Motor vehicle dealer successorship or change in executive management.

(1) Any designated family member of a ~~deceased or incapacitated~~ new motor vehicle dealer may succeed the dealer in the ownership or operation, or be a designated executive manager of the dealership under the existing dealer agreement if the designated family member gives the manufacturer or distributor written notice of his or her intention to succeed to, or be designated as the executive manager of, the dealership within 120 days after the dealer's death or incapacity or designation of a successor or executive manager, and agrees to be bound by all of the terms and conditions of the dealer agreement, and the designated family member meets the current criteria generally applied by the manufacturer or distributor in qualifying new motor vehicle dealers or executive managers. A manufacturer or distributor may refuse to honor the designation or change ~~existing dealer agreement~~ with the designated family member only for good cause. In determining whether good cause exists for refusing to honor the agreement, the manufacturer or distributor has the burden of proving that the designated successor is a person who is not of good moral character or does not meet the manufacturer's existing written, reasonable, and uniformly applied standards for business experience and financial qualifications. The designated family member will have a minimum of one year to satisfy that manufacturer's written and reasonable standards and financial qualifications for appointment as the dealer or executive manager ~~and principal~~.

(2) The manufacturer or distributor may request from a designated family member ~~such~~ any information or application ~~personal and financial data as is~~ reasonably necessary to determine whether the existing dealer agreement should be honored. The designated family member shall supply the personal and financial data promptly upon the request.

(3) If a manufacturer or distributor believes that good cause exists for refusing to honor the succession or designation, the manufacturer or distributor may, within 45 days after receipt of the notice of the designated family member's intent to succeed the dealer in the ownership or the appointment of an executive manager in the operation of the dealership, or within forty-five days

after the receipt of the requested personal and financial data, serve upon the designated family member notice of its refusal to approve the succession.

(4) The notice of the manufacturer or distributor provided in ~~subsection~~ subdivision (3) of this section shall state the specific factual and legal grounds for the refusal to approve the succession or designation of an executive manager. ~~the succession and that discontinuance of the agreement shall take effect not less than one hundred eighty days after the date the notice is served~~.

(5) If notice of refusal is not served within the ~~sixty~~ 45 days provided for in ~~subsection~~ subdivision (3) of this section, the dealer agreement continues in effect and is subject to termination only as otherwise permitted by this article.

(6) This section does not preclude a new motor vehicle dealer from designating any person as his or her successor by will or any other written instrument filed with the manufacturer or distributor, and if such an instrument is filed, it alone determines the succession rights to the management and operation of the dealership.

(7) If the manufacturer challenges the succession in ownership or executive manager designation, it maintains the burden of proof to show good cause by a preponderance of the evidence. If the person or new motor vehicle dealer seeking succession of ownership or executive manager designation files a civil action within 180 days of the manufacturer's refusal to approve or the one year qualifying period set forth in subdivision (1) of this section, whichever is longer, ~~set forth in subsection (4) of this section,~~ no action may be taken by the manufacturer contrary to the dealer agreement until such time as the civil action and any appeal has been exhausted: *Provided*, That when a motor vehicle dealer appeals a decision upholding a manufacturer's decision to not allow succession based upon the designated person's insolvency~~,~~ or conviction of a crime punishable by imprisonment in excess of one year under the law which the designated person was convicted, the dealer agreement shall remain in effect pending exhaustion of all appeals only if the new motor vehicle dealer establishes that the public interest will not be harmed by keeping the dealer agreement in effect pending entry of final judgment after the appeal.

§17A-6A-12. Establishment and relocation or establishment of additional dealers.

(1) As used in this section, "relocate" and "relocation" do not include the relocation of a new motor vehicle dealer within four miles of its established place of business or if an existing new motor vehicle dealer sells or transfers the dealership to a new owner and the successor new motor vehicle dealership owner relocates to a location within four miles of the seller's last open new motor vehicle dealership location. The relocation of a new motor vehicle dealer to a site within the area of sales responsibility assigned to that dealer by the manufacturing branch or distributor may not be within six air miles of another dealer of the same line-make.

(2) Before a manufacturer or distributor enters into a dealer agreement establishing or relocating a new motor vehicle dealer within a relevant market area where the same line-make is represented, the manufacturer or distributor shall give written notice to each new motor vehicle dealer of the same line-make in the relevant market area of its intention to establish an additional dealer or to relocate an existing dealer within that relevant market area.

(3) Within 60 days after receiving the notice provided in subdivision (2) of this section, or within 60 days after the end of any appeal procedure provided by the manufacturer or distributor, a new motor vehicle dealer of the same line-make within the affected relevant market area may bring a

declaratory judgment action in the circuit court for the county in which the new motor vehicle dealer is located to determine whether good cause exists for the establishing or relocating of the proposed new motor vehicle dealer. *Provided*, That a new motor vehicle dealer of the same line-make within the affected relevant market area shall not be permitted to bring such an action if the proposed relocation site would be further from the location of the new motor vehicle dealer of the same line-make than the location from which the dealership is being moved. Once an action has been filed, the manufacturer or distributor may not establish or relocate the proposed new motor vehicle dealer until the circuit court has rendered a decision on the matter. An action brought pursuant to this section shall be given precedence over all other civil matters on the court's docket. The manufacturer has the burden of proving that good cause exists for establishing or relocating a proposed new motor vehicle dealer.

(4) This section does not apply to the reopening in a relevant market area of a new motor vehicle dealer that has been closed within the preceding two years if the established place of business of the new motor vehicle dealer is within four air miles of the established place of business of the closed or sold new motor vehicle dealer.

(5) In determining whether good cause exists for establishing or relocating an additional new motor vehicle dealer for the same line-make, the court shall take into consideration the existing circumstances, including, but not limited to, the following:

~~(a)~~ (A) The permanency and amount of the investment, including any obligations incurred by the dealer in making the investment;

~~(b)~~ (B) The effect on the retail new motor vehicle business and the consuming public in the relevant market area;

~~(c)~~ (C) Whether it is injurious or beneficial to the public welfare;

~~(d)~~ (D) Whether the new motor vehicle dealers of the same line-make in the relevant market area are providing adequate competition and convenient consumer care for the motor vehicles of that line-make in the market area, including the adequacy of motor vehicle sales and qualified service personnel;

~~(e)~~ (E) Whether the establishment or relocation of the new motor vehicle dealer would promote competition;

~~(f)~~ (F) The growth or decline of the population and the number of new motor vehicle registrations in the relevant market area; and

~~(g)~~ (G) The effect on the relocating dealer of a denial of its relocation into the relevant market area.

