

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SEVENTH LEGISLATURE
REGULAR SESSION, 2026
FIFTY-EIGHTH DAY

Charleston, West Virginia, Thursday, March 12, 2026

The Senate met at 11:43 a.m.

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

Prayer was offered by the Honorable Vince S. Deeds, a senator from the tenth district.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Michael A. Woelfel, a senator from the fifth district.

Pending the reading of the Journal of Wednesday, March 11, 2026,

At the request of Senator Chapman, 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 fourth order of business.

Senator Rose, from the Committee on Energy, Industry, and Mining, submitted the following report, which was received:

Your Committee on Energy, Industry, and Mining has had under consideration

Eng. Com. Sub. for House Bill 4012, Relating to reducing the regulatory burden on utility companies when constructing and maintaining electric power generation and transmission facilities within this state.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on Energy, Industry, and Mining on March 11, 2026;

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

Respectfully submitted,

Christopher A. Rose,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4012) contained in the preceding report from the Committee on Energy, Industry, and Mining was taken up for immediate consideration and read a second time.

At the request of Senator Martin, and by unanimous consent, the bill was advanced to third reading with the unreported Energy, Industry, and Mining committee amendment pending and the right for further amendments to be considered on that reading.

Senator Willis, 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 4025, Exempting certain employees from the classified civil service system.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

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

Respectfully submitted,

Thomas E. Willis II,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4025) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Martin, 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.

Senator Willis, 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 4106, Allowing constitutional carry for 18- to 20-year-olds.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

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

Respectfully submitted,

Thomas E. Willis II,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 4106) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Martin, 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.

Senator Willis, 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 4198, E-Verify Safe Harbor Act.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

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

Respectfully submitted,

Thomas E. Willis II,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4198) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Martin, 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.

Senator Willis, 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 4602, Relating to requiring the Department of Human Services to establish a pilot program to contract for supplemental caseworker aide services for the Bureau for Social Services.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

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,

Thomas E. Willis II,
Chair.

At the request of Senator Barrett, as chair of the Committee on Finance, unanimous consent was granted to dispense with the second committee reference of the bill contained in the foregoing report from the Committee on the Judiciary.

At the request of Senator Martin, and by unanimous consent, the bill (Eng. H. B. 4602) was taken up for immediate consideration and read a second time.

At the request of Senator Martin, unanimous consent being granted, 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.

Senator Willis, 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 Com. Sub. for House Bill 4995, Require the use of video cameras in certain special education classrooms.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

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

Respectfully submitted,

Thomas E. Willis II,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for Com. Sub. for H. B. 4995) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

Senator Willis, 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 5214, Relating to drug testing of parents who have had abuse and/or neglect claims substantiated against them prior to reunification.

With an amendment from the Committee on Health and Human Resources pending;

And has also amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

And reports the same back with the recommendation that it do pass as amended by the Committee on Health and Human Resources to which the bill was first referred; and as last amended by the Committee on the Judiciary.

Respectfully submitted,

Thomas E. Willis II,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5214) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

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

Senator Willis, 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 5441, Reforming State Personnel System.

And has amended same.

Now on second reading, having been read a first time and rereferred to the Committee on the Judiciary on March 11, 2026;

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

Respectfully submitted,

Thomas E. Willis II,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 5441) contained in the preceding report from the Committee on the Judiciary was taken up for immediate consideration and read a second time.

At the request of Senator Martin, 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.

The Senate proceeded to the sixth order of business.

Senators Weld and Willis offered the following resolution:

Senate Resolution 63—Designating March 13, 2026, as Veterans Visibility Day at the Legislature.

Which, under the rules, lies over one day.

Senator Rucker offered the following resolution:

Senate Resolution 64—Opposing the People's Republic of China's Misuse of UN Resolution 2758 and reaffirming Taiwan's right to international participation.

Which, under the rules, lies over one day.

Petitions

Senator Helton presented a petition from the American Cancer Society Cancer Action Network and numerous West Virginia residents, supporting Engrossed House Bill 5691 (*Supplemental appropriation, Department of Health*).

Referred to the Committee on Health and Human Resources.

The Senate proceeded to the seventh order of business.

Senate Concurrent Resolution 8, Requesting Joint Committee on Government and Finance study access in public secondary schools to athletic trainers.

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

Senate Concurrent Resolution 9, Requesting Joint Committee on Government and Finance study decline of eastern gray fox population in WV.

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

At the request of Senator Martin, unanimous consent being granted, the resolution was referred to the Committee on Rules.

Senate Concurrent Resolution 10, Requesting Joint Committee on Government and Finance study feasibility of hunters buying upland game bird stamps with standard hunting licenses.

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

At the request of Senator Martin, unanimous consent being granted, the resolution was referred to the Committee on Rules.

Senate Resolution 62, Designating March 12, 2026, as WV Athletic Trainers Day.

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

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

At the request of Senator Helton, and by unanimous consent, the remarks by Senator Fuller as to the adoption of Senate Resolution 62 were ordered printed in the Appendix to the Journal.

The Senate proceeded to the eighth order of business.

Eng. Com. Sub. for House Bill 4002, Establishing the West Virginia Collaboratory.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Takubo, Tarr, Taylor, Weld, Woelfel, Woodrum, and Smith (Mr. President)—28.

The nays were: Hart, Martin, Rose, Rucker, Thorne, and Willis—6.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4002) passed with its title.

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

Eng. House Bill 4008, Relating to Business Ready Sites Program.

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

Senator Morris 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 his employer could potentially benefit from this legislation.

The Chair replied that any impact on Senator Morris 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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Hart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4008) passed with its title.

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

Eng. House Bill 4404, Increase the allowance for volunteer and part-volunteer fire companies and allowing fire departments to make an expenditure for educational and training supplies and fire prevention promotional materials.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4404) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 4404) takes effect from passage.

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

Eng. Com. Sub. for House Bill 4481, WV Load Forecast Accountability Act.

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 4481 pass?"

Senator Rose 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 controls technician for an electric utility company in West Virginia.

The Chair replied that any impact on Senator Rose 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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Fuller, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Tarr, Taylor, Thorne, Willis, and Smith (Mr. President)—26.

The nays were: Deeds, Garcia, Grady, Hamilton, Takubo, Weld, Woelfel, and Woodrum—8.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4481) passed.

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

Eng. Com. Sub. for House Bill 4481—A Bill to amend the Code of West Virginia, 1931, as amended by adding two new articles, designated §24-2J-1, §24-2J-2, §24-2J-3, §24-2J-4, §24-2J-5, §24-2J-6, §24-9-1, §24-9-2, §24-9-3, §24-9-4, §24-9-5, §24-9-6, §24-9-7, §24-9-8, §24-9-9, and §24-9-10, all relating to generation of electricity; creating the Electric Load Forecast Accountability Act and the West Virginia First Energy Act; providing short titles, findings, purposes, and definitions; providing oversight and reporting by the Public Service Commission concerning electric load forecasting; providing access to and protections from disclosure of confidential documents; requiring certain reporting and defining certain report contents; creating a sunset date; setting certain minimum operational utilization goal for coal-fired generation and providing incentives for attainment; providing certain protections against premature termination of certain electric generating facilities and placing limitation on announcements of such termination; restricting certain recoupment of certain expenditures associated with certain intermittent-generation resources; requiring certain utilities to include in their integrated resource plans an analysis of coal and natural-gas utilization, maintenance, and life-extension; directing use of moneys in the Electric Grid Stabilization and Security Fund; requiring certain coordination between Public Service Commission and Public Energy Authority; expanding powers, duties, and responsibilities of Public Energy Authority; providing certain oversight of PJM market participation and resource planning; requiring certain electric utilities to perform operational analysis and maintain operational plan; providing operational plan criteria; providing certain Public Service Commission and Public Energy Authority oversight of operational plans; requiring certain electric utilities to maintain minimum supply of certain resources; and requiring certain orders, directives, and requirements to implement the act.

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

Eng. Com. Sub. for Com. Sub. for House Bill 4483, Relating to funeral service licensure and administration.

On third reading, coming up in regular order, with the Government Organization committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 11, 2026, for further amendments to be received on third reading, was read a third time.

The question being on the adoption of the Government Organization committee amendment to the bill (*shown in the Senate Journal of yesterday, Wednesday, March 11, 2026, pages 47 to 52, inclusive*), the same was put and prevailed.

Engrossed Committee Substitute for Committee Substitute for House Bill 4483, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for H. B. 4483) passed with its title.

Senator Martin moved that the bill take effect July 1, 2026.

On this question, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for H. B. 4483) takes effect July 1, 2026.

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 4538, Regarding fines in DOH work zones.

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

Pending discussion,

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of today's second reading calendar.

Eng. Com. Sub. for House Bill 4546, Providing for biennial reporting instead of annual reporting for business organizations.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

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

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

Eng. Com. Sub. for House Bill 4546—A Bill to amend and reenact §11-12C-5, §19-4-19, §31B-1-108, §31B-2-208, §31B-2-211, §31B-8-809, §31B-10-1006, §31D-1-131, §31G-2-19, §33-4-12, §47-9-10a, §47-9-53a, §47B-10-1, §47B-10-4; and §59-1-2 of the Code of West Virginia, 1931, as amended, related to making certain business reporting requirements and fees to the Secretary of State biennially instead of annually.

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 4552, Relating to the law-enforcement powers of correctional officers.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4552) passed with its title.

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 4573, Foster Youth Post-Secondary Transition Awareness Act.

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

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of today's second reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4538, already placed in that position.

Eng. Com. Sub. for House Bill 4606, Relating to the meaning of residence for the purpose of bail.

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

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

Eng. Com. Sub. for House Bill 4610, Safeguard the Right-To-Try Cutting-Edge Medicine Act.

On third reading, coming up in regular order, with the unreported Health and Human Resources committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 11, 2026, for further amendments to be received on third reading, was read a third time.

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

On page 1, section 3, line 19, by striking out "§16-5B- *et seq.*" and inserting in lieu thereof "§16B-5B-1 *et seq.*".

Engrossed Committee Substitute for House Bill 4610, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4610) passed with its title.

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 4625, Relating to quit claim deeds.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4625) passed with its title.

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

Eng. House Bill 4626, Relating to the establishment of a grant program to fund the United States Food and Drug Administration's drug development trials with ibogaine.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4626) 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 4755, Adding Aggravated Vehicular Homicide to the list of qualifying offenses.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4755) passed.

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

Eng. Com. Sub. for House Bill 4755—A Bill to amend and reenact §61-11-18 of the Code of West Virginia, 1931, as amended, relating to qualifying offenses for purposes of recidivism punishment; adding aggravated vehicular homicide, driving under the influence causing serious bodily injury, third offense driving under the influence, and obstructing law enforcement, fire personnel, and emergency medical personnel causing death as qualifying offenses for enhanced sentencing of a repeat offender; and creating criminal penalties.

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

Eng. House Bill 4768, Relating to updating definitions to incorporate federal law changes to qualified higher education expenses for purposes of 529 accounts.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4768) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for House Bill 4784, Extending the Qualified Opportunity Zones until July 1, 2032.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Hart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for H. B. 4784) passed with its title.

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

Eng. Com. Sub. for Com. Sub. for House Bill 4793, Creating the Barber Apprenticeship Program.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for Com. Sub. for H. B. 4793) passed.

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

Eng. Com. Sub. for Com. Sub. for House Bill 4793—A Bill to amend and reenact §30-27-3, §30-27-8, §30-27-8a, and §30-27-8b of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §30-27-8c; relating to the West Virginia Board of Barbers and Cosmetologists; providing definitions; lowering minimum age to obtain licensure and certificates in certain professions from 18 to 16 years of age; removing good moral character requirements; revising certain licensure requirements; lowering minimum age for participation in apprenticeship from 16 to 14 years of age; providing for the development of additional apprenticeship programs; requiring West Virginia Department of Education to assist board in developing and administering apprenticeships for 14 and 15 year olds to the extent necessary to receive requisite federal authorization; providing program guidance; providing that apprentice in apprenticeship program be issued license or certification if apprentice completes requisite hours and meets all other applicable requirements; establishing salon training program; exempting safe services from licensure; and making technical corrections.

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

Eng. House Bill 4801, Defining Permissible expenditures for municipalities and counties.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4801) passed with its title.

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

Eng. House Bill 4819, Relating to use of criminal records as disqualification from authorization to practice a particular profession.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4819) passed with its title.

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

Eng. House Bill 4842, Relating to civil remedies for the unauthorized disclosure of intimate images.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 4842) passed with its title.

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 4850, Providing online training for Executors/Executrix of an Estate.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4850) passed with its title.

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 4893, Increase the penalties for contempt of court in a magistrate court.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4893) passed.

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

Eng. Com. Sub. for House Bill 4893—A Bill to amend and reenact §50-5-11 and §61-5-26 of the Code of West Virginia, 1931, as amended, relating to increasing the penalties and fines for a first, second, or third or subsequent finding contempt of court pertaining to the same matter in magistrate court; providing that a person adjudged guilty of a third or subsequent offense of contempt may, in the discretion of the magistrate, as an alternative to the sentence provided in the code, be sentenced in a manner consistent with §62-11A-1a of this code; and raising the amount a court can fine for contempt of court without a jury trial.

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

(Senator Clements in the Chair.)

Eng. Com. Sub. for House Bill 4965, Relating to patient-centered treatment flexibility within the Public Employees Insurance Agency.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: None.

Absent: Willis—1.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 4965) 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 5004, Relating generally to PANS and PANDAS.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5004) 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 5015, Relating to the Respiratory Care Interstate Compact.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5015) passed with its title.

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

Eng. House Bill 5022, Relating to expanding the programs to be included in the annual capitation rate review.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. H. B. 5022) 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 5063, To permit the county commission to appoint a county commissioner to a convention and visitor's bureau as a voting member.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5063) 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 5086, Relating to peer support services.

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

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5086) passed.

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

Eng. Com. Sub. for House Bill 5086—A Bill to amend and reenact §30-1-8 of the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new article, designated §21-18-1 and §21-18-2; and to amend said code by adding a new section, designated §57-3-11; relating to peer support programs; defining terms; establishing standards for peer support programs; prohibiting licensure discipline in certain instances; providing nothing shall prohibit a board from requiring a licensee to participate in attending a board designed professional health program; prohibiting boards from requesting certain information; allowing for privileged communications; creating a testimonial privilege; and providing exemptions.

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 5087, Relating to Interstate Cosmetology Licensure Compact.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5087) 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 5088, Relating to Natural Resource Police Officer Retirement.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5088) 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 5162, Relating to the sales of tax liens.

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

At the request of Senator Martin, unanimous consent being granted, the bill was referred to the Committee on Rules.

Eng. House Bill 5323, Relating to indexing of license and stamp fees.

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: Barnhart, Barrett, Bartlett, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rucker, Takubo, Tarr, Taylor, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—29.

The nays were: Azinger, Chapman, Hart, Rose, and Thorne—5.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. H. B. 5323) 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 5327, West Virginia ALS Care Services Act.

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

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5327) passed with its title.

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

Eng. House Bill 5382, Relating to the Neighborhood Investment Program.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Hart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. H. B. 5382) 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 5398, Relating to dates and deposits for Oil and Gas Well Plugging.

On third reading, coming up in regular order, with the unreported Energy, Industry, and Mining committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 11, 2026, for further amendments to be received on third reading, was read a third time.

At the request of Senator Rose, as chair of the Committee on Energy, Industry, and Mining, and by unanimous consent, the unreported Energy, Industry, and Mining committee amendment to the bill was withdrawn.

On motion of Senator Rose, 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:

CHAPTER 11. TAXATION.

ARTICLE 13. BUSINESS AND OCCUPATION TAX.

§11-13-2r. Recomputation of taxable generating capacity of certain coal-fired electric generating facilities; imposition of recapture tax.

(a) *General.* — Notwithstanding any provision of this article to the contrary, ~~for the taxable year beginning January 1, 2021, the tax on the privilege of generating electricity from coal-fired generating units in operation before January 1, 1995, shall be computed as provided in §11-13-2o of this code and the tax attributable to the months of January through June of 2021 shall be remitted before July 31, 2021, as provided in §11-13-4 of this code.~~ beginning July 1, 2021, the owner or operator of a coal-fired generating unit in operation before January 1, 1995, may elect to recompute the taxable generating capacity of those coal-fired generating units determined under §11-13-2o of this code so that the tax attributable to the second half of 2021 is computed and paid on 45 percent of the official capability of those generating units, as defined in §11-13-2o of this code: *Provided*, That this election is an irrevocable election and the owner or operator of the coal-fired generating units for which this election is made shall agree to keep them in operation until at least July 1, 2025. ~~The tax attributable to the months of July through December of 2021, as recomputed under this section, shall be remitted before January 31, 2022, as provided in §11-13-4 of this code.~~ When this election is made, then for taxable years beginning on and after January 1, 2022, the taxable generating capacity of coal-fired generating units in operation before January 1, 1995, shall be 45 percent of the official capability of the generating unit as defined in §11-13-2o of this code.

(b) Notwithstanding the provisions of subsection (a) of this section, for any coal-fired generating unit that is regulated entirely by another state, beginning July 1, 2026, the tax on the privilege of generating electricity from coal-fired generating units in operation before January 1, 1995, shall be computed as provided in §11-13-2o of this code and the tax attributable to the second half of 2026 and thereafter shall be 100 percent of the official capability of the generating unit as defined in §11-13-2o of this code. The tax attributable to the months of January through June of 2026 shall be remitted before July 31, 2026, as provided in §11-13-4 of this code.

(c) *Recapture tax.* — Beginning on and after July 1, 2021, but before July 1, 2025, should the coal-fired generating units impacted by this tax cease to operate, the owner or operator of said plants shall remit back to the West Virginia State Tax Department all of the business and occupation tax savings incurred during the time period between July 1, 2021, and the date the coal-fired generating units ceased operation. A recapture tax is imposed by this subsection, which tax is an amount equal to the business and occupation tax savings the owner or operator of the plant realized, or would have realized, due to enactment of this section, on or after July 1, 2021, but before July 1, 2025. The recapture tax shall be due and payable on the date the annual business and occupation tax return is due under this article for the taxable period for which the

recapture tax applies. In the event federal law or regulation requires the closing of coal-fired generating units before July 1, 2025, the recapture tax ~~shall~~ does not apply to taxable periods beginning subsequent to the closure date.

~~(e)~~(d) *Transfer of generating unit.* — If at any time after the effective date of this section but before July 1, 2025, a coal-fired generating unit whose taxable generating capacity was recomputed under this section is transferred to another entity, the amount of the business and occupation tax benefit the transferor received, or would have received, under this section had the owner continued to own and operated the generating unit shall be recaptured under subsection (b) of this section.

~~(d)~~(e) *Definitions.* — Terms "taxable generating capacity" and "official capability" used in this section are defined as provided in §11-13-2o of this code except to the extent those definitions are modified by language in this section for taxable periods beginning on and after July 1, 2021.

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit, or commercial use, there is levied and shall be collected from every person exercising the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section: *Provided*, That effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following: (1) Free natural gas provided to any surface owner; (2) Natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period; (3) Oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and (4) For a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article: *Provided*, That effective for taxable periods beginning on or after January 1, 2020:

(1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer;

(2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which

produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is two and five tenths percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.

(c) *Tax in addition to other taxes.* — The tax imposed by this section applies to all persons severing gas or oil in this state, and is in addition to all other taxes imposed by law.

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer must calculate the actual production of such well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in such calendar year.

(e) After the dedication in §11-13A-5a is made, the remaining proceeds collected from the tax imposed at the rate prescribed under subdivision (2), subsection (b) of this section are dedicated to the Oil and Gas Abandoned Well Plugging Fund created under §22-6-29a of this code: Provided, That if on June 1, 2023, or on June 1 of any year thereafter, June 1, 2024, or June 1, 2025, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6 million; or if on September 30, 2026, or on September 30 of any year thereafter, there exists in the Oil and Gas Abandoned Well Plugging Fund an amount equal to or exceeding the sum of \$6 million that has not been encumbered by the Office of Oil and Gas in accordance with the provisions of this article, then the special rate of tax imposed under subdivision (2), subsection (b) of this section is reduced to zero for the taxable year beginning on and after the next succeeding January 1. The Starting in 2026, the Tax Commissioner shall issue an Administrative Notice by July 1 of each year indicating within 30 days of determining the amount of the balance in the fund as of the immediately preceding June 1 September 30 and the rate of tax on wells pursuant to this subsection. In no event may the total fund balance exceed \$9 million (150 percent of the baseline).

(f) Notwithstanding any provision of this code to the contrary, the Oil and Gas Abandoned Well Plugging Fund may exceed \$6 million only if every dollar above \$6 million is encumbered pursuant to a binding, executed contract to plug specific wells with a term not exceeding 12 months.

(g) The Department of Environmental Protection shall publish on its publicly accessible website an annual report that details: (1) revenue into the Oil and Gas Abandoned Well Plugging Fund for the year; (2) the fund balance at the end of the year; (3) the wells plugged by the fund in the year; (4) the average cost to plug wells during the year; and (5) the dollar amount of binding funds under contract but not yet paid at the end of the year.

CHAPTER 22. ENVIRONMENTAL RESOURCES.

ARTICLE 11B. UNDERGROUND CARBON DIOXIDE SEQUESTRATION AND STORAGE.

§22-11B-2. Definitions.

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

(1) "Carbon dioxide" means carbon dioxide produced by anthropogenic sources which is of such purity and quality that it will not compromise the safety of geologic storage and will not compromise those properties of a storage reservoir which allow the reservoir to effectively enclose and contain a stored gas;

(2) "Carbon dioxide sequestration" or "carbon dioxide storage" means the injection of carbon dioxide and associated constituents into subsurface geologic reservoirs intended to provide for the long-term containment of a gaseous, liquid, or supercritical carbon dioxide stream in subsurface geologic formations and thereby prevent its release into the atmosphere;

(3) "Class VI underground injection control" or "Class VI UIC" refers to the classification by the US EPA of wells for injection of substances or materials into deep rock formations and, specifically, to the class of wells that are used to inject carbon dioxide into underground rock formations to reduce carbon dioxide emissions to the atmosphere and mitigate climate change;

(4) "Class VI underground injection control permit," "Class VI UIC permit," or "Class VI permit" means a permit to drill injection wells and to conduct carbon dioxide sequestration at a specified site;

(5) "Commission" means the Oil and Gas Conservation Commission established pursuant to §22C-9-1 *et seq.* of this code.

(6) "Completion certificate" means a Certificate of Underground Carbon Dioxide Storage Project Completion;

(7) "Excursion" means the migration of carbon dioxide at or beyond the designated boundary of a carbon dioxide sequestration site;

(8) "Permit" means a Class VI underground injection control permit issued by the secretary or by the US EPA, authorizing a person or business entity to drill an injection well and to construct and operate a carbon dioxide sequestration facility;

(9) "Pore space" means a cavity or void, whether naturally or artificially created, in a subsurface stratum and is also known as container space or storage rights;

(10) "Reservoir" means a subsurface stratum, formation, aquifer, cavity, or void, whether naturally or artificially created, including oil and gas reservoirs, saline formations, and coal seams suitable for, or capable of being made suitable for, injecting and storing carbon dioxide;

(11) "Secretary" means the Secretary of the Department of Environmental Protection;

(12) "Carbon dioxide storage facility", ~~or~~ "sequestration facility", or "storage site" means the reservoir, underground equipment, and surface facilities and equipment used or proposed to be used in a carbon dioxide sequestration project, but does not include an industrial or commercial facility or equipment that separates carbon dioxide from the atmosphere, heat or electric power production facilities, exhaust or process streams of commercial and industrial facilities, or any pipelines used to transport captured carbon dioxide to the storage facility;

(13) "Storage operator" means a person applying for or holding a permit until the issuance of a completion certificate for the relevant storage facility;

(14) "Storage reservoir" means a reservoir proposed, authorized, or used for storing carbon dioxide;

(15) "UIC" means underground injection control;

(16) "Unknown or unlocatable owner" means a person vested with a present ownership interest in the pore space whose present identity or location cannot be determined from:

(A) A reasonable review of the records of the clerk of the county commission, the sheriff, the assessor, and the clerk of the circuit court in the county or counties in which the property is located, and includes unknown heirs, successors and assigns known to be alive;

(B) A reasonable inquiry in the vicinity of the owner's last known place of residence;

(C) A diligent inquiry into known interest owners in the same tract; and

(D) A reasonable review of available Internet resources commonly utilized by the industry; and

(17) "US EPA" means United States Environmental Protection Agency.

§22-11B-4. Permit application requirements and contents; application fee; required findings; and rulemaking.

(a) Every permit application filed under this article shall be on a form as may be prescribed by the secretary, shall be verified, and shall contain all information specified by legislative rule.

(b) Upon filing an application for a permit, an applicant shall:

(1) Pay a fee in an amount set by the secretary. The amount of the fee shall be set by rule and shall be based on the secretary's anticipated cost of processing applications for permits, orders, or determinations under this article. The fee shall be deposited in the Carbon Dioxide Storage Facility Administrative Fund; and

(2) Pay to the secretary the costs the secretary incurs in publishing notices of applications and notices for hearings on applications submitted under this article.

(c) ~~Before a permit application may be approved, the secretary shall determine whether the proposed storage facility contains commercially valuable minerals and, if it does, a permit may be issued only if the secretary is satisfied that the interests of the mineral owners or mineral lessees will not be adversely affected or have been addressed in an written agreement entered into by the mineral owners, mineral lessees, and the storage operator~~ require the applicant to design a carbon sequestration or storage facility that:

(1) Isolates the contiguous commercially valuable mineral, including the coal or oil and gas estate and oil and gas storage operations, from the facility's carbon dioxide plume; and

(2) Ensures existing or future development or storage of the commercially valuable mineral will not be adversely affected.

(d) The carbon sequestration or storage facility permit application shall:

(1) Indicate whether the area within the proposed boundaries of the storage facility and the contiguous area to the proposed boundaries of the storage facility, including the other subsurface horizons above and below the storage facility, contains any commercially valuable mineral, including any coal or oil and gas estate or oil and gas storage field. If it does, a permit may be issued only if the department is satisfied that the interests of the mineral owners, mineral lessees, and storage operators of the commercially valuable mineral estate will not be adversely affected; and

(2) Include evidence that the applicant has provided notice of the proposed carbon sequestration or storage facility to the other pore space owners and pore space lessees within the storage facility, and to the mineral owners, mineral lessees, and operators of any commercially valuable mineral, including storage operators of any oil and gas, within any strata within the storage facility's proposed boundaries and contiguous to the boundaries of the storage facility.

(e) The notice provided in subsection (d) of this section shall be in writing, include information regarding the application, boundaries, and storage horizons for the facility, and include a copy of the notice of the hearing.

(1) The pore space owners and lessees, other than the applicant, mineral owners, mineral lessees, and operators of a commercially valuable mineral, including storage operators of any oil and gas, may submit an objection to the department regarding the design of a carbon sequestration or storage facility based on the potential adverse effect to the commercially valuable mineral.

(2) The applicant shall address any objection to the department's satisfaction before proceeding with the application process.

~~(d) No permit shall~~

(f) A permit may not be issued under this article unless the secretary finds that:

~~(1) That~~ The application and the proposed operations comply with all requirements established by the secretary, including any applicable underground injection rules, and with all applicable provisions of state and federal law;

~~(2) That~~ The storage facility is suitable and feasible for carbon dioxide injection and sequestration;

~~(3) That the storage operator~~ The applicant has made a good-faith effort to obtain the consent of all persons who own or lease the storage reservoir's pore space and

~~(4) That The storage operator~~ has obtained the written consent of persons who own at least 75 percent of the storage reservoir's pore space; ~~and have at least begun the process~~

(4) The applicant has attempted in good faith to obtain the remaining nonconsenting interests through the commission;

~~(5) That~~ The proposed storage facility will not adversely affect surface waters or formations containing fresh water;

(6)~~That~~ The storage facility will not unduly endanger human health or the environment;

(7)~~That~~ Adequate horizontal and vertical boundaries of the storage reservoir are defined, including buffer areas, to ensure that the storage facility is operated safely and prudently;

(8)~~That~~ The storage operator will establish monitoring facilities and protocols to assess the location and migration of carbon dioxide injected for storage and to ensure compliance with all permit, statutory, and administrative requirements;

(9)~~That~~ All nonconsenting pore space owners and lessees are or will be justly and reasonably compensated in accordance with the rules and procedures set forth in or promulgated under this article by the secretary and the commission; ~~and~~

(10)~~That~~ The storage facility is in the public interest; and

(11) Adequate notice has been provided, other than to the applicant, to the pore space owners and lessees, mineral owners, mineral lessees, and operators of any commercially valuable mineral, including storage operators of any oil and gas, within the proposed boundaries of the storage facility and the contiguous area to the proposed boundaries of the storage facility, including the other subsurface horizons above and below the storage facility.

~~(e)~~(g) To the extent not inconsistent with state and federal regulations, the secretary shall render a decision on a permit application within one year after submission of a complete application.

~~(f)~~(h) The secretary shall propose rules for legislative approval, pursuant to the provisions of §29A-3-1 *et seq.* of this code, detailing additional requirements for inclusion in a permit application, such as:

(1) Site characterization requirements;

(2) Injection well construction requirements for materials that are compatible with and can withstand contact with carbon dioxide over the life of a carbon dioxide sequestration-~~project~~ facility;

(3) Well operation requirements;

(4) Comprehensive monitoring requirements that address all aspects of well integrity, carbon dioxide injection and storage, ~~as well as~~ and air and ground water quality during the injection operation and the post-injection site care period;

(5) Financial responsibility requirements assuring the availability of funds for the life of a carbon dioxide sequestration-~~project~~ or storage facility, including post-injection site care and emergency response; and

(6) Reporting and recordkeeping requirements that provide-~~project-specific~~ facility-specific information to continually evaluate the site operations and confirm environmental protection.

§22-11B-5. Public participation in permit process, notices, public hearing.

(a) Public notice of an application for a permit required under this article shall allow at least 30 days for public comment. The secretary shall specify the required contents of the public notice.

(b) The secretary shall send the public notice to the applicant, who shall ~~be responsible for publication of~~ publish a Class 1 legal advertisement of the notice by a date and in a paper specified by the secretary. Upon publication, the applicant shall send the secretary a copy of the certificate of publication. The costs of publication shall be borne by the applicant.

(c) Notice of an application for a permit shall be served to each mineral lessee, mineral owner, and pore space owner with a legal interest ~~that involves~~ recorded in any county in which the storage reservoir lies and at their last known address.

(d) Notice of an application for a permit shall be served to each surface owner of land overlying the storage reservoir with an interest entered for taxation in any county in which the storage reservoir lies and at the address shown upon any tax ticket.

(e) Notice of an application for a permit shall be served to any additional persons that the secretary requires.

(f) Service of individual notices required by this section shall be through personal service, by registered mail, or by any method of delivery that requires a receipt or signature confirmation.

(g) The secretary, ~~and/or~~ the commission, or both, shall hold a public hearing whenever ~~he or she~~ the secretary or commission finds, on the basis of requests, a significant degree of public interest of issues relevant to the draft permit. The secretary, ~~and/or~~ the commission, or both, may also hold a public hearing ~~at his or her discretion~~ if either determines that a hearing may assist in clarifying one or more issues involved in the permit decision. ~~Should~~ If a public hearing ~~be is~~ held, notice of the hearing shall be provided in the same manner as set forth ~~above~~ with respect to in this section regarding public notice of the preparation of a draft permit.

Engrossed Committee Substitute for House Bill 5398, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5398) passed.

At the request of Senator Rose, as chair of the Committee on Energy, Industry, and Mining, and by unanimous consent, the unreported Energy, Industry, and Mining committee amendment to the title of the bill was withdrawn.

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

Eng. Com. Sub. for House Bill 5398—A Bill amend and reenact §11-13-2r, §11-13A-3a, §22-11B-2, §22-11B-4, and §22-11B-5 of the Code of West Virginia, 1931, as amended, all relating to natural resource development; taxes on certain natural resources; modifying certain dates and deposits regarding oil and gas well plugging; limiting the unencumbered balance of the Oil and Gas Abandoned Well Plugging Fund; requiring that amounts in excess of \$6 million be encumbered pursuant to binding contracts to plug specific wells within 12 months; requiring the Department of Environmental Protection to publish an annual report detailing fund revenue, balance, wells plugged, average cost, and funds under contract; capping the fund at \$9 million; allowing for receipt of federal moneys for abandoned well plugging; increasing a certain tax on certain coal-fired generating units; modifying the computation of the taxable generating capacity of coal-fired generating units in operation before January 1, 1995; increasing the tax on the privilege of generating electricity from coal-fired generating units in operation before January 1, 1995, to 100 percent of the official capability of the generating unit for any coal-fired generating unit that is regulated entirely by another state; setting a beginning date of July 1, 2026, for the modified computation and increased tax; and protecting mineral development from certain carbon capture practices.

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

Eng. House Bill 5406, Relating to driving under the influence.

On third reading, coming up in regular order, with the right having been granted on March 10, 2026, for amendments to be received on third reading, was read a third time.

There being no amendments offered,

Engrossed House Bill 5406 was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. H. B. 5406) 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 5466, Relating to Abuse Prevention Program.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5466) 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 5480, Relating to establishing the West Virginia Youth Summer Employment and Career Readiness Program.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5480) passed.

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

Eng. Com. Sub. for House Bill 5480—A Bill to amend and reenact the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §5B-2P-1, §5B-2P-2, §5B-2P-3, §5B-2P-4, §5B-2P-5, §5B-2P-6, §5B-2P-7, §5B-2P-8, §5B-2P-9, and §5B-2P-10, relating to establishing the West Virginia Youth Summer Employment and Career Readiness Program; providing purpose and legislative findings; defining terms; establishing program; specifying design of program; directing coordination with state and local governmental agencies; providing for award of grant funding to employer partners; specifying authorized uses of funding; requiring annual reporting; providing for rulemaking; providing for funding through special revenue account and grants and donations; and providing for immunities.

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 5582, Extending program for drug screening of applicants for TANF.

On third reading, coming up in regular order, with the unreported Workforce committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 11, 2026, for further amendments to be received on third reading, was reported by the Clerk.

At the request of Senator Martin, unanimous consent being granted, the bill was laid over one day, retaining its place on the calendar, with the right to amend on third reading remaining in effect and with the unreported Workforce committee amendment pending.

Eng. Com. Sub. for House Bill 5613, Relating to authorizing the Fleet Management Division to use telematics.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5613) 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 5622, Amendments to city charters.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. Com. Sub. for H. B. 5622) passed with its title.

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

Eng. House Bill 5638, Relating to the requirements of the state's cyber security program and responsibilities and authority of the state chief information security officer.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the Chair declared the bill (Eng. H. B. 5638) passed with its title.

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

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

Eng. House Bill 5653, To confirm the confidentiality of internal audit and other manuals, training materials, guidelines, thresholds, and procedures.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5653) passed with its title.

Senator Martin moved that the bill take effect from passage.

On this question, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. H. B. 5653) takes effect from passage.

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

Eng. House Bill 5684, Relating to authorizing the Supreme Court of Appeals to create child protection commissioners.

On third reading, coming up in regular order, with the unreported Judiciary committee amendment pending, and with the right having been granted on yesterday, Wednesday, March 11, 2026, for further amendments to be received on third reading, was read a third 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:

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

ARTICLE 10. WEST VIRGINIA PUBLIC EMPLOYEES RETIREMENT ACT.

§5-10-48. Reemployment after retirement; options for holder of elected public office.

(a) The Legislature finds that a compelling state interest exists in maintaining an actuarially sound retirement system and that this interest necessitates that certain limitations be placed upon an individual's ability to retire from the system and to then later return to state employment as an employee with a participating public employer while contemporaneously drawing an annuity from the system. The Legislature hereby further finds and declares that the interests of the public are served when persons having retired from public employment are permitted, within certain limitations, to render post-retirement employment in positions of public service, either in elected or appointed capacities. The Legislature further finds and declares that it has the need for qualified employees and that in many cases an employee of the Legislature will retire and be available to return to work for the Legislature as a per diem employee. The Legislature further finds and declares that in many instances these employees have particularly valuable expertise which the Legislature cannot find elsewhere. The Legislature further finds and declares that reemploying these persons on a limited per diem basis after they have retired is not only in the best interests of this state but has no adverse effect whatsoever upon the actuarial soundness of this particular retirement system.

(b) For the purposes of this section: (1) "Regularly employed on a full-time basis" means employment of an individual by a participating public employer, in a position other than as an elected or appointed public official, which normally requires 12 months per year service and at least 1,040 hours of service per year in that position; (2) "temporary full-time employment" or "temporary part-time employment" means employment of an individual on a temporary or provisional basis by a participating public employer, other than as an elected or appointed public official, in a position which does not otherwise render the individual as regularly employed; (3) "former employee of the Legislature" means any person who has retired from employment with the Legislature and who has at least 10 years' contributing service with the Legislature; and (4) "reemployed by the Legislature" means a former employee of the Legislature who has been reemployed on a per diem basis not to exceed 175 days per calendar year.

(c) Subject to the provisions of subsection (i) of this section, if a retirant becomes regularly employed on a full-time basis by a participating public employer, payment of his or her annuity shall be suspended during the period of his or her reemployment and he or she shall become a contributing member to the retirement system. If his or her reemployment is for a period of one year or longer, his or her annuity shall be recalculated and he or she shall be granted an increased annuity due to the additional employment, the annuity to be computed according to §5-10-22 of this code. If his or her reemployment is for a period less than one year, he or she may request in writing that the employee and employer retirement contributions submitted during reemployment be credited to the participating public employer pursuant to §5-10-44 of this code, and his or her previous annuity shall be reinstated effective the first day of the month following termination of reemployment and the board's receipt of written notice thereof. Subject to the provisions of subsection (i) of this section, a retirant may accept legislative per diem, temporary full-time, or temporary part-time employment from a participating employer without suspending his or her

retirement annuity so long as he or she does not receive annual compensation in excess of \$25,000.

(d) Senior judges, justices, and magistrates. —

(1) Notwithstanding the provisions of subsection (c) of this section, a retired intermediate court judge, circuit court judge, or family court judge, or justice who is recalled and assigned to temporary service as a senior judge or justice by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §51-9-10 of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(2) Notwithstanding the provisions of subsection (c) of this section, a retired magistrate who is recalled and assigned to temporary service as a senior magistrate by the West Virginia Supreme Court of Appeals may receive per diem compensation pursuant to the requirements of §50-1-6a of this code while continuing to receive his or her annuity, subject to the provisions of subsection (i) of this section.

(e) Subject to the provisions of subsection (i) of this section, if a member retires and is then subsequently elected to a public office, or is subsequently appointed to hold an elected public office, or is a former employee of the Legislature who has been reemployed by the Legislature, he or she has the option, notwithstanding subsection (c) of this section, to either:

(1) Continue to receive payment of his or her annuity while holding public office, or during any reemployment of a former employee of the Legislature on a per diem basis, in addition to the salary he or she may be entitled to as an office holder, or as a per diem reemployed former employee of the Legislature; or

(2) Suspend the payment of his or her annuity and become a contributing member of the retirement system as provided in subsection (c) of this section. Notwithstanding the provisions of this subsection, a member who is participating in the system as an elected public official may not retire from his or her elected position and commence to receive an annuity from the system and then be elected or reappointed to the same position unless and until a continuous 12-month period has passed since his or her retirement from the position: *Provided*, That a former employee of the Legislature may not be reemployed by the Legislature on a per diem basis until at least 60 days after the employee has retired: *Provided, however*, That the limitation on compensation provided by subsection (c) of this section does not apply to the reemployed former employee: *Provided further*, That in no event may reemployment by the Legislature of a per diem employee exceed 175 days per calendar year.

(f) Subject to the provisions of subsection (i) of this section, a member who is participating in the system simultaneously as both a regular, full-time employee of a participating public employer, and as an elected or appointed member of the legislative body of the state or any political subdivision, may, upon meeting the age and service requirements of this article, elect to retire from his or her regular full-time state employment and may commence to receive an annuity from the system without terminating his or her position as a member of the legislative body of the state or political subdivision: *Provided*, That the retired member shall not, during the term of his or her retirement and continued service as a member of the legislative body of a political subdivision, be eligible to continue his or her participation as a contributing member of the system and shall not continue to accrue any additional service credit or benefits in the system related to the continued service.

(g) Notwithstanding the provisions of §5-10-27b of this code, any publicly elected member of the legislative body of any political subdivision or of the State Legislature, the Clerk of the House of Delegates, and the Clerk of the Senate may elect to commence receiving in-service retirement distributions from this system upon attaining the age of 70 and one-half years: *Provided*, That the member is eligible to retire under the provisions of §5-10-20 or §5-10-21 of this code: *Provided, however*, That the member elects to stop actively contributing to the system while receiving the in-service distributions.

(h) The Legislature hereby finds and declares that a severe shortage of child protective services workers and adult protective services workers exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve this critical need. Notwithstanding any provision of subsection (c) of this section to the contrary, a person receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment as a child protective services worker or an adult protective services worker on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position, has been retired for at least 60 days, and is hired to fill an existing child protective services or adult protective services vacancy. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protective service worker or an adult protective service worker. The provisions of this subsection shall expire July 1, 2025.

(i) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by a participating public employer after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or his or her participating public employer fails to comply with §5-10-19 in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of §5-10-44 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(j) The Legislature hereby finds and declares that a severe shortage of attorneys to represent children in child welfare matters exists throughout the state, and therefore, a compelling state interest exists in expanding the use of retired employees to serve as child protection commissioners or circuit court law clerks. Notwithstanding any provision of subsection (c) of this section to the contrary, a licensed attorney receiving retirement benefits or who is eligible to receive retirement benefits pursuant to the provisions of this chapter, may accept employment from the Supreme Court of Appeals as a child protection commissioner or circuit court law clerk on a full-time or part-time basis without having payment of his or her retirement annuity suspended and without reentering the retirement system as a contributing member. This subsection is only applicable if the retired employee meets the minimum qualifications of the position and has been retired for at least 60 days. The retired employee may continue to work under this subsection only as long as that position remains vacant. The vacant position shall be posted until it is filled by a regularly employed person meeting the minimum qualifications to serve as a child protection commissioner or circuit court law clerk.