§17A-6A-13. Obligations regarding warranties.

(1) Each new motor vehicle manufacturer or distributor shall specify in writing to each of its new motor vehicle dealers licensed in this state the dealer's obligations for preparation, delivery, and warranty service on its products. The manufacturer or distributor shall compensate the new motor vehicle dealer for warranty service required of the dealer by the manufacturer or distributor. The manufacturer or distributor shall provide the new motor vehicle dealer with the schedule of compensation to be paid to the dealer for parts, diagnostic time as applicable, work and service,

and the time allowance for the performance of the work, diagnostic time as applicable, and service in a manner in compliance with ~~section eight-a of this article.~~ §17A-6A-8a of this code.

(2) The schedule of compensation shall include reasonable compensation for diagnostic work, as well as repair service and labor. Time allowances for the diagnosis and performance of warranty work and service shall be reasonable and adequate for the work to be performed. In the determination of what constitutes reasonable compensation under this section~~, section eight-a of this article~~ §17A-6A-8a of this code shall govern: *Provided*, That in the case of a dealer of new motorcycles, motorboat trailers, all-terrain vehicles, utility terrain vehicles, and snowmobiles, the compensation of a dealer for warranty parts is the greater of the dealer's cost of acquiring the part plus 30 percent or the manufacturer's suggested retail price: *Provided, however*, That in the case of a dealer of travel trailers, fold-down camping trailers, and motorhomes, the compensation of a dealer's cost for warranty parts is not less than the dealer's cost of acquiring the part plus 20 percent.

(3) A manufacturer or distributor may not do any of the following:

~~(a)~~ (A) Fail to perform any warranty obligation;

~~(b)~~ (B) Fail to include in written notices of factory recalls to new motor vehicle owners and dealers the expected date by which necessary parts and equipment will be available to dealers for the correction of the defects; or

~~(c)~~ (C) Fail to compensate any of the new motor vehicle dealers licensed in this state for repairs effected by the recall or the manufacturer's or distributor's warranty obligation as provided under §17A-6A-8a of this code.

(4) All claims made by a new motor vehicle dealer pursuant to this section for labor and parts shall be paid within 30 days after their approval. All claims shall be either approved or disapproved by the manufacturer or distributor within 30 days after their receipt on a proper form generally used by the manufacturer or distributor and containing the usually required information therein. Any claim not specifically disapproved in writing within 30 days after the receipt of the form is considered to be approved and payment shall be made within 30 days. The manufacturer has the right to initiate an audit of a claim within twelve months after payment and to charge back to the new motor vehicle dealer the amount of any false, fraudulent, or unsubstantiated claim, subject to the requirements of ~~section eight-a of this article.~~ §17A-6A-8a of this code.

(5) The manufacturer shall accept the return of any new and unused part, component, or accessory that was ordered by the dealer, and shall reimburse the dealer for the full cost charged to the dealer for the part, component, or accessory if the dealer returns the part and makes a claim for the return of the part within one year of the dealer's receipt of the part, component, or accessory and provides reasonable documentation, to include any changed part numbers to match new part numbers, provided that the part was ordered for a warranty repair.

§17A-6A-15. Indemnity.

Notwithstanding the terms of any dealer agreement, a manufacturer or distributor shall indemnify and hold harmless its dealers for any reasonable expenses incurred, including damages, court costs, and attorney's fees, arising out of complaints, claims, or actions to the extent such complaints, claims, or actions relate to the manufacture, assembly, or design of a new motor vehicle, manufacturer's warranty obligations excluding dealer negligence, or other

functions by the manufacturer or distributor beyond the control of the dealer, including, without limitation, the selection by the manufacturer or distributor of parts or components for the vehicle, and any damages to merchandise occurring prior to acceptance of the vehicle by the dealer to the dealer if the carrier is designated by the manufacturer or distributor, if the new motor vehicle dealer gives timely notice to the manufacturer or distributor of the complaint, claim, or action.

§17A-6A-15a. Dealer data, obligation of manufacturer, vendors, suppliers and others; consent to access dealership information; unlawful activities; indemnification of dealer.

(a) Except as expressly authorized in this section, a manufacturer or distributor cannot require a motor vehicle dealer to provide its customer information to the manufacturer or distributor unless necessary for the sale and delivery of a new motor vehicle to a consumer, to validate and pay consumer or dealer incentives, for manufacturer's marketing purposes, for evaluation of dealer performance, for analytics, or to support claims submitted by the new motor vehicle dealer for reimbursement for warranty parts or repairs. Nothing in this section shall limit the manufacturer's ability to require or use customer information to satisfy any safety or recall notice obligation or other legal obligation.

(b) The dealer is only required to provide the customer information to the extent lawfully permissible, and to the extent the requested information relates solely to specific program requirements or goals associated with the manufacturer's or distributor's own vehicle makes. A manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer system~~ data systems vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer or ~~management computer system~~ data systems vendor may not prohibit a dealer from providing a means to regularly and continually monitor, or conduct an audit of, the specific data accessed from or written to the dealer's ~~computer system~~ data systems and from complying with applicable state and federal laws and any rules or regulations promulgated thereunder. These provisions do not impose an obligation on a manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer~~ vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch, dealer, or ~~management computer~~ data systems vendor to provide that capability.

(c) A manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer system~~ data systems vendor, or any third party acting on behalf of any manufacturer, factory branch, distributor, distributor branch or dealer, or ~~management computer system~~ data systems vendor, may not provide access to customer or dealership information maintained in a dealer ~~management computer system~~ data systems used by a motor vehicle dealer located in this state, other than a subsidiary or affiliate of the manufacturer factory branch, distributor or distributor branch without first obtaining the dealer's prior express written consent and agreement, revocable by the dealer upon 10 business days written notice, to provide the access.

(d) Upon a written request from a motor vehicle dealer, the manufacturer, factory branch, distributor, distributor branch, dealer, or ~~management computer system~~ data systems vendor, or any third party acting on behalf of or through any manufacturer, factory branch, distributor, distributor branch or dealer ~~management computer system~~ data systems vendor shall provide to the dealer a written list of all specific third parties other than a subsidiary or affiliate of the manufacturer, factory branch, distributor or distributor branch to whom any data obtained from the dealer has actually been provided within the 12 month period prior to date of dealer's written request. If requested by the dealer, the list shall further describe the scope and specific fields of

the data provided. The consent does not change the person's obligations to comply with the terms of this section and any additional state or federal laws, and any rules or regulations promulgated thereunder, applicable to them with respect to the access.