CHAPTER 49. CHILD WELFARE.

ARTICLE 1. GENERAL PROVISIONS AND DEFINITIONS.**§49-1-207. Definitions related to court actions.**

When used in this chapter, terms defined in this section have the meanings ascribed to them that relate to, but are not limited to, court actions, except in those instances where a different meaning is provided or the context in which the word is used clearly indicates that a different meaning is intended.

"Court" means the circuit court of the county with jurisdiction of the case or the judge in vacation unless otherwise specifically provided.

"Court appointed special advocate (CASA) program" means a community organization that screens, trains, and supervises CASA volunteers to advocate for the best interests of children who are involved in abuse and neglect proceedings pursuant to §49-3-102 of this code.

"Extrajudicial Statement" means any utterance, written or oral, which was made outside of court.

"Juvenile referee" means a magistrate appointed by the circuit court to perform the functions expressly prescribed for a referee under the provisions of this chapter.

"Multidisciplinary team" means a group of professionals and paraprofessionals representing a variety of disciplines who interact and coordinate their efforts to identify, diagnose and treat specific cases of child abuse and neglect. Multidisciplinary teams may include, but are not limited to, medical, educational, childcare and law-enforcement personnel, social workers, psychologists, and psychiatrists. Their goal is to pool their respective skills in order to formulate accurate diagnoses and to provide comprehensive coordinated treatment with continuity and follow-up for both parents and children.

"Community team" means a multidisciplinary group which addresses the general problem of child abuse and neglect in a given community and may consist of several multidisciplinary teams with different functions.

"Child protection commissioner" means an individual appointed by the Supreme Court of Appeals to manage portions of a court case filed pursuant to this chapter.

"Res gestae" means a spontaneous declaration made by a person immediately after an event and before the person has had an opportunity to conjure a falsehood.

"Valid court order" means an order issued by a court of competent jurisdiction relating to a child brought before the court and who is the subject of that order. Prior to the entry of the order the child shall receive the full due process rights guaranteed to that child or juvenile by the Constitutions of the United States and the State of West Virginia.

"Violation of a traffic law of West Virginia" means a violation of chapter 17A, 17B, 17C, or 17D of this code, except a violation of §17C-4-1 or §17C-4-2 of this code relating to hit and run, or §17C-5-1, §17C-5-2, or §17C-5-3 of this code, relating, respectively, to vehicular homicide, aggravated vehicular homicide, vehicular homicide in a school zone, vehicular homicide in a construction zone, driving under the influence of alcohol, controlled substances or drugs and reckless driving.

ARTICLE 4. COURT ACTIONS.**§49-4-118. Child protection commissioner created; powers and duties.**

(a) The Supreme Court of Appeals is requested to create a pilot project utilizing child protection commissioners to encourage efficiency and ensure accountability in court actions filed pursuant to this chapter.

(b) A child protection commissioner is a judicial officer and shall be appointed, and may be removed, by the Supreme Court of Appeals for a two-year term that may be renewed, and is subject to the administrative oversight, training, and standards established by the Supreme Court of Appeals.

(c) A child protection commissioner shall be an attorney licensed to practice law in this state and possess experience or training in juvenile law, as determined by rules of the Supreme Court of Appeals.

(d) The Administrative Director of the Supreme Court of Appeals may designate multi-circuit child protection commissioner regions to carry out the purpose of this section, and a child protection commissioner may serve in that capacity in more than one circuit simultaneously.

(e) Subject to the direction and oversight of the chief circuit judge, a child protection commissioner may authorize emergency removals as permitted by law, monitor diversion and pre-petition matters, conduct evidentiary and status hearings, compel witnesses to testify and place them under oath, order services and visitation, determine child-support, custody, sibling visitation, grandparent visitation, and post termination-visitiation in matters pending in circuit court under Rule 6 of the Rules of Procedure for Child Abuse and Neglect Proceedings, facilitate multi-disciplinary team meetings, manage discovery, oversee improvement periods and case plans, remove individuals from treatment court programs, and perform all other duties authorized by rules promulgated by the Supreme Court of Appeals.

(f) The child protection commissioner may issue a non-binding report and recommendations to the presiding circuit judge regarding findings of fact and conclusions of law for a preliminary, adjudication, disposition, or permanency hearing, contempt, termination of an improvement period, placement, or referral to a treatment court; however, the circuit court shall retain the sole authority to enter orders on these matters. A child protection commissioner shall not exercise independent contempt authority. Any party may object to a child protection commissioner's report and recommendations within 10 days of their entry and filing, and the circuit judge shall review the record made before the child protection commissioner, the recommended decision of the child protection commissioner, and the objections and exceptions which have been filed, and the court shall enter an order.

(g) A child protection commissioner shall be paid by the Supreme Court of Appeals at the rate it establishes and may also receive travel reimbursement as provided by Supreme Court of Appeals policy. The Supreme Court of Appeals shall provide all necessary equipment for a child protection commissioner to perform his or her duties, and may, at its discretion, acquire or lease the necessary facilities as required. A child protection commissioner may be either a full-time employee or paid hourly depending on workload necessities as determined by the Administrative Director.

(h) The Administrative Director of the Supreme Court of Appeals will identify measurable outcomes to be improved for the pilot program referenced in this section, and those measures shall include a baseline of pre-implementation costs and, upon annual reporting to the Joint Committee on Government and Finance, shall further include the annual costs and projected annual cost for the pilot program.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 9. RETIREMENT SYSTEM FOR JUDGES OF COURTS OF RECORD.

§51-9-10. Services of senior judges and justices.

(a) The Legislature finds that:

(1) Section seven, article VIII of the Constitution of West Virginia expressly requires the Legislature to fix judicial salaries by statute, providing that: "[j]ustices, judges and magistrates shall receive the salaries fixed by law".

(2) Occasionally, circumstances may require the extended assignment of senior judges and justices, necessitating the Legislature to prescribe such circumstances when the limitations on compensation of senior judges and justices receiving retirement benefits may be exceeded.

(b) The Legislature recognizes and acknowledges the authority of the West Virginia Supreme Court of Appeals to recall retired circuit court judges, family court judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals for temporary assignment and to create a panel of such senior judges and justices to serve in certain circumstances including, but not limited to, serving temporarily in the event of a protracted illness or medical condition, lengthy suspension, or other unfilled vacancy; serving temporarily in a circuit to assist with an excess of pending matters identified by the administrative director through statistical analysis; mentoring or assisting a sitting judge as directed by the administrative director; serving temporarily in a circuit in the event of a recusal or disqualification of a judge or justice; serving as a child protection commissioner pursuant to §49-4-118 of this code; serving as a law clerk for a circuit judge, a judge of the intermediate court of appeals, or a justice of the Supreme Court of Appeals; or presiding over cases as a member of the mass litigation or business court: *Provided*, That extended assignment of retired judges and justices must not be utilized in such a way as to threaten the qualified status of the Judges' Retirement System under applicable provisions of the Internal Revenue Code, including Treasury Regulation §1.401(a)-1(b)(1) requiring that a qualified plan must be established primarily to provide payment of definitely determinable benefits to its employees after retirement or attainment of normal retirement age.

(c) Senior intermediate court judges, circuit court judges, and justices recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$430 for each day actually served: *Provided*, That the combined total of per diem compensation and retirement benefits paid to a senior judge or justice during a single calendar year may not exceed the annual salary of a sitting circuit judge, except as set forth in subsection (d) of this section.

(d) Notwithstanding subsection (c) of this section, for purposes of maintaining judicial efficacy and continuity in judicial decision making, a senior judge or justice may continue to receive per diem compensation after the combined total of per diem compensation and retirement benefits paid to the senior judge or justice during that calendar year exceeds the annual salary of a sitting

circuit judge if the Chief Justice of the Supreme Court of Appeals enters an administrative order certifying there are certain extraordinary circumstances involving the necessary absence of a sitting judicial officer because of a protracted illness or medical condition, or a lengthy suspension which necessitate the extended assignment of the senior judge or justice. Immediately upon entering such an order, the Chief Justice shall submit copies of the order to the State Auditor and the State Treasurer.

(e) In addition to the per diem compensation authorized by this section, senior judges and justices recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(f) Senior family court judges recalled and assigned to service shall receive per diem compensation set by the Supreme Court of Appeals, but not to exceed \$325 for each day actually served: *Provided*, That the combined total per diem compensation and retirement benefits paid to a senior family court judge during a single calendar year may not exceed the annual salary of a sitting family court judge, except as set forth in subsection (d) of this section. In addition to the per diem compensation authorized by this section, senior family court judges recalled to service may be reimbursed for their actual and necessary expenses incurred in the performance of their duties.

(g) Notwithstanding any provision of this article to the contrary, a retirant who becomes employed by the Supreme Court after the effective date of his or her retirement must have a bona fide separation from service upon retirement to be eligible for an annuity under the retirement system. If a retirant fails to have a bona fide separation from service upon retirement or if such retirant or the participating public employer fails to comply with subsection (h) of this section in a manner satisfactory to the board, then the member's retirement shall be voided and the member shall repay to the system the gross amount of all annuity payments received related to such voided retirement. The board may take any actions necessary or appropriate in accordance with the provisions of § 51-9-18 to recover such annuity payments so that an in-service distribution is not deemed to have been made.

(h) Prior to any retirant subsequently becoming reemployed by the Supreme Court, whether on a permanent, full-time, part-time, substitute, per diem, temporary or leased employee basis, the Supreme Court shall notify the board and the retirant, in writing, if and when any such potential employment will negatively impact the retirant's retired status or benefits. Upon the retirant's acceptance of such employment, the participating public employer shall notify the board, in writing, of the retirant's subsequent employment. The retirement board may also require of retirants and the Supreme Court such reports, forms and verifications as it deems necessary to ensure that a bona fide separation from service from retirement has occurred.

On motion of Senator Tarr, the following amendment to the Judiciary committee amendment to the bill (Eng. H. B. 5684) was reported by the Clerk:

On page 9, section 118, lines 40-44, by striking out all of subsection (h) and inserting in lieu thereof a new subsection (h) to read as follows:

(h) The Administrative Director of the Supreme Court of Appeals will identify and report annually, to the Joint Committee on Government and Finance, on measurable outcomes to be improved for the pilot program referenced in this section, and those measures shall include, but not be limited to, a baseline of pre-implementation outcome metrics and the annual costs for the pilot program.

Following discussion,

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

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

Engrossed House Bill 5684, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5684) passed.

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

Eng. House Bill 5684—A Bill to amend and reenact §5-10-48, §49-1-207, and §51-9-10 of the Code of West Virginia, 1931, as amended; and to amend the code by adding a new section, designated §49-4-118, relating to authorizing the Supreme Court of Appeals to create child protection commissioners; specifying retirement benefits applicable to certain retired public employees employed as child protection commissioners; defining child protection commissioner; requesting Supreme Court of Appeals to create program of child protection commissioners; providing for appointment, removal, and oversight; providing qualifications; authorizing multi-circuit child protection commissioner regions; setting forth powers and duties; creating annual reporting requirement; providing for compensation and employment terms; and authorizing senior judges and justices to serve as child protection commissioners.

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

Eng. House Bill 5685, Relating to authorizing bonds for improvements to the West Virginia Science and Culture Center.

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, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—33.

The nays were: Hart—1.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. H. B. 5685) passed with its title.

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

Pending announcement of a meeting of a standing committee of the Senate,

On motion of Senator Martin, at 1:32 p.m., the Senate recessed until 3 p.m. today.

The Senate reconvened at 3:33 p.m. and proceeded to the ninth order of business.

Eng. Com. Sub. for House Bill 4007, Relating to industrial access roads.

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

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

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

CHAPTER 17. ROADS AND HIGHWAYS.

ARTICLE 3A. INDUSTRIAL ACCESS ROAD FUND.

§17-3A-1. Industrial Access Road Fund created; construction guarantees by municipalities and counties.

(a) Any other provision of this code notwithstanding, there is hereby continued in the State Treasury the Industrial Access Road Fund, referred to in this article as "the fund". There shall be deposited into the fund three fourths of one percent of all state tax collections which are otherwise specifically dedicated by the provisions of this code to the State Road Fund or the percentage of those tax collections that will produce \$3 million for each fiscal year: Provided, That the Commissioner of Highways may transfer an additional amount up to \$3 million from the State Road Fund in any fiscal year when he or she determines this additional amount would be a prudent investment in additional industrial access roads that could not be funded out of the fund without additional moneys being available. At the end of each fiscal year, all unobligated moneys in the fund revert to the State Road Fund.

(b) The moneys in the fund shall be expended by the Division of Highways for constructing and maintaining industrial access roads within counties and municipalities to industrial sites on which manufacturing, distribution, processing, or other economic development activities, including publicly owned airports, are already constructed, or are under firm contract to be constructed, or an approved industrial development site as part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code. The moneys in the fund shall also be used for signage, signalization, safety-related upgrades, and other improvements directly tied to an approved industrial access road fund project. In the event there is no industrial site already constructed, or for which the construction is under firm contract, or an approved industrial development site as part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, a county or municipality may guarantee to the Division of Highways an

acceptable surety or a device in an amount equal to the estimated cost of the access road or that portion provided by the Division of Highways, that an industrial site will be constructed and if no industrial site acceptable to the Division of Highways is constructed within the time limits of the surety or device, the surety or device shall be forfeited: Provided, That any grant previously awarded prior to being approved as a part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, and has not yet expended all of the grant award shall not have surety to the Division of Highways.

§17-3A-2. Division of highways to determine construction of industrial access roads.

In determining whether or not to construct or improve any industrial access road and in determining the nature of the road to be constructed, the Division of Highways shall base its decision on the costs of the industrial access road in relation to the volume and nature of the traffic to be generated as a result of developing the industrial site within the total industrial area. In making a decision on any industrial site, the total volume of traffic to be generated shall be considered in regard to the overall cost of the project. The Division of Highways shall consult and work in cooperation with the West Virginia Division of Economic Development Office in determining the use of industrial access road funds.

Prior to a formal request for the use of moneys from the fund to provide access to new or expanding industrial sites, the location of the industrial access road shall be submitted for approval of the Division of Highways. The Division of Highways shall consider the cost of the industrial access road as it relates to the project's location and as it relates to the possibility of future extensions of the road to serve other possible industrial sites as well as the future development of the surrounding area. The Division of Highways shall approve, reject, or provide comments relating to the location of the Industrial Access Road within 90 days of the date of submission of the request.

Prior to the allocation of moneys from the fund for the construction or maintenance of an industrial access road to an industry proposing to locate or expand in a county or municipality, the governing body of the county or municipality shall, by resolution, request moneys from the fund and shall be responsible for the preliminary negotiations with the industries and other interested parties. The Division of Highways shall be available for consultation with the governing bodies of the counties or municipalities and other interested parties and may prepare surveys, plans, engineering studies, and cost estimates for the proposed industrial access road.

§17-3A-4. Restrictions on use of fund.

(a) The fund may not be used for the adjustment of utilities or for the construction of industrial access roads to schools, hospitals, libraries, armories, shopping centers, apartment buildings, government installations, or similar facilities, whether public or private. The fund may not be used to construct industrial access roads on private property.

(b) Moneys from the fund may not be expended until the governing body of the county or municipality certifies to the Division of Highways that the industrial site is constructed and operating, or is under firm contract to be constructed or operated, or is an approved industrial development site as part of the West Virginia Business Ready Sites Program, as defined in §24-2-1n of this code, or upon the presentation of an acceptable surety or device in an amount equal to the estimated cost of the access road or that portion provided by the Division of Highways in accordance with ~~section one of this article~~ §17-3A-1.

(c) Not more than ~~\$400,000~~ \$800,000 of unmatched moneys from the fund may be allocated for use in any one county or municipality in any fiscal year. ~~The maximum amount of unmatched moneys which may be allocated from the fund is ten percent of the fair market value of the designated industrial establishment.~~ The amount of unmatched funds allocated may be supplemented with additional matched moneys from the fund, in which case the matched moneys allocated from the fund may not exceed ~~150,000~~ \$300,000, to be matched equally from sources other than the fund. ~~The amount of matched moneys which may be allocated from the fund over and above the unmatched funds may not exceed five percent of the fair market value of the designated industrial site.~~

(d) Funds may only be allocated to those items of construction and engineering which are essential to providing an adequate facility to serve the anticipated traffic. Funds may not be allocated for items such as storm sewers, curbs, gutters, and extra pavement width unless necessary to extend or connect an existing access road

Following discussion,

The question being on the adoption of the Economic Development committee amendment to the bill, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4007), as amended, was then ordered to third reading.

At the request of Senator Helton, and by unanimous consent, the remarks by Senator Woelfel regarding the adoption of the Economic Development committee amendment to Engrossed Committee Substitute for House Bill 4007 were ordered printed in the Appendix to the Journal.

Eng. Com. Sub. for House Bill 4010, Providing a statutory program for loaning financial assistance to local airports for airplane hangar construction in this state.

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

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

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

CHAPTER 31. CORPORATIONS.

ARTICLE 15. WEST VIRGINIA ECONOMIC DEVELOPMENT AUTHORITY.

§31-15-23b. Airport hangar grant program.

(a) There is hereby created a sub-fund of the Economic Development Project Fund in the State Treasury known as the Airport Hangar Development Fund. The sub-fund shall consist of all moneys transferred to the sub-fund pursuant to this section from the Economic Development Project Fund; gifts, grants, and contributions to the fund; any earnings or interest accruing to the fund; and any other moneys appropriated to the sub-fund by the Legislature. The authority may invest and reinvest moneys in the sub-fund with the West Virginia Investment Management Board or the Board of Treasury Investments.

(b) On or before July 1, 2026, the authority shall transfer \$75 million from the Economic Development Project Fund to the Airport Hangar Development Fund.

(c) The authority shall use moneys in the Airport Hangar Development Fund to spur economic development in aviation repair, overhaul, assembly, and maintenance by providing grants for the construction of wide-bodied hangars at airports located within the state. On or before September 1, 2026, the authority shall establish the Airport Hangar Grant Program. The program shall offer grants to counties, municipalities, and regional airport authorities located within the state to fund the planning, acquisition, construction, improvement, maintenance, or operation of wide-body hangar facilities owned or operated or to be owned or operated by the counties, municipalities, or regional airport authorities receiving the grants.

(d) The authority shall establish criteria for awarding of grants.

(e) Grants may only be given for hangars with a minimum clear width of 250 feet, clear depth of 225 feet, and clear height of 75 feet. Preference shall be given to hangars with a minimum clear width of 350 feet, clear depth of 330 feet, and clear height of 90 feet. Preference shall also be given to airports with higher pavement classification ratings, runways over 7,500 linear feet and larger proposed hangar size: *Provided, however,* That moneys for grants for runways over 8,000 linear feet must kept available for at least one grantee.

(f) Applications for grants shall include proposed concept plans and site plans for a proposed hangar and demonstrate the airport's capability to locate the hangar with runway and taxiway access. Applications for grants shall include important airport characteristics, including, but not limited to, available property for the hangar and expansion for new business development, runway length, runway width, landing distance area, take-off runway area, pavement classification, rating of runway, and other relevant information important to the applicant.

(g) The authority may cooperate with the offices of the West Virginia Division of Multimodal Transportation Facilities, the Department of Commerce, and other state and local agencies to explore all available opportunities for funding such hangar projects.

(h) The authority may limit the number of airports participating in the pilot project program based on availability of allocated funds.

(i) The authority shall set the rules and conditions for participating airports based on available funding.

(j) The authority may promulgate legislative rules, including emergency rules, pursuant to §29A-3-1 *et seq.* of this code to effectuate the purposes of this section.

(k) On July 1 of each year, the authority shall annually provide a full summary report digitally of the status of the Airport Hangar Grant Program to the Joint Committee on Government and Finance.

The bill (Eng. Com. Sub. for H. B. 4010), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4087, To create a West Virginia-Ireland Education Alliance.

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

Eng. Com. Sub. for House Bill 4176, To allow youth and handicapped hunters to harvest a buck deer or doe during youth/handicapped special hunts.

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

Eng. Com. Sub. for House Bill 4191, Relating to providing child care generally.

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

Eng. Com. Sub. for House Bill 4245, Authorizing Certain Agencies of the Department of Revenue to Promulgate Legislative Rules.

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

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

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

ARTICLE 7. AUTHORIZATION FOR AGENCIES OF THE DEPARTMENT OF REVENUE TO PROMULGATE LEGISLATIVE RULES.

§64-7-1. Alcohol Beverage Control Administration.

The legislative rule filed in the State Register on July 22, 2025, authorized under the authority of §60-7-10 of this code, modified by the Alcohol Beverage Control Administration to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 11, 2025, relating to the Alcohol Beverage Control Administration (private clubs, 175 CSR 02), is authorized with the following amendment:

On page 40, by striking out 4.2 through 4.2.5 in their entirety and inserting in lieu thereof the following:

"4.2. Age for purchase of alcoholic beverages. - No licensee shall sell any alcoholic beverage or nonintoxicating beer to individuals below the age of 21 years. The licensee must verify an individual's age by requiring ~~require~~ proof of age from at least one of ~~three~~ the following documents certifying the age and depicting the identity of the holder of the document ~~individual, one form of proof shall be either a valid driver's license, commercial driver's license, or Department of Motor Vehicles identification card, showing that the holder is at least 21 years of age. The following are considered to be valid proofs of age.:~~

4.2.1. A valid West Virginia driver's license showing that the holder is at least 21 years of age and the photograph on the license matches the holder.

4.2.2. A valid West Virginia Commercial Driver's license (CDL) ~~license~~ showing that the holder is at least 21 years of age and the photograph on the license matches the holder.

4.2.3. A valid West Virginia Department of Motor Vehicles (WV DMV) identification or a valid West Virginia Mobile ID issued by the WV DMV showing that the holder is at least 21 years of age and the photograph on the identification or WV Mobile ID matches the holder.

4.2.3.a. In order to accept a valid West Virginia Mobile ID, a licensee must download a West Virginia DMV approved reader/verifier application or "APP". Approved WV DMV reader/verifier APP vendors include, but are not limited to Credence mID, Idemia (Mobile ID Verify), TapID, and any other WV DMV approved reader/verifier APP vendors. Note, any other digital identification or any other photograph/copy of an identification is not an acceptable form of identification.

4.2.3.b. Utilizing a WV DMV approved reader/verifier APP that has age verification, the licensee must first confirm the validity of a holder's WV Mobile ID. A holder would need to share data with the licensee which at minimum includes their name, photo, and birthdate to complete the validation process. If a holder chooses to not share the pertinent data with the licensee, then the licensee cannot complete a sale of alcohol using the WV Mobile ID.

4.2.3.c. Upon a holder sharing the data set forth in section 4.2.3.b., a licensee using a WV DMV approved reader/verifier APP with age verification shall confirm the holder's WV Mobile ID is valid. Simultaneously, the WV DMV approved reader/verifier APP with age verification will verify if the holder is 21 years of age or over, or that the holder is not 21 years of age or over. Additionally, the licensee must verify the photograph on the WV Mobile ID matches the holder before completing the sale of any alcohol to a holder that is 21 years of age or older. If a holder's purported WV Mobile ID is not confirmed as valid or the holder is not 21 years of age, then the licensee cannot complete the sale of alcohol. Note, the licensee using a WV DMV approved reader/verifier APP with age verification remains responsible to confirm the proper age and identity of the holder, as with any other valid form of identification.

4.2.4. A valid driver's license from another state showing that the holder is at least 21 years of age and the photograph on the license matches the holder may be accepted if there is no indication or evidence that the license has been altered.

4.2.5. Any other valid means of satisfactory proof with picture identification showing the individual holder to be at least 21 years of age and the photograph on the document matches the holder, such as a valid government issued passport, United States military identification, United States VISA documents, or a United States issued permanent resident card.

The failure to produce satisfactory proof of age with a valid form of identification upon demand entitles requires the licensee to refuse to sell alcoholic beverages to the individual."

§64-7-2. Division of Financial Institutions.

(a) The legislative rule filed in the State Register on July 24, 2025, authorized under the authority of §31-17-3 of this code, modified by the Division of Financial Institutions to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 10, 2025, relating to the Division of Financial Institutions (residential mortgage lenders, brokers, and loan originators, 106 CSR 05), is authorized with the following amendment:

On page 1, subsection 2.1, line 1, following the words "Pursuant to" by striking "W. Va. Code §31A-8-12b(1)" and inserting in lieu thereof "W. Va. Code §31A-8-12b(a)(1)"; and

On page 3, section 4, line 4, following the word "to" by striking "subsections" and inserting in lieu thereof "sections".

(b) The legislative rule filed in the State Register on July 23, 2025, authorized under the authority of §31A-8-12b of this code, relating to the Division of Financial Institutions (the installation, operation, and sharing of customer bank communication terminals and the utilization of nonexclusive access interchange system, 106 CSR 07), is authorized with the following amendment:

On page 8, subsection 9.1, line 4, following the word "subsections" by striking "3.1.~~wu~~ or 6.1.~~qx~~" and inserting in lieu thereof "3.1.21 or 6.1.15";

On page 8, subsection 11.2, line 4, following the word "subsections" by striking "3.1.~~ffd~~ or 6.1.~~zx~~" and inserting in lieu thereof "3.1.30 or 6.1.24"; and

On page 9, subsection 14.1, line 3, following the words "W. Va. Code" by striking "§31-17A-5(c)" and inserting in lieu thereof "§31-17A-5".

(c) The legislative rule filed in the State Register on July 23, 2025, authorized under the authority of §31A-4-33 of this code, relating to the Division of Financial Institutions (the notice and treatment of joint accounts, 106 CSR 17), is authorized.

(d) The legislative rule filed in the State Register on February 3, 2025, authorized under the authority of §31A-8G-3 of this code, relating to the Commissioner of Financial Institutions (Fintech Regulatory Sandbox Program, 106 CSR 21), is authorized.

§64-7-3. Insurance Commissioner.

(a) The legislative rule filed in the State Register on April 16, 2025, authorized under the authority of §33-12-37 of this code, relating to the Insurance Commissioner (fingerprinting requirements for applicants for insurance producer license and insurance adjuster license, 114 CSR 02A), is authorized.

(b) The legislative rule filed in the State Register on July 22, 2025, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commission (premium financing for life insurance for college students, 114 CSR 07), is authorized.

(c) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commission (mass marketing of property and liability insurance, 114 CSR 09), is authorized.

(d) The legislative rule filed in the State Register on July 22, 2025, authorized under the authority of §33-2-10 of this code, relating to the Insurance Commission (advertisement of accident and sickness insurance, 114 CSR 10), is authorized;

(e) The legislative rule filed in the State Register on April 16, 2025, authorized under the authority of §33-12B-12 of this code, relating to the Insurance Commissioner (insurance adjusters, 114 CSR 25), is authorized.

(f) The legislative rule filed in the State Register on July 22, 2025, authorized under the authority of §33-27-14 of this code, modified by the Insurance Commission to meet the objections

of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2025, relating to the Insurance Commission (insurance holding company systems, 114 CSR 35), is authorized.

(g) The legislative rule filed in the State Register on April 16, 2025, authorized under the authority of §33-2-10 of this code, modified by the Insurance Commissioner to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 21, 2025, relating to the Insurance Commissioner (credit for reinsurance, 114 CSR 40), is authorized.

The legislative rule filed in the State Register on April 16, 2025, authorized under the authority of §33-15-4u of this code, relating to the Insurance Commissioner (mental health parity, 114 CSR 64), is authorized.

§64-7-4. Lottery Commission.

(a) The Legislature directs the Lottery Commission to amend the legislative rule filed in the State Register on April 30, 2025, authorized under the authority of §29-22D-4 of this code, relating to the Lottery Commission (West Virginia Lottery sports wagering rule, 179 CSR 09), authorized with the amendment set forth below:

On page 23, after section 26, by inserting therein a new section, designated §179-9-27 to read as follows:

§179-9-27. Patron Protection.

27.1. Any operator, sports pool operator, or any entity licensed to accept wagers on sporting events, including individually branded online sports pool websites and accompanying mobile applications, shall conspicuously post the minimum and maximum wagers permitted for each menu item offered for wagering on any online sports pool website or mobile application in which wagers are accepted.

27.2. Any operator, sports pool operator, or any entity licensed to accept wagers on sporting events, including individually branded online sports pool websites and accompanying mobile applications, shall be prohibited from accepting any wager on any sporting event that exceeds ten times the posted maximum wager permitted for the menu item in which the wager is placed.

27.3. Any operator, sports pool operator, or any entity licensed to accept wagers on sporting events, including individually branded online sports pool websites and accompanying mobile applications, may not refuse to accept any wager that is within the posted maximum wager permitted for the menu item in which the wager is placed, and shall not unduly delay acceptance of such wager, only and unless such activity:

27.3.1. Constitutes suspicious wagering activity, as defined by the Commission: *Provided*, That such determination of suspicious wagering activity may not be based solely upon the size of a patron's wager or deposit into their sports wagering account; or

27.3.2 Indicates that such patron has a compulsive gambling disorder.

27.4. If the acceptance of any wager that is within the posted maximum wager permitted for the menu item in which the wager is being placed takes longer than 30 seconds, the operator, sports pool operator, or any entity licensed to accept wagers on sporting events, including

individually branded online sports pool websites and accompanying mobile applications, must submit an exception report to the Commission within 24 hours.

27.5 When any operator, sports pool operator, or any entity licensed to accept wagers on sporting events, including individually branded online sports pool websites and accompanying mobile applications, attempts to restrict a patron's ability to place wagers within the posted maximum wager permitted for the menu item in which the wager is being placed, or make deposits into their sports wagering account above, including but not limited to banning, or suspending the patron's sports wagering account, such restriction must be based upon the operator's good faith belief that clear and convincing evidence exists justifying such limit, ban, or restriction.

27.6. Within 24 hours of an operator, sports pool operator, or any entity licensed to accept wagers on sporting events, including individually branded online sports pool websites and accompanying mobile applications, issuing any restriction on a patron pursuant to subsection §179-9-27.5 of this rule, electronic written notice must be provided to the patron and Commission. Such written notice shall include, but need not be limited to:

27.6.1. The specific manner in which the patron is being restricted;

27.6.2. The duration of such restriction;

27.6.3. An explanation of why the authorized sports bettor is being restricted, specifying if such restriction is for suspicious wagering activity or compulsive gambling;

27.6.4. Any and all documents and information relied upon in forming the basis of the operator's good faith belief that clear and convincing evidence exists to justify such restriction must be described with particularity, and copies of any documentary evidence must be provided to the patron; and

27.6.5. If such restriction is issued because of compulsive gambling, resources which are intended to combat compulsive gambling.

(b) The legislative rule filed in the State Register on June 25, 2025, authorized under the authority of §29-22E-4 of this code, relating to the Lottery Commission (interactive wagering, 179 CSR 10), is authorized.

§64-7-5. Racing Commission.

(a) The legislative rule filed in the State Register on July 24, 2025, authorized under the authority of §19-23-6 of this code, modified by the Racing Commission to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on November 5, 2025, relating to the Racing Commission (thoroughbred racing, 178 CSR 01), is authorized.

(b) The legislative rule filed in the State Register on July 22, 2025, authorized under the authority of §19-23-12e of this code, relating to the Racing Commission (Advance Deposit Account Wagering, 178 CSR 10), is authorized.

§64-7-6. Tax Division.

(a) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §11-1C-11b of this code, relating to the Tax Division (valuation of timberland and managed timberland, 110 CSR 01H), is authorized.

(b) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §11-1C-5 of this code, modified by the Tax Division to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2025, relating to the Tax Division (valuation of public utility property for ad valorem property tax purposes, 110 CSR 01M), is authorized.

(c) The legislative rule filed in the State Register on March 31, 2025, authorized under the authority of §11-13FF-5 of this code, modified by the Tax Division to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on August 26, 2025, relating to the Tax Division (tax credit for providing vehicles to low-income workers, 110 CSR 13FF), is authorized.

(d) The legislative rule filed in the State Register on March 31, 2025, authorized under the authority of §11-13GG-16 of this code, relating to the Tax Division (Downstream Natural Gas Manufacturing Investment Tax Credit, 110 CSR 13GG), is authorized.

(e) The legislative rule filed in the State Register on March 31, 2025, authorized under the authority of §11-13II-5 of this code, relating to the Tax Division (High-Wage Growth Business Tax Credit, 110 CSR 13II), is authorized.

(f) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §11-13AA-10 of this code, relating to the Tax Division (commercial patent incentives tax credits, 110 CSR 13Q), is authorized.

(g) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §47-21A-23 of this code, modified by the Tax Division to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2025, relating to the Tax Division (on-line bingo and raffles, 110 CSR 16A), is authorized.

(h) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §11-10-5 of this code, relating to the Tax Division (Soft Drinks Tax, 110 CSR 19), is authorized.

(i) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §11-13MM-6 of this code, modified by the Tax Division to meet the objections of the Legislative Rule-Making Review Committee and refiled in the State Register on September 24, 2025, relating to the Tax Division (income tax credits for property taxes paid, 110 CSR 21H), is authorized with the following amendment:

On page 5, subsection 4.4, line 2, following the word "spouse" by striking "that" and inserting in lieu thereof "who";

On page 5, subsection 4.5, line 2, following the word "veteran's" by striking "homestead or an eligible widowed spouse" and inserting in lieu thereof "or an eligible widowed spouse's homestead"; and

On page 5, subsection 4.5, line 3, following the words "veteran's" by inserting "or eligible widowed spouse's".

(j) The legislative rule filed in the State Register on July 25, 2025, authorized under the authority of §5F-2-2 of this code, relating to the Tax Division (preneed cemetery companies, 110 CSR 36), is authorized with the following amendment:

On page 10, after subsection 19.2, by adding thereto a new subsection, designated §110-36-19.3 to read as follows:

§110-36-19.3. The Commissioner shall report any violation or complaint relating to preneed cemetery companies received to the Attorney General and shall cooperate with any investigation or action which the Attorney General may initiate regarding any violation of this rule.

At the request of Senator Martin, and by unanimous consent, further consideration of the bill was deferred until the conclusion of today's second reading calendar, following consideration of Engrossed Committee Substitute for House Bill 4573, already placed in that position.

Eng. Com. Sub. for House Bill 4345, Relating to the preservation of missing persons records and evidence.

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

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

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

CHAPTER 15. PUBLIC SAFETY.

ARTICLE 3D. WEST VIRGINIA'S MISSING PERSON'S ACT.

§15-3D-3. Definitions.

For the purposes of this article:

(1) "CODIS" means the Federal Bureau of Investigation's Combined DNA Index System, which allows for the storage and exchange of DNA records submitted by federal, state, and local forensic DNA laboratories. The term "CODIS" includes the National DNA Index System or NDIS, administered and operated by the Federal Bureau of Investigation.

(2) "Complainant" means a person who contacts law enforcement to report that a person is missing.

(3) "Electronic communication device" means a cellular telephone, personal digital assistant, electronic device with mobile data access, laptop computer, pager, broadband personal communication device, two-way messaging device, electronic game, or portable computing device.

(4) "Juvenile" means any person under 18 years of age.

(5) "Law-enforcement agency" means any duly authorized state, county, or municipal organization employing one or more persons whose responsibility is the enforcement of laws of the state or any county or municipality thereof.

(6) "Lead law-enforcement agency" means the law-enforcement agency that initially receives a missing persons complaint or, after the fulfillment of all requirements of this article related to the initial receipt of a missing persons complaint and transmission of information to required databases, the law-enforcement agency with the primary responsibility for investigating a missing or unidentified persons complaint.

(7) "Missing and endangered child" means any missing child for which there are substantial indications the child is at high risk of harm or in immediate danger, and rapid action is required, including, but not limited to:

(A) Physically or mentally disabled and dependent upon an agency or another individual for care;

(B) Under the age of 13;

(C) Missing under circumstances which indicate the child's safety may be in danger; or

(D) A foster child and has been determined a missing and endangered child by the Department of Human Services.

(8) "Missing child" means any child under the age of 18 whose whereabouts are unknown to the child's legal custodian.

(9) "Missing person" means any person who is reported missing to a law-enforcement agency.

(10) "NamUs" means the database of the National Missing and Unidentified Persons System.

(11) "NCIC" means the database of the National Crime Information Center, the nationwide, online computer telecommunications system maintained by the Federal Bureau of Investigation to assist authorized agencies in criminal justice and related law-enforcement objectives.

(12) "NCMEC" means the database of the National Center for Missing and Exploited Children.

(13) "Unidentified person" means any person, living or deceased, who has not been identified through investigation for over 30 days.

(14) "Unresolved missing persons complaint" means a missing person's complaint that is unresolved one year from the date the missing persons complaint was filed pursuant to §15-3D-4 of this code.

~~(14)~~ (15) "Violent Criminal Apprehension Program" or "ViCAP" is a unit of the Federal Bureau of Investigation responsible for the analysis of serial violent and sexual crimes.

~~(15)~~ (16) "WEAPON system" means the West Virginia Automated Police Network.

§15-3D-10. Unresolved missing persons complaints.

(a) Law enforcement agencies shall permanently retain and shall not destroy unresolved missing persons complaint records and evidence.

(b) Law enforcement agencies may follow the state's existing record-retention schedules for resolved missing persons complaints.

(c) Law-enforcement agencies shall digitize active and unresolved missing persons complaint files, ensuring that all related documentation and evidence are scanned, uploaded, or otherwise preserved in a secure, searchable digital format. Physical and biological evidence shall be retained permanently by the lead law-enforcement agency or the West Virginia State Police pursuant to the policies of the law-enforcement agency.

(d) All documentation related to an unresolved missing persons complaint shall be transmitted to the West Virginia Fusion Center by the lead law-enforcement agency. The West Virginia Fusion Center shall retain the documentation until it is provided notice by the lead law-enforcement agency or the West Virginia State Police that the person has been located or the complaint has been resolved.

CHAPTER 15A. DEPARTMENT OF HOMELAND SECURITY.

ARTICLE 12. WEST VIRGINIA FUSION CENTER.

§15A-12-9. Cold case database.

(a) As used in this section:

"CODIS" means the Combined DNA Index System;

"Cold case" means any investigation into a qualifying crime, ~~a~~ an unresolved missing persons complaint as defined in §15-3D-3 of this code, or unidentified human remains where all investigative leads have been exhausted and the crime remains unsolved;

"Database" means the cold case database;

"NAMUS" means the National Missing and Unidentified Persons System;

"NCIC" means the National Crime Information Center;

"NCMEC" means the National Center for Missing and Exploited Children;

"Qualifying crime" means felony offenses set forth in §61-2-1 *et seq.*, §61-3-1, §61-3-2, §61-3-7, §61-3C-14b, §61-3E-1 *et seq.*, §61-8-1 *et seq.*, §61-8A-1 *et seq.*, §61-8B-1 *et seq.*, §61-8C-1 *et seq.*, and §61-8D-1 *et seq.* of this code; and

"ViCAP" means the Violent Crime Apprehension Program.

(b) The West Virginia Fusion Center shall develop a secure database that contains all information related to each cold case in any jurisdiction in the state.

(c) The West Virginia Fusion Center shall adopt policies and procedures to collect information for the database and for its maintenance.

(d) Each law-enforcement agency in the state and the State Fire Marshal's Fire Investigation Division ~~may~~ shall provide the information required by the West Virginia Fusion Center for inclusion in the database for each cold case as provided in §15-3D-10 of this code. Each law-enforcement agency and the office of the State Fire Marshal may maintain its physical evidence and investigation files for each cold case until the investigation is resolved.

(e) Information to be collected and maintained in the cold case database. – Each law-enforcement agency in the state and the Fire Marshal's Fire Investigation Division may provide a written report or other information to the West Virginia Fusion Center for inclusion in the database containing the following:

(1) The victim's:

(A) Name;

(B) Gender;

(C) Race;

(D) Ethnicity; and

(E) Date of birth;

(2) The ViCAP number if the case has been entered into the ViCAP system;

(3) The NCMEC number if the case has been entered into the NCMEC system;

(4) Whether the case was entered into the NAMUS system;

(5) The NCIC number if entered into the NCIC system;

(6) The Medical Examiner case number;

(7) Whether a probative, unanalyzed suspect referenced DNA is available;

(8) Whether a probative crime scene DNA profile from the putative perpetrator has been uploaded to CODIS;

(9) Whether reference DNA from the victim is available;

(10) The West Virginia State Police Forensic Lab case number;

(11) The name of the agency investigating the case;

(12) The investigating agency's phone number;

(13) The agency case number;

(14) Whether the victim was a juvenile or adult victim at the time the crime occurred;

(15) The date the crime was reported to the investigating agency;

(16) The date or approximate date the victim was last seen;

(17) The date or approximate date of death;

(18) The cause or manner of death;

(19) The location where the body was found;

(20) Whether a weapon was used, and the type of weapon used;

(21) Whether the following evidence is available:

(A) Fingerprints;

(B) Palm prints;

(C) Latent prints;

(D) Dental records;

(E) Shell casings; or

(F) Other physical evidence;

(22) Whether a suspect or person of interest has been identified;

(23) Scars, marks, tattoos, and any other unique distinguishing features of any suspects or persons of interest;

(24) A case narrative; and

(25) Any other additional information that is pertinent to the case.

(f) The following information may be entered if applicable to either the victim or the suspect, but the law-enforcement agency shall specify which individual is being referenced:

(1) Vehicle information;

(2) Aliases;

(3) Associated case addresses;

(4) Associated phone numbers;

(5) Associated names;

(6) Case photos or composite drawings at the discretion of the investigating agency; and

(7) Any other additional information that is pertinent to the case.