~~(d)~~ (e) A manufacturer, factory branch, distributor, distributor branch, dealer, ~~management computer system~~ data systems vendor, or any third party acting on behalf of or through any dealer, or ~~management computer system~~ data systems vendor, having electronic access to customer or motor vehicle dealer~~ship~~ data in a dealership data ~~management computer~~ system used by a motor vehicle dealer located in this state shall provide notice in a reasonable timely manner to the dealer of any security breach of dealership or customer data obtained through the access.

~~(e)~~ (f) A manufacturer or distributor or a third party acting on behalf of a manufacturer or distributor may not require a dealer to provide any customer information: ~~(a)~~ ~~Of~~ Any individual who is not a customer of such manufacturer's or distributor's own vehicle makes; ~~(b)~~ for any purpose other than for reasonable marketing purposes on behalf of that dealer, market research, consumer surveys, market analysis, or dealership performance analysis; ~~(c)~~ if sharing that information would not be permissible under local, state, or federal law; ~~(d)~~ except to the extent the requested information relates solely to specific program requirements or goals associated with such manufacturer's or distributor's own vehicle makes; ~~(e)~~ that is general customer information or other information related to the dealer, ~~or (f)~~ unless the requested information can be provided in a manner consistent with dealer's current privacy policies and Gramm-Leach-Bliley Act privacy notice, ~~and no~~ a dealer may not be required to amend that notice to accommodate data sharing with the manufacturer or distributor.

(g) As used in this section:

(1) "Authorized Integrator" means any third party with whom a dealer has entered into a written contract to perform a specific function for a dealer that permits the third party to access protected dealer data and/or to write data to a dealer data system to carry out the specified function (the "authorized integrator contract").

(2) "Dealer" means a new motor vehicle dealer as defined by §17A-6A-3(11) of this code and any authorized dealer personnel.

(3) "Dealer data system" means any software, hardware, or firmware used by a dealer in its business operations to store, process, or maintain protected dealer data.

(4) "Dealer data systems vendor" means any dealer management system provider, customer relationship management system provider, or other vendor that permissibly stores protected dealer data pursuant to a written contract with the dealer ("dealer data systems vendor contract").

(5) "Data access overcharge" means any charge to a dealer or authorized integrator for integration beyond reimbursement for any direct costs incurred by the dealer data systems vendor for such Integration. If a dealer data systems vendor chooses to seek reimbursement from any dealer or authorized integrator for such direct costs, the direct costs must be disclosed to the dealer, and justified by documentary evidence of the costs associated with such Integration or it will be considered a data access overcharge.

(6) "Integration" means access to protected dealer data in a dealer's dealer data system by an authorized integrator, or an authorized integrator writing data to a dealer's dealer data system.

Integration does not require access to any copyrighted material but must allow for access to all protected dealer data. Integration may be accomplished by any commercially reasonable means that do not violate this section, but all dealer data vendors must include an option to integrate via a secure open application programming interface (API), which must be made available to dealers and authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure access to dealers and authorized Integrators as an API.

(7) "Prior express written consent" means written consent provided by the dealer that is contained in a document separate from any other consent, contract, franchise agreement, or other writing that specifically outlines the dealer's consent for the authorized Integrator to obtain the dealer data, as well as the scope and duration of that consent. This consent may be unilaterally revoked by the dealer: (A) without cause, upon 30 days' notice, and (B) immediately for cause.

(8) "Protected dealer data" means any of the following data that is stored in a dealer data system:

(A) Personal, financial, or other data pertaining to a consumer, or a consumer's vehicle that is provided to a dealer by a consumer or otherwise obtained by a dealer: *Provided,* That this subdivision does not give a new motor vehicle dealer any ownership or rights to share or use the motor vehicle diagnostic data beyond what is necessary to fulfill a dealer's obligation to provide warranty, repair, or service work to its customers; or

(B) Any other data regarding a dealer's business operations in that dealer's dealer data system:

(9) "Secure open API" means an application programming interface that allows authorized integrators to integrate with dealer data systems remotely and securely. The APIs must be "open" in that all required information to Integrate via the API (software development toolkit and any other necessary technical or other information) must be made available by a dealer data systems vendor to any authorized integrator upon request by a dealer. The secure open API must include all relevant endpoints to allow for access to all protected dealer data, or as are needed to integrate with protected dealer data, and must provide granularity and control necessary for dealers and authorized integrators to Integrate the data necessary under the authorized integrator contract. "Open" does not mean that the API must be available publicly or at no cost to an authorized integrator, however no data access overcharge may be assessed in connection with a secure open API.

(10) "Third party" includes service providers, vendors, including dealer data systems vendors and authorized integrators, and any other individual or entity other than the dealer. Third party does not include any manufacturer, factory branch, distributor, distributor branch or governmental entity acting pursuant to federal, state, or local law, or any third party acting pursuant to a valid court order.

(h) Prohibited Action

1. A third party may not:

(A) Access, share, sell, copy, use, or transmit protected dealer data from a dealer data system without the express written consent of a dealer;

(B) Take any action, by contract, by technical means, or otherwise, that would prohibit or limit a dealer's ability to protect, store, copy, share, or use any protected dealer data. This includes, but is not limited to:

(i) Imposing any data access overcharges or other restrictions of any kind on the dealer or any authorized integrator for integration;

(ii) Prohibiting any third party that the dealer has identified as one of its authorized integrators from integrating with that dealer's dealer data system;

(iii) Place unreasonable restrictions on integration by any authorized integrator or other third party that the dealer wishes to be an authorized integrator. Examples of unreasonable restrictions include, but are not limited to:

(I) Unreasonable restrictions on the scope or nature of the data shared with an authorized integrator;

(II) Unreasonable restrictions on the ability of the authorized integrator to write data to a dealer data system;

(III) Unreasonable restrictions or conditions on a third party accessing or sharing protected dealer data, or writing data to a dealer data system; and

(IV) Requiring unreasonable access to sensitive, competitive, or other confidential business information of a third party as a condition for access to protected dealer data or sharing protected dealer data with an authorized integrator;

(iv) Prohibiting or limiting a dealer's ability to store, copy, securely share or use protected dealer data outside the dealer data system in any manner and for any reason; or

(v) Permitting access to or accessing protected dealer data without express written consent by the dealer.