(g) The West Virginia Fusion Center shall maintain the information contained within the database indefinitely.

The bill (Eng. Com. Sub. for H. B. 4345), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4418, Creating "The Tax Efficiency Act of 2026".

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

Eng. House Bill 4425, To repeal the provision allowing for students to transfer from one school to another without losing eligibility.

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

Eng. House Bill 4452, To remove Mortmain restrictions on religious organizations.

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

At the request of Senator Martin, 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 4577, Relating to driver's licenses.

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

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

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

CHAPTER 3. ELECTIONS.

ARTICLE 2. REGISTRATION OF VOTERS.

§3-2-11. Registration in conjunction with driver licensing.

(a) The Division of Motor Vehicles or other division or department that may be established by law to perform motor vehicle driver licensing services, shall, except with respect to foreign driver's licenses recognized pursuant to reciprocal agreements under §17A-2-10b of this code, obtain as an integral and simultaneous part of every process of application for the issuance, renewal, or change of address of a motor vehicle driver's license, or official identification card pursuant to §17B-2-1 *et seq.* of this code, when the division's regional offices are open for regular business, the following information from each qualified registrant:

- (1) Full name, including first, middle, last, and any premarital names;
- (2) Date of birth;
- (3) Residence address and mailing address, if different;
- (4) The applicant's electronic signature and photograph;
- (5) Telephone number, if available;

(6) Email address, if available;

(7) Political party membership, if any;

(8) Driver's license number and last four digits of Social Security number;

(9) A notation that the applicant has attested that he or she meets all voter eligibility requirements;

(10) United States citizenship status;

(11) Whether the applicant affirmatively declined to become registered to vote during the transaction with the Division of Motor Vehicles;

(12) Date of application; and

(13) Any other information specified in rules adopted to implement this section.

(b) Unless the applicant affirmatively declines to become registered to vote or update his or her voter registration during the transaction with the Division of Motor Vehicles, the Division of Motor Vehicles shall release all of the information obtained pursuant to subsection (a) of this section to the Secretary of State, who shall forward the information to the county clerk for the relevant county to process the newly registered voter or updated information for the already-registered voter pursuant to law. The Division of Motor Vehicles shall notify the applicant that by submitting his or her signature, the applicant grants written consent for the submission of the information obtained and required to be submitted to the Secretary of State pursuant to this section.

(c) As soon as practicable, but no later than 90 days following the effective date of amendments made during the 2024 regular legislative session, the Division of Motor Vehicles shall create a regular process, including, but not limited to, the requirements of §3-2-11(p) of this code, that ensures the Secretary of State can fulfill his or her duties as provided by §3-2-3 of this code to confirm that any applicant to register to vote in West Virginia through the Division of Motor Vehicles is in fact a U.S. citizen eligible to vote in West Virginia and to ensure that persons who are noncitizens of the United States have not and cannot register to vote in West Virginia.

(d) Information regarding a person's failure to sign the voter registration application is confidential and may not be used for any purpose other than to determine voter registration.

(e) A qualified voter who submits the required information or update to his or her voter registration, pursuant to the provisions of subsection (a) of this section, in person at a driver licensing facility at the time of applying for, obtaining, renewing, or transferring his or her driver's license or official identification card, and who presents identification and proof of age at that time, is not required to make his or her first vote in person or to again present identification in order to make that registration valid.

(f) A qualified voter, who submits, by mail or by delivery by a third party, an application for registration on the form used in conjunction with driver licensing, is required to make his or her first vote in person and present identification as required for other mail registration in accordance with §3-2-10(g) of this code. If the applicant has been previously registered in the jurisdiction and

the application is for a change of address, change of name, change of political party affiliation, or other correction, the presentation of identification and first vote in person is not required.

(g) An application for voter registration submitted pursuant to the provisions of this section updates a previous voter registration by the applicant and authorizes the cancellation of registration in any other county or state in which the applicant was previously registered.

(h) A change of address from one residence to another within the same county which is submitted for driver licensing or nonoperator's identification purposes in accordance with applicable law, serves as a notice of change of address for voter registration purposes if requested by the applicant after notice and written consent of the applicant.

(i) Completed applications for voter registration or change of address for voting purposes received by an office providing driver licensing services shall be forwarded to the Secretary of State within five days of receipt unless other means are available for a more expedited transmission. The Secretary of State shall remove and file any forms which have not been signed by the applicant and shall forward completed, signed applications to the clerk of the appropriate county commission within five days of receipt.

(j) Voter registration application forms containing voter information which are returned to a driver licensing office unsigned shall be collected by the Division of Motor Vehicles, submitted to the Secretary of State, and maintained by the Secretary of State's office according to the retention policy adopted by the Secretary of State.

(k) The Secretary of State shall establish procedures to protect the confidentiality of the information obtained from the Division of Motor Vehicles, including any information otherwise required to be confidential by other provisions of this code.

(l) A person registered to vote pursuant to this section may cancel his or her voter registration at any time by any method available to any other registered voter.

(m) This section does not require the Division of Motor Vehicles to determine eligibility for voter registration and voting.

(n) Except for the changes made to subsection (b) of this section during the 2017 regular legislative session, the changes made to this section during the 2016 regular legislative session become effective on July 1, 2021, and any costs associated therewith shall be paid by the Division of Motor Vehicles. The Commissioner of the Division of Motor Vehicles, the Secretary of the Department of Transportation, and the Secretary of State shall each appear before the Joint Committee on Government and Finance and the Joint Standing Committee on the Judiciary, during the first interim meetings of such committees occurring after September 1, 2019, to present written reports containing a full and complete list of any infrastructure each agency requires to achieve the purposes of this section. Along with the report required by this subsection, the Division of Motor Vehicles shall submit a written schedule to both committees outlining how the division will implement the requirements of this section by July 1, 2021.

(o) The Secretary of State shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement the requirements of this section.

(p) Notwithstanding any other provisions of this code to the contrary, the Division of Motor Vehicles shall expeditiously and comprehensively release and forward all information obtained

pursuant to subsection (a) of this section purporting to document an applicant's status as a U.S. citizen to the Secretary of State of any applicant attempting to register to vote in West Virginia. This information shall be used for the express purpose of expediting the Secretary of State's fulfillment of his or her duties pursuant to §3-2-11(c) and §3-2-3 of this code requiring the Secretary of State to confirm that persons who are noncitizens of the United States have not and cannot register to vote in the state of West Virginia.

(q) The amendments to this section enacted by the Legislature in the 2024 regular session are effective January 1, 2025.

CHAPTER 17A. MOTOR VEHICLE ADMINISTRATION, REGISTRATION, CERTIFICATE OF TITLE, AND ANTITHEFT PROVISIONS.

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-10b. Same – Entry into reciprocal agreements with certain foreign countries.

(a) The commissioner shall seek to enter into reciprocal agreements with the proper authorities of the foreign countries specified in subsection (e) of this section, which agreements shall provide for:

(1) The recognition of valid driver's licenses of citizens of said foreign countries in this state when such citizens are lawfully present in the United States; and

(2) The recognition of valid driver's licenses of citizens of this state by the authorities of said foreign countries.

The commissioner shall only enter into such reciprocal agreements upon a determination that the requirements and qualifications for the issuance of a driver's license in the foreign country are at least as stringent as those of this state. Following the entry into a reciprocal agreement, a citizen of the country that is party to the agreement, who possesses a valid driver's license issued by the appropriate licensing authority of that country, and who is otherwise lawfully present in the United States, may, subject to the terms of the relevant reciprocal agreement, operate a motor vehicle in this state without obtaining a West Virginia driver's license.

(b) Any person operating a motor vehicle in this state with a foreign driver's license granted recognition by a reciprocal agreement entered into under this section must comply with the compulsory motor vehicle liability insurance and financial responsibility laws of this state.

(c) A citizen of a foreign country that has entered into a reciprocal agreement with this state pursuant to this section shall not, by virtue of having his or her foreign driver's license recognized for use in this state, be registered to vote in this state pursuant to §3-2-11 of this code.

(d) The commissioner may, in his or her discretion, set registration and other fees for the recognition of foreign driver's licenses under reciprocal agreements entered into pursuant to this section.

(e) Reciprocal agreements with the following foreign countries are hereby authorized:

(1) The Republic of Ireland; and

(2) Japan.

(f) The commissioner shall propose rules for legislative approval in accordance with the provisions of §29A-3-1 et seq. of this code providing for the entry into reciprocal agreements pursuant to the provisions of this section.

The bill (Eng. Com. Sub. for H. B. 4577), as amended, was then ordered to third reading.

Eng. Com. Sub. for Com. Sub. for House Bill 4588, Relating to participating in the federal tax credit scholarship program.

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

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

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

ARTICLE 1C. THE FEDERAL TAX CREDIT SCHOLARSHIP PROGRAM.

§5B-1C-1. Participation in the federal tax credit scholarship program.

(a) The Secretary of Commerce, or his or her appointee, shall:

(1) Participate in the federal tax credit established under section 70411 of Pub. Law No. 119-21 for individuals who make qualified contributions to scholarship granting organizations;

(2) Identify qualified scholarship granting organizations located in the state in accordance with the requirements of this article;

(3) By the first day of January each year, submit to the Secretary of the Treasury of the United States and publish on its website a list of qualified scholarship granting organizations that are located in the state;

(4) Certify its own authority to provide such list upon submission;

(5) Accept applications from scholarship granting organizations throughout the year for inclusion on the list submitted pursuant to subsection (a)(3) of this section; and

(6) Establish rules solely for the purposes of administering the process and documentation necessary for an entity to be listed as a qualified scholarship granting organization.

§5B-1C-2. Enacting date.

This Act shall take effect upon passage.

The bill (Eng. Com. Sub. for Com. Sub. for H. B. 4588), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4592, Relating to college campus safety.

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

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

On page 1, section 5c, line 1, by striking out the word "may" and inserting in lieu thereof the word "shall";

And,

On page 2, section 5c, line 34, by striking out the word "shall" and inserting in lieu thereof the word "may".

The bill (Eng. Com. Sub. for H. B. 4592), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4603, Relating to the creation of the process of obtaining and adjudicating a pre-adjudicatory alternative disposition.

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

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

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

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 21. PUBLIC DEFENDER SERVICES.

§29-21-2. Definitions.

As used in this article, the following words and phrases are hereby defined:

(1) "Eligible client": Any person who meets the requirements established by this article to receive publicly funded legal representation in an eligible proceeding as defined herein;

(2) "Eligible proceeding": Criminal charges which may result in incarceration; juvenile proceedings; proceedings to revoke parole or probation if the revocation may result in incarceration; contempt of court; child abuse and neglect proceedings which may result in a termination of parental rights; pre-adjudicatory alternative diversion proceedings; appointment of a guardian for a minor in a circuit court pursuant to a pre-adjudicatory alternative diversion; mental hygiene commitment proceedings; extradition proceedings; proceedings which are ancillary to an eligible proceeding, including, but not limited to, proceedings to enhance sentences brought pursuant to ~~sections eighteen and nineteen, article eleven, chapter sixty one §61-11-18 and §61-11-19 of this code, forfeiture proceedings brought pursuant to article seven, chapter sixty a of this code §60A-7-701 et seq. of this code,~~ and proceedings brought to obtain extraordinary remedies; and appeals from or post-conviction challenges to the final judgment in an eligible proceeding. Legal representation provided pursuant to the provisions of this article is limited to the court system of the State of West Virginia, but does not include representation in municipal courts unless the accused is at risk of incarceration;

(3) "Legal representation": The provision of any legal services or legal assistance as counsel or guardian ad litem consistent with the purposes and provisions of this article;

(4) "Private practice of law": The provision of legal representation by a public defender or assistant public defender to a client who is not entitled to receive legal representation under the provisions of this article, but does not include, among other activities, teaching;

(5) "Public defender": The staff attorney employed on a full-time basis by a public defender corporation who, in addition to providing direct representation to eligible clients, has administrative responsibility for the operation of the public defender corporation. The public defender may be a part-time employee if the board of directors of the public defender corporation finds efficient operation of the corporation does not require a full-time attorney and the executive director approves such part-time employment;

(6) "Assistant public defender": A staff attorney providing direct representation to eligible clients whose salary and status as a full-time or part-time employee are fixed by the board of directors of the public defender corporation;

(7) "Public defender corporation": A corporation created under section eight of this article for the sole purpose of providing legal representation to eligible clients; and

(8) "Public defender office": An office operated by a public defender corporation to provide legal representation under the provisions of this article.

CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

ARTICLE 10. GUARDIANS AND WARDS GENERALLY.

§44-10-3. Appointment and termination of guardian for a minor.

(a) The circuit court and family court have concurrent jurisdiction to appoint a guardian for a minor: Provided, That jurisdiction to appoint a guardian for a minor pursuant to §49-4-607a of this code shall be in the circuit court exercising jurisdiction of the underlying juvenile abuse and neglect proceeding.

(b) Venue for a petition for appointment of guardianship is in the county in which the minor has resided for the past six months unless the court finds extraordinary circumstances for a sooner filing. If the child is a nonresident of this state and only the guardianship of the estate is sought the petition may be filed in the county in which the child has an estate: Provided, That venue for a petition for appointment of guardianship pursuant to §49-4-607a of this code shall be in the circuit court exercising jurisdiction of the underlying juvenile abuse and neglect proceeding.

(c) All proceedings shall be conducted in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings.

(d) Any responsible person with knowledge of the facts regarding the welfare and best interests of a minor may petition for an appointment of a guardian except a parent or other person whose rights to the minor have been terminated. No guardianship petition may be considered if the child who is the subject of the petition is involved in another court proceeding relating to custody or guardianship or if the petitioner is a parent seeking custodial rights adverse to the other parent: Provided, That a guardianship petition made pursuant §49-4-607a of this code shall be considered by the circuit judge presiding over the underlying juvenile abuse and neglect proceeding which gave rise to this action.

(e) Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the court. The court shall hold a hearing upon the petition for the appointment of a guardian within ten days after the petition is filed. If all persons entitled to service in accordance with the Rules of Practice and Procedure for Minor Guardianship Proceedings have not been served at least five days prior to the hearing or have not waived service the court shall continue the hearing but may appoint a temporary guardian pursuant to subsection (g) below.

(f) When a petition for the appointment of a guardian is filed pursuant to §49-4-607a of this code, the petition shall have attached thereto a certified copy of the underlying juvenile abuse and neglect order authorizing the filing of a petition for the appointment of a guardian. Within two days of the filing of a petition for the appointment of a guardian, the circuit clerk shall notify the circuit court of the filing of the petition. Notwithstanding the provisions of subsection (e) of this section, upon receipt of the notice of the filing of the petition from the circuit clerk, the circuit judge presiding over the underlying juvenile abuse and neglect proceeding which gave rise to this action shall promptly schedule a hearing with the parties and their counsel and enter an order designating the time and location of the hearing and shall also direct the guardian ad litem in the underlying juvenile child abuse and neglect proceeding to provide a written report to the court that demonstrates whether the appointment of a guardian pursuant to §49-4-607a of this code is in the child's best interests. This hearing shall address the petition for the appointment of a guardian and shall be held within 30 days after the petition is filed.

~~(f)~~ (g) The court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor's best interest and:

(1) The parents consent;

(2) The parents' rights have been previously terminated;

(3) The parents are unwilling or unable to exercise their parental rights;

(4) The parents have abandoned their rights by a material failure to exercise them for a period of more than six months; or

(5) There are extraordinary circumstances that would, in all reasonable likelihood, result in serious detriment to the child if the petition is denied.

~~(g)~~ (h) Whether or not one or more of the conditions of subsection (f) have been established, the court may appoint a temporary guardian for a minor upon a showing that an immediate need exists or that a period of transition into the custody of a parent is needed so long as the appointment is in the best interest of the minor. The temporary guardian has the authority of a guardian appointed pursuant to subsection (f) but the duration of the temporary guardianship may not exceed six months. A temporary guardianship may be extended beyond six months upon further order of the court finding continued need in the best interest of the minor.

~~(h)~~ (i) Any suitable person may be appointed as the minor's guardian. A parent shall receive priority subject only to the provisions of subsections (d) and (f) above. However, in every case the competency and fitness of the proposed guardian must be established and a determination made that the appointment is in the best interest of the child.

~~(i)~~ (j) When a petition for the appointment of a guardian is filed pursuant to §49-4-607a of this code, the court may appoint a guardian for a minor if the court finds by clear and convincing evidence that the appointment is in the minor's best interest and:

(1) All parents having or asserting parental rights to the minor consent to the appointment of a guardian or the parents' rights have been previously terminated;

(2) The Department of Human Services consents to the appointment of a guardian; and

(3) The guardian ad litem in the underlying juvenile child abuse and neglect proceeding has provided a written report to the court that demonstrates that the appointment of a guardian pursuant to §49-4-607a of this code is in the minor's best interests;

(k) The Department of Human Services, in cases seeking to appoint a guardian pursuant to §49-4-607a of this code, shall file any order entered by a circuit court appointing a guardian pursuant to this article in the underlying juvenile abuse and neglect proceeding.

(l) The court, the guardian or the minor may revoke or terminate the guardianship appointment when:

(1) The minor reaches the age of eighteen and executes a release stating that the guardian's estate was properly administered and that the minor has received the assets of the estate from the guardian;

(2) The guardian or the minor dies;

(3) The guardian petitions the court to resign and the court enters an order approving the resignation; or

(4) A petition is filed by the guardian, the minor, a parent or an interested person or upon the motion of the court stating that the minor is no longer in need of the assistance or protection of a guardian due to changed circumstances and the termination of the guardianship would be in the minor's best interest.

~~(j)~~ (m) For a petition to revoke or terminate a guardianship filed by a parent, the burden of proof is on the moving party to show by a preponderance of the evidence that there has been a material change of circumstances and that a revocation or termination is in the child's best interest: *Provided*, That a guardianship that was granted in a case filed pursuant to the provisions of §49-4-607a may be revoked, modified, or terminated by a parent pursuant to a filed petition with the circuit judge presiding over the underlying juvenile abuse and neglect, the burden of proof is on the moving party to show by clear and convincing evidence that there has been a material change of circumstances and that a revocation, modification, or termination is in the child's best interest: *Provided*, That if the circuit judge presiding over the underlying juvenile abuse and neglect proceeding is not available to preside over a petition to revoke, modify, or terminate a guardianship filed by a parent, then the circuit court having jurisdiction over the original child abuse and neglect proceeding shall preside over the proceeding, and all costs and legal fees of a proceeding contemplated in this subsection shall be borne by the moving party.

~~(k)~~ (n) A guardianship may not be terminated by the court if there are any assets in the estate due and payable to the minor. Another guardian may be appointed upon the resignation of a guardian whenever there are assets in the estate due and payable to the minor.

(+) (o) Other than court orders and case indexes, all other records of a guardian proceeding involving a minor are confidential and shall not be disclosed to anyone who is not a party to the proceeding, counsel of record for the proceeding, the court presiding over the proceeding or other family or circuit court presiding over another proceeding involving the minor absent a court order permitting examination of such records.

(p) At any point after two years has elapsed from the entry of an order appointing a guardian pursuant to the provisions of §49-4-607a, the guardian may file a petition for adoption, pursuant to the provisions of §48-22-101 et seq. of this code, in the circuit court having jurisdiction over the underlying original child abuse and neglect proceeding that gave rise to the guardianship proceeding.

§44-10-5. Bond of guardian.

(a) Every guardian, except in cases filed pursuant to 49-4-607a and in the case of a testamentary guardian where the will otherwise directs and the court in which the will is recorded deems it unnecessary for the safety of the ward, shall give bond with security to be approved by the court by whom he or she is appointed, or before whom he or she accepts the trust, in such penalty as shall be prescribed by the court.

(b) The bond shall be given before the clerk of the court in which the petition is filed.

CHAPTER 49. CHILD WELFARE.

§49-4-601b. Substantiation by the department of abuse and neglect; file purging; expungement; exceptions.

(a) Notwithstanding any provision of this code to the contrary, when the department substantiates an allegation of abuse and/or neglect against a person, but there is no judicial finding of abuse and/or neglect as a result of the allegation, the department shall provide written notice of the substantiation to the person by certified mail, return receipt requested.

(b) The person against whom an abuse and/or neglect allegation has been substantiated, as described in subsection (a) of this section, has the right to contest the substantiation by filing a grievance with the board of review of the department and has the right to appeal the decision of the board of review to the court, in accordance with the provisions of §29A-5-1 *et seq.* of this code regarding administrative appeals.

(c) The secretary of the department shall propose legislative rules for promulgation in accordance with §29A-3-1 *et seq.* of this code, within the applicable time limit to be considered by the Legislature during its regular session in the year 2021, which rules shall include, at a minimum:

(1) Provisions for ensuring that an individual against whom the department has substantiated an allegation of abuse and/or neglect, but against whom there is no judicial finding of abuse and/or neglect, receives written notice of the substantiation in a timely manner. The written notice shall at a minimum, state the following:

(A) The name of the child the person is alleged to have abused and/or neglected, the place or places where the abuse and/or neglect allegedly occurred, and the date or dates on which the abuse and/or neglect is alleged to have occurred;

(B) That the person has a right to file a grievance protesting the substantiation of abuse and/or neglect with the board of review of the department and clear instructions regarding how to file a grievance with the board of review, including a description of any applicable time limits;

(C) That the person has a right to appeal an adverse decision of the board of review of the department to the courts and notice of any applicable time limits; and

(D) A description of any public or nonpublic registry on which the person's name will be included as a result of a substantiated allegation of abuse and/or neglect and a statement that the inclusion of the person's name on the registry may prevent the person from holding jobs from which child abusers are disqualified, or from providing foster or kinship care to a child in the future;

(2) Provisions for ensuring that a person against whom an allegation of abuse and/or neglect has been substantiated, but against whom there is no judicial finding of abuse and/or neglect, may file a grievance with the department and provisions guaranteeing that he or she will have a full and fair opportunity to be heard; and

(3) Provisions requiring the department to remove a person's name from an abuse and/or neglect registry maintained by the department if a substantiated allegation is successfully challenged in the board of review or in a court.

(d) Notwithstanding any provision of this code to the contrary:

(1) Where any allegation of abuse and/or neglect is substantiated and a petition for abuse and/or neglect could be filed and the department does not file a petition, all department records related to the allegation shall be sealed one year after the substantiation determination, unless during the one-year period another allegation of child abuse and/or neglect against the person is substantiated: *Provided*, That the provisions of this subdivision do not apply to a person against whom an allegation is substantiated but the circumstances do not allow for the filing of a petition for abuse and/or neglect;

(2) Where an allegation of child abuse and/or neglect is substantiated and a petition is filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred, the allegation shall be considered to have been unsubstantiated.

(3)(A) Where an allegation of child abuse and/or neglect is substantiated and a judicial determination of child abuse and/or neglect is found, a person may petition the circuit court which found the person to be an abusing parent to have his or her department record sealed after no less than five years have elapsed since the finding of abuse and/or neglect is rendered: *Provided*, That a petition may not be filed if the person had been the subject of a substantiated allegation of abuse and/or neglect during the period of time after the finding and prior to the filing of the petition; and

(B) In its consideration of a petition filed under this subdivision, the court, in its discretion, may look at all relevant factors related to the petition, including, but not limited to, efforts at rehabilitation and family reunification.

(4) (A) Where an allegation of child abuse and/or neglect is substantiated by the department and a petition alleging child abuse and neglect was filed with the circuit court which does not end in an adjudication that abuse and/or neglect occurred due to a pre-adjudicatory alternative diversion, as provided in §49-4-607a of this code, the allegation shall be considered substantiated

and a person may petition the circuit court, that had jurisdiction over the underlying juvenile abuse and neglect proceeding who ratified the pre-adjudicatory alternative diversion to have his or her department record sealed after the child subject to the guardianship attains the age of 18, but no petition shall be made less than five years having elapsed since the order dismissing the underlying abuse and neglect proceeding is entered: *Provided*, That if the circuit judge of the circuit presiding over the underlying juvenile abuse and neglect proceeding is not available to preside over a petition to have his or her department record sealed, then the circuit court having jurisdiction over the original child abuse and neglect proceeding shall generally preside: *Provided, however*, That a petition to have his or her department record sealed may not be filed if the person has been the subject of a subsequent substantiated allegation of abuse and/or neglect during the period of time after the removal of the child that necessitated the filing of the underlying juvenile abuse and neglect proceeding and prior to the filing of the petition to have his or her department record sealed; and

(B) In its consideration of a petition filed under this subdivision, the court, in its discretion, may look at all relevant factors related to the petition, including, but not limited to the history of the petitioner, the facts and circumstances that caused the pre-adjudicatory alternative diversion to be entered into and the efforts to address these circumstances, efforts at rehabilitation and family reunification

(e) The sealing of a record pursuant to subsection (d) of this section means that any inquiry of the department about a person having a record of child abuse and/or neglect for purposes of possible employment shall be answered in the negative.

(f) The secretary is directed to propose legislative rules pursuant to §29A-1-1 *et seq.* of this code to effectuate the amendments to this section enacted during the regular session of the Legislature, 2023.

§49-4-607a. Pre-Adjudicatory Alternative Diversion.

(a) Subsequent to the department or other reputable person's filing of a petition to a circuit court alleging that a child is neglected or abused pursuant to the provisions of this article, a parent whose child has been removed from his or her home, pursuant to §49-4-601a of this code, and whose placement has been ratified by the circuit court, may file a written motion seeking a pre-adjudicatory alternative diversion which would allow for the entry of an order of guardianship, pursuant to §44-10-1 *et seq.* of this code, with the placement in lieu of a finding of child abuse and neglect in the underlying case. A parent's written motion seeking a pre-adjudicatory alternative diversion must contain stipulations to the factual basis that gave rise to the petition alleging child abuse or neglect that necessitated the initial removal of the child. All adults having or asserting parental rights to the child for which there is a motion for a pre-adjudicatory alternative diversion must consent to the pre-adjudicatory alternative diversion and the proposed guardianship.

(b) A written motion for a pre-adjudicatory alternative diversion shall be made at least five days prior to the scheduled adjudicatory hearing and served upon all parties, the guardian ad litem, and the court.

(c) Upon receipt of the written motion seeking a pre-adjudicatory alternative diversion, the court shall enter an order directing the department and the guardian ad litem to each review and evaluate the contents of the motion and provide to the court a written report containing recommendations as to whether a pre-adjudicatory alternative diversion is in the best interests of

the child. The department shall also provide in its written report to the circuit court whether it consents to the proposed guardianship request contained within the parent's written motion for a pre-adjudicatory alternative diversion and such consent by the department shall not be unreasonably withheld. The required written reports contemplated in this subsection shall be filed with the court within 30 days of the entry of said order.

(d) At the hearing on the parent's request for the pre-adjudicatory alternative diversion, the parents shall be present and shall provide to the court stipulations to the factual basis that gave rise to the petition alleging child abuse or neglect that necessitated the initial removal of the child. A court shall enter an order granting the written request for a pre-adjudicatory alternative diversion and authorizing the filing of a petition for the appointment of a guardian, pursuant to §44-10-1 et seq. of this code, if the circuit court, after reviewing the parent's motion for a pre-adjudicatory alternative diversion and the written reports of the guardian ad litem and the department, determine the following:

(1) The guardian ad litem's written report recommends that the guardianship is in the best interests of the child;

(2) The department's written report recommends that the guardianship is in the best interests of the child;

(3) The department consents to the guardianship; and

(4) All adults having or asserting parental rights to the child consent to a pre-adjudicatory alternative diversion and the pre-adjudicatory alternative diversion is in the best interest of the child or the parents' rights have been previously terminated.

(e) When a motion for a pre-adjudicatory alternative diversion has been granted by the circuit court the legal proceedings in the underlying juvenile abuse and neglect matter relating to the minor children that are the subject of the pre-adjudicatory alternative diversion shall be continued generally until the court receives an order indicating that a guardian has been appointed pursuant to §44-10-1 et seq. of this code.

(f) All parties to the underlying child abuse and neglect proceeding shall be afforded the right to legal counsel in the legal proceedings appointing a guardian contemplated in this section and the court shall appoint the same legal counsel to represent the parties.

(g) The circuit court shall dismiss the underlying child abuse and neglect case once the order appointing a guardian has been entered and provided to the circuit court having jurisdiction over the underlying juvenile child abuse and neglect proceeding: *Provided*, That the circuit court may order the department to continue to provide any services that are for the benefit of the child that is subject to the guardianship if the court finds that continuation of these services are in the best interest of the child.

(g) A pre-adjudicatory alternative diversion is not available to parents if a court determines:

(1) The parent has subjected the child, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent to aggravated circumstances which include, but are not limited to, abandonment, torture, chronic abuse and sexual abuse;

(2) The parent has:

(A) Committed murder of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(B) Committed voluntary manslaughter of the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent;

(C) Attempted or conspired to commit murder or voluntary manslaughter or been an accessory before or after the fact to either crime;

(D) Committed unlawful or malicious wounding that results in serious bodily injury to the child, the child's other parent, guardian or custodian, to another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent; or

(E) Committed sexual assault or sexual abuse of the child, the child's other parent, guardian or custodian, another child of the parent or any other child residing in the same household or under the temporary or permanent custody of the parent.

The bill (Eng. Com. Sub. for H. B. 4603), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4710, Changing the limit on switching parties before filing to run for office from 60 days to 180 days prior to an election.

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 5. PRIMARY ELECTIONS AND NOMINATING PROCEDURES.

§3-5-7. Filing certificates of announcements of candidacies; requirements; withdrawal of candidates when section applicable.

(a) Any person who is eligible and seeks to hold an office or political party position to be filled by election in any primary or general election held under the provisions of this chapter shall file a certificate of announcement declaring his or her candidacy for the nomination or election to the office.

(b) The certificate of announcement shall be filed as follows:

(1) Candidates for the House of Delegates, the State Senate, circuit judge, family court judge, and any other office or political position to be filled by the voters of more than one county shall file a certificate of announcement with the Secretary of State.

(2) Candidates for an office or political position to be filled by the voters of a single county or a subdivision of a county, except for candidates for the House of Delegates, State Senate, circuit

judge or family court judge, shall file a certificate of announcement with the clerk of the county commission.

(3) Candidates for an office to be filled by the voters of a municipality shall file a certificate of announcement with the recorder or city clerk.

(c) The certificate of announcement shall be filed with the proper officer not earlier than the second Monday in January before the primary election day and not later than the last Saturday in January before the primary election day and must be received before midnight, eastern standard time, of that day or, if mailed, shall be postmarked by the United States Postal Service before that hour. This includes the offices of Justice of the Supreme Court of Appeals, Judge of the Intermediate Court of Appeals, circuit court judge, family court judge and magistrate, which are to be filled on a nonpartisan and division basis at the primary election: *Provided*, That on the final day of a political filing period, the office of the Secretary of State shall be open from 9:00 a.m. until 11:59 p.m. The offices of the County Clerk in all counties of the state shall be open on that final day of a political filing period from 9:00 a.m. until 12:00 p.m.

(d) The certificate of announcement shall be on a form prescribed by the Secretary of State on which the candidate shall make a sworn statement before a notary public or other officer authorized to administer oaths, containing the following information:

(1) The date of the election in which the candidate seeks to appear on the ballot;

(2) The name of the office sought; the district, if any; and the division, if any;

(3) The legal name of the candidate and the exact name the candidate desires to appear on the ballot, subject to limitations prescribed in §3-5-13 of this code;

(4) The county of residence and a statement that the candidate is a legally qualified voter of that county; and the magisterial district of residence for candidates elected from magisterial districts or under magisterial district limitations;

(5) The specific address designating the location at which the candidate resides at the time of filing, including number and street or rural route and box number and city, state, and zip code;

(6) For ~~partisan~~ general elections, the name of the candidate's political party, if any, on the date the certificate of announcement is submitted and a statement that the candidate:

(A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party, if any; and

(B) has not been registered as a voter affiliated with any other political party, or independent of any political party, for a period of ~~60~~ 210 days before the date of filing the announcement.

(7) For primary elections, the name of the candidate's political party, on the date the certificate of announcement is submitted and a statement that the candidate:

(A) Is a member of and affiliated with that political party as evidenced by the candidate's current registration as a voter affiliated with that party, if any; and

(B) Has not been registered as a voter affiliated with any other political party for a period of 60 days before the date of filing the announcement.

~~(7)~~ (8) For candidates for delegate to national convention, the name of the presidential candidate to be listed on the ballot as the preference of the candidate on the first convention ballot; or a statement that the candidate prefers to remain "uncommitted";

~~(8)~~ (9) A statement that the person filing the certificate of announcement is a candidate for the office in good faith;

~~(9)~~ (10) The words "subscribed and sworn to before me this _____ day of _____, 20____" and a space for the signature of the officer giving the oath.

(e) The Secretary of State or the board of ballot commissioners, as the case may be, may refuse to certify the candidacy or may remove the certification of the candidacy upon receipt of a certified copy of the voter's registration record of the candidate showing that the candidate was registered as a voter in a party other than the one named in the certificate of announcement during the 60 days, in the case of primary elections, or 210 days, in the case of general election, immediately preceding the filing of the certificate: *Provided*, That unless a signed formal complaint of violation of this section and the certified copy of the voter's registration record of the candidate are filed with the officer receiving that candidate's certificate of announcement no later than 10 days following the close of the filing period, the candidate may not be refused certification for this reason: *Provided, however*, That prior to accepting a Certificate of Announcement for filing for an office which is elected in a partisan election, the Secretary of State's Office, clerk of the county commission, recorder or city clerk shall electronically verify a candidate's current party affiliation as subscribed and sworn to by the candidate. If a candidate's current party affiliation is not as stated on the Certificate of Announcement, the filing shall be refused.

(f) The certificate of announcement shall be subscribed and sworn to by the candidate before some officer qualified to administer oaths, who shall certify the same. Any person who knowingly provides false information on the certificate is guilty of false swearing and shall be punished in accordance with §3-9-3 of this code.

(g) Any candidate for delegate to a national convention may change his or her statement of presidential preference by notifying the Secretary of State by letter received by the Secretary of State no later than the third Tuesday following the close of candidate filing. When the rules of the political party allow each presidential candidate to approve or reject candidates for delegate to convention who may appear on the ballot as committed to that presidential candidate, the presidential candidate or the candidate's committee on his or her behalf may file a list of approved or rejected candidates for delegate and the Secretary of State shall list as "uncommitted" any candidate for delegate who is disapproved by the presidential candidate.

(h) A person may not be a candidate for more than one office or office division at any election: *Provided*, That a candidate for an office may also be a candidate for President of the United States, for membership on political party executive committees or for delegate to a political party national convention: *Provided, however*, That an unsuccessful candidate for a nonpartisan office in an election held concurrently with the primary election may be appointed under the provisions of section nineteen of this article to fill a vacancy on the general ballot.

(i) A candidate who files a certificate of announcement for more than one office or division and does not withdraw, as provided by §3-5-11 of this code, from all but one office prior to the close

of the filing period may not be certified by the Secretary of State or placed on the ballot for any office by the board of ballot commissioners.

(j) The amendments to this section enacted by the Legislature in the ~~2024~~²⁶ Regular Session are effective January 1, ~~2025~~ 2027.

On motion of Senator Tarr, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4710) were reported by the Clerk and considered simultaneously:

On page 2, section 7, line 38, by striking out the word "general" and inserting in lieu thereof the word "partisan";

On page 3, section 7, lines 45 through 50, by striking out all of subdivision (7);

And re-numbering the remaining subdivisions;

And,

On page 3, section 7, line 62, by striking out the words "60 days, in the case of primary elections, or 210 days, in the case of general election," and inserting in lieu thereof the words "210 days".

Following discussion,

The question being on the adoption of Senator Tarr's amendments to the Judiciary committee amendment to the bill, the same was put.

The result of the voice vote being inconclusive, Senator Tarr demanded a division of the vote.

A standing vote being taken, there were 21 "yeas" and 13 "nays".

Whereupon, the President declared Senator Tarr's amendment to the Judiciary committee amendment to the bill adopted.

The question now being on the adoption of the Judiciary committee amendment to the bill, as amended, the same was put and prevailed.

The bill (Eng. Com. Sub. for H. B. 4710), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4712, Increasing the criminal penalties for DUI causing death to be known as "Baylea's Law."

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 5. SERIOUS TRAFFIC OFFENSES.

§17C-5-2. Driving under influence of alcohol, controlled substances, or drugs; penalties.

(a) Definitions. —

(1) "Impaired state" means a person:

(A) Is under the influence of alcohol;

(B) Is under the influence of any controlled substance;

(C) Is under the influence of any other drug or inhalant substance;

(D) Is under the combined influence of alcohol and any controlled substance or any other drug; or

(E) Has an alcohol concentration in his or her blood of eight hundredths of one percent or more, by weight.

(2) "Bodily injury" means injury that causes substantial physical pain, illness, or any impairment of physical condition.

(3) "Controlled substance" has the meaning provided in §60A-1-101 of this code.

(4) "Serious bodily injury" means bodily injury that creates a substantial risk of death, that causes serious or prolonged disfigurement, prolonged impairment of health, or prolonged loss or impairment of the function of any bodily organ.

(5) "Test and lock program" means the Motor Vehicle Test and Lock Program, established in §17C-5A-3a and administered by the Division of Motor Vehicles.

(b)(1) Any person who drives a vehicle in this state while he or she is in an impaired state and does so with deliberate disregard for the safety of others, as defined in §17C-5-1 of this code, and such impaired state and deliberate disregard for the safety of others proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than five nor more than 30 years and shall be fined not less than \$2,000 nor more than \$10,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life: *Provided*, That any death charged under this subdivision must occur within one year of the offense: *Provided further*, That upon conviction for a violation of this subdivision, the sentence is mandatory, and not eligible for suspension pursuant to the provisions of §25-4-6 of this code, or an order for home incarceration pursuant to the provisions of §62-11B-1 *et seq.* of this code. The amendments to this section enacted during the 2026 regular legislative session shall be known as "Baylea's Law".

(2) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes the death of any person, including an embryo or fetus as defined in §61-2-30 of this code, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than three nor more than 15 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of 10 years or for a period of time conditioned on participation in the test and lock program in

accordance with §17C-5A-3a of this code: *Provided*, That any death charged under this subsection must occur within one year of the offense: *Provided, however*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(c) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes serious bodily injury to any person, including an embryo or fetus as defined in §61-2-30 of this code, other than himself or herself, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than 10 years and shall be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of five years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(d) Any person who drives a vehicle in this state while he or she is in an impaired state, and such impaired state proximately causes a bodily injury to any person other than himself or herself, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than one year and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of two years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the person has previously been convicted under this section, the person shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. Any jail term imposed pursuant to this subsection shall include actual confinement of not less than 24 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(e) Any person who drives a vehicle on any public highway or private road in this state: (1) while he or she is in an impaired state; or (2) while he or she is in an impaired state but has an alcohol concentration in his or her blood of less than fifteen hundredths of one percent, by weight, is guilty of a misdemeanor and, upon conviction thereof, may be confined in jail for up to six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(f) Any person who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of fifteen hundredths of one percent or more, by weight, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$200 nor more than \$1,000,

and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(g) Any person who, being a habitual user of narcotic drugs or amphetamines, or any derivative thereof, drives a vehicle on any public highway or private road in this state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than one day nor more than six months, which jail term is to include actual confinement of not less than 24 hours, and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months. A person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(h) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is in an impaired state is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code.

(i) Any person who knowingly permits his or her vehicle to be driven on any public highway or private road in this state by any other person who is a habitual user of narcotic drugs or amphetamines, or any derivative thereof, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not more than six months and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of six months.

(j) (1) Any person under the age of 21 years who drives a vehicle on any public highway or private road in this state while he or she has an alcohol concentration in his or her blood of two hundredths of one percent or more, by weight, but less than eight hundredths of one percent, by weight, for a first offense under this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined not less than \$25 nor more than \$100, and have his or her license to operate a motor vehicle suspended by the Commissioner of the Division of Motor Vehicles for a period of 60 days or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. For a second or subsequent offense under this subsection, the person is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for 24 hours and shall be fined not less than \$100 nor more than \$500, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or until the person's 21st birthday, whichever period is longer, or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code. A person who is charged with a first offense under the provisions of this subsection may move for a continuance of the proceedings, from time to time, to allow the person to participate in the test and lock program as provided in §17C-5A-3a of this code. Upon successful completion of the program, the court shall dismiss the charge against the person and expunge the person's record as it relates to the alleged offense. In the event the person fails to successfully complete the program, the court shall proceed to an adjudication of the alleged offense. A motion for a continuance under this subsection may not be construed as an admission or be used as evidence.

(2) (A) Notwithstanding subdivision (1) of this subsection, a person shall have his or her license to operate a motor vehicle suspended or revoked for a minimum period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, if the person:

(i) Has previously been convicted under this subsection and is subsequently convicted of an offense under another subsection of this section; or

(ii) Is convicted under this subsection and has previously been convicted of an offense under another subsection of this section.

(B) Nothing in this subdivision permits a shorter period of license revocation, license suspension, or participation in the test and lock program than is mandatory for the specific offense for which the person is convicted.

(3) A person arrested and charged with an offense under the provisions of this subsection or subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section may not also be charged with an offense under this subsection arising out of the same transaction or occurrence.

(k) Any person who drives a vehicle on any public highway or private road in this state while he or she is in an impaired state and has within the vehicle one or more other persons who are unemancipated minors who have not yet reached their 16th birthday is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than two days nor more than 12 months, and shall be fined not less than \$200 nor more than \$1,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for a period of one year or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That such jail term shall include actual confinement of not less than 48 hours: *Provided, however*, That a person sentenced pursuant to this subsection shall receive credit for any period of actual confinement he or she served upon arrest for the subject offense.