(i) Nothing in this section shall be interpreted to prevent any dealer or third party from discharging its obligations as a service provider under an agreement or otherwise under federal, state, or local law to protect and secure protected dealer data, or to otherwise limit those responsibilities.

(j) A dealer data systems vendor or authorized integrator is not responsible for any action taken directly by the dealer, or for any action it takes in appropriately following the written instructions of the dealer, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer.

(k) A dealer is not responsible for any action taken directly by any of its dealer data systems vendors or authorized integrators, or for any action it takes in appropriately following the written instructions of any of its dealer data systems vendors or authorized integrators, to the extent that such action prevents it from meeting any legal obligation regarding the protection of protected dealer data or results in any liability as a consequence of such actions by the dealer data systems vendor or authorized integrator.

(l) Additional responsibilities and restrictions

(1) All dealer data systems vendors must adopt and make available a standardized Integration framework (use of the STAR Standards or a standard compatible with the STAR standards shall be deemed to be in compliance with this requirement) and allow for integration via secure open APIs to authorized integrators. In the event that APIs are no longer the reasonable commercial or technical standard for secure data integration, a similar open access integration method may be provided, to the extent it provides the same or better secure Integration to dealers and authorized integrators as a secure open API.

(2) All dealer data systems vendors and authorized integrators:

(A) May Integrate, or otherwise access, use, store, or share protected dealer data, only as outlined in, and to the extent permitted by their dealer data systems vendor contract or authorized integrator contract;

(B) Must make any dealer data systems vendor contract or authorized integrator contract terminable upon no more than 90 days notice from the dealer;

(C) Must, upon notice of the dealer's intent to terminate its dealer data systems vendor contract or authorized integrator contract, in order to prevent any risk of consumer harm or inconvenience, work to ensure a secure transition of all protected dealer data to a successor dealer data systems vendor or authorized integrator. This includes, but is not limited to:

(i) Providing unrestricted access to all protected dealer data and all other data stored in the dealer data system in a commercially reasonable time and format that a successor dealer data systems vendor or authorized integrator can access and use; and

(ii) Deleting or returning to the dealer all protected dealer data prior to termination of the contract pursuant to any written directions of the dealer;

(iii) Providing a dealer, upon request, with a listing of all entities with whom it is sharing or has shared protected dealer data, or with whom it has allowed access to protected dealer data; and

(iv) Allowing a dealer to audit the dealer data systems vendor or authorized integrator's access to and use of any protected dealer data.

~~(i)~~ (m) Notwithstanding the terms or conditions of any consent, authorization, release, novation, franchise, or other contract or agreement, every manufacturer, factory branch, distributor, distributor branch, dealer, ~~system~~ data systems vendor, or any third party acting on behalf of or through a manufacturer, factory branch, distributor, distributor branch or dealer, ~~management computer system~~ data systems vendor shall fully indemnify, defend, and hold harmless any dealer or manufacturer, factory branch, distributor or distributor branch from all damages, attorney fees, and costs, other costs and expenses incurred by the dealer from complaints, claims, or actions arising out of manufacturer's, factory's branch, distributor's, distributor's branch, dealer ~~management computer system~~ data systems vendors, or any third party for its willful, negligent, or impermissible use or disclosure of dealer data or customer data or other sensitive information in the dealer's data ~~computer~~ system. The indemnification includes, but is not limited to, judgments, settlements, fines, penalties, litigation costs, defense costs, court costs, costs related to the disclosure of security breaches, and attorneys' fees arising out of complaints, claims, civil, or administrative actions.

~~(j)~~ (n) The rights conferred on motor vehicle dealers in this section are not waivable and may not be reduced or otherwise modified by any contract or agreement.

~~(k)~~ (o) This section applies to contracts entered into after the effective date of this section.

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

(q) A manufacturer, factory branch, distributor, distributor branch, dealer, data management computer systems vendor, or any third party acting on behalf of itself, or through a manufacturer, factory branch, distributor, distributor branch, or dealer data management computer system vendor shall not take an act prejudicial against a new motor vehicle dealer because of a new motor vehicle dealer exercising its rights under this section.

§17A-6A-15c. Manufacturer performance standards; uniform application; prohibited practices.

A manufacturer may not require dealer adherence to a performance standard or standards which are not applied uniformly to other similarly situated dealers. In addition to any other requirements of the law, the following shall apply:

(1) A performance standard, sales objective, or program for measuring dealer performance ~~that may have a material effect on a dealer, including the dealer's right to payment under any incentive or reimbursement program and the application of the standard, sales objective, or program~~ used by a manufacturer, distributor, or factory branch in determining a dealer's compliance with the dealer agreement shall be reasonable and based on accurate information, including, but not limited to, the dealer's specific local market circumstances and geographical characteristics. A manufacturer, distributor, or factory branch may not impose unreasonable restrictions on a dealer relative to compliance with a sales performance standard or sales objective.

(2) Upon written request from a dealer participating in the program, the manufacturer shall provide in writing the dealer's performance requirement or sales goal or objective, which shall include a reasonable and general explanation of the methodology, criteria, and calculations used.

(3) A manufacturer shall allocate a reasonable and appropriate supply of vehicles to assist the dealer in achieving any performance standards established by the manufacturer and distributor.

(4) The manufacturer or distributor has the burden of proving by a preponderance of the evidence that the performance standard, sales objective, or program for measuring dealership performance complies with this article.

§17A-6A-18. West Virginia law to apply.

Notwithstanding the terms, provisions, or requirements of any franchise agreement, contract, or other agreement of any kind between a new motor vehicle dealer and a manufacturer or distributor captive finance source, dealer management system, or any subsidiary, affiliate, or partner of a manufacturer or distributor, or captive finance source or dealer management system,

the provisions of this code apply to all such agreements and contracts listed in this section or governed by the article. Any provisions in the agreements and contracts which violate the terms of this section are null and void.

The bill (Eng. Com. Sub. for H. B. 4560), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4570, To allow veterinary telehealth in West Virginia with out of state providers.

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

Eng. Com. Sub. for House Bill 4644, Prohibiting the restriction, regulation, use or administration of lawn care and pest care products.