(l) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on one occasion, is guilty of a misdemeanor and, upon conviction thereof, shall be confined in jail for not less than six months nor more than one year, may be fined not less than \$1,000 nor more than \$3,000, and shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for 10 years or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code: *Provided*, That if the second conviction is for an offense as described in subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, or fine shall be imposed: *Provided, however*, That this section does not apply to a second conviction that is subject to a period of license revocation under subsection (j) of this section.

(m) A person convicted of an offense under this section, who has previously been convicted of any offense under this section on two or more occasions, is guilty of a felony and, upon conviction thereof, shall be imprisoned in a state correctional facility for not less than two nor more than five years, shall have his or her license to operate a motor vehicle revoked by the Commissioner of the Division of Motor Vehicles for life or for a period of time conditioned on participation in the test and lock program in accordance with §17C-5A-3a of this code, and the court may, in its discretion, impose a fine of not less than \$3,000 nor more than \$5,000: *Provided*,

That if the third or subsequent conviction is for an offense as described in subsections (b), (c), or (d) of this section and the subsection creating the offense requires a period of incarceration, period of license revocation, or fine that is greater than what is required for a conviction under this subsection, the greater period of incarceration, period of revocation, and fine shall be imposed: *Provided, however,* That this section does not apply to a third or subsequent conviction that is subject to a period of license revocation under subsection (j) of this section.

(n) For purposes of subsections (l) and (m) of this section relating to second, third, and subsequent offenses, the following events shall be regarded as offenses and convictions under this section:

(1) Any conviction under the provisions of subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, or under a prior enactment of this section, for an offense which occurred within the 10-year period immediately preceding the date of arrest in the current proceeding;

(2) Any conviction under a municipal ordinance of this state or any other state or a statute of the United States or of any other state of an offense which has the same elements as an offense described in subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section, which offense occurred within the 10-year period immediately preceding the date of arrest in the current proceeding; and

(3) Any period of conditional probation imposed pursuant to §17C-5-2b of this code for violation of subsection (e) of this section, which violation occurred within the 10-year period immediately preceding the date of arrest in the current proceeding.

(o) A person may be charged in a warrant, indictment, or information for a second or subsequent offense, as described in subsection (j), (l), or (m) of this section, if the person has been previously arrested for, or charged with, a violation of this section which is alleged to have occurred within the applicable time period for prior offenses, notwithstanding the fact that there has not been a final adjudication of the charges for the alleged previous offense. In that case, the warrant or indictment or information must set forth the date, location, and particulars of the previous offense or offenses. No person may be convicted of a second or subsequent offense under this section unless the conviction for the previous offense has become final, or the person has previously had a period of conditional probation imposed pursuant to §17C-5-2b of this code.

(p) The fact that any person charged with a violation of subsection (b), (c), (d), (e), (f), or (g) of this section, or any person permitted to drive as described under subsection (h) or (i) of this section, is or has been legally entitled to use alcohol, a controlled substance, or a drug does not constitute a defense against any charge of violating subsection (b), (c), (d), (e), (f), (g), (h), or (i) of this section.

(q) The sentences provided in this section upon conviction for a violation of this article are mandatory and are not subject to suspension or probation: *Provided,* That the court may apply the provisions of §62-11A-1 *et seq.* of this code to a person sentenced or committed to a term of one year or less for a first offense under this section: *Provided, however,* That the court may impose a term of conditional probation pursuant to §17C-5-2b of this code to persons adjudicated thereunder. An order for home detention by the court pursuant to the provisions of §62-11B-1 *et seq.* of this code may be used as an alternative sentence to any period of incarceration required by this section for a first or subsequent offense: *Provided further,* That for any period of home incarceration ordered for a person convicted of a second offense under this section, electronic monitoring shall be required for no fewer than five days of the total period of home confinement ordered and the offender may not leave home for those five days notwithstanding the provisions

of §62-11B-5 of this code: *And provided further*, That for any period of home incarceration ordered for a person convicted of a third or subsequent violation of this section, electronic monitoring shall be included for no fewer than 10 days of the total period of home confinement ordered and the offender may not leave home for those 10 days notwithstanding §62-11B-5 of this code.

(r) A person whose license to operate a motor vehicle has been revoked or suspended by the Commissioner of the Division of Motor Vehicles pursuant to this section must complete a comprehensive safety and treatment program as set forth in §17C-5A-3 of this code before his or her license to operate a motor vehicle can be reinstated and his or her driving privileges restored.

(s) For any offense for which an alternative revocation period is permitted conditioned upon participation in the test and lock program, an alternative sentence may not be imposed without the consent of the driver.

(t) Upon entering the order of conviction for an offense under this section, or the imposition of conditional probation as provided in §17C-5-2b of this code, the clerk of the court shall immediately transmit the order to the Commissioner of the Division of Motor Vehicles.

~~(u) The amendments made to this section during the 2020 regular session of the Legislature shall become effective on July 1, 2020.~~

The bill (Eng. Com. Sub. for H. B. 4712), as amended, was then ordered to third reading.

Eng. House Bill 4765, Teacher, School Personnel, and State Police Pay Raise.

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

At the request of Senator Martin, 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 4852, Relating to regulation of foods.

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

At the request of Senator Martin, unanimous consent being granted, the bill was referred to the Committee on Rules, with committee amendments pending.

Eng. Com. Sub. for House Bill 4865, Providing for a program allowing election official trainees to be appointed as election officials.

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 1. GENERAL PROVISIONS AND DEFINITIONS.

§3-1-28. Election officials; eligibility; suspension of eligibility.

(a) To be eligible to be appointed or serve as an election official in any state, county, or municipal election held in West Virginia, a person:

(1) Must be a registered voter of the county for elections held throughout the county and a registered voter of the municipality for elections held within the municipality: *Provided*, That if the required number of persons eligible to serve as election officials for a municipal election are not available or are not willing to serve as election officials for a municipal election, a registered voter of the county in which the municipality is located may serve as an election official for elections held within the municipality;

(2) Must be able to read and write the English language;

(3) May not be a candidate on the ballot or an official write-in candidate in the election for any office, other than for district, county, or state political party executive committee;

(4) May not be the parent, child, sibling, or spouse of a candidate on the ballot for any office, other than for district, county, or state political party executive committee, or an official write-in candidate for any office, other than for district, county, or state political party executive committee, in the precinct where the official serves;

(5) May not be a person prohibited from serving as an election official pursuant to any other federal or state statute; and

(6) May not have been previously convicted of a violation of any election law.

(b) The governing body responsible for appointing election officials may establish a program to permit a student who is a junior or senior student attending a secondary educational institution or being home schooled and who is an election official trainee to be appointed as an election official.

(1) To be eligible to be appointed as an election official under this subsection, a person:

(A) Must meet the requirements of subdivisions two through six of §3-1-28(a) of this code;

(B) Must be a junior or senior student in good standing who is attending a public or private secondary educational institution or being home schooled at the time of the election for which he or she is to be appointed as an election official;

(C) Must have a cumulative grade point average equivalent to at least 3.0 on a 4.0 scale, if attending a public or private secondary educational institution;

(D) Must have the written approval of his or her parent or legal guardian, as applicable;

(E) Must have the written approval of the principal of the public or private secondary educational institution he or she attends, if

(i) attending a public or private secondary educational institution, and

(ii) if the appointment requires the student to work on a day when school is in session; and

(F) Must have satisfactorily completed the training program for election officials set forth in §3-1-46 of this code.

(2) Only one election official qualifying under this subsection may serve per political party per precinct. Prior to appointment, an election official qualifying under this subsection must certify in writing to the governing body responsible for appointing election officials his or her political party affiliation.

(3) Students appointed as election officials under this subsection shall not be counted as absent from school on the day they serve as election officials.

(c) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for four years for the following reasons:

(1) Failure to appear at the polling place at the designated time without proper notice and just cause;

(2) Failure to perform the duties of an election official as required by law;

(3) Improper interference with a voter casting a ballot or violating the secrecy of the voter's ballot;

(4) Being under the influence of alcohol or drugs while serving as an election official; or

(5) Having anything wagered or bet on an election.

(e) (d) The county commission may, upon majority vote, suspend the eligibility to serve as an election official in any election for two years upon petition of 25 registered voters of the precinct where the official last served and upon presentation of evidence of any of the grounds set forth in §31-1-28(b) of this code: *Provided*, That the petition requesting the suspension of the election official is filed with the county commission at least 90 days prior to an election date. The names of those persons signing the petition must be kept confidential.

The bill (Eng. Com. Sub. for H. B. 4865), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 4869, Establish narrow, clearly bounded guaranteed-issue rights for Medicare Supplement policies in West Virginia.

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

Eng. Com. Sub. for House Bill 4996, Relating to bail in cases involving terroristic threats to schools or children.

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 6. CRIMES AGAINST THE PEACE.

§61-6-20. Falsely reporting an emergency incident; making threats of a crime of violence.

(a) For purposes of this section:

(1) "Crime of violence" means any criminal offense, whether classified as a felony or misdemeanor under the laws of this state, that requires as an element the use, attempted use, or threatened use of physical force against another person.

(2) "Threat" means any communication that a reasonable person, in view of the totality of the circumstances, including the context, the medium of transmission, and the relationship between the communicator and the recipient, would interpret as a serious expression of intent to commit a crime of violence against another person and that would cause the recipient to be placed in reasonable apprehension of such harm.

(3) "Severe public alarm or inconvenience" means the following:

(A) The evacuation or closure of a building, place of assembly, facility of public transportation, or other public space;

(B) The substantial disruption of public services, including but not limited to emergency response, law enforcement activities, or transportation;

(C) Widespread fear or panic among members of the public, as evidenced by multiple reports to authorities or observable public reaction; or

(D) Any other significant interference with the ordinary activities of the public that a reasonable person would consider serious, considering the nature, context, and foreseeable consequences of the threat.

(b) A person is guilty of reporting a false emergency incident when knowing the information reported, conveyed, or circulated is false or baseless, he or she:

(1) Initiates or circulates a false report or warning of an impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency under circumstances in which it is likely that severe public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned; or

(2) Reports, by word or action, to any official or quasi-official agency or organization having the function of dealing with emergencies involving danger to life or property, an alleged occurrence or impending occurrence of a fire, explosion, crime, catastrophe, accident, illness, or other emergency in which it is likely that severe public alarm or inconvenience will result or that firefighting apparatus, ambulance apparatus, one or more rescue vehicles or other emergency apparatus might be summoned, which did not occur, does not in fact exist; or

(3) Reports to a law-enforcement officer or agency the alleged occurrence of any offense or incident which did not in fact occur, or an allegedly impending occurrence of an offense or incident which is not in fact about to occur, or false information relating to an actual offense or incident or to the alleged implication of some person; or

(4) Without just cause, calls or summons by telephone, fire alarm system, or otherwise, any firefighting apparatus, ambulance apparatus, rescue vehicles, or other emergency vehicles.

~~(b)~~ (c) Any person who violates the provisions of subsection ~~(a)~~ (b) of this section is guilty of a misdemeanor, and, upon conviction thereof, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined.

~~(c)~~ (d) Notwithstanding the provisions of subsection ~~(a)~~ (b) of this section, any person convicted of a second or subsequent violation of ~~the provisions~~ subsection (b) of this section or, of a violation of subsection (b) of this section which results in bodily injury to another person is guilty of a felony and, upon conviction thereof, shall be fined not less than \$5,000 nor more than \$10,000, or imprisoned in a state correctional facility for a term of not less than one year nor more than five years, or both fined and imprisoned.

(e) A person is guilty of communicating a threat to commit a crime of violence when he or she intentionally communicates a threat to commit any crime of violence against another person or persons and

(1) Causes severe public alarm or inconvenience; or

(2) Recklessly disregards the risk of causing such severe public alarm or inconvenience.

(f) Any person who violates subsection (e) of this section is guilty of a felony and, upon conviction, shall be fined not less than \$2,500 nor more than \$10,000, or confined in a state correctional facility for not less than one year nor more than 10 years, or both fined and confined.

(g) Notwithstanding any other provision of this code to the contrary, any person who is charged with an offense under subsection (e) and who is on pre-trial release or convicted of an offense pursuant to subsection (e) and has had his or her sentence suspended, been granted probation, been released on parole, been incarcerated pursuant to §62-11B-4 of this code, been granted work release pursuant to §62-11A-1 of this code, been granted a conditional release pursuant to §27-6A-5 of this code, or been granted any other type of release from confinement may be prohibited by a court from establishing a residence, or accepting employment, within 1,000 feet of the location of the place where the violence was threatened to occur throughout the duration of the period that the person is on pre-trial release, supervised post-conviction release, or conditional release: *Provided*, That a person who is on pre-trial release or is on post-conviction or conditional supervised release due to an alleged, or actual, violation of subsection (e) of this section, shall not establish a residence, or accept employment, within 1,000 feet of the residence of any threatened person, when the threat is directed at an identifiable individual or individuals, throughout the duration of the period that the person is on pre-trial release, supervised post-conviction release, or conditional release.

(h) Any offense alleged to have been committed pursuant to subsection (e) of this section may be determined to have occurred at the place at which the communication originated or the place at which the communication was received or intended to be received.

(i) It is not a defense against any prosecution pursuant to this section that the defendant did not have the ability to complete the threatened violence.

(j) The offenses set forth in this section are in addition to and separate and distinct from any other offenses set forth in this code.

~~(d)~~ (k) Prior to the sentencing of a person who has been convicted of a violation of this section, the court may enter an order directing any law enforcement agency or emergency service provider

involved in the emergency response that wishes to be reimbursed for the costs incurred by the agency or provider during the emergency response, to file with the court within a specified time an itemized statement of those costs. The court may then order the offender to reimburse the agency for all or a portion of those costs.

~~(e)~~ (l) This section does not apply to any person conducting an authorized emergency drill.

The bill (Eng. Com. Sub. for H. B. 4996), as amended, was then ordered to third reading.

Eng. House Bill 5048, To ensure virtual instruction for foster students while in temporary placement facilities.

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

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

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

ARTICLE 2. STATE RESPONSIBILITIES FOR CHILDREN.

§49-2-125a. Right to education for residential placement of foster children.

(a) When a foster child is in the process of residential placement, the foster child shall continue to receive his or her education through virtual learning while the foster child is awaiting placement with a foster family.

(b) Virtual learning shall be done through the county where the foster student was last enrolled, and if this is not possible, then the virtual learning shall occur in the county where the foster child currently resides while awaiting residential placement: *Provided*, That if neither county has the capability for virtual learning, then a public charter virtual school or the closest available county with virtual learning capability shall be the county used by the foster student.

(c) Virtual learning shall take place in accordance with the provisions of §18-5F-1 *et seq.* or §18-5G-1, *et seq.* of this code.

(d) The individual, group, or organization responsible for the foster child while the child is awaiting residential placement shall receive information technology ("IT") training from West Virginia Department of Education for purposes of ensuring the foster child shall receive virtual learning. This training shall include education in every step needed for the student to be able to log in and participate in the virtual courses the foster child is enrolled in. This training shall be at the expense of the West Virginia Department of Education.

(e) The virtual instruction for the child awaiting residential placement shall occur no more than three days after the child is in the temporary care of the individual, group, or organization.

(f) Once the foster child is placed with a foster family, the virtual learning information and educational enrollment information received from the child shall be provided to both the foster family and to the new county where the student is enrolled.

The bill (Eng. H. B. 5048), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5065, Relating to hotel occupancy tax.

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 18. HOTEL OCCUPANCY TAX.

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

(a) The consumer shall pay to the hotel operator the amount of tax imposed by any municipality or county hereunder, which tax shall be added to and shall constitute a part of the consideration paid for the use and occupancy of the hotel room, and which tax shall be collectible as such by the hotel operator who shall account for, and remit to the taxing authority, all taxes paid by consumers. The hotel operator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for occupancy or use of a hotel room. The hotel operator may commingle taxes collected hereunder with the proceeds of the rental of hotel accommodations unless the taxing authority, ~~shall~~ by ordinance, order, regulation, or otherwise, ~~require~~ requires in writing that the hotel operator ~~to~~ segregate such taxes collected from such proceeds. The taxing authority's claim shall be enforceable against, and shall be superior to, all other claims against the moneys so commingled excepting only claims of the state for moneys held by the hotel pursuant to the provisions of §11-15-1 *et seq.* of this code. All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the hotel until those taxes ~~shall~~ have been remitted to the taxing authority as hereinafter provided.

(b) *Economic nexus and duty of certain marketplace facilitators to collect tax.* — Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a hotel room, such marketplace facilitator shall be responsible, on behalf of the hotel or hotel operator, for the collection and remittance of the tax imposed by any municipality or county pursuant to this article when:

(1) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators equal to or exceeding \$100,000 in gross revenue for an immediately preceding calendar year, or a current calendar year; or

(2) The marketplace facilitator makes or facilitates West Virginia sales on its own behalf or on behalf of one or more hotel or hotel operators in 200 or more separate transactions for an immediately preceding calendar year or a current calendar year.

For purposes of this section, a marketplace facilitator meeting the requirements of this subsection is deemed to be an agent of any hotel or hotel operator making retail sales through the marketplace facilitator's physical or electronic marketplace.

(c) *Collection and remittance of tax by marketplace facilitators.* —

(1) Where a marketplace facilitator is responsible for the collection and remittance of the tax imposed pursuant to subsection (b) of this section, the marketplace facilitator shall separately state the tax authorized by this article on all bills, invoices, accounts, books of account, and records relating to consideration paid for the occupancy or use of a hotel room.

(2) Where a hotel or hotel operator contracts with a marketplace facilitator to offer the use or occupancy of a hotel room, the marketplace facilitator shall maintain records of every hotel or hotel operator and such records shall include:

(A) The name of the hotel, motel, short-term rental, or vacation rental where the lodging occurred;

(B) The name of the hotel, motel, short-term rental, or vacation rental owner;

(C) The address where the lodging occurred;

(D) The dates when the lodging occurred;

(E) The amount of tax received as required under this article;

(F) The date the amount of tax was received; and

(G) Whether the tax received was a municipal or county tax.

(3) A marketplace facilitator shall use geofencing or a similar mechanism to provide an accurate basis for occupancy tax collection.

(4) A marketplace facilitator shall use a nine-digit postal code when necessary in order to guarantee the collected tax is being remitted to the proper political subdivision.

(5) All taxes collected pursuant to the provisions of this article shall be deemed to be held in trust by the marketplace facilitator, on behalf of the hotel or hotel operator, until those taxes have been remitted by the marketplace facilitator to the taxing authority in accordance with §7-18-10 of this code. ~~Provided, That nothing in this section shall be construed to~~ The marketplace facilitator shall remit the tax to:

(A) The county treasurer for lodging taxes for county convention and visitors bureaus; and

(B) The municipal treasurer, clerk, or recorder as dictated by the municipal charter for lodging taxes for a municipal convention and visitors bureau.

(6) This section does not interfere with the ability of a marketplace facilitator and a hotel or hotel operator to enter into an agreement regarding fulfillment of the requirements of §7-18-1 *et seq.* of this code.

~~(d) *Effective date.* — The amendments to this section enacted during the regular session of the Legislature, 2021, shall apply to sales by a marketplace facilitator made on and after January 1, 2022.~~

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

The bill (Eng. Com. Sub. for H. B. 5065), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5074, Relating to changing the allocation of proceeds in the Medical Cannabis Program Fund.

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

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

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

ARTICLE 9. TAX ON MEDICAL CANNABIS.

§16A-9-2. Medical Cannabis Program Fund.

(a) *Fund established.* — The Medical Cannabis Program Fund is established as a special fund in the State Treasury. Money in the fund ~~is appropriated~~ shall be allocated as set forth in subsection (c) of this section. Any amount unspent at the end of a fiscal year shall be ~~appropriated~~ allocated to the bureau for its operations.

(b) *Source of funds.* — Fees and taxes payable under this act shall be deposited into the fund. The money deposited into the fund may only be used for the purposes set forth in this section. Any interest accrued shall be deposited into the fund.

(c) *Use of proceeds.* —

(1) On June 30, 2026, \$5 million from the balance of moneys in the fund shall be allocated to the Supreme Court of Appeals for a pilot project for the establishment of a Child Protection Commission and "\$5 million from the balance of moneys in the fund shall be allocated to Division of Primary Care to expand and enhance services addressing homelessness;". the remaining balance in the fund shall revert to general revenue for appropriation;

(2) Beginning of July 1, 2026, the money in the fund is allocated in accordance with the following percentages, except as otherwise provided in this subdivision:

(A) ~~Fifty-five~~ Fifteen percent of the revenue in the fund shall be allocated to the ~~bureau~~ Office of Medical Cannabis for administrative purposes.

(B) Fifteen percent shall be allocated to the Department of Agriculture for testing of medical cannabis, which shall occur at the West Virginia State University lab when operational.

(C) ~~The remaining forty-five percent of the revenue in the fund shall be allocated as follows:~~
(A) ~~Fifty~~ Twenty percent shall be allocated to the Fight Substance Abuse Fund created by §60A-9-8 of the ~~this~~ code;

(D) Ten percent shall be allocated to Marshall University for cannabis research;

(E) Ten percent shall be allocated to West Virginia University's Rockefeller Neuroscience Institute for substance use disorder research;

(F) Ten percent shall be allocated to the Supreme Court of Appeals for the purposes of a Child Protection Commission; and"

~~"(B) (G) Forty Twenty percent shall be allocated to the Division of Administrative Services, Justice and Community Services section, for grants to local law enforcement agencies for training, drug diversion, and other programs focused on crime and addiction and to pay expenses of the division in administering the grant program, which expenses may not in any fiscal year exceed three percent of the funds allocated, pursuant to and in accordance with the provisions of article nine-a, chapter fifteen §15A-2-1 et seq. of this code."~~

~~(B) (G) Forty Ten percent shall be allocated to the Division of Justice and Community Services, for grants to local law enforcement agencies for training, drug diversion, and other programs focused on crime and addiction, pursuant to and in accordance with the provisions of article nine-a, chapter fifteen of this code.~~

~~(C) (H) Ten percent shall be allocated to the fund created in section four, article twenty-nine, chapter thirty, to be used for law enforcement professional training and professional development programs.~~

The bill (Eng. Com. Sub. for H. B. 5074), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5101, The Joanna Phillips Domestic Violence Prevention 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 and adopted:

On pages 5 through 8, by striking out all of section 1a and inserting in lieu thereof a new section 1a, to read as follows:

§62-1C-1a. Pretrial release; types of release; conditions for release; considerations as to conditions of release.

(a) Subject to the provisions of §62-1C-1 of this code, when a person charged with a violation or violations of the criminal laws of this state first appears before a judicial officer:

(1) Except for good cause shown, a judicial officer shall release a person charged with a misdemeanor offense on his or her own recognizance unless that person is charged with:

(A) A misdemeanor offense of actual violence or threat of violence against a person;

(B) A misdemeanor offense where the victim was a minor, as defined in §61-8C-1 of this code;

(C) A misdemeanor offense involving the use of a deadly weapon, as defined in §61-7-2 of this code;

(D) A misdemeanor offense of the Uniform Controlled Substances Act as set forth in chapter 60A of this code;

(E) Misdemeanor offenses of sexual abuse;

(F) A serious misdemeanor traffic offense set forth in §17C-5-1 or §17C-5-2 of this code; or

(G) A misdemeanor offense involving auto tampering, petit larceny or possession, transfer or receiving of stolen property when alleged value on the property involved exceeds \$250.

(2) In determining good cause for purposes of release under this section, a judicial officer shall consider the residency status of a person charged with a misdemeanor offense, including but not limited to whether the person: (A) Is a resident of West Virginia and/or the United States of America; (B) has ties to the community; and (C) is a risk of flight.

(2)(3) For the misdemeanor offenses specified in subsection (a) of this section and all other offenses which carry a penalty of incarceration, the arrested person is entitled to be admitted to bail subject to the least restrictive condition or combination of conditions that the judicial officer determines reasonably necessary to assure that person will appear as required, and which will not jeopardize the safety of the arrested person, victims, witnesses, or other persons in the community or the safety and maintenance of evidence: *Provided, That pursuant to §62-1C-4 of this code, a magistrate may not release a defendant charged with a felony offense on his or her own recognizance.* Further conditions may include that the person charged shall:

(A) Not violate any criminal law of this state, another state, or the United States;

(B) Remain in the custody of a person designated by the judicial officer, who agrees to assume supervision and to report any violation of a release condition to the court, if the designated person is reasonably able to assure the judicial officer that the person will appear as required and will not pose a danger to himself or herself or to the safety of any other person or the community;

(C) Participate in home incarceration pursuant to §62-11B-1 *et seq.* of this code;

(D) Participate in an electronic monitoring program if one is available where the person is charged or will reside;

(E) Maintain employment, or, if unemployed, actively seek employment;

(F) Avoid all contact with an alleged victim of the alleged offense and with potential witnesses and other persons as directed by the court;

(G) Refrain from the use or excessive use of alcohol, or any use of a narcotic drug or other controlled substance, as defined in §60A-1-1 *et seq.* of this code without a prescription from a licensed medical practitioner;

(H) Execute an agreement to forfeit, upon failing to appear as required, property of a sufficient unencumbered value, including money, as is reasonably necessary to assure the appearance of the person as required. The person charged shall provide the court with proof of ownership, the value of the property, and information regarding existing encumbrances of the property as, in the discretion of the judicial officer, is reasonable and necessary collateral to ensure the subsequent appearance of the person as required;

(I) Post a cash bond, or execute a bail bond with solvent sureties who will execute an agreement to forfeit an amount reasonably necessary to assure appearance of the person as required. If other than an approved surety, the surety shall provide the court with information regarding the value of its assets and liabilities and the nature and extent of encumbrances against

the surety's property. The surety shall have a net worth of sufficiently unencumbered value to pay the amount of the bail bond; or

(J) Satisfy any other condition that is reasonably necessary to assure the appearance of the person as required and to assure the safety of the arrested person, victims, witnesses, other persons in the community, or the safety and maintenance of evidence.

~~(3)~~ (4) Proper considerations in determining whether to release the arrested person on an unsecured bond, fixing a reasonable amount of bail, or imposing other reasonable conditions of release are:

(A) The ability of the arrested person to give bail;

(B) The nature, number, and gravity of the offenses;

(C) The potential penalty the arrested person faces;

(D) Whether the alleged acts were violent in nature;

(E) The arrested person's prior record of criminal convictions and delinquency adjudications, if any;

(F) The character, health, residence, and reputation of the arrested person: Provided, That, in determining whether to release a person, fix bail or impose reasonable conditions of release, a judicial officer shall consider the person's status as a resident of West Virginia and/or of the United States of America;

(G) The character and strength of the evidence which has been presented to the judicial officer;

(H) Whether the arrested person is currently on probation, extended supervision, or parole;

(I) Whether the arrested person is already on bail or subject to other release conditions in other pending cases;

(J) Whether the arrested person has been bound over for trial after a preliminary examination;

(K) Whether the arrested person has in the past forfeited bail or violated a condition of release or was ever a fugitive from justice; and

(L) The policy against unnecessary incarceration of arrested persons pending trial set forth in this section.

(b) In all misdemeanors, cash bail may not exceed three times the maximum fine provided for the offense. If the person is charged with more than one misdemeanor, cash bail may not exceed three times the highest maximum fine of the cumulative charged offenses; Provided, That in cases involving domestic violence, defined in §48-27-101 et seq. of this code, the court may determine a higher bail is appropriate given violations of any protective order or bond conditions, the seriousness of risk, and the likelihood of harm to others.

(c) Notwithstanding any provisions of this article to the contrary, whenever a person not subject to the provisions of §62-1C-1 of this code remains incarcerated after his or her initial

appearance, relating to a misdemeanor, due to the inability to meet the requirements of a secured bond, a magistrate or judge shall hold a hearing within 5 days of setting the initial bail to determine if there is a condition or combination of conditions which can meet the considerations set forth in ~~§62-1C-1a(a)(2)~~ §62-1C-1a(a)(3) of this code.

(d) A judicial officer may upon notice and hearing modify the conditions of release at any time by imposing additional or different conditions.

(e) A prosecuting attorney and defense counsel, unless expressly waived by the defendant, shall appear at all hearings in which bail or bond conditions are at issue other than the proceeding at which the conditions of release are initially set.

(f) No judicial officer may recommend the services of a surety who is his or her relative as that term is defined in §6B-1-3 of this code.

The bill (Eng. Com. Sub. for H. B. 5101), as amended, was then ordered to third reading.

Eng. House Bill 5166, To provide notice to any political committees violating the filing requirements prior to assessing any civil fines and giving the Secretary of State authority to grant additional time for compliance not to exceed an additional 14 days.

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

At the request of Senator Martin, 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. Com. Sub. for House Bill 5168, To increase funding for EMS first responders.

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

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

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

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

CHAPTER 5B. ECONOMIC DEVELOPMENT ACT OF 1985.

ARTICLE 2. DEPARTMENT OF ECONOMIC DEVELOPMENT.

§5B-2-21b. Authority to assist certified microgrid district projects and certified high impact data center projects; legislative findings.

(a) Findings and purpose. — The Legislature hereby finds and declares the following:

(1) The findings and purpose set forth in §5B-2-21a(a) (2025), except to the extent expressly modified herein, are hereby incorporated herein by reference with the same force and effect as though fully set forth herein.

(2) It is in the best interests of the state to induce and assist in development of these projects, in order to advance the public purposes of relieving unemployment by preserving and creating jobs, and preserving and creating new and greater sources of revenue for the support of public services provided by the state and local government.

(3) It is the intent of the Legislature to occupy the whole field of the creation and regulation of certified microgrid districts and certified high impact data centers. The stated purpose of this section is to promote uniform and consistent application of the act within the state.

(b) The Department of Commerce shall assist projects developing or operating a certified microgrid district pursuant to §5B-2-21 of this code or a certified high impact data center pursuant to §5B-2-21a of this code. The Secretary of Commerce shall designate one of their personnel as "Data Economy Liaison" to serve as a single point-of-contact for certified microgrid districts and high impact data centers to assist coordinate and expedite their development and operation, including, but not limited to site selection and permitting. A "certified microgrid district" is a microgrid project, regardless of stage of development or operation, that has been certified by the Secretary of the Department of Commerce as set forth in §5B-2-21 of this code. A "certified high impact data center" is a data center project, regardless of stage of development or operation, that has been certified by the Secretary of the Department of Commerce as set forth in §5B-2-21a of this code.

(c) This section prohibits:

(1) Counties and municipalities, whether by ordinance, resolution, administrative act, or otherwise, from enacting, adopting, implementing, or enforcing ordinances, regulations, or rules which limit, in any way, the creation of, and acquisition, construction, equipping, development, expansion, and operation of any certified microgrid district or certified high impact data center project; and

(2) Counties and municipalities from imposing or enforcing local laws and ordinances concerning the creation or regulation of any certified microgrid district or certified high impact data center therein.

(d) In accordance with §5B-2-21(b) and §5B-2-21(c) of this code, and notwithstanding any provision of this code to the contrary, or any municipality's home rule powers with respect to ordinances and ordinance procedures, including any authority pursuant to the Municipal Home Rule Program under §8-1-5a of this code, certified microgrid districts and certified high impact data centers may not be subject to the following:

(1) County or municipal zoning, horticultural, noise, viewshed, lighting, development, or land use ordinances, restrictions, limitations, or approvals;

(2) County or municipal building permitting, inspection, or code enforcement;

(3) County or municipal license requirements;

(4) The legal jurisdiction of the county or municipality in which the certified microgrid district or certified high impact data center is entirely or partially located, except as specifically provided in this article;

(5) Any requirement under state law for the consent or approval of the municipality in which a certified microgrid district or certified high impact data center is entirely or partially located of any state or county action pursuant to this code, specifically including, but not limited to, §7-11B-1 *et seq.* of this code, for formal consent of the governing body of a municipality for county or state action regarding the establishment of tax increment financing development or redevelopment districts or the approval of tax increment financing development or redevelopment plans.

(e) Notwithstanding the creation of a certified microgrid district or a certified high impact data center, the owner, operator, or manager, as applicable, and all tenants, lessees or licensees thereof, of a certified microgrid district or a certified high impact data center shall:

(1) Pay business and occupation tax, if applicable, pursuant to §8-13-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(2) Collect and remit municipal sales and service tax and municipal use tax, if applicable, pursuant to §8-1-5a, §8-13C-4, and §8-13C-5 of this code, to the municipality in the same manner as any other business or commercial venture located within the municipality;

(3) Pay ad valorem real and personal property tax pursuant to the same millage rates as any other business or commercial venture located within the county and municipality;

(4) Pay all municipal and county service fees enacted pursuant to §8-13-13, §7-15-17, and §7-17-12 of this code, including, but not limited to, fire, ambulance, police, sanitation, or city service fees; Provided, That in no event shall any the owner, operator, or manager, as applicable, and all tenants, lessees or licensees thereof, of a certified microgrid district or a certified high impact data center be required to pay both county and municipal fees for fire protection.

(5) Pay all utility rates, fees, and charges for utilities used or consumed during construction and operation of premises within the certified microgrid district or certified high impact data center, including, but not limited to, water, sewer, stormwater, and garbage and recycling collection: *Provided, That* (A) The rates, fees, and charges for such services shall be based on the cost of providing such service and the utility shall enter into a contract under the rules of the Public Service Commission for each such service with the developer and file the special contract with the Public Service Commission; and (B) the developer shall only be required to pay any capacity improvement fee or impact fee to the extent that capital additions, betterments, and improvements must be designed, acquired, constructed, and equipped by the utility to provide such service to the project; Utility customers outside of the microgrid district shall not bear any construction or operational costs associated with any new utility property built solely to provide service within a microgrid district;

(6) Be entitled to ~~municipal~~ police protection and ~~municipal~~ fire protection, if available, in the same manner as any other business or commercial venture located within the county or municipality; and

(7) Design, acquire, construct, and equip the certified microgrid district or certified data center pursuant to the State Building Code in accordance with §8-12-13 of this code and the corresponding State Rule 87 CSR 4.

(f) The Department of Commerce, Department of Environmental Protection, and Department of Transportation may take actions necessary in support of the development of any certified

microgrid district or certified data center, including, but not limited to, the development or improvement of such highways, roads, thoroughfares, and sidewalks within any county or municipality in which the certified microgrid district or certified data center is partially or entirely located.

(g) In order to effectuate the purposes of this section, the Department of Commerce, or any agency, division, or subdivision thereof, may promulgate legislative rules, including emergency rules, in accordance with §29A-3-1 *et seq.* of this code.

CHAPTER 7. COUNTY COMMISSIONS AND OFFICERS.

ARTICLE 5C. FUNDS FOR PROVIDING EMERGENCY MEDICAL SERVICES.

§7-5C-1. Funds for use of emergency medical services departments in counties with excess levy or dedicated fee.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the County Emergency Medical Services Fund which is an interest-and-earnings accumulating account. The fund shall receive legislative appropriations, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of moneys in the County Emergency Medical Services Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The fund shall be administered by the Director of the West Virginia Office of Emergency Medical Services and distributed by the director to county commissions and distributed by those county commissions to emergency medical services departments in those counties for the exclusive benefit of providing emergency medical services in the county. Distributions from the fund shall be distributed only to the county commissions of counties that have in place a countywide excess levy, or a countywide fee, dedicated to emergency medical services. Among those counties, distributions shall be in relative proportion to each county's population's percentage of the aggregate population of all such counties combined.

(b) The Director of the West Virginia Office of Emergency Medical Services may propose legislative rules, including emergency rules, for promulgation in accordance with §29A-3-1 *et seq.* of this code to implement this section.

§7-5C-2. Funds for use of emergency medical services departments in counties.

(a) There is hereby created in the State Treasury a special revenue fund designated and known as the All-County Emergency Medical Services Fund which is an interest-and-earnings accumulating account. The fund shall receive legislative appropriations, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of moneys in the All-County Emergency Medical Services Fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The fund shall be administered by the Director of the West Virginia Office of Emergency Medical Services and distributed by the director to county commissions and distributed by those county commissions to emergency medical services departments in those counties for the exclusive benefit of providing emergency medical services

in the county. Among those counties, distributions shall be in relative proportion to each county's population's percentage of the aggregate population of all such counties combined.

(b) The Director of the West Virginia Office of Emergency Medical Services may propose legislative rules, including emergency rules, for promulgation in accordance with §29A-3-1 et seq. of this code to implement this section.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-25. Emergency Medical Services Salary Enhancement, Crisis Response, and Mental Health Treatment Fund.

(a) There is hereby ~~created~~ continued in the State Treasury a special revenue fund designated and known as the Emergency Medical Services Salary Enhancement Fund, hereafter to be known as the Emergency Medical Services Crisis Response and Mental Health Treatment Fund, which is an interest- and earnings-accumulating account ~~The fund is established to support Expenditures from the fund shall be for the purposes set forth in this section, including supplementing the salaries of, and training, purchasing and maintaining equipment and supplies, facility maintenance, and providing crisis response for, county emergency medical service personnel as that term is defined in §16-4C-3(g) of this code or a county-designated or contracted emergency medical service provider. and all moneys must be spent to support increasing salaries of emergency medical service workers and providing crisis response to encourage retention~~ The fund consists of moneys appropriated by the Legislature, grants, gifts, devises, and donations from any public or private source. All interest and other returns derived from the deposit and investment of moneys in the ~~Emergency Medical Services Salary Enhancement Fund~~ fund shall be credited to the fund. Any balance, including accrued interest and other returns, remaining in the fund at the end of each fiscal year shall not revert to the General Revenue Fund but shall remain in the fund and be expended as provided in this section. The Director of the West Virginia Office of Emergency Medical Services shall administer the fund.

(b) Notwithstanding the provisions of subsection (a) of this section to the contrary, any funds transferred into the fund from the State Lottery Fund pursuant to the provisions of §29-22-18h of this code shall be distributed to counties subject to the following conditions:

(1) The first \$1 million transferred shall be used by the Office of Emergency Medical Services for mental health treatment and training for emergency medical service personnel, including, but not limited to:

(A) Crisis Intervention Team training;

(B) Peer support programs;

(C) Adult Mental Health First Aid;

(D) Life Coach training; or

(E) Critical Incident Stress Management training: *Provided*, That any funds not used in any fiscal year may be redistributed to the counties according to the distribution authorized by this section.

(2) For any money awarded to a county from funds transferred from the State Lottery pursuant to §29-22-18h of this code, the county shall provide a 30 percent match from county funds or funds received by the county from other sources to serve as a match for these funds.

(c) The Director of the Office of Emergency Medical Services shall propose legislative rules for promulgation and promulgate emergency rules pursuant to the provisions of §29A-3-15 of this code. These rules shall include a means of distributing any available funds to counties to accomplish the purpose of this section with an emphasis on the following factors:

- (1) Counties who may demonstrate the most need;
- (2) Counties that have a special levy for emergency medical services;
- (3) Counties that have reached the maximum allowable rate on regular levies; and/or
- (4) Counties that have a challenge recruiting and retaining emergency medical services personnel due to interstate competition.

~~(e)~~ (d) The Office of Emergency Medical Services shall prepare an annual report to the Legislative Oversight Commission on Health and Human Resources Accountability. The report shall provide:

- (1) A county-by-county accounting of how the funds were distributed;
- (2) An accounting by county of the number of emergency medical service workers receiving a salary enhancement; and
- (3) Recommendations for continued funding.

The first report is due by July 1, 2024, and annually thereafter.

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICERS.

ARTICLE 22. STATE LOTTERY ACT.

§29-22-18h. Additional allocation of net profits from the State Lottery Fund to certain emergency medical services funds.

(a) Notwithstanding any other provision of this code to the contrary, following the end of each fiscal year, after the Lottery Commission has met the requirements for the allocation of net profits from the State Lottery Fund as required under §29-22-18 of this code and any other provisions of this code, and after satisfying the requirements for funds dedicated to pay debt service in accordance with bonds payable from the State Lottery Fund and for other purposes as required by §29-22-18, §29-22-18f, and §29-22-18g of this code, the Lottery Commission shall annually allocate and transfer from any remaining and available net profits for the fiscal year in the State Lottery Fund to the following:

- (1) The sum of \$6 million, or the sum of the remaining and available net profits, whichever is less, to the Emergency Medical Services Crisis Response and Mental Health Treatment Fund established in §16-4C-25 of this code, which sum transferred shall be distributed in accordance with the provisions of that section;

(2) The sum of \$3 million, or the sum of the remaining and available net profits, whichever is less, to the County Emergency Medical Services Fund created in §7-5C-1 of this code, which sum transferred shall be distributed in accordance with the provisions of that section; and

(3) The sum of \$3 million, or the sum of the remaining and available net profits, whichever is less, to the All-County Emergency Medical Services Fund created in §7-5C-2 of this code, which sum transferred shall be distributed in accordance with the provisions of that section.

(b) In the event that remaining and available net profits for the fiscal year in the State Lottery Fund are not sufficient to meet the allocation and transfer of net profits as directed under subsection (a) of this section, then the amounts allocated and transferred under subsection (a) of this section from any remaining and available net profits for the fiscal year shall be reduced on a pro rata basis.

The bill (Eng. Com. Sub. for H. B. 5168), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5182, Relating generally to authorizing security personnel employed by the State Treasurer to carry concealed weapons while performing his or her official duties.

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

Eng. Com. Sub. for House Bill 5212, Relating to financial aid for post-secondary education.

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

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

On page 24, section 7, line 31, by striking out "(4)" and inserting in lieu thereof "(3)";

On page 24, section 7, lines 34 and 35, by striking out the words "permitted pursuant to §18B-3-5 of this code and";

And,

On page 25, section 7, line 46, by striking out "(4)" and inserting in lieu thereof "(3)".

The bill (Eng. Com. Sub. for H. B. 5212), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5353, To bring virtual currency kiosks within the purview of money transmission licensure and create disclosure requirements and daily transaction limitations for new and existing customers.