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

Eng. Com. Sub. for House Bill 4712, Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court.

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

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

Eng. House Bill 4778, Permit banks to transact business with any one or more fiduciaries on multiple fiduciary accounts.

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

Eng. Com. Sub. for House Bill 4779, Permit banks the discretion to choose whether to receive deposits from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds.

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

Eng. House Bill 4842, Relating to obscene matter to minors.

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

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

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

ARTICLE 8C. FILMING OF SEXUALLY EXPLICIT CONDUCT OF MINORS.

§61-8C-3. Distribution and exhibiting of material depicting minors engaged in sexually explicit conduct prohibited; penalty.

(a) Any person who, knowingly and willfully, sends or causes to be sent or distributes, exhibits, possesses, electronically accesses with intent to view, or displays or transports any material visually portraying a minor engaged in any sexually explicit conduct is guilty of a felony.

(b) Any person who violates the provisions of subsection (a) of this section when the conduct involves fifty or fewer images shall, upon conviction, be imprisoned in a state correctional facility for not more than two years or fined not more than $2,000 or both.

(c) Any person who violates the provisions of subsection (a) of this section when the conduct involves more than fifty but fewer than six hundred images shall, upon conviction, be imprisoned in a state correctional facility for not less than two nor more than ~~ten~~ 10 years or fined not more than $5,000, or both.

(d) Notwithstanding the provisions of subsections (b) and (c) of this section any person who violates the provisions of subsection (a) of this section when the conduct involves ~~six hundred~~ 600 or more images or depicts violence against a child or a child engaging in bestiality shall, upon conviction, be imprisoned in a state correctional facility for not less than five nor more than ~~fifteen~~ 15 years or fined not more than $25,000 or both.

(e) For purposes of this section each video clip, movie or similar recording of five minutes or less shall constitute ~~seventy-five~~ 75 images. A video clip, movie, or similar recording of a duration longer than five minutes shall be deemed to constitute ~~seventy-five~~ 75 images for every two minutes in length if it exceeds five minutes.

(f) The provisions of this section are inapplicable to:

(1) Law enforcement personnel while acting in the performance of their official duties;

(2) Prosecuting attorneys while acting in the performance of their official duties;

(3) Attorneys representing persons charged with a violation of this article or a substantially similar federal law while acting in the performance of their official duties;

(4) Judges and magistrates while acting in the performance of their official duties;

(5) Jurors while acting in the performance of their official duties ; and

(6) Support personnel for the persons listed in subdivisions (1) through (4) of this subsection in the performance of their professional, employment, and fact-finding duties.

(g) The Supreme Court of Appeals is hereby requested to promulgate such rules, protocols, and forms as are necessary to regulate access to, use, and handling of materials depicting minors engaging in sexually explicit conduct with due consideration given to the privacy rights of victims and the due process rights of defendants in judicial proceedings .

On motion of Senator Weld, the following amendment to the bill (Eng. H. B. 4842) was next reported by the Clerk and adopted:

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

ARTICLE 8. CRIMES AGAINST CHASTITY, MORALITY AND DECENCY.

§61-8-9. Indecent exposure.

(a) A person is guilty of indecent exposure when such person intentionally exposes his or her sex organs or anus or the sex organs or anus of another person, or intentionally causes such exposure by another or engages in any overt act of sexual gratification, and does so under circumstances in which the person knows that the conduct is likely to cause affront or alarm: *Provided,* That it is not considered indecent exposure for a mother to breast feed a child in any location, public or private.

(b) Except as provided in subsection (c), any person who violates the provisions of this section shall be guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail not more than ninety days, or fined not more than $250, or both fined and confined.

(c) Any person who violates the provisions of subsection (a) of this section by intentionally exposing himself or herself to another person and the exposure was done for the purpose of sexual gratification, is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $500 or confined in jail not more than twelve months, or both. For a second offense, the person is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than $1,000 and confined in jail for not less than thirty days nor more than twelve months. For a third or subsequent offense, the person is guilty of a felony and, upon conviction thereof, shall be fined not more than $3,000 and imprisoned in a state correctional facility for not less than one year nor more than five years.

(d) Notwithstanding the provisions of subsection (a), (b), and (c) of this section, any person who intentionally exposes his or her sex organs to another for purposes of sexual gratification knowing or having any reason to know that the person to whom he or she exposed himself or herself was 16 years of age or younger, is guilty of a felony, and upon conviction thereof, shall be fined not more than $5,000 or imprisoned in a state correctional facility for not less than one nor more than five years or both fined and imprisoned.

The bill (Eng. Com. Sub. for H. B. 4842), as amended, was then ordered to third reading.

The Senate proceeded to the tenth order of business.

Senate Bill 731, Making supplementary appropriation to Department of Tourism, Tourism Workforce Development Fund.

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

Senate Bill 732, Making supplementary appropriation to Hospital Finance Authority, Hospital Finance Authority Fund.

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

Senate Bill 733, Supplementing and amending appropriation to Executive, Governor's Office.

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

Eng. Com. Sub. for House Bill 2733, Relating to the establishment of a Combat Action Badge and Combat Action Ribbon special registration plates.

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

Eng. Com. Sub. for House Bill 2798, Relating to requiring the Health Department to mandate mucopolysaccharidosis type 1 (MPS1) test for newborn babies, to be known as Embie's Law.

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

At the request of Senator Maroney, unanimous consent being granted, the bill was referred to the Committee on Finance.

Eng. Com. Sub. for House Bill 2838, Authorize the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds, and to create the State Auditor's Public Integrity and Fraud Fund for use of said funds.

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

Eng. House Bill 3082, Stabilizing funding sources for the DEP Division of Air Quality.

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

Eng. Com. Sub. for House Bill 3231, Public Utilities not required to pay interest on security deposits.

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

Eng. Com. Sub. for House Bill 4008, Relating to Higher Education Policy Commission funding formula.

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

Eng. Com. Sub. for House Bill 4021, Relating to the Medical Student Loan Program.

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

Eng. Com. Sub. for House Bill 4059, Clarifying that new Department of Health and Human Resources' Deputy Commissioners are exempt from civil service.

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

Eng. Com. Sub. for House Bill 4087, Allowing variance in state fire code for certain buildings used solely for emergency equipment storage.

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

Eng. House Bill 4110, Relating to staffing levels at multi-county vocational centers.