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

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

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

ARTICLE 2. CHECKS AND MONEY ORDER SALES, MONEY TRANSMISSION SERVICES, TRANSPORTATION, AND CURRENCY EXCHANGE.**§32A-2-1. Definitions.**

(a) "Acting in concert" means persons knowingly acting together with a common goal of jointly acquiring control of a licensee whether or not pursuant to an express agreement.

(b) "Average daily money transmission liability" means the amount of the licensee's outstanding money transmission obligations in this state at the end of each day in a given period of time, added together, and divided by the total number of days in the given period of time. For purposes of calculating average daily money transmission liability, the given period of time shall be the quarters ending March 31, June 30, September 30, and December 31.

(c) "Check" means any check, traveler's check, draft, money order, or other instrument for the transmission or payment of money whether or not the instrument is negotiable. "Check" does not include a credit card voucher or a letter of credit.

(d) "Closed loop stored value" means stored value that is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value.

(e) "Commissioner" means the Commissioner of Financial Institutions of this state.

(f) "Control" means:

(1)(A) The power to vote, directly or indirectly, at least 25 percent of voting shares or voting interests of a licensee or person in control of a licensee;

(B) The power to elect or appoint a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee; or

(C) The power to exercise, directly or indirectly, a controlling influence over the management or policies of a licensee or person in control of a licensee.

(2) Rebuttable presumption of control:

(A) A person is presumed to exercise a controlling influence when the person holds the power to vote, directly or indirectly, at least 10 percent of outstanding voting shares or voting interests of a licensee or person in control of a licensee.

(B) A person presumed to exercise a controlling influence as defined in this section can rebut the presumption of control if the person is a passive investor.

(3) For the purposes of determining the percentage of a person controlled by any other person, the person's interest shall be aggregated with the interest of any other immediate family member, including the person's spouse, parents, children, siblings, mothers-in-law, fathers-in-law, sons-in-law, daughters-in-law, brothers-in-law, sisters-in-law, and any other person who shares such person's home.

(g) "Control of virtual currency," when used in reference to a transaction or relationship involving virtual currency, means the power to execute unilaterally or prevent indefinitely a virtual currency transaction.

(h) "Currency exchange" means the conversion of the currency of one government into the currency of another government, but it does not include the issuance and sale of travelers checks denominated in a foreign currency. Transactions involving the electronic transmission of funds by licensed money transmitters which may permit, but do not require, the recipient to obtain the funds in a foreign currency outside of West Virginia are not currency exchange transactions: *Provided*, That they are not reportable as currency exchange transactions under federal laws and regulations.

~~(h)~~ (i) "Currency exchange, transportation, transmission business" means a person who is engaging in currency exchange, currency transportation, or currency transmission as a service or for profit.

~~(i)~~ (j) "Currency transmission" or "money transmission" means, directly or through an authorized delegate: (1) Engaging in the business of selling or issuing checks or the business of receiving currency, the payment of money, or other value that substitutes for money by any means for the purpose of transmitting, either prior to or after receipt, that currency; ~~or~~ (2) Payment of money or other value that substitutes for money by wire, facsimile, or other electronic means, or through the use of a financial institution, financial intermediary, the Federal Reserve system, digital wallet, including, but not limited to, a digital wallet used in connection with a consumer payment mobile application, or other funds transfer network; or (3) Engaging in the business of owning or operating a virtual currency kiosk. It includes the transmission of funds through the issuance and sale of stored value or similar prepaid products' cards which are intended for general acceptance and used in commercial or consumer transactions. It also includes payroll processing services. It does not include the provision solely of online or telecommunications services or network access.

~~(j)~~ (k) "Currency transportation" means knowingly engaging in the business of physically transporting currency from one location to another in a manner other than by a licensed armored car service exempted under section three of this article.

(l) "Digital wallet" means any electronic or digital functionality that:

(1) Stores value or virtual currency for a customer, including, but not limited to, in encrypted or tokenized form; and

(2) Transmits, routes, or otherwise processes such stored value or virtual currency to facilitate a payment transaction.

(m) "Elder adult" means a person who is 60 years of age or older.

(n) "Exchange", used as a verb, includes to assume control of virtual currency from or on behalf of a person, at least momentarily, to sell, trade, or convert:

(1) Virtual currency for money, bank credit, or one or more forms of virtual currency; or

(2) Money or bank credit for one or more forms of virtual currency.

(o) "Existing customer" means a consumer who:

(1) Is engaging in a transaction at a virtual currency kiosk in this state; and

(2) Has been registered for more than 10 days as a customer of the owner of the virtual currency kiosk or virtual currency kiosk operator.

~~(k)~~ (p) "Key individual" or "principal" means any individual ultimately responsible for establishing or directing policies and procedures of the licensee, such as an executive officer, manager, director, or trustee.

~~(j)~~ (q) "Licensee" means a person licensed by the commissioner under this article.

~~(m)~~ (r) "Money" or "currency" means a medium of exchange that is authorized or adopted by the United States or a foreign government and includes a monetary unit of account established by an intergovernmental organization or by agreement between two or more governments.

~~(n)~~ (s) "Money order" means any instrument for the transmission or payment of money in relation to which the purchaser or remitter appoints or purports to appoint the seller thereof as his or her agent for the receipt, transmission, or handling of money, whether the instrument is signed by the seller, the purchaser, remitter, or some other person.

(t) "Money transmission kiosk" or "virtual currency kiosk" means an automated electronic machine that allows users to engage in money transmission, including any machine that is capable of accepting or dispensing cash in exchange for virtual currency. "Money transmission kiosk" or "virtual currency kiosk" does not include consumer cellular telephones and similar personal devices.

~~(e)~~ (u) "MSB accredited state" means a state agency that is accredited by the Conference of State Bank Supervisors and Money Transmitter Regulators Association for money transmission licensing and supervision.

~~(p)~~ (v) "Nationwide Multistate Licensing System and Registry" or "NMLS" means the system developed by the Conference of State Bank Supervisors and the American Association of Residential Mortgage Regulators and owned and operated by the State Regulatory Registry, LLC, or any successor or affiliated entity, for the licensing and registration of persons in the financial services industries.

(w) "New customer" means a consumer who is engaging in a virtual currency transaction in this state and has been registered for 10 days or less as a customer of the owner of a virtual currency kiosk or virtual currency kiosk operator.

~~(q)~~ (x) "Outstanding money transmission obligations" shall mean:

(1) Any payment instrument or stored value issued or sold by the licensee to a person located in the United States or reported as sold by an authorized delegate of the licensee to a person that is located in the United States that has not yet been paid or refunded by or for the licensee or escheated in accordance with applicable unclaimed property laws; or

(2) Any money received for transmission by the licensee or an authorized delegate in the United States from a person located in the United States that has not been received by the payee or refunded to the sender or escheated in accordance with applicable unclaimed property laws.

(3) For purposes of this subsection, "in the United States" shall include, to the extent applicable, a person in any state, territory, or possession of the United States, the District of Columbia, the Commonwealth of Puerto Rico, or a United States military installation that is located in a foreign country.

~~(f)~~ (y) "Passive investor" means a person that:

(1) Does not have the power to elect a majority of key individuals or executive officers, managers, directors, trustees, or other persons exercising managerial authority of a person in control of a licensee;

(2) Is not employed by and does not have any managerial duties of the licensee or person in control of a licensee;

(3) Does not have the power to exercise directly or indirectly a controlling influence over the management or policies of a licensee or person in control of a licensee; and

(4) Either:

(A) Attests to subdivisions (1), (2), and (3) of this subsection in a form prescribed by the commissioner or

(B) Commits to the passivity characteristics of subdivisions (1), (2), and (3) of this subsection in a written document.

~~(g)~~ (z) "Payment instrument" means a written or electronic check, draft, money order, traveler's check, or other written or electronic instrument for the transmission of payment of money or monetary value, whether or not negotiable, and does not include stored value or any instrument that: (1) is redeemable by the issuer only for goods or services provided by the issuer or its affiliate or franchisees of the issuer or its affiliate, except to the extent required by applicable law to be redeemable in cash for its cash value, or (2) not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

~~(h)~~ (aa) "Payroll processing services" means receiving money for transmission pursuant to a contract with a person to deliver wages or salaries, making payment of payroll taxes to state and federal agencies, making payments relating to employee benefit plans, or making distributions of other authorized deductions from wages and salaries: *Provided*, That it does not include an employer performing payroll processing services on its own behalf or on behalf of an affiliate or a professional employment organization subject to regulation under other applicable state law.

~~(i)~~ (bb) "Person" means any individual, partnership, association, joint stock association, limited liability company, trust, or corporation.

~~(j)~~ (cc) "Stored value" means monetary value representing a claim against the issuer evidenced by an electronic or digital record and that is intended and accepted for use as a means of redemption for money or monetary value, or payment for goods or services. The term includes, but is not limited to, "prepaid access" as defined by 31 C.F.R. § 1010.100, as amended or

recodified from time to time. Notwithstanding the foregoing, the term "stored value" does not include a payment instrument, closed loop stored value, or stored value not sold to the public but issued and distributed as part of a loyalty, rewards, or promotional program.

~~(w)~~ (dd) "Tangible net worth" means the aggregate assets of a licensee excluding all intangible assets, less liabilities, as determined in accordance with United States generally accepted accounting principles.

(ee) "Transfer" includes to assume control of virtual currency from or on behalf of a person and to:

(1) Credit the virtual currency to the account of another person;

(2) Move the virtual currency from one account of a person to another account of the same person; or

(3) Relinquish control of virtual currency to another person.

(ff) "U.S. Dollar equivalent of virtual currency" means the equivalent value of a particular virtual currency in United States dollars shown on a virtual currency exchange based in the United States for a particular date or period specified in this article.

(gg) "Virtual currency" means a digital representation of value that is used as a medium of exchange, unit of account, or store of value and is not money, whether or not denominated in money. Virtual currency does not include:

(1) A transaction in which a merchant grants, as part of an affinity or rewards program, value that cannot be taken from or exchanged with the merchant for money, bank credit, or virtual currency; or

(2) A digital representation of value issued by or on behalf of a publisher and used solely within an online game, game platform, or family of games sold by the same publisher or offered on the same game platform.

(hh) "Virtual currency administration" means issuing virtual currency with the authority to redeem the currency for money, bank credit, or other virtual currency.

(ii) "Virtual currency business activity" means:

(1) Exchanging, transferring, or storing virtual currency or engaging in virtual currency administration, whether directly or through an agreement with a virtual currency control-services vendor;

(2) Holding electronic precious metals or electronic certificates representing interests in precious metals on behalf of another person or issuing shares or electronic certificates representing interests in precious metals; or

(3) Exchanging one or more digital representations of value used within one or more online games, game platforms, or family of games for:

(A) Virtual currency offered by or on behalf of the same publisher from which the original digital representation of value was received;

(B) Money or bank credit outside the online game, game platform, or family of games offered by or on behalf of the same publisher from which the original digital representation of value was received.

(ij) "Virtual currency control-services vendor" means a person that has control of virtual currency solely under an agreement with a person that, on behalf of another person, assumes control of virtual currency.

(kk) "Virtual currency kiosk operator" means a person who engages in virtual currency business activity through a money transmission kiosk located in this state or a person that owns, operates, solicits, markets, advertises, manages, or facilitates a money transmission kiosk located in this state through which virtual currency business activity is offered.

(ll) "Virtual currency storage" means:

(1) Maintaining possession, custody, or control over virtual currency on behalf of another person, including as a virtual currency control-services vendor;

(2) Issuing, transferring, or otherwise granting or providing to any person in this state any claim or right or any physical, digital, or electronic instrument, receipt, certificate, or record representing any claim or right to receive, redeem, withdraw, transfer, exchange, or control any virtual currency; or

(3) Receiving possession, custody, or control over virtual currency from a person in this state in return for a promise or obligation to return, repay, exchange, or transfer such virtual currency or a like amount of such virtual currency.

(mm) "Virtual currency wallet" means a software application or other mechanism providing a means for holding, storing, and transferring virtual currency.

§32A-2-4. License application, issuance, and renewal.

(a) An applicant for a license shall submit an application to the commissioner on a form prescribed by the commissioner. The commissioner may direct an applicant to file a license application through the Nationwide Multistate Licensing System and Registry operated by the State Regulatory Registry, LLC.

(b) Each application shall be accompanied by a nonrefundable application fee and a license fee. If the application is approved, the application fee is the license fee for the first year of licensure.

(c) The commissioner shall issue a license if the commissioner finds that the applicant meets the requirements of this article and the rules adopted under this article. The commissioner shall approve or deny every application for an original license within 120 days from the date a complete application is submitted, unless the commissioner extends the period for good cause. All licenses issued under this article expire on December 31 of the year issued, unless sooner suspended or revoked, and are subject to renewal for the following year.

(d) The licensee at each office it owns and operates in West Virginia shall prominently display, or maintain available for inspection, a copy of the license authorizing the conduct of a currency exchange business if the location offers and provides such services. Where the currency exchange business is conducted through a licensee's authorized delegates in this state, each authorized delegate location offering such services shall maintain available for inspection proof of their appointment by the licensee to conduct such business.

(e) As a condition for renewal of a license, the licensee must submit to the commissioner an application for renewal on a form prescribed by the commissioner and an annual license renewal fee. The commissioner may direct an applicant to file a license renewal application through the Nationwide Multistate Licensing System and Registry operated by the State Regulatory Registry, LLC.

(f) A license issued under this article may not be transferred or assigned.

(g) An applicant for a license who is not located in this state shall file an irrevocable consent, duly acknowledged, that suits and actions may be commenced against the applicant in the courts of this state by service of process upon a person located within the state designated to accept service, or by service upon the Secretary of State, as well as by service as set forth in this chapter.

(h) The commissioner is authorized to participate in the multistate supervisory process, including any multistate investigatory, examination, and licensing process, established between states and coordinated through the Conference of State Bank Supervisors, Money Transmitter Regulators Association, and affiliates and successors thereof, for all licensees that hold licenses in this state and other states.

(i) A virtual currency kiosk operator doing business in West Virginia prior to the effective date of the amendments to this article made during the regular session of the Legislature, 2026, shall make application through NMLS for licensure within 90 days of the effective date of this section. Applicants must provide a list of delegate locations within NMLS at the time of application and include the appropriate fee.

§32A-2-8c. Virtual Currency Kiosk Requirements.

(a) A licensee, in establishing a relationship with a user and before entering into an initial virtual currency transaction on behalf of or with the user, shall disclose in clear, conspicuous, and legible writing all material risks associated with virtual currency generally. The material risks associated with virtual currency required to be disclosed include without limitation:

(1) A disclosure that is acknowledged by the customer, provided separately from the disclosures provided under subdivisions (2) and (7) of this subsection, and written prominently and in bold type stating the following: "WARNING: LOSSES DUE TO FRAUDULENT OR ACCIDENTAL TRANSACTIONS MAY NOT BE RECOVERABLE AND TRANSACTIONS IN VIRTUAL CURRENCY MAY BE IRREVERSIBLE.";

(2) Virtual currency is not backed or insured by the government, and accounts and value balances are not subject to protections of the Federal Deposit Insurance Corporation, National Credit Union Administration, or Securities Investor Protection Corporation;

(3) A virtual currency transaction may be deemed to be made when recorded on a public ledger which may not be the date or time when the customer initiates the virtual currency transaction;

(4) The value of virtual currency may be derived from the continued willingness of market participants to exchange fiat currency for virtual currency which may result in the permanent and total loss of the value of a particular virtual currency if the market for that virtual currency disappears;

(5) The volatility and unpredictability of the price of virtual currency relative to fiat currency may result in a significant loss over a short period of time;

(6) A bond maintained by the licensee for the benefit of the customers of the licensee may not be sufficient to cover all losses incurred by customers; and

(7) Virtual currency transactions may be irreversible and may be used by a person seeking to defraud customers, including, but not limited to, a person impersonating a customer's family or friends, threatening jail time, stating that a customer's identity has been stolen, insisting that a customer withdraw money from the customer's bank account and purchase virtual currency, or alleging that a customer's personal computer has been hacked.

(b) A licensee, when opening an account for a new customer and before entering into an initial virtual currency transaction for, on behalf of, or with the customer, shall disclose in clear, conspicuous, and legible writing, using not less than 24 point sans-serif-type font, all relevant terms and conditions associated with the products, services, and activities of the licensee and virtual currency generally. The disclosure shall include without limitation:

(1) The customer's liability for unauthorized virtual currency transactions;

(2) The customer's right to stop execution of a preauthorized virtual currency transfer and the procedure used to stop execution of the transaction;

(3) The circumstances under which the licensee, absent a court or government order, will disclose information concerning the customer's account to third parties;

(4) The requirement that the licensee communicate to the customer what customer information may be disclosed to third parties;

(5) The customer's right to receive a receipt for a virtual currency transaction at the time of the transaction;

(6) Upon a change in the rules or policies of the owner or operator, the customer's right to consent to the changed rules or policies before performing a transaction after the change; and

(7) Any other disclosures that are customarily provided in connection with opening a person's account.

(c) A licensee, before each transaction in virtual currency for, on behalf of, or with a customer, shall disclose to the customer in an easily readable manner that is in clear, conspicuous, and legible writing to advertise, solicit, or negotiate, either orally or in writing, for a transaction conducted in person, electronically, or by phone, using not less than 24 point sans-serif-type font.

the terms and conditions of the virtual currency transaction. The terms and conditions shall include without limitation:

(1) The amount of the transaction;

(2) Any fees, expenses, and charges borne by the customer, including without limitation, applicable exchange rates;

(3) The type and nature of the virtual currency transaction;

(4) A warning that, once executed, the virtual currency transaction may not be undone, if applicable;

(5) A daily virtual currency transaction limit according to subsection (g) of this section;

(6) The difference in the sale price of the virtual currency versus the current market price; and

(7) Any other disclosures that are customarily given in connection with a virtual currency transaction.

(d) A licensee shall ensure that each customer acknowledges receipt of all disclosures required under this section.

(e) A licensee, upon the completion of a virtual currency transaction, shall provide to the customer a written, paper receipt. The receipt shall be provided in a retainable form and may be provided electronically if the customer requests and agrees to receive an electronic receipt. The receipt shall include without limitation:

(1) The name and contact information for the licensee, including without limitation, the licensee's business address and a customer service telephone number established by the licensee to answer questions and register complaints;

(2) The name of the customer;

(3) The type, value, date, and precise time of the virtual currency transaction, transaction hash or identification number, and each virtual currency wallet address;

(4) The amount of the virtual currency transaction expressed in United States currency;

(5) The public virtual currency wallet address of the customer;

(6) The unique identifier of the virtual currency kiosk operator;

(7) A fee charged, including without limitation, a fee charged directly or indirectly by the licensee or a third party involved in the virtual currency transaction;

(8) The exchange rate, if applicable;

(9) Any tax collected by the licensee for the virtual currency transaction;

(10) A statement of the liability of the licensee for non-delivery or delayed delivery;

(11) A statement of the refund policy of the licensee;

(12) The name and telephone number of the Division of Financial Institutions and a statement disclosing that the licensee's customers may contact the division with questions or complaints about the licensee's virtual currency kiosk services; and

(13) Any additional information the commissioner may require.

(f) The following shall be the maximum daily virtual currency kiosk transaction limits:

(1) One thousand dollars for each new customer of a virtual currency kiosk; and

(2) Ten thousand dollars for each existing customer of a virtual currency kiosk.

(g) The licensee shall allow a new customer, upon the request of the customer, to cancel and receive a full refund for any fraudulent virtual currency transactions that occurred not later than 10 days after the new customer registered as a customer of the licensee if, not later than 30 days after the last virtual currency transaction that occurred during the 10-day period, the customer:

(1) Contacts the licensee and a government or law enforcement agency to inform them of the fraudulent nature of the virtual currency transaction; and

(2) Files a report with a government or law enforcement agency memorializing the fraudulent nature of the virtual currency transaction.

(h) Each licensee shall:

(1) Obtain a copy of a government-issued identification card that identifies each customer of the owner of the virtual currency kiosk or the virtual currency kiosk operator;

(2) Maintain restrictions that prevent more than one customer of the licensee from using the same virtual currency wallet;

(3) Be able to prevent designated virtual currency wallets from being used at a virtual currency kiosk owned or operated by the licensee;

(4) Use an established third party that specializes in performing blockchain analyses to preemptively perform the analyses to identify and prevent high risk or sanctioned virtual currency wallets from being used by customers at virtual currency kiosks owned or operated by the licensee;

(5) Define, in the licensee's policies and procedures, a risk-based method of monitoring customers of the owner of the virtual currency kiosk or the virtual currency kiosk operator on a post-transaction basis;

(6) Offer, during the hours of operation of the virtual currency kiosks owned or operated by the licensee, live customer support by telephone from a toll-free telephone number prominently displayed at or on the virtual currency kiosks;

(7) Designate a contact person available to communicate with law enforcement regarding investigations involving transactions conducted through a kiosk operated by the operator

(8) Establish an enhanced due diligence protections policy and provide enhanced due diligence protections which shall include documentation of risk-based, pre-transaction procedures designed to identify and mitigate fraud, scams, or financial exploitation, including establishing the nature and purpose of the transaction, evaluating transaction and behavioral risk indicators, and placing a temporary transaction hold of up to 72 hours where elevated risk is identified. The licensee's approval of the transaction shall be dependent upon the licensee's assessment of the enhanced due diligence protections;

(9) Designate and employ a chief compliance officer who shall:

(A) Be qualified to coordinate and monitor a compliance program to ensure compliance with this section and all other applicable federal laws and regulations and state laws and rules; and

(B) Own not more than 20 percent of the licensee that employs the chief compliance officer; and

(10) Use full-time employees to fulfill the licensee's compliance responsibilities under federal laws and regulations and state laws and rules.

§32A-2-17. Cooperative agreements; inconsistencies with federal law.

(a) The commissioner shall cooperate with federal and state agencies in discharging the commissioner's responsibilities under this article. The commissioner may:

(1) Arrange for the exchange of information among government officials concerning the regulation of a currency exchange, transportation, or transmission business;

(2) Cooperate in and coordinate training programs concerning the regulation of currency exchange, transportation, or transmission businesses; and

(3) Assist state and federal agencies in their enforcement and investigatory activities and supply those agencies with documentation and information.

(b) The commissioner may request the assistance of the State Police in enforcing this article.

(c) In the event state money transmission jurisdiction is conditioned on a federal law, any inconsistencies between any provision of this article and the federal law governing money transmission shall be governed by the applicable federal law to the extent of the inconsistency.

(d) In the event of any inconsistencies between this article and a federal law that governs pursuant to subsection (c) of this section, the commissioner may provide interpretive guidance that:

(1) Identifies the inconsistency; and

(2) Identifies the appropriate means of compliance with federal law.

§32A-2-27. Authorized delegates.

(a) A licensee may conduct the business of money transmission and currency exchange regulated by this article at one or more locations through authorized delegates designated by the

licensee to conduct business on its behalf, including the physical locations of money transmission kiosks and virtual currency kiosks.

(b) A licensee may not knowingly authorize a person to act as its delegate who has, within the previous 10 years, a disqualifying criminal conviction of the type set forth in §32A-2-8(c)(2) of this article code.

(c) A licensee shall enter into a contract with its authorized delegate detailing the nature and scope of the relationship between the licensee and the authorized delegate. The contract shall require that the authorized delegate operate in full compliance with the laws of this state and of the United States. The licensee shall, upon request, provide the commissioner with the sample written contract.

(d) The financial responsibility of a licensee for the actions of its authorized delegate shall not exceed the amount of funds received by the authorized delegate on behalf of its licensee for the business regulated under this article.

(e) An authorized delegate has an affirmative duty not to: (i) Commit fraud or misrepresentation; or (ii) submit fraudulent statements to the licensee. A licensee shall promptly report to the commissioner and to any other appropriate state or federal official when it has probable cause to believe that an authorized delegate has violated the affirmative duty set forth in this subsection.

(f) The licensee shall require the authorized delegate to hold in trust for the licensee from the moment of receipt of the proceeds of any business transacted under this article in an amount equal to the amount of proceeds due the licensee less the amount due the authorized delegate. The funds shall remain the property of the licensee whether or not commingled by the authorized delegate with its own funds. In the event that the license is revoked by the commissioner, all proceeds held in trust by the authorized delegate of that licensee are considered to be assigned to the commissioner. If an authorized delegate fails to remit funds to the licensee in accordance with the time specified in the contract with the licensee, the licensee may bring a civil action against the authorized delegate for three times the actual damages. The commissioner may by rule set a maximum remittance time for authorized delegates.

(g) An authorized delegate shall report to the licensee the theft or loss of payment instruments within 24 hours from the time the authorized delegate knew or should have known of the theft or loss.

(h) Upon any suspension or revocation of a license, the failure of a licensee to renew a license, or the denial of the renewal of a license, the licensee shall notify its authorized delegates of the event and demand that they immediately cease operations as authorized delegates.

(i) A licensee shall report the removal of an authorized delegate location, or the termination of operations of an authorized delegate location, including money transmission kiosks and virtual currency kiosks, to the commissioner on a quarterly basis, and shall in the report list any new authorized delegate locations, including money transmission kiosks and virtual currency kiosks, in this state.

(j) No authorized delegate shall act outside its scope of authority as defined under this article and by its contract with the licensee to act on behalf of the licensee with regard to any transaction regulated by this article.

The bill (Eng. Com. Sub. for H. B. 5353), as amended, was then ordered to third reading.

Eng. House Bill 5366, Relating to rules governing the practice of law.

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

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

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

ARTICLE 1. SUPREME COURT OF APPEALS.

§51-1-4a. Rules governing practice of law; creation of West Virginia State Bar; providing its powers, and fees for administration.

(a) The Supreme Court of Appeals of West Virginia shall, from time to time, prescribe, adopt, promulgate, and amend rules:

(a)(1) Defining the practice of law.

(b)(2) Prescribing a code of ethics governing the professional conduct of attorneys at law and the practice of law, and prescribing a code of judicial ethics.

(c)(3) Prescribing procedure for disciplining, suspending, and disbaring attorneys at law.

(d)(4) Organizing and governing by and through all of the attorneys at law practicing in this state, an administrative agency of the Supreme Court of Appeals of West Virginia, which shall be known as "The West Virginia State Bar." The West Virginia State Bar shall be a part of the judicial department of the state government and is hereby ~~created~~ continued for the purpose of enforcing such rules ~~as may be~~ prescribed, adopted and promulgated by the court from time to time under this section. It ~~is hereby authorized and empowered to~~ may perform the functions and purposes expressed in a Constitution, bylaws and amendments thereto ~~as shall be~~ that are approved by the Supreme Court of Appeals from time to time. All persons practicing law in this state shall be members of the West Virginia State Bar in good standing: ~~Provided, however, That the West Virginia State Bar shall not become operative until its Constitution and bylaws shall first have been submitted to all attorneys at law practicing in this state, including those presently serving in the Armed Forces of the United States, for the purpose of securing the suggestions and recommendations of all such attorneys at law, for a period of at least sixty days prior to the entry of an order by such court approving said Constitution and bylaws.~~

(e)(5) Fixing a schedule of fees to be paid by attorneys at law practicing in the State of West Virginia for the purpose of administering this section, and providing for the collection and disbursement of such the fees: ~~Provided, however, That the annual fees to be paid by any attorney at law shall not exceed the sum of \$5, unless a majority of the attorneys at law practicing in this state consent to the payment of a higher annual fee.~~

(b) The inherent rule-making power of the Supreme Court of Appeals is hereby declared.

(c) When and as the rules of the court ~~herein~~ authorized ~~shall be~~ in this section are prescribed, adopted, and promulgated, all laws and parts of laws that conflict ~~therewith~~ with the rules shall be and become of no further force or effect to the extent of such conflict.

(d) Records, files, or other documents gathered or provided pursuant to rules promulgated by the Supreme Court of Appeals relating to the procedures, referrals, and services of the West Virginia Judicial and Lawyer Assistance Program are not public records and are exempt from disclosure under the Freedom of Information Act as provided in §29B-1-1 et seq. of this code, to the extent those rules designate them as confidential.

Senator Willis 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 practicing attorney in the State of West Virginia.

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

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. 5366), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5401, Relating to voting in West Virginia elections while residing overseas.

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 3. VOTING BY ABSENTEES.

§3-3-1. Persons eligible to vote absentee ballots.

(a) All registered and other qualified voters of the county may vote an absentee ballot in person during the period of early voting. ~~in person~~

(b) Registered voters and other qualified voters in the county ~~are authorized to~~ may vote an absentee ballot by mail in the following circumstances:

(1) Any voter who is confined to a specific location and prevented from voting in person throughout the period of voting in person because of:

(A) Disability, illness, injury, or other medical reason;

(B) Physical disability or immobility due to extreme advanced age; or

(C) Incarceration or home detention ~~Provided, That~~ if the underlying conviction is not for a crime which is a felony or a violation of §3-9-12, §3-9-13, or §3-9-16 of this code involving bribery in an election;

(2) Any voter who is absent from ~~the his or her~~ county of residence throughout the period and available hours for voting in person because of:

(A) Personal or business travel;

(B) Attendance at a college, university, or other place of education or training; or

(C) Employment which because of hours worked and distance from the county seat make voting in person impossible;

(3) Any voter absent from the county throughout the period and available hours for voting in person and who is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C. § 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, and spouses and dependents of those members on active duty; ~~and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States~~

(4) ~~Any voter who is required to dwell temporarily outside the county and is absent from the county throughout the time for voting in person because~~ citizen of the United States temporarily residing abroad who:

(A) ~~Serving as an elected or appointed federal or state officer; or~~ Immediately prior to their departure from the United States was domiciled in West Virginia and:

(i) Was last registered to vote, or last eligible to register and vote, in West Virginia; or

(ii) Would have been eligible to register and vote in West Virginia except that the citizen had not reached 18 years of age, but has since reached 18 years of age; and

(iii) ~~Serving in any other documented employment assignment of specific duration of four years or less~~ Is not registered or qualified to vote elsewhere in the United States;

(B) Holds a valid passport or passport card or other proof of citizenship issued under the authority of the Secretary of State of the United States; and

(C) Has not established permanent residency in any other state or country.

(5) ~~Any voter for whom the designated area for absentee voting within the county courthouse or annex of the courthouse and the voter's assigned polling place are inaccessible because of his or her physical disability; and~~

(6)(5) Any voter who is participating in the Address Confidentiality Program as established by §48-28A-103 of this code.

(c) Registered voters and other qualified voters in the county ~~are authorized to~~ may vote an electronic absentee ballot in the following circumstances:

(1) The voter has a physical disability, as defined in §3-3-1a of this code;

(2) The voter is absent from the county throughout the period and available hours for voting in person and is an absent uniformed services voter or overseas voter, as defined by 42 U.S.C.

§ 1973, *et seq.*, the Uniformed and Overseas Citizens Absentee Voting Act of 1986, including members of the uniformed services on active duty, members of the merchant marine, and spouses and dependents of those members on active duty; and persons who reside outside the United States and are qualified to vote in the last place in which the person was domiciled before leaving the United States; or

(3) The voter is a citizen of the United States, temporarily residing abroad, who meets the conditions in subdivision (4), subsection (b) of this section for voting an absentee ballot by mail;
or

(4) The voter is a qualified first responder called away on duty to respond to an emergency outside the voter's county of residence, which prevents the voter from participating in the election by in-person and mail-in absentee voting. For purposes of this section, "qualified first responder" means a person with specialized training who arrives and provides aid at the scene of an emergency, such as an accident, natural disaster, or act of terrorism. First responders typically include emergency medical technicians, firefighters, law-enforcement officers, neighborhood assistance officers, and paramedics.

(d) Registered voters and other qualified voters in the county may, in the following circumstances, vote an emergency absentee ballot, subject to the availability of the services as provided in this article:

(1) Any voter who is confined or expects to be confined in a hospital or other duly licensed health care facility within the county of residence or other authorized area, as provided in this article, on the day of the election;

(2) Any voter who resides in a nursing home within the county of residence and would be otherwise unable to vote in person, providing the county commission has authorized the services if the voter has resided in the nursing home for a period of less than 30 days;

(3) Any voter who becomes confined, on or after the 7th day preceding an election, to a specific location within the county because of illness, injury, physical disability, immobility due to advanced age, or another medical reason: *Provided*, That the county clerk may require a written confirmation by a licensed physician, physician's assistant, or advanced practice registered nurse that the voter meets the criteria of this subdivision before permitting ~~such~~ the voter to vote an emergency absentee ballot; and

(4) Any voter who is working as a replacement poll worker and is assigned to a precinct out of his or her voting district, if the assignment was made after the period for voting an absentee ballot in person has expired.

(e) Any overseas federal election voter may register to vote and may apply for and vote an absentee ballot by mail in any federal election held in the election district of this state in which the voter was formerly domiciled.

(f) Any overseas federal election voter who was born outside the United States may register to vote and may apply for and vote an absentee ballot by mail in any federal election held in the election district of this state in which the voter's parent, legal guardian, or spouse was formerly domiciled.

(g) A United States citizen who was never domiciled in West Virginia is not eligible to vote in any state, county, municipal, or special election.

(h) Any overseas state and federal voter may register to vote and may apply for and vote an absentee ballot by mail in a state election and a federal election held in the election district of this state in which the voter was formerly domiciled.

(i) The amendments to this section enacted during the 2026 regular session of the Legislature are effective January 1, 2027.

§3-3-1a. Definitions.

(a) For the purposes of this article, the following terms and phrases have the following definitions meanings ascribed to them.

(1) "Disability" means a physical or mental impairment that substantially limits one or more major life activities.

(2) "Federal election" means any general, special, or primary election held for the purpose of nominating or electing any candidate for President or Vice President of the United States, Presidential elector, United States Senate, or United States House of Representatives.

(3) "Overseas federal election voter" means any citizen of the United States who:

(A) Was born outside the United States;

(B) Is not a voter under subdivision (4), subsection (b) of this section or an "overseas state and federal voter" under subdivision (4) of this section;

(C) Would otherwise satisfy the state's voter eligibility requirements, except for the West Virginia residency requirement, if the last place where the parent, legal guardian, or spouse of the voter was, or would have been eligible to register and vote before departure from the United States is within West Virginia; and

(D) Has not previously registered to vote elsewhere in the United States.

(4) "Overseas state and federal voter" means a citizen of the United States residing abroad who does not intend to return or whose intent to return is uncertain, and:

(A) Immediately prior to departure from the United States was domiciled in West Virginia; and

(i) Was registered to vote, or last eligible to register and vote, in West Virginia; or

(ii) Would have been eligible to register and vote in West Virginia except that the citizen had not reached 18 years of age, but has since reached 18 years of age; and

(iii) Is not registered or qualified to vote elsewhere in the United States;

(B) Holds a valid passport or passport card or other proof of citizenship issued under the authority of the Secretary of State of the United States; and

(C) Has not established permanent residency in any other state or country.

(5) "Physical disability" means a physical impairment that substantially limits one or more major life activities and renders a person unable to vote in person, at the polls, without assistance.

(6) "State election" means any general, special, or primary election held for the purpose of:

(A) Nominating or electing a candidate as:

(i) Governor, Secretary of State, Attorney General, Treasurer, Auditor, or Commissioner of Agriculture; or

(ii) A member of the State Senate or the House of Delegates; or

(B) Approving or rejecting any amendment to the West Virginia Constitution.

(b) The amendments to this section enacted during the 2026 regular session of the Legislature are effective January 1, 2027.

The bill (Eng. Com. Sub. for H. B. 5401), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5438, To modify the foundation allowance to improve instructional programs.

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

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

On page 3, section 10, line 48, by striking out the word "will" and inserting in lieu thereof the word "shall";

On page 3, section 10, line 51, by striking out "§18A-9B-5 and §18A-9B-9" and inserting in lieu thereof "§18-9B-5 and §18-9B-9";

And,

On page 6, section 10, lines 125 through 127, by striking out all of paragraph (H).

On motions of Senators Oliverio, Tarr, and Bartlett, the following amendment to the bill (Eng. Com. Sub. for H. B. 5438) was next reported by the Clerk and adopted:

On page 1, by inserting the following:

§18-9A-4. Foundation allowance for professional educators.

(a) The basic foundation allowance to the county for professional educators is the amount of money required to pay the state minimum salaries, in accordance with §18A-4-1 *et seq.* of this code, subject to the following:

(1) In making this computation a county shall receive an allowance for state aid eligible professional educator positions to each one thousand students in net enrollment as follows:

(A) For each high-density county, seventy-two and three tenths professional educators per each one thousand students in net enrollment;

(B) For each medium-density county, seventy-two and forty-five one hundredths professional educators per each one thousand students in net enrollment;

(C) For each low-density county, seventy-two and six tenths professional educators per each one thousand students in net enrollment;

(D) For each sparse-density county, seventy-two and seventy-five one hundredths professional educators per each one thousand students in net enrollment; and

(E) For any professional educator positions, or fraction thereof, determined for a county pursuant to paragraphs (A), (B), (C) and (D) of this subdivision that exceed the number employed, the county's allowance for these positions shall be determined using the average state funded salary of professional educators for the county;

(2) The number of and the allowance for personnel paid in part by state and county funds shall be prorated; and

(3) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional educators for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(b) This subsection shall expire effective July 1, 2027 and thereafter and no longer have any effect. Each county board shall establish and maintain a minimum ratio of professional instructional personnel per state aid funded professional educators as follows:

(1) For each high-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-nine one hundredths percent;

(2) For each medium-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and twenty-four one hundredths percent;

(3) For each low-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and eighteen one hundredths percent;

(4) For each sparse-density county, the minimum ratio of professional instructional personnel per state aid funded professional educators, or the number employed, whichever is less, is ninety-one and seven one hundredths percent; and

(5) Where two or more counties join together in support of a vocational or comprehensive high school or any other program or service, the professional instructional personnel for the school or program may be prorated among the participating counties on the basis of each one's enrollment therein and the personnel shall be considered within the above-stated limit.

(c) This subsection shall expire effective July 1, 2027 and thereafter and no longer have any effect. Any county board which does not establish and maintain the applicable minimum ratio required in subsection (b) of this section shall suffer a pro rata reduction in the allowance for professional educators under this section: *Provided*, That a county may not be penalized if it has increases in enrollment during that school year: *Provided, however*, That a county board of education serving as the fiscal agent for a multi-county vocational center may not be penalized if the county's failure to meet the applicable minimum ratio is due to the staffing levels at the multi-county vocational center.

~~(d) A county may not increase the number of administrative personnel employed as either professional educators or pay grade "H" service personnel above the number which were employed, or for which positions were posted, on June 30, 1990, and, therefore, county boards shall whenever possible utilize classroom teachers for curriculum administrative positions through the use of modified or extended contracts.~~

The bill (Eng. Com. Sub. for H. B. 5438), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5462, Relating to Mine Subsidence.

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

Eng. Com. Sub. for House Bill 5484, Creating the crime of conspiracy to deny medical treatment to victim of sexual offense.

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

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

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

ARTICLE 2. CRIMES AGAINST THE PERSON.

§61-2-31. Prohibiting violations of an individual's right to seek appropriate medical treatment or medical forensic care related to a sexual offense; coercion to have an illegal abortion; conspiracy; definitions.

(a) All persons within the boundaries of the State of West Virginia have the right to seek appropriate medical treatment permitted under West Virginia law or medical forensic care related to a sexual offense, without delay, in a private, age-appropriate, or developmentally appropriate space required to ensure the health, safety, and welfare of the victim of the sexual offense.

(b) If any person by force or threat of force willfully injures, intimidates, or interferes with, or attempts to injure, intimidate, or interfere with, or oppresses or threatens any other person in the free exercise of the right to seek appropriate medical treatment permitted under West Virginia law or medical forensic care to obtain biological evidence, as defined in §15-9B-1a of this code and consistent with §16-2R-1 et seq. of this code, related to a sexual offense, he or she is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 15 years, or fined not more than \$50,000, or both fined and confined.

(c) Any person who knowingly and intentionally forces or coerces a victim of a sexual offense which results in the pregnancy of the victim to have an illegal abortion in violation of the provisions of §16-2R-1 et seq. of this code is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 15 years, or fined not more than \$50,000, or both fined and confined.

(d) It is unlawful for two or more persons to conspire to commit an offense in violation of subsections (b) or (c) of this section. Any person who violates this section by conspiring to commit an offense in violation of subsections (b) or (c) of this section is guilty of a felony and, upon conviction thereof, shall be confined in a state correctional facility for not less than five years nor more than 15 years, or fined not more than \$50,000, or both fined and confined. Nothing in this subsection shall be construed to impart criminal liability on the victim of the sexual offense.

(e) For purposes of this section:

(1) "Force or coerce" means committing, attempting to commit, or threatening to commit physical harm to a woman, the unborn child, or another individual where such conduct is intended to compel the woman to have an abortion against her will: *Provided*, That the provision of information, counseling, or assistance regarding alternatives to an abortion does not constitute either force or coercion.

(2) "Sexual offense" includes the listed offenses as that term is defined in §15-9B-1a of this code and any violation of §61-14-1 et seq. of this code which includes an element of sexual servitude, commercial sexual activity, or other sexual exploitation.

The bill (Eng. Com. Sub. for H. B. 5484), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5515, Relating to modernizing and updating workers' compensation statutes.

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

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

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

ARTICLE 4. DISABILITY AND DEATH BENEFITS.

§23-4-1a. Report of injuries by employee.

Every employee who sustains an injury subject to this chapter, or his or her representative, shall immediately on the occurrence of the injury or as soon thereafter as practicable give or cause to be given to the employer or any of the employer's agents a written notice of the occurrence of the injury ~~with like notice or a copy of the notice to the workers' compensation commission~~ stating in ordinary language the name and address of the employer, the name and address of the employee, the time, place, nature, and cause of the injury, and whether temporary total disability has resulted from the injury. The notice shall be given personally to the employer or any of the employer's agents, or may be sent by certified mail addressed to the employer at the employer's last known residence or place of business. ~~The notice may be given to the workers' compensation commission by mail.~~

§23-4-1b. Report of injuries by employers.