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

Eng. Com. Sub. for House Bill 4112, Provide consumers a choice for pharmacy services.

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

Eng. Com. Sub. for House Bill 4285, Relating to real estate appraiser licensing board requirements.

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

Eng. House Bill 4288, Relating to expanding the practice of auricular acudetox to professions approved by the acupuncturist board.

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

Eng. Com. Sub. for House Bill 4336, Providing for the valuation of natural resources property.

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

Eng. House Bill 4355, Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items.

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

Eng. Com. Sub. for House Bill 4389, Relating to repealing school innovation zones provisions superseded by Innovation in Education Act.

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

Eng. House Bill 4419, Allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees.

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

Eng. Com. Sub. for House Bill 4488, Relating to coal mining and changing fees for permitting actions.

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

Eng. Com. Sub. for House Bill 4492, Creating the Division of Multimodal Transportation.

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

Eng. House Bill 4496, Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested.

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

Eng. Com. Sub. for House Bill 4497, Extending the regional jail per diem through July 1, 2023.

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

Eng. Com. Sub. for House Bill 4559, Providing for legislative rulemaking relating to the disposition of unidentified and unclaimed remains in the possession of the Chief Medical Examiner.

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

Eng. Com. Sub. for House Bill 4563, Provide for a license plate for auto mechanics.

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

Eng. Com. Sub. for House Bill 4565, To exempt temporary employees and employees of the Higher Education Policy Commission from automatic enrollment into the state's 457 (b) plan.

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

Eng. House Bill 4566, Creating the Economic Enhancement Grant Fund.

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

Eng. House Bill 4568, To allow phased rehabilitations of certified historic structures.

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

Eng. Com. Sub. for House Bill 4608, To require the State Fire Commission to propose minimum standards for persons to be certified as probationary status volunteer firefighters.

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

Eng. Com. Sub. for House Bill 4629, Relating to procedures for certain actions against the state.

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

Eng. Com. Sub. for House Bill 4634, Relating to occupational licensing or other authorization to practice.

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

Eng. Com. Sub. for House Bill 4636, Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time.

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

Eng. Com. Sub. for House Bill 4662, Relating to licensure of Head Start facilities in this state.

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

Eng. House Bill 4743, Relating to security and surveillance requirements of medical cannabis organization facilities.

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

Eng. Com. Sub. for House Bill 4787, Creating the Highly Automated Motor Vehicle Act.

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

Eng. Com. Sub. for House Bill 4826, Relating to e-sports.

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

Eng. House Bill 4829, Modifying definitions of certain school cafeteria personnel.

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

Eng. House Bill 4848, Relating to nonintoxicating beer, wine and liquor licenses.

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

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

Senator Blair (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

Senate Concurrent Resolution 25, Firefighter Marvin Layton Hughes Memorial Bridge.

Senate Concurrent Resolution 32, Curtis "Pap" and Millie "Mammie" Asbury Memorial Bridge.

Senate Concurrent Resolution 41, Henry Preston Hickman Memorial Bridge.

Senate Concurrent Resolution 51, Deputy Kenneth "Kenny" Ward Love, Sheriff Elvin Eugene "Pete" Wedge, and Jailer Ernest Ray "Ernie" Hesson Memorial Bridge.

House Concurrent Resolution 13, The Doctor Enrique Aguilar Memorial Bridge.

House Concurrent Resolution 17, Daniel Okey Cunningham Memorial Bridge.

House Concurrent Resolution 35, David Allen Drake, Sr. Memorial Bridge.

House Concurrent Resolution 36, John Calvin "J.C." Baker Memorial Bridge.

House Concurrent Resolution 61, Timothy Wayne Farley Memorial Bridge.

And,

House Concurrent Resolution 82, Alleen Ledson Memorial Bridge.

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

Respectfully submitted,

Craig Blair,
Chair ex officio.

At the request of Senator Takubo, unanimous consent being granted, the resolutions (S. C. R. 25, 32, 41, and 51 and H. C. R. 13, 17, 35, 36, 61, and 82) contained in the preceding report from the Committee on Rules were taken up for immediate consideration and considered simultaneously.

The question being on the adoption of the resolutions, the same was put and prevailed.

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

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

Your Committee on the Judiciary has had under consideration

Eng. Com. Sub. for House Bill 4373, To exclude fentanyl test strips from the definition of drug paraphernalia.

And has amended same.

And,

Eng. Com. Sub. for House Bill 4511, To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act.

And has amended same.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bills (Eng. Com. Sub. for H. B. 4373 and 4511) contained in the preceding report from the Committee on the Judiciary were each taken up for immediate consideration, read a first time, and ordered to second reading.

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

Your Committee on the Judiciary has had under consideration

Eng. House Bill 4433, Providing that retirement benefits are not subject to execution.

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

Respectfully submitted,

Charles S. Trump IV,
Chair.

At the request of Senator Takubo, unanimous consent being granted, the bill (Eng. H. B. 4433) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration, read a first time, and ordered to second reading.

(Senator Weld in the Chair.)

Senator Blair (Mr. President), from the Committee on Rules, submitted the following report, which was received:

Your Committee on Rules has had under consideration

House Concurrent Resolution 25, SP5 Terry Lee McClanahan Memorial Bridge.

And has amended same.

House Concurrent Resolution 26, Charleston Police Officer Cassie Johnson - Fallen Heroes Memorial Bridge.

And has amended same.

House Concurrent Resolution 38, "Dale Shaheen and George H. Hooker Memorial Bridge.".

And has amended same.

House Concurrent Resolution 70, Calvin H. Shifflett Memorial Bridge.

And has amended same.

House Concurrent Resolution 74, Judge Les Fury Memorial Bridge.

And has amended same.

And,

House Concurrent Resolution 83, U.S. Army SGT Charles L. Toppings Memorial Road.

And has amended same.

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

Respectfully submitted,

Craig Blair,
Chair ex officio.

At the request of Senator Takubo, unanimous consent being granted, the resolutions (H. C. R. 25, 26, 38, 70, 74, and 83) contained in the preceding report from the Committee on Rules were taken up for immediate consideration and considered simultaneously.

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

House Concurrent Resolution 25, SP5 Terry Lee McClanahan Memorial Bridge.