It is the duty of every employer to report to ~~the commission, the successor to the commission or another private carrier, whichever is applicable,~~ every injury sustained by any person in his or her employ to its workers' compensation insurance carrier or claims administrator, if applicable. The report shall be on forms prescribed by the ~~commission or the Insurance Commissioner whichever is applicable,~~ and shall be made within five days of the employer's receipt of the employee's notice of injury as required by §23-4-1a of this code. ~~or within five days after the employer has been notified by the commission or the Insurance Commissioner, whichever is applicable, that a claim for benefits has been filed on account of such injury, whichever is sooner, and, notwithstanding any other provision of this chapter to the contrary, the~~ The five-day period may not be extended by the ~~commission the successor to the commission, or another private carrier, whichever is~~ employer's workers' compensation insurance carrier or claims administrator, if applicable, but the employer has the right to file a supplemental report at a later date. The employer's report of injury shall include a statement as to whether ~~or not,~~ on the basis of the information available, the employer disputes the compensability of the injury or objects to the payment of temporary total disability benefits in connection with the injury. The statements by the employer shall not prejudice the employer's right thereafter to contest the compensability of the injury, or to object to any subsequent finding or award, in accordance with §23-5-1 *et seq.* of this code; but an employer's failure to make timely report of an injury as required in this section, or statements in the report to the effect that the employer does not dispute the compensability of the injury or object to the payment of temporary total disability benefits for the injury, shall be considered to be a waiver of the employer's right to object to any interim payment of temporary total disability benefits ~~paid by the commission, the successor to the commission, or another private carrier~~ with respect to any period from the date of injury to the date of receipt of any objection made to the interim payments by the employer.

§23-4-1c. Payment of temporary total disability benefits directly to claimant; payment of medical benefits; payments of benefits during protest; right of ~~commission, successor to the commission,~~ Insurance Commissioner, private carriers, and self-insured employers to collect payments improperly made.

(a) In any claim for benefits under this chapter, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant has sustained a compensable injury within the meaning of §23-4-1 of this code and enter an order giving all parties immediate notice of the decision.

(1) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may enter an order conditionally approving the claimant's application if it finds that obtaining additional medical evidence or evaluations or other evidence related to the issue of compensability would aid the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable,~~ in making a correct final decision. Benefits shall be paid during the period of conditional approval; however, if the final decision is one that rejects the claim, the payments shall be considered an overpayment. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may only recover the amount of the overpayment as provided for in subsection (h) of this section.

(2) In making a determination regarding the compensability of a newly filed claim or upon a filing for the reopening of a prior claim pursuant to the provisions of §23-4-16 of this code based upon an allegation of recurrence, reinjury, aggravation, or progression of the previous compensable injury, or in the case of a filing of a request for any other benefits under the

provisions of this chapter, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall consider the date of the filing of the claim for benefits for a determination of the following:

(A) Whether the claimant had a scheduled shutdown beginning within one week of the date of the filing;

(B) Whether the claimant received notice within 60 days of the filing that his or her employment position was to be eliminated, including, but not limited to, the closure of the claimant's worksite, a layoff, or the elimination of the claimant's employment position;

(C) Whether the claimant is receiving unemployment compensation benefits at the time of the filing; or

(D) Whether the claimant has received unemployment compensation benefits within 60 days of the filing.

In the event of an affirmative finding upon any of these four factors, the finding shall be given probative weight in the overall determination of the compensability of the claim or of the merits of the reopening request.

(3) Any party may object to the order of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and obtain an evidentiary hearing as provided in ~~section one, article five of this chapter~~ §23-5-1a of this code: *Provided*, That if ~~the successor to the commissioner, other a private carrier or self-insured whichever is applicable, employer~~ fails to timely issue a ruling upon any application or motion as provided by law, or if the claimant files a timely protest to the ruling of a private carrier or self-insured employer ~~private carrier or other issuing entity~~, denying the compensability of the claim, denying temporary total disability benefits, or denying medical authorization, the ~~Office of Judges~~ Board of Review shall provide a hearing on the protest on an expedited basis as determined by rule of the ~~Office of Judges~~ Board of Review.

(b) Where it appears from the employer's report, or from proper medical evidence, that a compensable injury will result in a disability which will last longer than three days as provided in §23-4-5 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may immediately enter an order commencing the payment of temporary total disability benefits to the claimant in the amounts provided for in §23-4-6 and §23-4-14 of this code, and the payment of the expenses provided for in §23-4-3(a) of this code, relating to the injury, without waiting for the expiration of the 30-day period during which objections may be filed to the findings as provided in ~~section one, article five of this chapter~~ §23-5-1a of this code. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter an order commencing the payment of temporary total disability or medical benefits within 15 working days of receipt of either the employee's or employer's report of injury, whichever is received sooner, and also upon receipt of either a proper physician's report or any information necessary for a determination. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give to the parties immediate notice of any order granting temporary total disability or medical benefits. When an order granting temporary total disability benefits is made, the claimant's return-to-work potential shall be assessed. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may schedule medical and vocational evaluation of the claimant and assign appropriate personnel to expedite the claimant's return to work as soon as reasonably possible.

(c) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may enter orders granting temporary total disability benefits upon receipt of medical evidence justifying the payment of the benefits. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may not enter an order granting prospective temporary total disability benefits for a period of more than 90 days: *Provided*, That when the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, determines that the claimant remains disabled beyond the period specified in the prior order granting temporary total disability benefits, the Insurance Commissioner, private carrier, or self-insured employer shall enter an order continuing the payment of temporary total disability benefits for an additional period not to exceed 90 days and shall give immediate notice to all parties of the decision.

(d) Upon receipt of the first report of injury in a claim, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall request from the employer or employers any wage information necessary for determining the rate of benefits to which the employee is entitled. If an employer does not furnish this information within 15 days from the date the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, received the first report of injury in the case, the employee shall be paid temporary total disability benefits for lost time at the rate the ~~commission~~ Insurance Commissioner obtains from reports made pursuant to §23-2-2(b) of this code. If no wages have been reported, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make the payments at the rate the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, finds would be justified by the usual rate of pay for the occupation of the injured employee. The rate of benefits shall be adjusted both retroactively and prospectively upon receipt of proper wage information. The Insurance Commissioner shall have access to all wage information in the possession of any state agency.

(e) Subject to the limitations set forth in §23-4-16 of this code, upon a finding of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that a claimant who has sustained a previous compensable injury which has been closed by order, or by the claimant's return to work, suffers further temporary total disability or requires further medical or hospital treatment resulting from the compensable injury, payment of temporary total disability benefits to the claimant in the amount provided for in §23-4-6 and §23-4-14 of this code, ~~shall immediately commence, and including~~ the expenses provided for in §23-4-3(a) of this code, shall immediately commence relating to the disability, without waiting for the expiration of the 30-day period during which objections may be filed. Immediate notice to the parties of the decision shall be given.

(f) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall deliver amounts due for temporary total disability benefits directly to the claimant.

(g) Where the employer has elected to carry its own risk under §23-2-9 of this code, and upon the findings aforesaid, the self-insured employer shall immediately pay the amounts due the claimant for temporary total disability benefits. A copy of the notice shall be sent to the claimant.

(h) In the event that an employer files a timely objection to any order of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, with respect to compensability, or any order denying an application for modification with respect to temporary total disability benefits, or with respect to those expenses outlined in §23-4-3(a) of this code, the ~~division~~ Insurance Commissioner, private carrier, or self-insured employer shall continue to pay to the claimant such benefits and expenses during the period of such disability. ~~Where it is~~

~~subsequently found by the Insurance Commissioner, private carrier or self-insured, whichever is applicable, that the claimant was not entitled to receive such temporary total disability benefits or expenses, or any part thereof, so paid, the Insurance Commissioner, private carrier or self-insured, whichever is applicable, shall credit said employer's account with the amount of the overpayment.~~ When the employer has protested the compensability or applied for modification of a temporary total disability benefit award or expenses and the final decision in that case determines that the claimant was not entitled to the benefits or expenses, the disputed amount of benefits or expenses is considered overpaid an overpayment. ~~For all awards made or nonawarded partial benefits paid the~~ The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may recover the amount of overpaid benefits or expenses overpayment by withholding, in whole or in part, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(i) In the event that the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, finds that, based upon the employer's report of injury, the claim is not compensable, the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable,~~ shall provide a copy of the employer's report to the claimant in addition to the order denying the claim.

(j) If a claimant is receiving benefits paid through a wage replacement plan, salary continuation plan, or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for temporary total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall reduce the temporary total disability benefits provided under this chapter by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the temporary total disability benefit, whichever is greater: *Provided,* That this subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.

§23-4-1d. Method and time of payments for permanent disability.

(a) If the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, makes an award for permanent partial or permanent total disability, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable,~~ shall start payment of benefits by mailing or delivering the amount due directly to the employee within 15 working days from the date of the award: *Provided,* That the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable,~~ may withhold payment of the portion of the award that is the subject of subsection (b) of this section until 77 days have expired without an objection being filed.

(b) When the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, self-insured employer, ~~the office of judges~~ or the Workers' Compensation Board of Review, whichever is applicable, enters an order or provides notice granting the claimant a permanent total disability award and an objection or petition for appeal is filed ~~by the employer,~~ ~~the commission the successor to the commission or other private carrier,~~ payment of monthly permanent total disability benefits shall begin. However, any payment for a back period of benefits

from the onset date of total permanent disability to the date of the award shall be limited to a period of 12 months of benefits. If, after all litigation is completed and the time for the filing of any further objections or appeals to the award has expired and the award of permanent total disability benefits is upheld, the claimant shall receive the remainder of benefits due to him or her based upon the onset date of permanent total disability that was finally determined.

(c) If the claimant is owed any additional payment of back permanent total disability benefits, ~~the commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall not only pay the claimant the sum owed but shall also add thereto interest at the simple rate of six percent per annum from the date of the initial award granting the total permanent disability to the date of the final order upholding the award. In the event that an intermediate order directed an earlier onset date of permanent total disability than was found in the initial award, the interest-earning period for that additional period shall begin upon the date of the intermediate award. ~~Any interest payable shall be charged to the account of the employer or shall be paid by the employer if it has elected to carry its own risk.~~

(d) If a timely protest to the award is filed, as provided in ~~section one or nine, article five of this chapter~~ §23-5-1a or §23-5-9a of this code, benefits shall continue to be paid to the claimant ~~benefits~~ during the period of the disability unless it is subsequently found that the claimant was not entitled to receive the benefits or any part thereof ~~in which event the commission shall, where the employer is a subscriber to the fund, credit the employer's account with the amount of the overpayment.~~ If the final decision in any case determines that a claimant was not lawfully entitled to benefits paid to him or her pursuant to a prior decision, the amount of ~~benefit~~ benefits paid shall be considered overpaid. ~~For all awards made or nonawarded partial benefits paid the commission, successor to the commission, other~~ an overpayment and the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may only recover that amount by withholding, in whole or in part, ~~as determined by the commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable,~~ future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(e) An award for permanent partial disability shall be made as expeditiously as possible and in accordance with the time frame requirements promulgated by ~~the board of managers~~ rule of the Insurance Commissioner.

(f) If a claimant is receiving benefits paid through a retirement plan, wage replacement plan, salary continuation plan, or other benefit plan provided by the employer to which the employee has not contributed, and that plan does not provide an offset for permanent total disability benefits to which the claimant is also entitled under this chapter as a result of the same injury or disease, the employer shall notify the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of the duplication of the benefits paid to the claimant. Upon receipt of the notice, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall reduce the permanent total disability benefits provided under this chapter by an amount sufficient to ensure that the claimant does not receive monthly benefits in excess of the amount provided by the employer's plan or the permanent total disability benefit, whichever is greater: *Provided*, That this subsection does not apply to benefits being paid under the terms and conditions of a collective bargaining agreement.

§23-4-1e. Temporary total disability benefits not to be paid for periods of correctional center or jail confinement; denial of workers' compensation benefits for injuries or disease incurred while confined.

(a) Notwithstanding any provision of this code to the contrary, no person shall be jurisdictionally entitled to temporary total disability benefits for that period of time in excess of three days during which that person is confined in a state correctional facility or jail: *Provided*, That confinement shall not affect the claimant's eligibility for payment of expenses: *Provided, however*, That this subsection is applicable only to injuries and diseases incurred prior to any period of confinement. Upon release from confinement, the payment of benefits for the remaining period of temporary total disability shall be made if justified by the evidence and authorized by order of the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

(b) Notwithstanding any provision of this code to the contrary, no person confined in a state correctional facility or jail who suffers injury or a disease in the course of and resulting from his or her work during the period of confinement which work is imposed by the administration of the state correctional facility or jail and is not suffered during the person's usual employment with his or her usual employer when not confined shall receive benefits under the provisions of this chapter for the injury or disease: *Provided*, That individuals otherwise confined in a state correctional facility or jail, or at a juvenile services facility, and working in a program authorized by §25-7-14 or §25-7-16 of this code, shall be eligible to receive benefits under the provisions of this chapter while working in an authorized program. The coverage for benefits may be obtained either by the private entity or by agreement with the state agency as specified in §25-7-14(a)(5) and §25-7-16(a)(5) of this code.

§23-4-3. Schedule of maximum disbursements for medical, surgical, dental, and hospital treatment; legislative approval; guidelines; preferred provider agreements; charges in excess of scheduled amounts not to be made; required disclosure of financial interest in sale or rental of medically related mechanical appliances or devices; promulgation of rules to enforce requirement; consequences of failure to disclose; contract by employer with hospital, physician, etc., prohibited; criminal penalties for violation; payments to certain providers prohibited; medical cost and care program; payments; interlocutory orders.

(a) ~~The Workers' Compensation Commission, and effective upon termination of the commission, the~~ Insurance Commissioner shall establish and alter from time to time, as it ~~he or she~~ determines appropriate, a schedule of the maximum reasonable amounts to be paid to health care providers, providers of rehabilitation services, providers of durable medical and other goods, ~~and~~ providers of other supplies and medically related items, or other persons, firms, or corporations for the rendering of treatment or services to injured employees under this chapter. ~~The commission and effective upon termination of the commission, the Insurance Commissioner, also, on the first day of each regular session and also from time to time, as it may consider appropriate, shall submit the schedule, with any changes thereto, to the Legislature.~~

~~The commission, and effective upon termination of the commission, all~~ Insurance Commissioner, private carriers and carrier, or self-insured employers or their agents employer, whichever is applicable, shall disburse and pay for personal injuries to the employees who are entitled to the benefits under this chapter as follows:

(1) Sums for health care services, rehabilitation services, durable medical and other goods and other supplies, and medically related items as may be reasonably required. ~~The commission, and effective upon termination of the commission, all Insurance Commissioner, private carriers and carrier, or self-insured employers or their agents~~ employer, whichever is applicable, shall determine that which is reasonably required within the meaning of this section in accordance with the guidelines developed by the health care advisory panel pursuant to section three b of this article: *Provided*, ~~That nothing in this section shall prevent the implementation of guidelines applicable to a particular type of treatment or service or to a particular type of injury before guidelines have been developed for other types of treatment or services or injuries: *Provided, however,* That any guidelines for utilization review which are developed in addition to the guidelines provided for in section three b of this article may be used by the commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, until superseded by guidelines developed by the health care advisory panel pursuant to said section~~ medical management rule established by the Insurance Commissioner and approved by the Workers' Compensation Industrial Council pursuant to §23-2C-5 of this code. Each health care provider who seeks to provide services or treatment which are not within any guideline set forth in the rule shall submit to the ~~commission, and effective upon termination of the commission, all Insurance Commissioner, private carriers~~ carrier, or self-insured employers, and other payors employer, whichever is applicable, specific justification for the need for the additional services in the particular case and the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer shall have the justification reviewed by a health care professional before authorizing the additional services. The ~~commission, and effective upon termination of the commission, all Insurance Commissioner, private carriers~~ carrier, or self-insured employers and other payors employer, whichever is applicable, may enter into preferred provider and managed care agreements which provides for fees and other payments which deviate from the schedule set forth in this subsection.

(2) Payment for health care services, rehabilitation services, durable medical and other goods and other supplies, and medically related items authorized under this subsection may be made to the injured employee or to the person, firm, or corporation who or which has rendered the treatment or furnished health care services, rehabilitation services, durable medical or other goods or other supplies and items, or who has advanced payment for them, as the ~~commission, and effective upon termination of the commission, all Insurance Commissioner, private carriers, self-insured employers and other payors, considers~~ carrier, or self-insured employer, whichever is applicable, considers proper, but no payments or disbursements shall be made or awarded by the ~~commission unless duly verified statements on forms prescribed by the commission, and effective upon termination of the commission, all private carriers, self-insured employers and other payors,~~ have been filed within six months after the rendering of the treatment or the delivery of such goods, supplies, or items or within 90 days of a subsequent compensability ruling if a claim is initially rejected: *Provided*, That no payment under this section shall be made unless a verified statement shows ~~no~~ a charge for or ~~with respect to~~ the treatment or ~~for~~ or with respect to any of the items specified in this subdivision has been or will be made against the injured employee or any other person, firm, or corporation. When an employee covered under the provisions of this chapter is injured in the course of and as a result of his or her employment and is accepted for health care services, rehabilitation services, or the provision of durable medical or other goods or other supplies or medically related items, the person, firm, or corporation rendering the treatment may not make any charge or charges for the treatment or with respect to the treatment against the injured employee or any other person, firm, or corporation which would result in a total charge for the treatment rendered in excess of the maximum amount ~~set forth therefor~~ in the ~~commission~~ fee schedule set forth in this subsection.

(3) Any pharmacist filling a prescription for medication for a workers' compensation claimant shall dispense a generic brand of the prescribed medication if a generic brand exists. If a generic brand does not exist, the pharmacist may dispense the name brand. In the event that a claimant wishes to receive the name brand medication in lieu of the generic brand, the claimant may receive the name brand medication but, in that event, the claimant is personally liable for the difference in costs between the generic brand medication and the brand name medication.

~~(4) In the event that a claimant elects to receive health care services from a health care provider from outside of the State of West Virginia and if that health care provider refuses to abide by and accept as full payment the reimbursement made by the Workers' Compensation Commission, and effective upon termination of the commission, all private carriers and self-insured employers or their agents, pursuant to the schedule of maximum reasonable amounts of fees authorized by this subsection, with the exceptions noted below, the claimant is personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider. If a claimant elects to receive health care services for a compensable injury from an out-of-state health care provider, and the out-of-state health care provider refuses to accept the rate of reimbursement set forth in the fee schedule established by the Insurance Commissioner, the claimant is personally liable for the difference between the scheduled fee and the amount demanded by the out-of-state health care provider, except as provided in paragraphs (A) or (B) of this subdivision.~~

(A) In the event of an emergency where there is an urgent need for immediate medical attention in order to prevent the death of a claimant or to prevent serious and permanent harm to the claimant, if the claimant receives the emergency care from an out-of-state health care provider who refuses to accept as full payment the scheduled amount, the claimant is not personally liable for the difference between the amount scheduled and the amount demanded by the health care provider. Upon the claimant's attaining a stable medical condition and being able to be transferred to either a West Virginia health care provider or an out-of-state health care provider who has agreed to accept the scheduled amount of fees as payment in full, if the claimant refuses to seek the specified alternative health care providers, he or she is personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider for services provided after attaining stability and being able to be transferred.

(B) In the event that there is no health care provider reasonably near to the claimant's home who is qualified to provide the claimant's needed medical services who is either located in the State of West Virginia or who has agreed to accept as payment in full the scheduled amounts of fees, ~~the commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, upon application by the claimant, may authorize the claimant to receive medical services from another health care provider. The claimant is not personally liable for the difference in costs between the scheduled amount and the amount demanded by the health care provider.

(b)(1) No employer shall enter into any contracts with any hospital, its physicians, officers, agents, or employees to render medical, dental, or hospital service or to give medical or surgical attention to any employee for injury compensable within the purview of this chapter and no employer shall permit or require any employee to contribute, directly or indirectly, to any fund for the payment of such medical, surgical, dental, or hospital service within such hospital for the compensable injury. Any employer violating this subsection is liable in damages to the employer's employees as provided in §23-2-8 of this code, and any employer or hospital or agent or employee thereof violating the provisions of this section is guilty of a misdemeanor and, upon conviction

thereof, shall be punished by a fine not less than \$100 nor more than \$1,000 or by imprisonment not exceeding one year, or both.

(2) The provisions of this subsection shall not prohibit an employer, ~~the successor to the commission, other~~ private carrier, or self-insured employer from participating in a managed health care plan, including, but not limited to, a preferred provider organization or program or a health maintenance organization or managed care organization or other medical cost containment relationship with the providers of medical, hospital, or other health care. An employer, ~~successor to the commission, other~~ private carrier, or self-insured employer that provides a managed health care plan approved by the ~~commission or, upon termination of the commission, the~~ Insurance Commissioner for its employees or the employees of its insured may require an injured employee to use health care providers authorized by the managed health care plan for care and treatment of his or her compensable injuries. If the employer, private carrier, or self-insured employer does not provide a managed health care plan or program, the claimant may select his or her initial health care provider for treatment of a compensable injury or disease ~~except as provided under subdivision (3) of this subsection~~. If a claimant wishes to change his or her health care provider and if his or her employer has established and maintains a managed health care plan, the claimant shall select a new health care provider through the managed health care plan. A claimant who has used the providers under the employer's managed health care plan may select a health care provider outside the employer's plan for treatment of the compensable injury or disease if the employee receives written approval from the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, to do so. ~~and the approval is given pursuant to criteria established by rule of the commission.~~

~~(3) If the commission enters into an agreement which has been approved by the board of managers with a managed health care plan, including, but not limited to, a preferred provider organization or program, a health maintenance organization or managed care organization or other health care delivery organization or organizations or other medical cost containment relationship with the providers of medical, hospital or other health care, then:~~

~~(A) If an injured employee's employer does not provide a managed health care plan approved by the commission for its employees as described in subdivision (2) of this subsection, the commission may require the employee to use health care providers authorized by the commission's managed health care plan for care and treatment of his or her compensable injuries; and~~

~~(B) If a claimant seeks to change his or her initial choice of health care provider where neither the employer nor the commission had an approved health care management plan at the time the initial choice was made, and if the claimant's employer does not provide access to such a plan as part of the employer's general health insurance benefit, then the claimant shall be provided with a new health care provider from the commission's managed health care plan available to him or her.~~

~~(c) When an injury has been reported to the commission by the employer without protest, the commission or self-insured employer may pay, within the maximum amount provided by schedule established under this section, bills for health care services without requiring the injured employee to file an application for benefits.~~

(d) ~~(c)~~ The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall provide for the replacement of artificial limbs, crutches, hearing aids, eyeglasses, and all other mechanical appliances provided

in accordance with this section which later wear out, or which later need to be refitted because of the progression of the injury which caused the devices to be originally furnished, or which are broken in the course of and as a result of the employee's employment. The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall pay for these devices, when needed, notwithstanding any time limits provided by law.

~~(e) No payment shall be made to a health care provider who is suspended or terminated under the terms of section three c of this article except as provided in subsection (c) of said section.~~

~~(f) (d) The commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may engage in and contract for medical cost containment programs, pharmacy benefits management programs, medical case management programs, and utilization review programs. Payments for these programs shall be made from the Workers' Compensation Old Fund, ~~or the funds of the successor to the commission, other~~ by the private carrier, or by the self-insured employer, whichever is applicable. Any order issued pursuant to the program shall be interlocutory in nature until an objecting party has exhausted all review processes provided for by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

~~(g) (e)~~ Notwithstanding the provisions of this section, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer may establish fee schedules, make payments, and take other actions required or allowed pursuant to §16-29D-1 *et seq.* of this code.

§23-4-3b. Creation of health care advisory panel.

[Repealed.]

§23-4-3c. Suspension or termination of providers of health care.

[Repealed.]

§23-4-4. Funeral expenses; wrongfully seeking payment; criminal penalties.

(a) In case the personal injury causes death, reasonable funeral or cemetery expense, in an amount to be fixed, from time to time, by the ~~commission, and upon its termination, the~~ Insurance Commissioner, shall be paid ~~from the fund, or by the Insurance Commissioner, the private carrier, or self-insured employer, whichever is applicable, payment to be made to the~~ to persons who have furnished the services and supplies, or to the persons who have advanced payment for the services and supplies, as the commission may determine proper, in addition to any award made to the employee's dependents.

(b) A funeral director ~~or ceterian~~, or any person who furnished the services and supplies associated with the funeral or cemetery expenses, or a person who has advanced payment for the services and supplies, is prohibited from making any charge or charges against the employee's dependents for funeral expenses which would result in a total charge for funeral expenses in excess of the amount fixed by the ~~commission, and upon its termination, the~~ Insurance Commissioner, unless:

(1) The person seeking funeral expenses notifies, in writing and prior to the rendering of any service, the employee's dependent as to the exact cost of the service and the exact amount the employee's dependent would be responsible for paying in excess of the amount fixed by the ~~commission or~~ Insurance Commissioner; and

(2) The person seeking funeral expenses secures, in writing and prior to the rendering of any service, consent from the employee's dependent that he or she will be responsible to make payment for the amount in excess of the amount fixed by the ~~commission or the~~ Insurance Commissioner.

(c) Any person who knowingly and willfully seeks or receives payment of funeral expenses in excess of the amount fixed by the ~~commission or the~~ Insurance Commissioner without satisfying both of the requirements of subsection (b) of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$3,000 or confined in jail for a definite term of confinement of 12 months, or both.

§23-4-5. Benefits for first three days after injury.

If the period of disability does not last longer than three days from the day the employee leaves work as the result of the injury, no award shall be allowed, except the disbursements or payments provided for in ~~the two next preceding sections~~ §23-4-6 and §23-4-6a of this code, but if the period of disability lasts longer than seven days from the day the employee leaves work as a result of the injury, an award shall be allowed for the first three days of such disability.

§23-4-6. Classification of and criteria for disability benefits.

Where compensation is due an employee under the provisions of this chapter for personal injury, the compensation shall be as provided in the following schedule:

(a) The terms "average weekly wage earnings, wherever earned, of the injured employee, at the date of injury" and "average weekly wage in West Virginia", as used in this chapter, have the meaning and shall be computed as set forth in §23-4-14 of this code except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of §23-4-6d of this code.

(b) For all awards made on and after the effective date of the amendment and reenactment of this section during the year 2003, if the injury causes temporary total disability, the employee shall receive during the continuance of the disability a maximum weekly benefit to be computed on the basis of 66 and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee, at the date of injury, not to exceed 100 percent of the average weekly wage in West Virginia: *Provided*, That in no event shall an award for temporary total disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia: *Provided, however, That* in the case of a claimant whose award was granted prior to the effective date of the amendment and reenactment of this section during the year 2003, the maximum benefit rate shall be the rate applied under the prior enactment of this subsection which was in effect at the time the injury occurred. The minimum weekly benefits paid under this subdivision shall not be less than 33 and one-third percent of the average weekly wage in West Virginia, except as provided in §23-4-6d and §23-4-9 of this code. In no event, however, shall the minimum weekly benefits exceed the level of benefits determined by use of the applicable federal minimum hourly wage: *Provided further*, That any claimant receiving permanent total disability benefits, permanent partial disability benefits, or dependents' benefits prior to July 1, 1994, shall

not have his or her benefits reduced based upon the requirement in this subdivision that the minimum weekly benefit shall not exceed the applicable federal minimum hourly wage.

(c) Subdivision (b) of this section is limited as follows: Aggregate award for a single injury causing temporary disability shall be for a period not exceeding 208 weeks; aggregate award for a single injury for which an award of temporary total disability benefits is made on or after the effective date of the amendment and reenactment of this section in the year 2003 shall be for a period not exceeding 104 weeks. Notwithstanding any other provision of this subdivision to the contrary, no person may receive temporary total disability benefits under an award for a single injury for a period exceeding 104 weeks from the effective date of the amendment and reenactment of this section in the year 2003.

(d) For all awards of permanent total disability benefits that are made on or after February 2, 1995, including those claims in which a request for an award was pending before the former workers' compensation division of the Bureau of Employment Programs or which were in litigation but not yet submitted for a decision, then benefits shall be payable until the claimant attains the age necessary to receive federal old age retirement benefits under the provisions of the Social Security Act, 42 U.S.C. §§ 401 and 402, in effect on the effective date of this section. The claimant shall be paid benefits so as not to exceed a maximum benefit of 66 and two-thirds percent of the claimant's average weekly wage earnings, wherever earned, at the time of the date of injury not to exceed 100 percent of the average weekly wage in West Virginia. The minimum weekly benefits paid under this section shall be as is provided for in subdivision (b) of this section. In all claims in which an award for permanent total disability benefits was made prior to February 2, 1995, the awards shall continue to be paid at the rate in effect prior to the effective date of the amendment and reenactment of this section in the year 2003. ~~Provided, That the provisions of sections one through eight, inclusive, article four-a of this chapter shall be applied thereafter to all prior awards that were previously subject to its provisions.~~ A single or aggregate permanent disability of 85 percent or more entitles the employee to a rebuttable presumption of a permanent total disability for the purpose of paragraph (2), subdivision (n) of this section: *Provided, however,* That the claimant must also be at least 50 percent medically impaired upon a whole body basis or has sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section. The presumption may be rebutted if the evidence establishes that the claimant is not permanently and totally disabled pursuant to subdivision (n) of this section. Under no circumstances may the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, grant an additional permanent disability award to a claimant receiving a permanent total disability award: *Provided, further however,* That if any claimant thereafter sustains another compensable injury and has permanent partial disability resulting from the injury, the total permanent disability award benefit rate shall be computed at the highest benefit rate justified by any of the compensable injuries.

(e)(1) For all awards made on or after the effective date of the amendment and reenactment of this section during the year 2003, if the injury causes permanent disability less than permanent total disability, the percentage of disability to total disability shall be determined and the award computed on the basis of four weeks' compensation for each percent of disability determined at the maximum or minimum benefit rates as follows: 66 and two-thirds percent of the average weekly wage earnings, wherever earned, of the injured employee at the date of injury, not to exceed 70 percent of the average weekly wage in West Virginia: *Provided,* That in no event shall an award for permanent partial disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia: *Provided, however,* That in the case of a claimant whose award was granted prior to the effective date of the amendment and reenactment of this

section during the year 2003, the maximum benefit rate shall be the rate applied under the prior enactment of this section which was in effect at the time the injury occurred.

(2) If a claimant is released by his or her treating physician to return to work at the job he or she held before the occupational injury occurred and if the claimant's preinjury employer does not offer the preinjury job or a comparable job to the employee when a position is available to be offered, the award for the percentage of partial disability shall be computed on the basis of six weeks of compensation for each percent of disability.

(3) The minimum weekly benefit under this subdivision shall be as provided in subdivision (b) of this section for temporary total disability.

(f) If the injury results in the total loss by severance of any of the members named in this subdivision, the percentage of disability shall be determined by the percentage of disability, specified in the following table:

The loss of a great toe shall be considered a 10 percent disability.

The loss of a great toe (one phalanx) shall be considered a five percent disability.

The loss of other toes shall be considered a four percent disability.

The loss of other toes (one phalanx) shall be considered a two percent disability.

The loss of all toes shall be considered a 25 percent disability.

The loss of forepart of foot shall be considered a 30 percent disability.

The loss of a foot shall be considered a 35 percent disability.

The loss of a leg shall be considered a 45 percent disability.

The loss of thigh shall be considered a 50 percent disability.

The loss of thigh at hip joint shall be considered a 60 percent disability.

The loss of a little or fourth finger (one phalanx) shall be considered a three percent disability.

The loss of a little or fourth finger shall be considered a five percent disability.

The loss of ring or third finger (one phalanx) shall be considered a three percent disability.

The loss of ring or third finger shall be considered a five percent disability.

The loss of middle or second finger (one phalanx) shall be considered a three percent disability.

The loss of middle or second finger shall be considered a seven percent disability.

The loss of index or first finger (one phalanx) shall be considered a six percent disability.

The loss of index or first finger shall be considered a 10 percent disability.

The loss of thumb (one phalanx) shall be considered a 12 percent disability.

The loss of thumb shall be considered a 20 percent disability.

The loss of thumb and index fingers shall be considered a 32 percent disability.

The loss of index and middle fingers shall be considered a 20 percent disability.

The loss of middle and ring fingers shall be considered a 15 percent disability.

The loss of ring and little fingers shall be considered a 10 percent disability.

The loss of thumb, index and middle fingers shall be considered a 40 percent disability.

The loss of index, middle and ring fingers shall be considered a 30 percent disability.

The loss of middle, ring and little fingers shall be considered a 20 percent disability.

The loss of four fingers shall be considered a 32 percent disability.

The loss of hand shall be considered a 50 percent disability.

The loss of forearm shall be considered a 55 percent disability.

The loss of arm shall be considered a 60 percent disability.

The total and irrecoverable loss of the sight of one eye shall be considered a 33 percent disability. For the partial loss of vision in one or both eyes, the percentages of disability shall be determined by the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, using as a basis the total loss of one eye.

The total and irrecoverable loss of the hearing of one ear shall be considered a 22 and one-half percent disability. The total and irrecoverable loss of hearing of both ears shall be considered a 55 percent disability.

For the partial loss of hearing in one or both ears, the percentage of disability shall be determined by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, using as a basis the total loss of hearing in both ears.

If a claimant sustains a compensable injury which results in the total loss by severance of any of the bodily members named in this subdivision or dies from sickness or noncompensable injury before the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, makes the proper award for the injury, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer shall make the award to the claimant's dependents as defined in this chapter, if any; the payment to be made in the same installments that would have been paid to claimant if living: *Provided*, That no payment shall be made to any surviving spouse of the claimant after his or her remarriage and that this liability shall not accrue to the estate of the claimant and is not subject to any debts of, or charges against, the estate.

(g) If a claimant to whom has been made a permanent partial award dies from sickness or noncompensable injury, the unpaid balance of the award shall be paid to claimant's dependents

as defined in this chapter, if any; the payment to be made in the same installments that would have been paid to claimant if living: *Provided*, That no payment shall be made to any surviving spouse of the claimant after his or her remarriage, and that this liability shall not accrue to the estate of the claimant and is not subject to any debts of, or charges against, such estate.

(h) For the purposes of this chapter, a finding of the Occupational Pneumoconiosis Board has the force and effect of an award.

(i) For the purposes of this chapter, with the exception of those injuries provided for in subdivision (f) of this section and §23-4-6b of this code, the degree of permanent disability other than permanent total disability shall be determined exclusively by the degree of whole body medical impairment that a claimant has suffered. For those injuries provided for in subdivision (f) of this section and §23-4-6b of this code, the degree of disability shall be determined exclusively by the provisions of said subdivision and said section. The Occupational Pneumoconiosis Board created pursuant to §23-4-8a of this code shall premise its decisions on the degree of pulmonary function impairment that claimants suffer solely upon whole body medical impairment. The ~~Workers' Compensation Commission~~ Insurance Commissioner shall adopt standards for the evaluation of claimants and the determination of a claimant's degree of whole body medical impairment. Once the degree of medical impairment has been determined, that degree of impairment shall be the degree of permanent partial disability that shall be awarded to the claimant. This subdivision is applicable to all injuries incurred and diseases with a date of last exposure on or after February 2, 1995, to all applications for an award of permanent partial disability made on and after that date and to all applications for an award of permanent partial disability that were pending before the former workers' compensation commission or pending in litigation but not yet submitted for decision on and after that date. The prior provisions of this subdivision remain in effect for all other claims.

~~(j) From a list of names of seven persons submitted to the executive director by the health care advisory panel, the executive director shall appoint an interdisciplinary examining board consisting of five members to evaluate claimants, including by examination if the board elects. The interdisciplinary examining board shall terminate upon termination of the commission and all administrative and adjudicatory functions performed by the interdisciplinary examining board shall be performed by the following reviewing bodies for those claims over which they have administrative jurisdiction: (1) The Insurance Commissioner or his or her designated administrator of each of the funds set forth in this chapter; (2) private carriers; or (3) self-insured employers. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall establish a reviewing body to review applications for permanent total disability. The reviewing bodies shall employ or otherwise engage adequate resources, including medical professionals, to perform the functions of the interdisciplinary examining board. The board shall be composed of three qualified physicians with specialties and expertise qualifying them to evaluate medical impairment and two vocational rehabilitation specialists who are qualified to evaluate the ability of a claimant to perform gainful employment with or without retraining. One member of the board shall be designated annually as chairperson by the executive director. The term of office of each member of the board shall be six years and until his or her successor has been appointed and has qualified. Any member of the board may be appointed to any number of terms. Any two physician members and one vocational rehabilitation specialist member shall constitute a quorum for the transaction of business. The executive director, from time to time, shall fix the compensation to be paid to each member of the board, and the members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. The board shall perform the duties and responsibilities~~

~~assigned by the provisions of this chapter, consistent with the administrative policies developed by the executive director with the approval of the board of managers.~~

~~(1) The executive director Insurance Commissioner shall establish requirements for the proper completion and support for an application for permanent total disability benefits within an existing or a new rule no later than January 1, 2004. Upon adoption of the rule by the board of managers, and no issue of permanent total disability may be referred to the interdisciplinary examining board, or, any other a reviewing body unless a properly completed and supported application for permanent total disability benefits has been first filed. Prior to the referral of any issue to the interdisciplinary examining board, or, upon its termination, prior to a reviewing body's adjudication of a permanent total disability application, the commission, or reviewing body shall conduct examinations of the claimant that it finds necessary and obtain all pertinent records concerning the claimant's medical history and reports of examinations and forward them to the board at the time of the referral. The commission or reviewing body shall provide adequate notice to the employer of the filing of the request for a permanent total disability award and the employer shall be granted an appropriate period in which to respond to the request. The claimant and the employer may furnish all pertinent information to the board or other reviewing body and shall furnish to the board or other reviewing body any information requested. The claimant and the employer may each submit no more than one report and opinion regarding each issue present in a given claim. The employer may have the claimant examined by medical specialists and vocational rehabilitation specialists: *Provided*, That the employer is entitled to only one examination on each issue present in a given claim. Any additional examinations must be approved by the commission or other reviewing body and shall be granted only upon a showing of good cause. The reports from all employer conducted examinations must be filed with the board or other reviewing body and served upon the claimant. The board or other reviewing body may request that those persons who have furnished reports and opinions regarding a claimant provide it with additional information considered necessary. Both the The claimant and the employer, as well as the commission, or other reviewing body may submit or obtain reports from experts challenging or supporting the other reports in the record regardless of whether or not the expert examined the claimant or relied solely upon the evidence of record.~~

~~(2) If the board or a quorum of the board elects to examine a claimant, the individual members shall conduct any examinations that are pertinent to each of their specialties. If a claim presents an issue beyond the expertise of the board, the board may obtain advice or evaluations by other specialists. In addition, if the board of managers determines that the number of applications pending before the interdisciplinary examining board has exceeded the level at which the board can review and make recommendations within a reasonable time, the board of managers may authorize the executive director to appoint any additional members to the board that are necessary to reduce the backlog of applications. The additional members shall be recommended by the health care advisory panel. The executive director may make any appointments he or she chooses from the recommendations. The additional board members shall not serve a set term but shall serve until the board of managers determines that the number of pending applications has been reduced to an acceptable level.~~

~~(3) Referrals to the board shall be limited to matters related to the determination of permanent total disability under the provisions of subdivision (n) of this section and to questions related to medical cost containment, utilization review decisions and managed care decisions arising under section three of this article.~~

~~(4) (2) In the event the board members or other a reviewing body elects to examine a claimant, the board or other reviewing body shall prepare a report stating the tests, examinations,~~

procedures, and other observations that were made, the manner in which each was conducted and the results of each. The report shall state the findings made by the ~~board or other~~ reviewing body and the reasons for the findings. Copies of the reports of all examinations made by the ~~board or other~~ reviewing body shall be served upon the parties ~~and the commission until its termination~~. Each shall be given an opportunity to respond in writing to the findings and conclusions stated in the reports.

(5) ~~(3)~~ ~~The board or other~~ A reviewing body shall state its initial recommendations ~~to the commission~~ in writing with an explanation for each recommendation setting forth the reasons for each. The recommendations shall be served upon the ~~parties and the commission~~ claimant and ~~each~~ the claimant shall be afforded a 30-day opportunity to respond in writing to the ~~board or other~~ reviewing body regarding its recommendations. The ~~board or other~~ reviewing body shall review any responses and issue its final recommendations. The final recommendations shall be effectuated by the entry of an appropriate order by ~~the commission, or, upon its termination,~~ the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. For all awards for permanent total disability where the claim was filed on or after the effective date of the amendment and reenactment of this section in the year 2003, the ~~commission or other~~ reviewing body shall establish the date of onset of the claimant's permanent total disability as the date when a properly completed and supported application for permanent total disability benefits as prescribed in subdivision (1) of this subsection that results in a finding of permanent total disability was filed ~~with the commission or other reviewing body~~: *Provided*, That upon notification ~~of to the commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, by a claimant or his or her representative that the claimant seeks to be evaluated for permanent total disability, the ~~commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-insured employer shall send the claimant or his or her representative the proper application form. The ~~commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall set time limits for the return of the application. A properly completed and supported application returned within the time limits set by the ~~commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall be treated as if received on the date the ~~commission or other reviewing body~~ Insurance Commissioner, private carrier, or self-insured employer was notified the claimant was seeking evaluation for permanent total disability: *Provided, however*, That notwithstanding any other provision of this section to the contrary, the onset date may not be sooner than the date upon which the claimant meets the percentage thresholds of prior permanent partial disability that are established by subsection (n) of this section as a prerequisite to the claimant's qualification for consideration for a permanent total disability award.

(6) ~~Except as noted below, objections pursuant to section one, article five of this chapter to any order shall be limited in scope to matters within the record developed before the Workers' Compensation Commission and the board or other reviewing body and shall further be limited to the issue of whether the board or other reviewing body properly applied the standards for determining medical impairment, if applicable, and the issue of whether the board's findings are clearly wrong in view of the reliable, probative and substantial evidence on the whole record. The preponderance of the evidence set forth in article one of this chapter shall apply to decisions made by reviewing bodies other than the commission instead of the clearly wrong standard. If either party contends that the claimant's condition has changed significantly since the review conducted by the board or other reviewing body, the party may file a motion with the administrative law judge, together with a report supporting that assertion. Upon the filing of the motion, the administrative law judge shall cause a copy of the report to be sent to the examining board or other reviewing body asking the board to review the report and provide comments if the board~~

~~chooses within sixty days of the board's receipt of the report. The board or other reviewing body may either supply comments or, at the board's or other reviewing body's discretion, request that the claim be remanded to the board for further review. If remanded, the claimant is not required to submit to further examination by the employer's medical specialists or vocational rehabilitation specialists. Following the remand, the board or other reviewing body shall file its recommendations with the administrative law judge for his or her review. If the board or other reviewing body elects to respond with comments, the comments shall be filed with the administrative law judge for his or her review. Following the receipt of either the board's or other reviewing body's recommendations or comments, the administrative law judge shall issue a written decision ruling upon the asserted change in the claimant's condition. No additional evidence may be introduced during the review of the objection before the office of judges or elsewhere on appeal: *Provided*, That each party and the commission may submit one written opinion on each issue pertinent to a given claim based upon a review of the evidence of record either challenging or defending the board's or other reviewing body's findings and conclusions. Thereafter, based upon the evidence of record, the administrative law judge shall issue a written decision containing his or her findings of fact and conclusions of law regarding each issue involved in the objection. The limitation of the scope of review otherwise provided in this subsection is not applicable upon termination of the commission and any objections shall be subject to article five of this chapter in its entirety. Any objection filed in regard to a decision on an application for permanent total disability benefits shall be subject to the review provisions of §23-5-1 et seq. of this code.~~

(k) Compensation payable under any subdivision of this section shall not exceed the maximum nor be less than the weekly benefits specified in subdivision (b) of this section.

(l) Except as otherwise specifically provided in this chapter, temporary total disability benefits payable under subdivision (b) of this section shall not be deductible from permanent partial disability awards payable under subdivision (e) or (f) of this section. Compensation, either temporary total or permanent partial, under this section shall be payable only to the injured employee and the right to the compensation shall not vest in his or her estate, except that any unpaid compensation which would have been paid or payable to the employee up to the time of his or her death, if he or she had lived, shall be paid to the dependents of the injured employee if there are any dependents at the time of death.

(m) The following permanent disabilities shall be conclusively presumed to be total in character:

Loss of both eyes or the sight thereof.

Loss of both hands or the use thereof.

Loss of both feet or the use thereof.

Loss of one hand and one foot or the use thereof.

(n)(1) Other than for those injuries specified in subdivision (m) of this section, in order to be eligible to apply for an award of permanent total disability benefits for all injuries incurred and all diseases, including occupational pneumoconiosis, regardless of the date of last exposure, on and after the effective date of the amendment and reenactment of this section during the year 2003, a claimant: (A) Must have been awarded the sum of 50 percent in prior permanent partial disability awards; (B) must have suffered a single occupational injury or disease which results in a finding

~~by the commission~~ that the claimant has suffered a medical impairment of 50 percent; or (C) has sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section. Upon filing an application, the claim will be reevaluated by the ~~examining board or other~~ reviewing body pursuant to subdivision (i) of this section to determine if the claimant has suffered a whole body medical impairment of 50 percent or more resulting from either a single occupational injury or occupational disease or a combination of occupational injuries and occupational diseases or has sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section. A claimant whose prior permanent partial disability awards total 85 percent or more shall also be examined by the ~~board or other~~ reviewing body and must be found to have suffered a whole body medical impairment of 50 percent in order for his or her request to be eligible for further review. The ~~examining board or other~~ reviewing body shall review the claim as provided for in subdivision (j) of this section. If the claimant has not suffered whole body medical impairment of at least 50 percent or has sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section, the request shall be denied. Upon a finding that the claimant has a 50 percent whole body medical impairment or has sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section, the review of the application continues as provided for in the following paragraph of this subdivision. Those claimants whose prior permanent partial disability awards total 85 percent or more and who have been found to have a whole body medical impairment of at least 50 percent or have sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section are entitled to the rebuttable presumption created pursuant to subdivision (d) of this section for the remaining issues in the request.

(2) For all awards made on or after the effective date of the amendment and reenactment of this section during the year 2003, disability which renders the injured employee unable to engage in substantial gainful activity requiring skills or abilities which can be acquired or which are comparable to those of any gainful activity in which he or she has previously engaged with some regularity and over a substantial period of time shall be considered in determining the issue of total disability. The comparability of preinjury income to post-disability income will not be a factor in determining permanent total disability. Geographic availability of gainful employment within a driving distance of 75 miles from the residence of the employee or within the distance from the residence of the employee to his or her preinjury employment, whichever is greater, will be a factor in determining permanent total disability. For any permanent total disability award made after the amendment and reenactment of this section in the year 2003, permanent total disability benefits shall cease at age the age of 70 years. ~~In addition, the vocational standards adopted pursuant to subsection (m), section seven, article three of this chapter shall be considered once they are effective.~~

(3) In the event that a claimant, who has been found to have at least a 50 percent whole body medical impairment or has sustained a 35 percent statutory disability pursuant to the provisions of subdivision (f) of this section is denied an award of permanent total disability benefits pursuant to this subdivision and accepts and continues to work at a lesser paying job than he or she previously held, the claimant is eligible, notwithstanding the provisions of §23-4-9 of this code, to receive temporary partial rehabilitation benefits for a period of four years. The benefits shall be paid at the level necessary to ensure the claimant's receipt of the following percentages of the average weekly wage earnings of the claimant at the time of injury calculated as provided in this section and §23-4-6d and §23-4-14 of this code:

- (A) 80 percent for the first year;
- (B) 70 percent for the second year;

(C) 60 percent for the third year; and

(D) 50 percent for the fourth year: *Provided*, That in no event shall the benefits exceed 100 percent of the average weekly wage in West Virginia. In no event shall the benefits be subject to the minimum benefit amounts required by the provisions of subdivision (b) of this section.

(4) Notwithstanding any provision of this subsection, subsection (d) of this section, or any other provision of this code to the contrary, on any claim filed on or after the effective date of the amendment and reenactment of this section in the year 2003:

(A) No percent of whole body medical impairment existing as the result of carpal tunnel syndrome for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this subsection or subsection (d) of this section; and

(B) No percent of whole body medical impairment existing as the result of any occupational disease, the diagnosis of which is based solely upon symptoms rather than specific, objective, and measurable medical findings, and for which a claim has been made under this chapter may be included in the aggregation of permanent disability under the provisions of this subsection or subsection (d) of this section.

(o) To confirm the ongoing permanent total disability status of the claimant, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may elect to have any recipient of a permanent total disability award undergo one ~~independent~~ medical examination during each of the first five years that the permanent total disability award is paid and one ~~independent~~ medical examination during each three-year period thereafter until the claimant reaches the age of 70 years: *Provided*, That the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, may elect to have any recipient of a permanent total disability award under the age of 50 years undergo one ~~independent~~ medical examination during each year that the permanent total disability award is paid until the recipient reaches the age of 50 years, and thereafter one ~~independent~~ medical examination during each three-year period thereafter until the claimant reaches the age of 70 years.

§23-4-6a. Benefits and mode of payment to employees and dependents for occupational pneumoconiosis; further adjustment of claim for occupational pneumoconiosis.

If an employee is found to be permanently disabled due to occupational pneumoconiosis as defined in §23-4-1 of this code, the percentage of permanent disability is determined by the degree of medical impairment that is found by the Occupational Pneumoconiosis Board. The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter an order setting forth the findings of the Occupational Pneumoconiosis Board with regard to whether the claimant has occupational pneumoconiosis and the degree of medical impairment, if any, resulting therefrom. That order is the final decision of the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for purposes of ~~section one, article five of this chapter~~ §23-5-1a of this code. If a decision is objected to, the ~~office of judges~~ Board of Review shall affirm the decision of the Occupational Pneumoconiosis Board made following hearing unless the decision is clearly wrong in view of the reliable, probative, and substantial evidence on the whole record. Compensation is paid therefor in the same manner and at the same rate as is provided for permanent disability under the provisions of subdivisions (d), (e), (g), (h), (i), (j), (k), (m) and (n),

~~section six of this article~~ §23-4-6 of this code: *Provided*, That for any employee who applies for occupational pneumoconiosis benefits whose award was granted on or after the effective date of the amendment and reenactment of this section during the year 2003, there shall be no permanent partial disability awarded based solely upon a diagnosis of occupational pneumoconiosis, it being the intent of the Legislature to eliminate any permanent partial disability awards for occupational pneumoconiosis without a specific finding of measurable impairment.

If the employee dies from occupational pneumoconiosis, the benefits shall be as provided for in §23-4-10 of this code; as to the benefits, §23-4-11 through §23-4-14 of this code, inclusive, of this article apply.

In cases of permanent disability or death due to occupational pneumoconiosis, as defined in §23-4-1 of this code, accompanied by active tuberculosis of the lungs, compensation shall be payable as for disability or death due to occupational pneumoconiosis alone.

The provisions of §23-4-16 of this code and ~~sections two, three, four and five, article five of this chapter~~ §23-5-2, §23-5-3a, §23-5-4, and §23-5-5a of this code providing for the further adjustment of claims are applicable to the claim of any claimant who receives a permanent partial disability award for occupational pneumoconiosis.

§23-4-6d. Benefits payable to part-time employees.

(a) For purposes of this section, a part-time employee means an employee who, at the date of injury, is customarily employed 25 hours per week or less on a regular basis and is classified by the employer as a part-time employee: *Provided*, That the term "part-time employee" shall not include an employee who regularly works more than 25 hours per week for the employer, nor shall it include an employee who regularly works for more than one employer and whose regular combined working hours total more than 25 hours per week when that employee is rendered unable to perform the duties of his or her employment as a result of the injury, nor shall it include any employee in the construction industry who works less than 25 hours per week.

(b) For purposes of establishing temporary total disability weekly benefits pursuant to §23-4-6(b) of this code for part-time employees, the "average weekly wage earnings, wherever earned, of the injured person at the date of injury" shall be computed based upon the best average weekly gross pay, wherever earned, which is received by the employee during the best quarter of wages out of the preceding four quarters of wages as reported to the ~~commission~~ Insurance Commissioner pursuant to §23-2-2(b) of this code: *Provided*, That for part-time employees who have been employed less than two months but more than one week prior to the date of injury or any employee whose wages have not yet been reported to the ~~commission~~ Insurance Commissioner, the average weekly wage earnings shall be calculated based upon the average gross earnings in the weeks actually worked: *Provided, however*, That for part-time employees who have been employed one week or less, the average weekly wage earnings shall be calculated based upon the average weekly wage prevailing for the same or similar part-time employment at the time of injury except that when an employer has agreed to pay a certain hourly wage to a part-time employee, the average weekly wage shall be computed by multiplying the hourly wage by the regular numbers of hours contracted to be worked each week: *Provided further*, That notwithstanding any provision of this article to the contrary, no part-time employee shall receive temporary total disability benefits greater than his or her average weekly wage earnings as so calculated.

(c) Notwithstanding any other provisions of this article to the contrary, benefits payable to a part-time injured employee for any permanent disability shall be computed and paid on the same basis as if the injured employee is not a part-time employee within the meaning of this section.

§23-4-7. Release of medical information to employer; legislative findings; effect of application for benefits; duty of employer.

(a) The Legislature hereby finds and declares that two of the primary objectives of the workers' compensation system established by this chapter are to provide benefits to an injured claimant promptly and to effectuate his or her return to work at the earliest possible time; and that the prompt dissemination of medical information to the ~~commission and~~ employer as to diagnosis, treatment, and recovery is essential if these two objectives are to be achieved. ~~that claimants are increasingly burdened with the task of contacting their treating physicians to request the furnishing of detailed medical information to the commission and their employers; that the commission is increasingly burdened with the administrative responsibility of providing copies of medical reports to the employer involved, whereas in other states the employer can obtain the necessary medical information direct from the treating physician; that much litigation is occasioned in this state because of a lack of medical information having been received by the employer as to the continuing disability of a claimant; and that detailed narrative reports from the treating physician are often necessary in order for the commission, the claimant's representatives and the employer to evaluate a claim and determine whether additional or different treatment is indicated.~~

(b) In view of the foregoing findings, a claimant irrevocably agrees by the filing of his or her application for benefits that any physician may release to and orally discuss with the claimant's employer, or its representative, or with a representative of the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, from time to time, the claimant's medical history and any medical reports pertaining to the occupational injury or disease and to any prior injury or disease of the portion of the claimant's body to which a medical impairment is alleged containing detailed information as to the claimant's condition, treatment, prognosis, and anticipated period of disability and dates as to when the claimant will reach or has reached his or her maximum degree of improvement or will be or was released to return to work. For the exclusive purposes of this chapter, the patient-physician privilege of confidentiality is waived with regard to the physician's providing provision of this medical information to the ~~commission, the employer or to the employer's representative pursuant to this section~~. Whenever a copy of any medical report is obtained by the employer or its representative and the physician has not also forwarded a copy of the medical report to the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, the employer shall forward a copy of the medical report to the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, within 10 days from the date the employer received the medical report from the physician.

§23-4-7a. Monitoring of injury claims; legislative findings; review of medical evidence; recommendation of authorized treating physician; independent medical evaluations; temporary total disability benefits and the termination thereof; mandatory action; additional authority; suspension of benefits.

(a) The Legislature hereby finds and declares that injured claimants should receive the type of treatment needed as promptly as possible; that overpayments of benefits with the resultant hardship created by the requirement of repayment should be minimized; and that to achieve these two objectives it is essential that the ~~commission~~ Insurance Commissioner, private carriers, and

self-insured employers establish and operate a systematic program for the monitoring of injury claims where the disability continues longer than might ordinarily be expected.

(b) In view of the foregoing findings, the ~~commission, in consultation with the health care advisory panel,~~ Insurance Commissioner shall establish guidelines as to the anticipated period of disability for the various types of injuries. Each injury claim in which temporary total disability continues beyond the anticipated period of disability established for the injury involved shall be reviewed by the ~~commission~~. If satisfied after reviewing the medical evidence that the claimant would not benefit by an ~~independent~~ a medical evaluation, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall mark the claim file accordingly and shall diary the claim file as to the next date for required review which shall not exceed 60 days. If the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, concludes that the claimant might benefit by an ~~independent~~ a medical evaluation, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer shall proceed as specified in subsections (d) and (e) of this section.

(c) When the authorized treating physician concludes that the claimant has either reached his or her maximum degree of improvement or is ready for disability evaluation, or when the claimant has returned to work, the authorized treating physician may recommend a permanent partial disability award for residual impairment relating to and resulting from the compensable injury, and the following provisions govern and control:

(1) If the authorized treating physician recommends a permanent partial disability award of 15 percent or less, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter an award of permanent partial disability benefits based upon the recommendation and all other available information. The claimant's entitlement to temporary total disability benefits ceases upon the entry of the award unless previously terminated under the provisions of subsection (e) of this section.

(2) If, however, the authorized treating physician recommends a permanent partial disability award in excess of 15 percent, or recommends a permanent total disability award, the claimant's entitlement to temporary total disability benefits ceases upon the receipt by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of the medical report. The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of its selection for ~~independent~~ evaluation prior to the entry of a permanent disability award: *Provided*, That unless the claimant has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in §23-4-6(e) of this code until the entry of a permanent disability award or until the claimant returns to work. The amount of benefits paid prior to the receipt of the ~~independent~~ evaluation report shall be considered and determined to be payment of the permanent disability award granted, if any. In the event that benefits actually paid exceed the amount granted by the permanent partial disability award, the claimant is entitled to no further benefits by the award and the excess paid shall be an overpayment. For all awards made or nonawarded partial benefits paid, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may only recover the amount of overpaid benefits or expenses by withholding, in whole or in part, future disability benefits payable to the individual in the same or other claims and credit the amount against the overpayment until it is repaid in full.

(d) When the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, concludes that ~~an independent~~ a medical evaluation is indicated, or that a claimant may be ready for disability evaluation in accordance with other provisions of this chapter, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, shall refer the claimant to a physician or physicians of its selection for examination and evaluation. If the physician or physicians selected recommend continued, additional, or different treatment, the recommendation shall be relayed to the claimant and the claimant's treating physician and the recommended treatment may be authorized by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

(e) Notwithstanding any provision in subsection (c) of this section, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter a notice suspending the payment of temporary total disability benefits but providing a reasonable period of time during which the claimant may submit evidence justifying the continued payment of temporary total disability benefits ~~when~~:

(1) When the physician or physicians selected by the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, ~~whichever is applicable~~, conclude that the claimant has reached his or her maximum degree of improvement;

(2) When the authorized treating physician advises the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that the claimant has reached his or her maximum degree of improvement or that he or she is ready for disability evaluation and when the authorized treating physician has not made any recommendation with respect to a permanent disability award as provided in subsection (c) of this section;

(3) When other evidence submitted to the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, justifies a finding that the claimant has reached his or her maximum degree of improvement; or

(4) When other evidence submitted or otherwise obtained justifies a finding that the claimant has engaged or is engaging in abuse, including, but not limited to, physical activities inconsistent with his or her compensable workers' compensation injury.

In all cases, a finding by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, that the claimant has reached his or her maximum degree of improvement terminates the claimant's entitlement to temporary total disability benefits regardless of whether the claimant has been released to return to work. Under no circumstances shall a claimant be entitled to receive temporary total disability benefits either beyond the date the claimant is released to return to work or beyond the date he or she actually returns to work.

In the event that the medical or other evidence indicates that claimant has a permanent disability, unless he or she has returned to work, the claimant shall thereupon receive benefits which shall be at the permanent partial disability rate as provided in §23-4-6(e) of this code until entry of a permanent disability award, pursuant to an evaluation by a physician or physicians selected by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, or until the claimant returns to work. The amount of benefits shall be considered and determined to be payment of the permanent

disability award granted, if any. In the event that benefits actually paid exceed the amount granted under the permanent disability award, the claimant is entitled to no further benefits by the order.

(f) Notwithstanding the anticipated period of disability established pursuant to the provisions of subsection (b) of this section, whenever in any claim temporary total disability continues longer than 120 days from the date of injury (or from the date of the last preceding examination and evaluation pursuant to the provisions of this subsection or pursuant to the directions of the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, under other provisions of this chapter), the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall refer the claimant to a physician or physicians of the ~~commission's~~ Insurance Commissioner's, private carrier's, or self-insured employer's selection for examination and evaluation in accordance with the provisions of §23-4-7a(d) of this code, and the provisions of subsection (e) of this section are fully applicable: *Provided*, That the requirement of mandatory examinations and evaluations pursuant to the provisions of this subsection shall not apply to any claimant who sustained a brain stem or spinal cord injury with resultant paralysis or an injury which resulted in an amputation necessitating a prosthetic appliance.

(g) The provisions of this section are in addition to and in no way in derogation of the power and authority vested in the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, by other provisions of this chapter or vested in the employer to have a claimant examined by a physician or physicians of the employer's selection and at the employer's expense, or vested in the claimant or employer to file a protest, under other provisions of this chapter.

(h) All evaluations and examinations performed by physicians shall be performed in accordance with the protocols and procedures established by the ~~health care advisory panel pursuant to section three b of this article~~ rule of the Insurance Commissioner: *Provided*, That the physician may exceed these protocols when additional evaluation is medically necessary.

(i) The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may suspend benefits being paid to a claimant if the claimant refuses, without good cause, to undergo the examinations or needed treatments provided for in this section until the claimant submits to the examination or needed treatments. ~~The executive director shall propose rules for approval by the commission to implement the provisions of this subsection.~~

§23-4-8a. Occupational Pneumoconiosis Board; composition; term of office; duties; quorum; remuneration.

The Occupational Pneumoconiosis Board shall consist of five licensed physicians who shall be appointed by the ~~executive director. Effective upon termination of the commission, the physicians shall be appointed by the~~ Insurance Commissioner: *Provided*, That those physicians ~~serving as of the termination of the commission shall continue to serve until replaced~~. No person shall be appointed as a member of the board, or as a consultant thereto, who has not by special study or experience, or both, acquired special knowledge of pulmonary diseases. All members of the Occupational Pneumoconiosis Board shall be physicians of good professional standing admitted to practice medicine and surgery in this state. Two members shall be roentgenologists. One member of the board shall be designated annually as chairman by the ~~executive director~~ Insurance Commissioner. The term of office of each member of the board shall be six years. ~~The five members of the existing board in office on the effective date of this section shall continue to~~

~~serve until their terms expire and until their successors have been appointed and have qualified.~~ Any member of the board may be appointed to any number of terms. The function of the board is to determine all medical questions relating to cases of compensation for occupational pneumoconiosis under the direction and supervision of the ~~executive director and, effective upon termination of the commission,~~ the Insurance Commissioner. Any three members of the board constitute a quorum for the transaction of its business if at least one of the members present is a roentgenologist. The ~~executive director and, effective upon termination of the commission,~~ the Insurance Commissioner, shall, from time to time, fix the compensation to be paid each member of the board. Members are also entitled to reasonable and necessary traveling and other expenses incurred while actually engaged in the performance of their duties. In fixing the compensation of board members, the ~~executive director or the~~ Insurance Commissioner shall take into consideration the number of claimants a member of the board actually examines, the actual time spent by members in discharging their duties, and the recommendation of the ~~board of managers and~~ Governor as to reasonable reimbursement per unit of time expended based on comparative data for physicians within the state in the same medical specialties.

§23-4-8b. Occupational Pneumoconiosis Board; procedure; autopsy.

The Occupational Pneumoconiosis Board, upon reference to it by an appropriate party of a case of occupational pneumoconiosis, shall notify the employee, or in case he or she is dead, the claimant, and the employer, ~~successor to the commission, other as well as the Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, to appear before the board at a time and place stated in the notice. If the employee is living, he or she shall appear before the board at the time and place specified and submit to the examination, including clinical and X-ray examinations, required by the board. If a physician licensed to practice medicine in the state makes an affidavit that the employee is physically unable to appear at the time and place designated by the board, the board shall, on notice to the proper parties, change the place and time as may reasonably facilitate the hearing or examination of the employee or may appoint a qualified specialist in the field of respiratory disease to examine the claimant on behalf of the board. The employee, or in case he or she is dead, the claimant, and employer shall also produce as evidence to the board all reports of medical and X-ray examinations which may be in their respective possession or control, showing the past or present condition of the employee. If the employee is dead, the notice of the board shall further require that the claimant produce necessary consents and permits so that an autopsy may be performed, if the board so directs. When in the opinion of the board an autopsy is considered necessary to accurately and scientifically ~~to~~ ascertain and determine the cause of death, the autopsy examination shall be ordered by the board, which shall designate a duly licensed physician, a pathologist, or any other specialists determined necessary by the board, to make the examination and tests to determine the cause of death and certify his or her or their written findings, in triplicate, to the board. The findings shall be public records. In the event that a claimant for compensation for the death refuses to consent and permit the autopsy to be made, all rights for compensation are forfeited.

The employee, or if he or she be dead, the claimant, and the employer, shall be entitled to be present at all examinations conducted by the board and to be represented by attorneys and physicians.

§23-4-8c. Occupational Pneumoconiosis Board; reports and distribution thereof; presumption; findings required of board; objection to findings; procedure thereon; limitations on refilings; consolidation of claims.

(a) The Occupational Pneumoconiosis Board, as soon as practicable after it has completed its investigation, shall make its written report to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, of its findings and conclusions on every medical question in controversy and the board shall send one copy of the report to the employee or claimant and one copy to the employer. The ~~board~~ Occupational Pneumoconiosis Board shall also return to and file with the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, all the evidence as well as all statements under oath, if any, of the persons who appeared before it on behalf of the employee or claimant, or employer, and also all medical reports and X-ray examinations produced by or on behalf of the employee or claimant, or employer.

(b) If it can be shown that the claimant or deceased employee has been exposed to the hazard of inhaling minute particles of dust in the course of and resulting from his or her employment for a period of 10 years during the 15 years immediately preceding the date of his or her last exposure to such hazard and that the claimant or deceased employee has sustained a chronic respiratory disability, it shall be presumed that the claimant is suffering or the deceased employee was suffering at the time of his or her death from occupational pneumoconiosis which arose out of and in the course of his or her employment. This presumption is not conclusive.

(c) The findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board shall set forth, among other things, the following:

(1) Whether or not the claimant or the deceased employee has contracted occupational pneumoconiosis and, if so, the percentage of permanent disability resulting therefrom;

(2) Whether or not the exposure in the employment was sufficient to have caused the claimant's or deceased employee's occupational pneumoconiosis or to have perceptibly aggravated an existing occupational pneumoconiosis or other occupational disease; and

(3) What, if any, physician appeared before the board on behalf of the claimant or employer and what, if any, medical evidence was produced by or on behalf of the claimant or employer.

(d) If either party objects to the whole or any part of the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board, the party shall file with the ~~Office of Judges~~ Board of Review, within 60 days from receipt of the copy to that party, unless for good cause shown the ~~chief administrative law judge~~ Board of Review extends the time, the party's objections to the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board in writing, specifying the particular statements of the ~~board's~~ Occupational Pneumoconiosis Board's findings and conclusions to which such party objects. The filing of an objection within the time specified is a condition of the right to litigate the findings and therefore jurisdictional. After the time has expired for the filing of objections to the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board, the ~~commission or administrative law judge~~ Board of Review shall proceed to act as provided in this chapter. If, after the time has expired for the filing of objections to the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board, no objections have been filed, the report of a majority of the ~~board~~ Occupational Pneumoconiosis Board of its findings and conclusions on any medical question shall be taken to be plenary and conclusive evidence of the findings and conclusions stated in the report. If objection has been filed to the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board, notice of the objection shall be given to the board. ~~and the~~ The members of the ~~board~~ Occupational Pneumoconiosis Board joining in the findings and conclusions shall appear at the time fixed by the ~~Office of Judges~~ Board of Review for the hearing to submit to examination and cross-

examination in respect to the findings and conclusions. At the hearing, evidence to support or controvert the findings and conclusions of the ~~board~~ Occupational Pneumoconiosis Board shall be limited to examination and cross-examination of the members of the board and to the taking of testimony of other qualified physicians and roentgenologists.

(e) In the event that a claimant receives a final decision that he or she has no evidence of occupational pneumoconiosis, the claimant is barred for a period of three years from the date of the Occupational Pneumoconiosis Board's decision or until his or her employment with the employer who employed the claimant at the time designated as the claimant's last date of exposure in the denied claim has terminated, whichever is sooner, from filing a new claim or pursuing a previously filed, but unruled upon, claim for occupational pneumoconiosis or requesting a modification of any prior ruling finding him or her not to be suffering from occupational pneumoconiosis. For the purposes of this subsection, a claimant's employment shall be considered to be terminated if, for any reason, he or she has not worked for that employer for a period in excess of 90 days. Any previously filed, but unruled upon, claim shall be consolidated with the claim in which the ~~board's~~ Occupational Pneumoconiosis Board's decision is made and shall be denied together with the decided claim. The provisions of this subsection shall not be applied in any claim where doing so would, in and of itself, later cause a claimant's claim to be forever barred by the provisions of §23-4-15 of this code.

(f) Effective upon termination of the former workers' compensation commission, the Insurance Commissioner shall assume all administrative powers and responsibilities necessary to administer ~~sections eight a, eight b and eight c of this article~~ this section and §23-4-8a and §23-4-8b of this code.

§23-4-9. Physical and vocational rehabilitation.

(a) The Legislature hereby finds that it is a goal of the workers' compensation program to assist employees to return to suitable gainful employment after an injury. In order to encourage workers to return to employment and to encourage and assist employers in providing suitable employment to injured employees, it is a priority of the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, to achieve early identification of individuals likely to need rehabilitation services and to assess the rehabilitation needs of these injured employees. It is the goal of rehabilitation to return injured employees to employment which is comparable in work and pay to that which the individual performed prior to the injury. If a return to comparable work is not possible, the goal of rehabilitation is to return the individual to alternative suitable employment, using all possible alternatives of job modification, restructuring, reassignment, and training, so that the individual will return to productivity with his or her employer or, if necessary, with another employer. The Legislature further finds that it is the shared responsibility of the employer, the employee, the physician, and the ~~commission~~ Insurance Commissioner or private carrier to cooperate in the development of a rehabilitation process designed to promote reemployment for the injured employee.

(b) In cases where an employee has sustained a permanent disability, or has sustained an injury likely to result in temporary disability as determined by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, shall at the earliest possible time determine whether the employee would be assisted in returning to remunerative employment with the provision of rehabilitation services and if it is determined that the employee can be physically

and vocationally rehabilitated and returned to remunerative employment by the provision of rehabilitation services including, but not limited to, vocational or on-the-job training, counseling, assistance in obtaining appropriate temporary or permanent work site, work duties, or work hours modification, by the provision of crutches, artificial limbs, or other approved mechanical appliances, or medicines, medical, surgical, dental, or hospital treatment or other services which the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, in its sole discretion determines will directly assist the employee's return to employment, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, shall immediately develop a rehabilitation plan for the employee and, after due notice to the employer, expend an amount necessary for that purpose: *Provided*, That the expenditure for vocational rehabilitation shall not exceed \$20,000 for any one injured employee: *Provided, however*, That no payment shall be made for such vocational rehabilitation purposes as provided in this section unless authorized by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, prior to the rendering of the physical or vocational rehabilitation, except that payments shall be made for reasonable medical expenses without prior authorization if sufficient evidence exists which would relate the treatment to the injury and the attending physician or physicians have requested authorization prior to the rendering of the treatment: *Provided further*, That payment for physical rehabilitation, including the purchase of prosthetic devices and other equipment and training in use of the devices and equipment, are considered expenses within the meaning of §23-4-3 of this code and are subject to the provisions of ~~sections three, three b and three c of this article~~ §23-4-3 of this code. The provision of any rehabilitation services may be pursuant to a rehabilitation plan to be developed and monitored by a rehabilitation professional for each injured employee or by such other provider as determined by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. Notwithstanding any other provision of this section to the contrary, the ~~commission~~ Insurance Commissioner may determine ~~under rules promulgated by the board of managers by rule~~ that a rehabilitation plan or any component thereof is not appropriate for an injured employee.

(c) In every case in which the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, orders physical or vocational rehabilitation of a claimant as provided in this section, the claimant shall, during the time he or she is receiving any vocational rehabilitation or rehabilitative treatment that renders him or her totally disabled during the period of rehabilitation, be compensated on a temporary total disability basis for that period.

(d) In every case in which the claimant returns to gainful employment as part of a rehabilitation plan, and the employee's average weekly wage earnings are less than the average weekly wage earnings earned by the injured employee at the time of the injury, he or she shall receive temporary partial rehabilitation benefits calculated as follows: The temporary partial rehabilitation benefit shall be 70 percent of the difference between the average weekly wage earnings earned at the time of the injury and the average weekly wage earnings earned at the new employment, both to be calculated as provided in §23-4-6, §23-4-6d, and §23-4-14 of this code as the calculation is performed for temporary total disability benefits, subject to the following limitations: In no event are the benefits subject to the minimum benefit amounts required by the provisions of §23-4-6(b) of this code, nor may the benefits exceed the temporary total disability benefits to which the injured employee would be entitled pursuant to §23-4-6, §23-4-6d, and §23-4-14 of this code during any period of temporary total disability resulting from the injury in the claim: *Provided*, That no temporary total disability benefits shall be paid for any period for which temporary partial rehabilitation benefits are paid: *Provided, however*, That the aggregate award of temporary total

rehabilitation or temporary partial rehabilitation benefits for a single injury for which an award of temporary total rehabilitation or temporary partial rehabilitation benefits is made on or after the effective date of the amendment and reenactment of this section in the year 2003 shall be for a period not exceeding 52 weeks unless the payment of temporary total rehabilitation disability benefits is in conjunction with an approved vocational rehabilitation plan for retraining, in which event the payment period of temporary total rehabilitation disability benefits may be extended for a period not to exceed a total of 104 weeks. The amount of temporary partial rehabilitation benefits payable under this subsection shall be reviewed every 90 days to determine whether the injured employee's average weekly wage in the new employment has changed and, if the change has occurred, the amount of benefits payable under this subsection shall be adjusted prospectively. Temporary partial rehabilitation benefits shall only be payable when the injured employee is receiving vocational rehabilitation services in accordance with a rehabilitation plan developed under this section and no payment of temporary partial rehabilitation benefits shall be made after the claimant has received the vocational training provided under the rehabilitation plan.

(e) The ~~executive director, in consultation with the board of managers,~~ Insurance Commissioner shall propose for promulgation rules for the purpose of developing a comprehensive rehabilitation program which will assist injured workers to return to suitable gainful employment after an injury in a manner consistent with the provisions and findings of this section. The rules shall provide definitions for rehabilitation facilities and rehabilitation services pursuant to this section. Notwithstanding any other provision of this chapter to the contrary, and in addition to the provisions of §23-4-3 of this code authorizing ~~employers~~ an employer or the employer's representative to participate in a managed health care plan, including a managed health care plan that provides physical and vocational rehabilitation services, an employer or the employer's representative may contract directly with one or more providers of vocational rehabilitation services to be the employer's preferred provider of vocational rehabilitation services for its employees who receive injuries compensable under the provisions of this chapter and the rules promulgated under this section may require those employees to use the preferred providers.

§23-4-11. To whom death benefits paid.

The benefits, in case of death, shall be paid to one or more dependents of the decedent, or to any other persons, for the benefit of all of the dependents, as may be determined by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, who may apportion the benefits among the dependents in the manner as they consider just and equitable. Payment to a dependent subsequent in right may be made if the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, considers proper and it operates to discharge all other claims for the benefits.

§23-4-12. Application of benefits.

The dependent or person to whom benefits are paid shall apply the benefits to the use of the several beneficiaries of the benefits according to their respective claims upon the decedent for support, in compliance with the finding and direction of the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

§23-4-14. Computation of benefits.

(a) The average weekly wage earnings, wherever earned, of the injured person at the date of injury and the average weekly wage in West Virginia as determined by the ~~commission, and,~~

~~effective January 1, 2006, the~~ Insurance Commissioner, in effect at the date of injury, shall be taken as the basis upon which to compute the benefits.

(1) In cases involving occupational pneumoconiosis or other occupational diseases, the "date of injury" is the date of the last exposure to the hazards of occupational pneumoconiosis or other occupational diseases.

(2) In computing benefits payable on account of occupational pneumoconiosis, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall deduct the amount of all prior workers' compensation benefits paid to the same claimant on account of silicosis, but a prior silicosis award shall not, in any event, preclude an award for occupational pneumoconiosis otherwise payable under this article.

(b)(1) Until July 1, 1994, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the average pay received during the two months, six months or 12 months immediately preceding the date of the injury, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of §23-4-6d of this code.

(2) On and after July 1, 1994, the expression "average weekly wage earnings, wherever earned, of the injured person, at the date of injury", within the meaning of this chapter, shall be computed based upon the daily rate of pay at the time of the injury or upon the weekly average derived from the best quarter of wages out of the preceding four quarters of wages as reported to the ~~commission~~ Insurance Commissioner pursuant to §23-2-2(b) of this code, whichever is most favorable to the injured employee, except for the purpose of computing temporary total disability benefits for part-time employees pursuant to the provisions of §23-4-6d of this code.

(c) The expression "average weekly wage in West Virginia", within the meaning of this chapter, is the average weekly wage in West Virginia as determined by the Commissioner of the Bureau of Employment Programs in accordance with the provisions of §21A-6-10 and §21A-6-11 of this code and other applicable provisions of said chapter.

(d) In any claim for injuries, including occupational pneumoconiosis and other occupational diseases, occurring on or after July 1, 1971, any award for temporary total, permanent partial, or permanent total disability benefits or for dependent benefits shall be paid at the weekly rates or in the monthly amount in the case of dependent benefits applicable to the claimant in effect on the date of the injury. In no event shall an award for permanent total disability be subject to annual adjustments resulting from changes in the average weekly wage in West Virginia.

§23-4-15. Application for benefits.

(a) To entitle any employee or dependent of a deceased employee to compensation under this chapter, other than for occupational pneumoconiosis or other occupational disease, the application for compensation shall be made on the form or forms prescribed by the Insurance Commissioner, and filed with the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, within six months from and after the injury or death, as the case may be, and unless filed within the six months period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, and all proofs of dependency in fatal cases must also be filed ~~with the commission~~ within six months from and after the death. In case the employee is mentally or

physically incapable of filing the application, it may be filed by his or her attorney or by a member of his or her family.

(b) To entitle any employee to compensation for occupational pneumoconiosis under the provisions of this subsection, the application for compensation shall be made on the form or forms prescribed by the Insurance Commissioner, and filed with the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, within three years from and after the last day of the last continuous period of 60 days or more during which the employee was exposed to the hazards of occupational pneumoconiosis or within three years from and after a diagnosed impairment due to occupational pneumoconiosis was made known to the employee by a physician and unless filed within the three-year period, the right to compensation under this chapter is forever barred, such time limitation being hereby declared to be a condition of the right and hence jurisdictional, or, in the case of death, the application shall be filed by the dependent of the employee within two years from and after the employee's death, and such time limitation is a condition of the right and hence jurisdictional.

(c) To entitle any employee to compensation for occupational disease other than occupational pneumoconiosis under the provisions of this section, the application for compensation shall be made on the form or forms prescribed by the Insurance Commissioner, and filed with the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, within three years from and after the day on which the employee was last exposed to the particular occupational hazard involved or within three years from and after the employee's occupational disease was made known to him or her by a physician or which he or she should reasonably have known, whichever last occurs, and unless filed within the three-year period, the right to compensation under this chapter shall be forever barred, such time limitation being hereby declared to be a condition of the right and therefore jurisdictional, or, in case of death, the application shall be filed as aforesaid by the dependent of the employee within one year from and after the employee's death, and such time limitation is a condition of the right and hence jurisdictional.

§23-4-15a. Nonresident alien beneficiaries.

Notwithstanding any other provisions of this chapter, nonresident alien beneficiaries are entitled to the same benefits as citizens of the United States: *Provided*, That the ~~commissioner, successor to the commissioner, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, in its discretion may make, and the beneficiary shall accept, commutation of the benefits into a lump sum settlement and payment. Nonresident alien beneficiaries within the meaning of this section means persons not citizens of the United States residing outside of the territorial limits of the United States at the time of the injury with respect to which benefits are awarded.

§23-4-15b. Determination of nonmedical questions; claims for occupational pneumoconiosis; hearing.

If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the last day of the last continuous period of 60 days' exposure to the hazards of occupational pneumoconiosis, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than 60 days while in the employ of the employer within three years prior to the filing of his or her claim, whether in the State of West Virginia the claimant was exposed to such hazard over a continuous period of

not less than two years during the 10 years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than 10 years during the 15 years immediately preceding the date of his or her last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by an employee within three years from and after the employee's occupational pneumoconiosis was made known to the employee by a physician, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the claimant filed his or her application within that period and whether in the State of West Virginia the claimant was exposed to the hazard over a continuous period of not less than two years during the 10 years immediately preceding the date of last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than 10 years during the 15 years immediately preceding the date of last exposure to the hazard. If a claim for occupational pneumoconiosis benefits is filed by a dependent of a deceased employee, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall determine whether the deceased employee was exposed to the hazards of occupational pneumoconiosis for a continuous period of not less than 60 days while in the employ of the employer within 10 years prior to the filing of the claim, whether in the State of West Virginia the deceased employee was exposed to the hazard over a continuous period of not less than two years during the 10 years immediately preceding the date of his or her last exposure to the hazard and whether the claimant was exposed to the hazard over a period of not less than 10 years during the 15 years immediately preceding the date of his or her last exposure to the hazard. The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall also determine other nonmedical facts that, in the opinion of the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, are pertinent to a decision on the validity of the claim.

The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall enter an order with respect to nonmedical findings within 90 days following receipt by the Insurance Commissioner, private carrier, or self-insured employer ~~whichever is applicable~~, of both the claimant's application for occupational pneumoconiosis benefits and the physician's report filed in connection with the claimant's application and shall give each interested party notice in writing of these findings with respect to all the nonmedical facts. The findings and actions of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, are final unless the employer, employee, claimant, or dependent, within 60 days after receipt of the notice, objects to the findings and, unless an objection is filed within the 60-day period, the findings are forever final, the time limitation is a condition of the right to litigate the findings and therefore jurisdictional. Upon receipt of an objection, the ~~chief administrative law judge~~ Board of Review shall set a hearing as provided in ~~section nine, article five of this chapter §23-5-9a of this code~~. In the event of an objection to the findings by the employer, the claim shall, notwithstanding the fact that one or more hearings may be held with respect to the objection, mature for reference to the Occupational Pneumoconiosis Board with like effect as if the objection had not been filed. If the ~~administrative law judge~~ Board of Review concludes after the ~~protest objection~~ hearings that the claim should be dismissed, a final order of dismissal shall be entered. The final order is subject to appeal in accordance with the provisions of ~~sections ten and twelve, article five of this chapter §23-5-10a and §23-5-12a of this code~~. If the ~~administrative law judge~~ Board of Review concludes after the ~~protest objection~~ hearings that the claim should be referred to the Occupational Pneumoconiosis Board for its review, the order entered shall be interlocutory only and may be appealed only in conjunction with an appeal from a final order with respect to the findings of the Occupational Pneumoconiosis Board.

§23-4-16. Jurisdiction over case continuous; modification of finding or order; time limitation on awards; reimbursement of claimant for expenses; reopening cases involving permanent total disability; promulgation of rules.