On page two, in the Resolved clause, line twenty-eight, by striking out the word "SP5" and inserting in lieu thereof the words "U.S. Army SP5";

On page two, in the first Further Resolved clause, line thirty-one, by striking out the word "SP5" and inserting in lieu thereof the words "U.S. Army SP5";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 20-061/00-016.01 (20A184), (38.23939, -81.5576) locally known as Lens Creek Temporary Bridge, carrying WV 61 over Lens Creek in Kanawha County, the "U.S. Army SP5 Terry Lee McClanahan Memorial Bridge".

House Concurrent Resolution 26, Charleston Police Officer Cassie Johnson - Fallen Heroes Memorial Bridge.

On page two, in the Resolved clause, lines forty-one and forty-two, by striking out the words "-Fallen Heroes";

On page two, in the second Further Resolved clause, lines forty-four and forty-five, by striking the words "-Fallen Heroes";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number: 20-060/00-005.59 (WB) (20A336), (38.35826,-81.63989) locally known as US 60 Washington Street Bridge, carrying US 60 over Elk River in Kanawha county, the "Charleston Police Officer Cassie Johnson Memorial Bridge".

House Concurrent Resolution 38, "Dale Shaheen and George H. Hooker Memorial Bridge.".

On page two, in the fifteenth Whereas clause, line thirty-four, by striking out the word "Warrant" and inserting in lieu thereof the words "U.S. Army Warrant";

On page two, in the Resolved clause, lines thirty-seven and thirty-eight, by striking out the words "23-44-9.12 on Route 44 in Logan County, West Virginia, the 'Warrant'" and inserting in lieu thereof the words "23-044/00-009.12 () (23A109), (37.75907,-81.99690) locally known as Warrant Officer Dale Shaheen Memorial Bridge, carrying WV 44 over Island Creek in Logan County, West Virginia, the "U.S. Army Warrant";

On page two, in the first Further Resolved Clause, line forty-two, by striking out the word "Warrant" and inserting in lieu thereof the words "U.S. Army Warrant";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name a bridge bearing bridge number 23-044/00-009.12 () (23A109), (37.75907,-81.99690) locally known as Warrant Officer Dale Shaheen Memorial Bridge, carrying WV 44 over Island Creek in Logan County, West Virginia, the "U.S. Army Warrant Officer Dale Shaheen and U. S. Army Pvt George H. Hooker Memorial Bridge".

House Concurrent Resolution 70, Calvin H. Shifflett Memorial Bridge.

On page two, in the Resolved clause, line thirty-three, by striking out the words "Calvin H. Shifflett" and inserting in lieu thereof the words "U.S. Army Private Calvin H. Shifflett";

On page two, in the first Further Resolved clause, line thirty-five, by striking out the words "Calvin H. Shifflett" and inserting in lieu thereof the words "U.S. Army Private Calvin H. Shifflett";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 42-022/00-014.01 () (42A251) locally known as Bemis Truss, carrying CR 22 over Shavers Fork Cheat River in Randolph County, the "U.S. Army Private Calvin H. Shifflett Memorial Bridge".

House Concurrent Resolution 74, Judge Les Fury Memorial Bridge.

On page two, in the Resolved clause, line sixteen, by striking out the word "Judge" and inserting in lieu thereof the words "U.S. Army Captain";

On page two, in the first Further Resolved clause, line eighteen, by striking out the word "Judge" and inserting in lieu thereof the words "U.S. Army Captain";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 21-033/00-018.34 () (21A215), locally known as Hardees Boxbeam, carrying US Route 33 over Stonecoal Creek in Lewis County, the "U.S. Army Captain Les Fury Memorial Bridge".

House Concurrent Resolution 83, U.S. Army SGT Charles L. Toppings Memorial Road.

On page two, in the Resolved clause, lines twenty-seven through twenty-nine, by striking out the words "a portion of County Route 30/1, beginning at (38.239066), (-82.192876) and ending at (38.239066), (-82.200978), locally known as Sheridan Road, in Lincoln County, the "U.S. Army SGT Charles L. Toppings Memorial Road"" and inserting in lieu thereof the words "bridge number 22-026/00-000.20 () (22A145), (38.25506,-82.17864) locally known as Onemile Creek Box Beam, carrying CR 26 over Onemile Creek in Lincoln County, the "U.S. Army SGT Charles L. Toppings Memorial Bridge"";

On page two, in the first Further Resolved clause, lines thirty-two and thirty-three, by striking out the words "portion of road as the "U.S. Army SGT Charles L. Toppings Memorial Road"" and inserting in lieu thereof the words "bridge as the "U.S. Army SGT Charles L. Toppings Memorial Bridge"";

And,

By striking out the title and substituting in lieu thereof a new title to read as follows:

Requesting the Division of Highways name bridge number 22-026/00-000.20 () (22A145), (38.25506,-82.17864) locally known as Onemile Creek Box Beam, carrying CR 26 over Onemile Creek in Lincoln County, the "U.S. Army SGT Charles L. Toppings Memorial Road".

The question being on the adoption of the resolutions, as amended, the same was put and prevailed.

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

Pending announcement of meetings of standing committees of the Senate, including the Committee on Rules,

On motion of Senator Takubo, at 6:20 p.m., the Senate adjourned until tomorrow, Thursday, March 10, 2022, at 11 a.m.

SENATE CALENDAR

Thursday, March 10, 2022
11:00 AM

SPECIAL ORDER OF BUSINESS

Saturday, March 12, 2022 – 11:00 AM

Consideration of executive nominations

UNFINISHED BUSINESS

S. R. 52 - Highlighting West Virginia's once-in-a-lifetime opportunity to strengthen national security and energy independence and supply world energy markets

S. R. 53 - Designating March 10, 2022, as World Kidney Day at Legislature

S. R. 54 - Congratulating Fairmont Senior High School Polar Bears football team for winning 2021 Class AA state championship

S. R. 55 - Congratulating Bridgeport High School baseball team for winning 2021 Class AAA state championship

THIRD READING

Eng. H. B. 2631 - Provide for WVDNR officers to be able to work “off duty” - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4020 - Relating to reorganizing the Department of Health and Human Resources - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4050 - Defining terms related to livestock trespassing

Eng. H. B. 4296 - To revise outdated provisions within Chapter 23 of the West Virginia Code, which pertains to workers’ compensation

Eng. Com. Sub. for H. B. 4311 - Creating criminal penalties for illegal voting activity - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4329 - To clarify the definition of an “interested person” for purposes of the West Virginia Small Estate Act

Eng. H. B. 4331 - West Virginia’s Urban Mass Transportation Authority Act - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4441 - Creating a Class M air rifle stamp

Eng. Com. Sub. for H. B. 4466 - Relating to School Building Authority’s review of school bond applications - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4540 - To update all retirement plans to comport with federal law - (With right to amend)

Eng. Com. Sub. for H. B. 4560 - Relating generally to motor vehicle dealers, distributors, wholesalers and manufacturers - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4570 - To allow veterinary telehealth in West Virginia with out of state providers

Eng. Com. Sub. for H. B. 4644 - Prohibiting the restriction, regulation, use or administration of lawn care and pest care products

Eng. Com. Sub. for H. B. 4712 - Require the prompt enrollment in payment plans for costs, fines, forfeitures, restitution, or penalties in circuit court and magistrate court - (Com. amend. and title amend. pending) - (With right to amend)

Eng. H. B. 4778 - Permit banks to transact business with any one or more fiduciaries on multiple fiduciary accounts

Eng. Com. Sub. for H. B. 4779 - Permit banks the discretion to choose whether to receive deposits from other banks, savings banks, or savings and loan associations when arranging for the re-deposits of county, municipal, and state funds - (Com. title amend. pending)

Eng. H. B. 4842 - Relating to obscene matter to minors - (Com. title amend. pending)

SECOND READING

S. B. 731 - Making supplementary appropriation to Department of Tourism, Tourism Workforce Development Fund (original similar to HB4851)

S. B. 732 - Making supplementary appropriation to Hospital Finance Authority, Hospital Finance Authority Fund (original similar to HB4852)

S. B. 733 - Supplementing and amending appropriation to Executive, Governor's Office (original similar to HB4850)

Eng. Com. Sub. for H. B. 2733 - Relating to the establishment of a Combat Action Badge and Combat Action Ribbon special registration plates - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 2838 - Authorize the ordering of restitution to the state for reimbursement of costs incurred for misuse of public funds, and to create the State Auditor’s Public Integrity and Fraud Fund for use of said funds

Eng. H. B. 3082 - Stabilizing funding sources for the DEP Division of Air Quality

Eng. Com. Sub. for H. B. 3231 - Public Utilities not required to pay interest on security deposits

Eng. Com. Sub. for H. B. 4008 - Relating to Higher Education Policy Commission funding formula - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4021 - Relating to the Medical Student Loan Program

Eng. Com. Sub. for H. B. 4059 - Clarifying that new Department of Health and Human Resources' Deputy Commissioners are exempt from civil service - (Com. amends. and title amend. pending)

Eng. Com. Sub. for H. B. 4087 - Allowing variance in state fire code for certain buildings used solely for emergency equipment storage

Eng. Com. Sub. for H. B. 4098 - Relating to Geothermal Energy Development - (Com. amend. and title amend. pending)

Eng. H. B. 4110 - Relating to staffing levels at multi-county vocational centers

Eng. Com. Sub. for H. B. 4112 - Provide consumers a choice for pharmacy services - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4285 - Relating to real estate appraiser licensing board requirements - (Com. amend. and title amend. pending)

Eng. H. B. 4288 - Relating to expanding the practice of auricular acudetox to professions approved by the acupuncturist board

Eng. Com. Sub. for H. B. 4336 - Providing for the valuation of natural resources property

Eng. H. B. 4355 - Relating to the disclosure by state institutions of higher education of certain information regarding textbooks and digital courseware and certain charges assessed for those items - (Com. amend. pending)

Eng. Com. Sub. for H. B. 4373 - To exclude fentanyl test strips from the definition of drug paraphernalia - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4389 - Relating to repealing school innovation zones provisions superseded by Innovation in Education Act

Eng. H. B. 4419 - Allowing candidate committees and campaign committees to make contributions to affiliated state party executive committees - (Com. amend. and title amend. pending) (original similar to SB665)

Eng. H. B. 4433 - Providing that retirement benefits are not subject to execution

Eng. Com. Sub. for H. B. 4488 - Relating to coal mining and changing fees for permitting actions

Eng. Com. Sub. for H. B. 4492 - Creating the Division of Multimodal Transportation - (Com. amend. pending)

Eng. H. B. 4496 - Allowing interest and earnings on federal COVID-19 relief moneys to be retained in the funds or accounts where those moneys are invested

Eng. Com. Sub. for H. B. 4497 - Extending the regional jail per diem through July 1, 2023

Eng. Com. Sub. for H. B. 4511 - To make numerous amendments to modernize and increase efficiencies in the administration of the West Virginia Unclaimed Property Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4559 - Providing for legislative rulemaking relating to the disposition of unidentified and unclaimed remains in the possession of the Chief Medical Examiner

Eng. Com. Sub. for H. B. 4563 - Provide for a license plate for auto mechanics - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4565 - To exempt temporary employees and employees of the Higher Education Policy Commission from automatic enrollment into the state's 457 (b) plan

Eng. H. B. 4566 - Creating the Economic Enhancement Grant Fund

Eng. H. B. 4568 - To allow phased rehabilitations of certified historic structures

Eng. Com. Sub. for H. B. 4608 - To require the State Fire Commission to propose minimum standards for persons to be certified as probationary status volunteer firefighters

Eng. Com. Sub. for H. B. 4629 - Relating to procedures for certain actions against the state - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4634 - Relating to occupational licensing or other authorization to practice

Eng. Com. Sub. for H. B. 4636 - Clarifying when business and occupation taxes owed to a city or municipality are considered to be remitted on time - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4662 - Relating to licensure of Head Start facilities in this state - (Com. amend. and title amend. pending) (original similar to SB661)

Eng. H. B. 4743 - Relating to security and surveillance requirements of medical cannabis organization facilities

Eng. Com. Sub. for H. B. 4787 - Creating the Highly Automated Motor Vehicle Act - (Com. amend. and title amend. pending)

Eng. Com. Sub. for H. B. 4826 - Relating to e-sports - (Com. amend. pending)

Eng. H. B. 4829 - Modifying definitions of certain school cafeteria personnel

Eng. H. B. 4848 - Relating to nonintoxicating beer, wine and liquor licenses - (Com. amend. and title amend. pending)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2022

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Thursday, March 10, 2022

9 a.m.	Finance	(Room 451M)
9 a.m.	Judiciary	(Room 208W)
10:45 a.m.	Rules	(Room 219M)