(a) The power and jurisdiction of the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, over each case is continuing and the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer whichever is applicable, may, in accordance with the provisions of this section and after due notice to the employer, make modifications or changes with respect to former findings or orders that are justified. ~~Upon and after February 2, 1995, the~~ The period in which a claimant may request a modification, change, or reopening of a prior award ~~that was entered either prior to or after that date~~ shall be determined by the following subdivisions of this subsection. Any request that is made beyond that period shall be refused.

(1) Except as provided in §23-4-22 of this code, in any claim which was closed without the entry of an order regarding the degree, if any, of permanent disability that a claimant has suffered, or in any case in which no award has been made, any request must be made within five years of the closure. During that time period, only two requests may be filed.

(2) Except as stated below, in any claim in which an award of permanent disability was made, any request must be made within five years of the date of the initial award. During that time period, only two requests may be filed. With regard to those occupational diseases, including occupational pneumoconiosis, which are medically recognized as progressive in nature, if any such request is granted by the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, a new five-year period begins upon the date of the subsequent award. ~~With the advice of the health care advisory panel, the executive director and the board of managers shall by rule designate those progressive diseases which are customarily the subject of claims.~~

(3) No further award may be made in fatal cases except within two years after the death of the employee.

(4) With the exception of the items set forth in §23-4-3(d) of this code, in any claim in which medical or any type of rehabilitation service has not been rendered or durable medical goods or other supplies have not been received for a period of five years, no request for additional medical or any type of rehabilitation benefits shall be granted nor shall any medical or any type of rehabilitation benefits or any type of goods or supplies be paid for by the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, if they were provided without a prior request. For the exclusive purposes of this subdivision, medical services and rehabilitation services shall not include any encounter in which significant treatment was not performed.

(b) In any claim in which an injured employee makes application for a further period of temporary total disability, if the application is in writing and filed within the applicable time limit stated above, the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, shall pass upon the request within 30 days of the receipt of the request. If the decision is to grant the request, the order shall provide for the receipt of temporary total disability benefits. In any case in which an injured employee makes application for a further award of permanent partial disability benefits or for an award of permanent total disability benefits, if the application is in writing and filed within the

applicable time limit as stated above, the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, shall pass upon the request within 30 days of its receipt and, if the ~~commission Insurance Commissioner, private carrier, or self-insured employer~~ determines that the claimant may be entitled to an award, the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer ~~whichever is applicable,~~ shall refer the claimant for further examinations that are necessary.

(c) If the application is based on a report of any medical examination made of the claimant and submitted by the claimant to the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, in support of his or her application and the claim is opened for further consideration and additional award is later made, the claimant shall be reimbursed for the expenses of the examination. The reimbursement shall be made by the ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, to the claimant, in addition to all other benefits awarded, upon due proof of the amount thereof being furnished by the claimant, but shall in no case exceed the sum fixed pursuant to the applicable schedule of maximum reasonable fees.

(d) The ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, has continuing power and jurisdiction over claims in which permanent total disability awards have been made after April 8, 1993.

(1) The ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, shall continuously monitor permanent total disability awards and may, from time to time, after due notice to the claimant, reopen a claim for reevaluation of the continuing nature of the disability and possible modification of the award. At such times as the ~~commission Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable,~~ may determine, the ~~commission Insurance Commissioner, private carrier, or self-insured employer~~ may require the claimant to provide documents and other information to the ~~commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable,~~ including, but not limited to, tax returns, financial records, and affidavits demonstrating level of income, recreational activities, work activities, medications used, and physicians or other medical or rehabilitation providers treating or prescribing medication or other services for the claimant; require the claimant to appear under oath before the ~~commission, successor to the commission, other private carrier or self-insured employer, whichever is applicable,~~ or its duly authorized representative and answer questions; and suspend or terminate any benefits of a claimant who willfully fails to provide the information or appear as required. *Provided,* That the ~~commission shall develop, implement and complete a program as soon as reasonably possible that requires each person receiving permanent total disability benefits on the effective date of the amendment and reenactment of this section in the year 2003, and each person who is awarded those benefits thereafter, to submit the tax returns and the affidavit described herein at least once: *Provided, however,* That this requirement does not restrict the commission's authority to require the information that may be required herein at such other times as the commission may determine.~~ The ~~commission, successor to the commission, other Insurance Commissioner,~~ private carrier, or self-insured employer, whichever is applicable, may reopen a claim for reevaluation when, in its sole discretion, it concludes that there exists good cause to believe that the claimant no longer meets the eligibility requirements under §23-4-6(n) of this code. The eligibility requirements, including any vocational standards, shall be applied as those requirements are stated at the time of a claim's reopening.

(2) Upon reopening a claim under this subsection, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may take evidence, have the claimant evaluated, make findings of fact and conclusions of law, and shall vacate, modify, or affirm the original permanent total disability award as the record requires. ~~The claimant's former employer shall not be a party to the reevaluation, but shall be notified of the reevaluation and may submit any information as the employer may elect.~~ In the event the claimant retains his or her award following the reevaluation, the claimant's reasonable attorneys' fees incurred in defending the award shall be paid by the ~~Workers' Compensation Commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. In addition, the ~~Workers' Compensation Commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall reimburse a prevailing claimant for his or her costs in obtaining one evaluation on each issue during the course of the reevaluation ~~with the reimbursement being made from the fund.~~ ~~The board of managers shall adopt criteria for the determination of reasonable attorneys' fees.~~

(3) This subsection shall not be applied to awards made under the provisions of §23-4-6(m) of this code. The claimant may seek review of the final order as otherwise provided in §23-5-1 *et seq.* of this code for review of orders granting or denying permanent disability awards.

(4) The ~~commission~~ Insurance Commissioner shall establish by rule criteria for review, reopening, and reevaluating a claim under this subsection. ~~The commission shall at least quarterly provide a report of the exercise of its authority to continuously monitor permanent total disability awards under this section to the Joint Committee on Government and Finance and the Joint Commission on Economic Development.~~

(e) A claimant may have only one active request for a permanent disability award pending in a claim at any one time. Any new request that is made while another is pending shall be consolidated into the former request.

§23-4-16a. Interest on benefits.

Whenever any award of temporary total, permanent partial, or permanent total disability benefits or dependent benefits is made on or after July 1, 1971, and a protest is filed to the award or an appeal is taken from the award by an employer only and not by the claimant or dependent and the award is not ultimately denied or reduced following the protest or appeal, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall add interest to the award at the simple rate of six percent per annum from the date the award would have been payable had the protest or appeal not been filed or taken, exclusive of any period for which a continuance was granted upon motion of any party other than the protesting or appealing employer. ~~Any interest payable shall be charged to the account of the protesting or appealing employer to the extent that the benefits upon which such interest is computed are charged to the account of the employer.~~

§23-4-17. Commutation of periodical benefits.

The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, under special circumstances and when it is considered advisable, may commute periodical benefits to one or more lump-sum payments. Upon the application of any claimant who has received an award of partial or total disability, who is not a citizen of the United States and desires to reside permanently beyond the territorial limits

of the United States, or upon the application of an alien dependent of a deceased employee with respect of whose death award of compensation has been made, the dependent residing in the territorial limits of the United States at the time of the decedent's death, and desiring to reside permanently beyond the territorial limits of the United States, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may commute into one lump-sum payment the periodical payments to which the claimant or dependent would be entitled, but at the rate of one-half the amount that would be payable to a citizen of the United States under like circumstances. The lump-sum payment at the rate specified in this section discharges all liability with respect to the award, but in no event shall the award be paid until the claimant or dependent has actually arrived and domiciled himself or herself outside the territorial limits of the United States, except a sufficient portion of the award to pay transportation and other necessary expenses.

§23-4-18. Mode of paying benefits generally; exemptions of compensation from legal process.

Except as provided by this section, compensation shall be paid only to the employees or their dependents and is exempt from all claims of creditors and from any attachment, execution or assignment other than compensation to counsel for legal services, under the provisions of, and subject to the limitations contained in ~~section sixteen, article five of this chapter~~ §23-5-16a of this code, and other than for the enforcement of orders for child or spousal support entered pursuant to the provisions of chapter 48 of this code. Payments may be made in the periodic installments determined by the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, in each case, but in no event less frequently than semimonthly for any temporary award and monthly for any permanent award. Payments for permanent disability shall be paid on or before the third day of the month in which they are due. In all cases where compensation is awarded or increased, the amount of compensation shall be calculated and paid from the date of disability.

§23-4-20. Postmortem examinations.

The ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may, after due notice to the ~~employer and claimant~~, whenever it considers it necessary, order an autopsy and may designate a duly licensed physician to make the postmortem examination or examinations that are necessary to determine the cause of the deceased employee's death. The physician shall file with the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, a written report of his or her findings. The claimant ~~and the employer, respectively, have~~ has the right to select a physician of his or her ~~or its~~ own choosing and, at his or her ~~or its~~ own expense, to participate in the postmortem examination. The ~~respective physicians selected by the claimant and the employer have~~ physician selected by the claimant has the right to concur in any report made by the physician selected by the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, or each may file with the ~~commission, successor to the commission, other~~ private carrier or self-insured employer, whichever is applicable, a separate report. In any case, including silicosis cases, in which ~~either the employer or a claimant~~ requests that an autopsy be performed, the autopsy shall be directed as provided in this section. In the event that a claimant ~~for compensation for the death~~ refuses to consent and permit the autopsy, ~~to be made~~ all rights to compensation shall be forfeited.

§23-4-22. Permanent disability evaluations; limitations; notice.

[Repealed.]

§23-4-23. Permanent total disability benefits; reduction of disability benefits; reduction of benefits; application of section; severability.

(a) This section is applicable whenever benefits are being paid for permanent total disability benefits arising under §23-4-6(d), (m), or (n) of this code or under §23-4-8c of this code. This section is not applicable to the receipt of temporary total disability benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of benefits pursuant to the provisions of §23-4-10(e) of this code. This section is not applicable to the receipt of medical benefits or the payment for medical benefits.

(b) Whenever applicable benefits are paid to a beneficiary with respect to the same time period for which payments under a self-insurance plan, a wage continuation plan, or a disability insurance policy provided by an employer are also received or being received by the beneficiary, the applicable benefits shall be reduced by these amounts:

(1) The after-tax amount of the payments received or being received under a self-insurance plan, a wage continuation plan, or under a disability insurance policy provided by an employer if the employee did not contribute directly to the plan or to the payment of premiums regarding the disability insurance policy; or

(2) The proportional amount, based on the ratio of the employer's contributions to the total insurance premiums for the policy period involved, of the after-tax amount of the payments received or being received by the employee pursuant to a disability insurance policy provided by an employer if the employee did contribute directly to the payment of premiums regarding the disability insurance policy: *Provided*, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided for in §23-4-6(b) and (d) of this code.

(c) This section applies to awards of permanent total disability made after the effective date of this section.

(d) The ~~board of managers~~ Insurance Commissioner shall promulgate the appropriate rules for the interpretation, processing, and enforcement of this section.

(e) If any portion of this section or any application of this section is subsequently found to be unconstitutional or in violation of applicable law, it shall not affect the validity of the remainder of this section or the applications of the section that are not unconstitutional or in violation.

§23-4-24. Permanent total disability awards; retirement age; limitations on eligibility and the introduction of evidence; effects of other types of awards; procedures; requests for awards; jurisdiction.

(a) Notwithstanding any provision of this chapter to the contrary, except as stated below, no claimant shall be awarded permanent total disability benefits arising under §23-4-6(d) or (n) of this code or §23-4-8c of this code who terminates active employment and is receiving full old-age retirement benefits under the Social Security Act, 42 U.S.C. § 401 and 42 U.S.C. § 402. Any claimant shall be evaluated only for the purposes of receiving a permanent partial disability award premised solely upon the claimant's impairments. This subsection is not applicable in any claim in which the claimant has completed the submission of his or her evidence on the issue of permanent total disability prior to the later of the following: Termination of active employment or

the initial receipt of full old-age retirement benefits under the Social Security Act. Once the claimant has terminated active employment and has begun to receive full old-age social security retirement benefits, the claimant may not produce additional evidence of permanent total disability nor shall the claim be remanded for the production of the evidence.

(b) The ~~Workers' Compensation Commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, has the sole and exclusive jurisdiction to initially hear and decide any claim or request pertaining, in whole or in part, to §23-4-6(d) or (n) of this code. Any claim or request for permanent total disability benefits arising under said subdivisions shall first be presented ~~to the commission~~ as part of the initial claim filing or by way of an application for modification or adjustment pursuant to §23-4-16 of this code. The ~~office of judges~~ Board of Review may consider a claim only after the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, has entered an appropriate order.

§23-4-25. Permanent total disability benefits; reduction of disability benefits for wages earned by claimant.

(a) After April 8, 1993, a reduction in the amount of benefits as specified in subsection (b) of this section shall be made whenever benefits are being paid for a permanent total disability award regardless of when the benefits were awarded. This section is not applicable to the receipt of medical benefits or the payment for medical benefits, the receipt of permanent partial disability benefits, the receipt of benefits by partially or wholly dependent persons, or to the receipt of benefits pursuant to the provisions of §23-4-10(e) of this code. Prior to the application of this section to any claimant, the ~~commission, successor to the commission, other~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give the claimant notice of the effect of this section upon a claimant's award if and when the claimant later earns wages.

(b) Whenever applicable benefits are paid to a claimant with respect to the same time period in which the claimant has earned wages as a result of his or her employment, the following reduction in applicable benefits shall be made. The claimant's applicable monthly benefits and monthly net wages received from the current employment shall be added together. If the total exceeds by more than 120 percent of the amount of the claimant's monthly net wages earned during his or her last employment prior to the award of permanent total disability benefits, the excess shall be reduced by \$1 for each \$2 that the claimant's monthly benefits and monthly net wages exceed the 120 percent level: *Provided*, That in no event shall applicable benefits be reduced below the minimum weekly benefits as provided in §23-4-6(b) and (d) of this code.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing; effective until June 30, 2022.

[Repealed.]

§23-5-2. Application by employee for further adjustment of claim; objection to modification; hearing.

In any case where an injured employee makes application in writing for a further adjustment of his or her claim under the provisions of §23-4-16 of this code and the application discloses

cause for a further adjustment, the ~~commission~~ Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall ~~after due notice to the employer~~, make the modifications or changes with respect to former findings or orders in the claim that are justified. Any party dissatisfied with any modification or change made by the ~~commission, the successor to the commission, other private insurance carriers and self-insured employers~~, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is, upon proper and timely objection, entitled to a hearing, as provided in ~~section nine of this article~~ §23-5-9a of this code.

§23-5-3. Refusal to reopen claim; notice; objection; effective until June 30, 2022.

[Repealed.]

§23-5-4. Application by employer for modification of award; objection to modification; hearing.

In any case in which an employer makes application in writing for a modification of any award previously made to an employee of the employer, the ~~commission, the successor to the commission, other private insurance carriers and self-insured employers~~, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall make a decision upon the application. If the application discloses cause for a further adjustment, the ~~commission, the successor to the commission, other private insurance carriers and self-insured employers~~, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall, after due notice to the employee, make the modifications or changes with respect to former findings or orders that are justified. Any party dissatisfied with any modification or change made or by the denial of an application for modification is, upon proper and timely objection, entitled to a hearing as provided in ~~either §23-5-9 or §23-5-9a~~ of this code.

§23-5-5. Refusal of modification; notice; objection; effective until June 30, 2022.

[Repealed.]

§23-5-6. Time periods for objections and appeals; extensions; effective until June 30, 2022.

[Repealed.]

§23-5-7. Compromise and settlement.

(a) The claimant, the employer, and the Workers' Compensation Commission, the successor to the ~~commission, other private insurance carriers, and self-insured employers~~, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may negotiate a final settlement of any and all issues in a claim wherever the claim is in the administrative or appellate processes: *Provided*, That in the settlement of medical benefits for nonorthopedic occupational disease claims, the claimant shall be represented by legal counsel: *Provided, however*, That for the purposes of this section, the term "nonorthopedic occupational disease claim" does not include an occupational hearing loss or hearing impairment claim. If the employer is not active in the claim, the ~~commission, the successor to the commission, other private insurance carriers, and self-insured employers~~, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may negotiate a final settlement with the claimant and the settlement shall be made a part of the claim record. Except in cases of fraud, no issue that is the subject of an approved settlement agreement may be reopened by any party, including the

commission, the successor to the commission, other private insurance carriers, and self-insured employers, Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable. Any settlement agreement may provide for a lump-sum payment or a structured payment plan, or any combination thereof, or any other basis as the parties may agree. If a self-insured employer later fails to make the agreed-upon payment, the commission Insurance Commissioner shall assume the obligation to make the payments and shall recover the amounts paid or to be paid from the self-insured employer and its sureties or guarantors, or both, as provided in §23-2-5 or §23-2-5a of this code.

(b) Each settlement agreement shall provide the toll-free number of the West Virginia State Bar Association and shall provide the injured worker with five business days to revoke the executed agreement. The Insurance Commissioner may void settlement agreements entered into by an unrepresented injured worker which are determined to be unconscionable pursuant to criteria established by rule of the commissioner.

(c) The amendments to this section enacted during the regular session of the Legislature, 2015, apply to all settlement agreements executed after the effective date.

§23-5-8. Designation of Office of Administrative Law Judges; powers of chief administrative law judge; effective until June 30, 2022.

[Repealed.]

§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand; effective until June 30, 2022.

[Repealed.]

§23-5-10. Appeal from administrative law judge decision to appeal board; effective until June 30, 2022.

[Repealed.]

§23-5-11. Workers' Compensation Board of Review generally; administrative powers and duties of the board; effective until June 30, 2022.

[Repealed.]

§23-5-11a. Workers' Compensation Board of Review generally; administrative powers and duties of the board; ~~effective July 1, 2022.~~

(a) The "Workers' Compensation Board of Review", which may also be referred to as "the Board of Review" or "the board" is hereby continued and granted exclusive jurisdiction over all objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, including any and all matters that were pending before the former Office of Judges after September 30, 2022.

(b) The board ~~consists~~ shall consist of at least three members and not exceed a total of five members.

(c) The Governor shall appoint, with the advice and consent of the Senate, ~~five~~ attorneys qualified in accordance with subsection (f) of this section to serve as members of the Board of Review. A member of the Board of Review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance, and then only after notice and opportunity to respond and present evidence. ~~No~~ If the board consists of five members, no more than three of the members of the board may be of the same political party. If the board consists of three or four members, no more than two of the members may be of the same political party. The Governor shall set the salary of the members of the board: *Provided, however,* That the annual salary of a member of the Board of Review shall not exceed \$125,000. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) Of the initial appointments of the two additional seats created during the 2021 Regular Session, one member shall be appointed for a term ending December 31, 2025; one member shall be appointed for a term ending December 31, 2027. Thereafter, ~~The~~ the appointments shall be for six-year terms. Notwithstanding any other provision of this code to the contrary, the term of a member shall expire pursuant to this subsection unless the member is reappointed by the Governor as set forth in subsection (c) of this section.

(e) A member of the Board of Review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to practice law in this state prior to appointment, and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

(f) No member of the Board of Review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

(g) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

(h) The board shall designate one of its members in rotation to be chair of the board for as long as the board may determine by order made and entered of record. In the absence of the chair, any other member designated by the members present shall act as chair.

(i) The Board of Review shall meet as often as necessary to conduct the board's administrative business and make rules of practice and procedure, at such times and places as the chair may determine. Two members shall be present in order to conduct administrative business and make rules of practice and procedure. All decisions of the board upon administrative matters, pursuant to this section, shall be determined by a majority of the members of the board. In the event of a tie vote, the chair shall cast the deciding vote.

(j) The Board of Review shall, from time to time, promulgate rules of practice and procedure for the review and determination of all objections filed with the board. The board does not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 *et seq.* of this code. Any rules adopted pursuant to this section which are applicable to the provisions of

this article are not subject to §29A-3-9 through §29A-3-16 of this code. The board shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

(k) The Board of Review may hire a clerk, hearing examiners, and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel: *Provided*, That for the purpose of any applicable Division of Personnel class specifications, hearing examiners must be classified under a class with "attorney" in the class title. All personnel of the Board of Review are under the supervision of the chair of the Board of Review.

(l) The administrative expenses of the Board of Review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the Board of Review.

(m) The amendments to this section made during the 2021 Regular Session of the Legislature shall become effective on July 1, 2022: *Provided*, That the board is authorized to promulgate rules and hire staff, pursuant to subsection (k) and (l) of this section, respectively, prior to July 1, 2022, to the extent necessary to comply with the requirements of this article that shall become effective on that date.

§23-5-12. Appeal to board; procedure; remand and supplemental hearing; effective until June 30, 2022.

[Repealed.]

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities; effective until June 30, 2022.

[Repealed.]

§23-5-14. Disqualification of board members.

In any ~~appeal matter~~ wherein a ~~board~~ member of the Workers' Compensation Board of Review is a party, or is personally interested in the results thereof ~~otherwise than as a general subscriber to the compensation fund, or he or she is connected with a contributor therein~~, or is a beneficiary therein, or is connected with a beneficiary therein, he or she shall be disqualified from participating in the hearing and determination of such appeal any objection to decisions of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable.

§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals of West Virginia prior to July 1, 2022; procedure; costs.

[Repealed.]

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees; effective until June 30, 2022.

[Repealed.]

The bill (Eng. Com. Sub. for H. B. 5515), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5527, Relating to Wellness Reimbursement Programs.

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

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

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

ARTICLE 64. WELLNESS REIMBURSEMENT PLANS.

§33-64-1. Definitions.

As used in this article:

"Broker" means an independent health insurance agent licensed in this state.

"Commissioner" means the Insurance Commissioner of West Virginia.

"Person" means a natural person, corporation, mutual company, unincorporated association, partnership, joint venture, limited liability company, trust, estate, foundation, not-for-profit corporation, unincorporated organization, government, or governmental subdivision or agency.

"Wellness reimbursement program, arrangement, or benefit plan" means a plan offered to an employer or employee that provides reimbursement or other wellness-related benefits intended to promote health or wellness, including but not limited to employer-sponsored wellness reimbursement arrangements or other wellness benefit structures offered through insurance or similar benefit models that:

(1) Have issued a contract to provide services and pay claims pertaining to reimbursements of qualified medical expenses relating to §26 U.S.C. 213 of the Internal Revenue Code; and

(2) Are intended, created, marketed, and sold as an ancillary product to an individual or group health insurance coverage or self-insured group health plan.

"Wellness reimbursement program, arrangement, or benefit plan" does not include any underlying individual or group health insurance coverage or a self-insured group health plan.

"Wellness reimbursement program administrator" means any person who manages the operation of a wellness reimbursement program.

§33-64-2. Wellness reimbursement program, arrangement, or benefit plan administrator to be licensed.

(a) No wellness reimbursement program, arrangement, or benefit plan administrator may sell, offer, market, promote, or operate a wellness reimbursement program, arrangement, or benefit plan as that term is defined in this article without first being licensed by the commissioner.

(b) Application for a license shall be on forms prescribed by the commissioner and shall be accompanied by an initial license fee of \$5,000, annual financial statements or reports for the two preceding calendar years, and any other documents that the commissioner may require to ensure that the wellness reimbursement program, arrangement, or benefit plan administrator meets the requirements for licensure set forth in this article. Thereafter, an application fee for a renewal offering shall be \$500. These fees shall be retained by the commissioner to offset the costs of administering this article.

(c) In addition to the documents required under subsection (b) of this section, a wellness reimbursement program, arrangement, or benefit plan administrator shall comply with federal ERISA requirements or submit a letter or document from the Internal Revenue Service or the U.S. Department of Labor approving of the specific wellness reimbursement program, arrangement, or benefit plan in question.

(d) A wellness reimbursement program, arrangement, or benefit plan administrator shall make and keep a full and correct record of its business and affairs, and the commissioner shall inspect these records at least every three years. The information from these records shall be furnished to the commissioner on demand, and the original books or records shall be open to examination by the commissioner when demanded. The cost of the examination shall be borne by the wellness reimbursement program, arrangement, or benefit plan administrator.

(e) A wellness reimbursement program, arrangement, or benefit plan administrator shall file and maintain with the commissioner a surety bond in favor of the state executed by a surety company authorized to transact business in this state. The commissioner may set the requirements of the surety bond as necessary.

(f) Before granting any license, the commissioner or his designee shall be satisfied that the wellness reimbursement program, arrangement, or benefit plan administrator is competent, trustworthy, financially responsible, has a good personal and business reputation, has not had an insurance license revoked, suspended, or denied in any jurisdiction within the preceding five years, and has not been convicted of a crime that bears a rational nexus to the activities licensed under this article in any jurisdiction. For purposes of this section, "convicted" includes a plea of guilty or a plea of nolo contendere.

(g) The commissioner may revoke or suspend any license issued to a wellness reimbursement program, arrangement, or benefit plan administrator when he or she finds that any condition exists which would have prohibited issuance of the original license, that the wellness reimbursement program, arrangement, or benefit plan administrator has violated any provision of this article, or that the wellness reimbursement program, arrangement, or benefit plan administrator has deceived or dealt unjustly with the citizens of this state. In lieu of revocation or suspension of license, the commissioner may impose a civil penalty not to exceed \$1,000 for each offense.

(h) Any wellness reimbursement program, arrangement, or benefit plan administrator who fails to obtain a license is subject to the penalties under §33-64-5 of this code and is subject to revocation of any licenses issued by the commissioner.

(i) Any proprietary information required by this article to be provided to, filed with, or available for review by the commissioner is confidential and is not subject to public disclosure, including disclosure pursuant to §29B-1-1 *et seq.* of this code.

§33-64-3. Compliance with federal and state laws.

(a) A wellness reimbursement program, arrangement, or benefit plan administrator shall attest to the commissioner and to the employer or employee that the wellness reimbursement program, arrangement, or benefit plan complies with all federal and state laws.

(b) A wellness reimbursement program, arrangement, or benefit plan administrator may not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

(c) If the wellness reimbursement program, arrangement, or benefit plan results in a taxable event for either the employer or the employee associated with the wellness reimbursement program, arrangement, or benefit plan, the wellness reimbursement program, arrangement, or benefit plan administrator shall defend the employer and its employees against any and all claims or suits that arise out of or by virtue of the wellness reimbursement program, arrangement, or benefit plan and shall indemnify the employer and its employees for a loss or judgment incurred by them as a result of the claim or suit.

§33-64-4. Brokers; commissions.

(a) A broker is not required to register as a wellness reimbursement program, arrangement, or benefit plan administrator to acquire commissions paid by such a company.

(b) A broker is not an employee of the wellness reimbursement program, arrangement, or benefit plan administrator and is only necessary to facilitate the partnership of the wellness reimbursement program, arrangement, or benefit plan administrator and the respective employee group enrolling in the wellness reimbursement program, arrangement, or benefit plan being that the services of the wellness reimbursement program, arrangement, or benefit plan are not straight-to-market services.

(c) Notwithstanding any provision of subsections (a) or (b) of this section to the contrary, a broker may not cause or knowingly permit the use of any advertisement, promotion, solicitation, representation, proposal, or offer that is untrue, deceptive, or misleading.

(d) A broker shall exercise good faith and fair dealing to a person when offering, selling, marketing, or promoting a wellness reimbursement program, arrangement, or benefit plan.

§33-64-5. Enforcement of this article.

(a) The commissioner shall enforce this article.

(b) A person who violates any part of this article is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$20,000 or confined in jail not more than one year, or both fined and confined, for each violation, and is subject to revocation of any license issued by the commissioner.

(c) The commissioner may propose for promulgation legislative rules and regulations as he or she considers necessary to implement this article.

§33-64-6. Wellness reimbursement programs, arrangements, or benefit plans do not apply to individual or group health plans.

Nothing in this article applies to any health or wellness programs or activities offered by an individual or group health coverage or self-insured group health plan to its enrollees.

§33-64-7. Insurance Commissioner to file report with Legislature.

Every three years after the effective date of this article, the Insurance Commissioner shall prepare and file a report with the Legislature addressing the implementation of this article, as it relates to the requirements for the programs outlined in this article, and any other information requested by the Legislature to be included within the report.

The bill (Eng. Com. Sub. for H. B. 5527), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5528, Relating to protection of personal residential information of certain public officials.

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 8. PUBLIC RECORDS MANAGEMENT AND PRESERVATION ACT.

§5A-8-24a. Protection of Personal Residential Information of Certain Public Officials.

(a) For purposes of this section:

"Covered individual" means any person who is or was previously elected, appointed, served, or employed as a judicial officer, prosecutor, public defender, law-enforcement officer, elected official, or campaign treasurer and includes any immediate family member residing in the same household as that individual.

"Controlling agency" means the state agency, county, municipality, or political subdivision that is in possession or control of a publicly accessible website, database, or record, containing personal residential information.

"Immediate family member" means spouse, child, parent, or any other family member related by blood or by law to the covered individual, and who resides in the same residence as the covered individual.

"Judicial officer" means a justice of the United States Supreme Court, any federal judge, a justice of the Supreme Court of Appeals of West Virginia, a state circuit judge, a family court judge, a magistrate, a state or federal administrative law judge, a municipal court judge, or any other judge established by state law.

"Law-enforcement officer" has the same meaning as that term is defined in §30-29-1 of this code and includes those individuals defined as "chief executive" in §30-29-1 of this code.

"Personal residential information" means a covered individual's home street address, personal residential telephone number, personal cellular telephone number that is not issued by an employing agency, or name when the name is associated with the home street address.

"Prosecutor" means the United States Attorney or his or her assistant United States attorneys, any other prosecutor established by federal law, the Attorney General or his or her assistant attorneys general, a county prosecuting attorney or his or her assistant prosecuting attorneys, or any other prosecutor established by state law.

"Record" means a publicly and remotely accessible website or database.

(b) If a covered individual provides a written request to the controlling agency and the covered individual identifies a specific record with personal residential information, the controlling agency shall remove or redact the covered individual's personal residential information from the specified record and shall make reasonable efforts to remove the information from all other records within the controlling state agency.

(c) If a covered individual provides a written request to the controlling state agency to have personal residential information removed or redacted and the controlling agency fails to remove or redact the information on the specified record, the covered individual may bring a civil action for injunctive or declaratory relief. If the court grants injunctive or declaratory relief, the controlling agency responsible for the violation may be required to pay reasonable attorneys' fees and other litigation costs reasonably incurred by the covered individual, as applicable and appropriate.

(d) This section does not prohibit disclosure of personal residential information for the following:

(1) Internal government use;

(2) Disclosures required by federal law;

(3) Disclosures to a consumer reporting agency, as defined in the Fair Credit Reporting Act, 15 U.S.C. § 1681 *et seq.*;

(4) Disclosures required pursuant to §15-12-1 of this code *et seq.*;

(5) Disclosures to local, state, or federal law-enforcement agencies;

(6) Disclosures subject to a valid subpoena or lawful discovery request;

(7) Disclosures required pursuant to §17A-2A-7 of this code;

(8) Physical documents affecting the title of real property recorded and indexed by a county;

(9) Disclosures to a title insurance company, title insurance agent, attorney, mortgage guarantee insurance company, mortgage loan originator, real estate broker, or relator;

(10) Records associated with Uniform Commercial Code filings and financing statements;

(11) Information provided to the Secretary of State, or his or her designee, or the chief local election officers, or their designees, for the purposes of enforcing election law; and

(12) Disclosures to electoral opponents, or the local chairperson of a political party, of covered individuals for the purpose of challenging a candidate's eligibility.

(e) At the time of the written request, the covered individuals shall affirm in writing that he or she understands the redaction may cause the individual to forfeit certain legal, promotional, or official notices that otherwise would be provided but for the redaction or nondisclosure.

The bill (Eng. Com. Sub. for H. B. 5528), as amended, was then ordered to third reading.

Eng. Com. Sub. for House Bill 5537, Repealing obsolete and outdated sections of the Education code.

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

At the request of Senator Martin, and by unanimous consent, the bill was advanced to third reading with the unreported Education committee amendment pending and the right for further amendments to be considered on that reading.

Eng. House Bill 5687, Relating to reducing the tax rate imposed on the gross value of metallurgical coal produced in this state.

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

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

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

ARTICLE 13A. SEVERANCE AND BUSINESS PRIVILEGE TAX ACT.

§11-13A-3. Imposition of tax on privilege of severing coal, limestone or sandstone, or furnishing certain health care services, effective dates therefor; reduction of severance rate for coal mined by underground methods based on seam thickness.

(a) *Imposition of tax.* — Upon every person exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use coal, limestone or sandstone, or in the business of furnishing certain health care services, there is hereby levied and shall be collected from every person exercising such privilege an annual privilege tax.

(b) *Rate and measure of tax.* — Subject to the provisions of subsection (h) of this section, the tax imposed in subsection (a) of this section is five percent of the gross value of the natural resource produced or the health care service provided, as shown by the gross income derived from the sale or furnishing thereof by the producer or the provider of the health care service, except as otherwise provided in this article: *Provided*, That effective July 1, 2019, the tax rate imposed by this subsection on the gross value of thermal or steam coal produced shall be reduced incrementally over the next three tax years for a total reduction of two percent by July 1, 2021. That on July 1, 2019, the reduction shall occur at the rate of 35 percent of the two percent reduction, on July 1, 2020, the reduction shall occur at the rate of 65 percent of the two percent reduction, and on July 1, 2021, at the rate of 100 percent of the two percent reduction: *Provided, however*, That effective July 1, 2027, the tax rate imposed by this subsection on the gross value of metallurgical coal produced shall be reduced as follows: the rate imposed by this subsection on the gross value of metallurgical coal severed between July 1, 2027, and June 30, 2028, shall be four and one-half percent (4.5%); the rate imposed by this subsection on the gross value of

metallurgical coal severed between July 1, 2028, and June 30, 2029 shall be four percent (4%); and the rate imposed by this subsection on the gross value of metallurgical coal severed beginning July 1, 2029, and thereafter shall be three and one-half percent (3.5%). In the case of coal, the rate of tax includes the thirty-five one hundredths of one percent additional severance tax on coal imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code and the additional severance tax on coal imposed by the state for the benefit of coal-producing counties as provided in §11-13A-6a of this code.

(c) "Thermal or steam coal" defined. - For purposes of this section the term "thermal or steam coal" means coal sold for the purpose of generating electricity.

(d) "Metallurgical coal" defined. - For purposes of this section the term "metallurgical coal" means coal that does not otherwise meet the definition of "thermal or steam coal" under subsection (c) of this section and which is not otherwise classifiable as thin seam coal, with average seam thickness below 45 inches, as set forth in subsection (h) of this section.

~~(d)~~ (e) "Certain health care services" defined. — For purposes of this section, the term "certain health care services" means, and is limited to, behavioral health services.

~~(e)~~ (f) Tax in addition to other taxes. — The tax imposed by this section applies to all persons severing or processing, or both severing and processing, in this state natural resources enumerated in subsection (a) of this section and to all persons providing certain health care services in this state as enumerated in subsection (d) of this section and shall be in addition to all other taxes imposed by law.

~~(f)~~ (g) Effective date. — This section, as amended in 1993, shall apply to gross proceeds derived after May 31, 1993. The language of this section, as in effect on January 1, 1993, shall apply to gross proceeds derived prior to June 1, 1993 and, with respect to such gross proceeds, shall be fully and completely preserved.

~~(g)~~ (h) Reduction of severance tax rate. — For tax years beginning after the effective date of this subsection, any person exercising the privilege of engaging within this state in the business of severing coal for the purposes provided in subsection (a) of this section shall be allowed a reduced rate of tax on coal mined by underground methods in accordance with the following:

(1) For coal mined by underground methods from seams with an average thickness of 37 inches to 45 inches, the tax imposed in subsection (a) of this section shall be two percent of the gross value of the coal produced. For coal mined by underground methods from seams with an average thickness of less than 37 inches, the tax imposed in subsection (a) of this section shall be one percent of the gross value of the coal produced. Gross value is determined from the sale of the mined coal by the producer. This rate of tax includes the thirty-five one hundredths of one percent additional severance tax imposed by the state for the benefit of counties and municipalities as provided in §11-13A-6 of this code.

(2) This reduced rate of tax applies to any new underground mine producing coal after the effective date of this subsection, from seams of less than 45 inches in average thickness or any existing mine that has not produced coal from seams 45 inches or less in thickness in the 180 days immediately preceding the effective date of this subsection.

(3) The seam thickness shall be based on the weighted average isopach mapping of actual coal thickness by mine as certified by a professional engineer.

~~(h)~~ (i) (1) Termination and expiration of the behavioral health severance and business privilege tax. — The tax imposed upon providers of health care services under the provisions of this article shall expire, terminate and cease to be imposed with respect to privileges exercised on or after July 1, 2016. Expiration of the tax as provided in this subsection does not relieve any person from payment of any tax imposed with respect to privileges exercised before the expiration date.

(2) Refunds made. — The Tax Commissioner shall issue a requisition on the Treasury for any amount finally, administratively or judicially determined to be an overpayment of the tax terminated under this subsection. The Auditor shall issue a warrant on the Treasurer for any refund requisitioned under this subsection payable to the taxpayer entitled to the refund, and the Treasurer shall pay the warrant out of the fund into which the amount refunded was originally paid.

~~(h)~~ (i) Termination and expiration of the privilege tax on limestone or sandstone. — The taxes imposed under this section for persons exercising the privilege of engaging or continuing within this state in the business of severing, extracting, reducing to possession and producing for sale, profit or commercial use limestone or sandstone shall cease, terminate and be of no further force or effect on and after July 1, 2019. Termination of the taxes imposed under this section do not relieve any person of any liability or duty to pay tax imposed under this article with respect to privileges exercised before the effective date of the termination.

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil.

(a) *Imposition of tax.* — For the privilege of engaging or continuing within this state in the business of severing natural gas or oil for sale, profit, or commercial use, there is levied and shall be collected from every person exercising the privilege an annual privilege tax at the rate and measure provided in subsection (b) of this section. ~~Provided, That~~ Effective for all taxable periods beginning on or after January 1, 2000, there is an exemption from the imposition of the tax provided in this article on the following:

- (1) Free natural gas provided to any surface owner;
- (2) Natural gas produced from any well which produced an average of less than 5,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable period;
- (3) Oil produced from any oil well which produced an average of less than one-half barrel of oil per day during the calendar year immediately preceding a given taxable period; and
- (4) For a maximum period of 10 years, all natural gas or oil produced from any well which has not produced marketable quantities of natural gas or oil for five consecutive years immediately preceding the year in which a well is placed back into production and thereafter produces marketable quantities of natural gas or oil.

(b) *Rate and measure of tax.* — The tax imposed in subsection (a) of this section is five percent of the gross value of the natural gas or oil produced by the producer as shown by the gross proceeds derived from the sale thereof by the producer, except as otherwise provided in this article. ~~Provided, That~~ Effective for taxable periods beginning on or after January 1, 2020:

- (1) For all natural gas produced from any well which produced an average in excess of 60,000 cubic feet of natural gas per day during the calendar year immediately preceding a given taxable year, and for oil produced from any well which produced an average in excess of 10 barrels of oil

per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer. For any natural gas and oil produced from any new well that is drilled and completed after June 30, 2027, the rate of tax is three-and-one-quarter percent of the gross value of the natural gas or oil produced, as shown by the gross proceeds derived from the sale thereof by the producer, for a period of 24 consecutive months calculated from the date of first sale of natural gas or oil from each such well. As used in this article, a new well is drilled and completed when it is hydraulically fractured;

(2) For all natural gas produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from any well, excluding wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is ~~two and five tenths~~ two-and-five-tenths percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer; and

(3) For all natural gas produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between 5,000 cubic feet of natural gas per day and 60,000 cubic feet of natural gas per day during the calendar year immediately preceding the beginning date of a given taxable year, and for oil produced from wells utilizing horizontal drilling techniques targeting shale formations, which produced an average between one-half barrel per day and 10 barrels per day, during the calendar year immediately preceding the beginning date of a given taxable year, the rate of tax is five percent of the gross value of the natural gas or oil produced as shown by the gross proceeds derived from the sale thereof by the producer.

(c) *Tax in addition to other taxes.* – The tax imposed by this section applies to all persons severing gas or oil in this state and is in addition to all other taxes imposed by law.

(d) For purposes of this section, in determining the average amount of production of gas and oil in any given calendar year, a taxpayer ~~must~~ shall calculate the actual production of ~~such the~~ well in the calendar year and divide the same by the number of days the well was in operation and producing gas or oil in ~~such that~~ that calendar year.

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

§11-13A-5a. Dedication of 10 percent of oil and gas severance tax for benefit of counties and municipalities and of three fourths of one percent of oil and gas severance tax for the benefit of the Office of Oil and Gas in the Department of Environmental Protection; distribution of major portion of such dedicated tax to oil and gas producing counties;

distribution of minor portion of such dedicated tax to all counties and municipalities; reports; rules; special funds in the office of state treasurer; methods and formulae for distribution of such dedicated tax; expenditure of funds by counties and municipalities for public purposes; and requiring special county and municipal budgets and reports thereon.

(a) Effective July 1, 1996, five percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this ~~code~~ article is hereby dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 1997, and thereafter, 10 percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this article is ~~hereby~~ dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section. Effective July 1, 2023, and every year thereafter, three fourths of one percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this code, not to exceed \$1,200,000, is ~~hereby~~ dedicated for the use and benefit of regulating the oil and gas industry by the Office of Oil and Gas in the Department of Environmental Protection and shall be deposited in the Oil and Gas Operating Permit and Processing Fund to ensure that the Office of Oil and Gas has sufficient funding to support its regulatory mission of ensuring the safety of the natural environment of this state. For any natural gas and oil produced from any new well that is drilled and completed after June 30, 2027:

(1) For a period of 24 consecutive months, calculated from the date of first sale of natural gas or oil from that new well, 15-and-one-half percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this article on that new well is dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section;

(2) For all periods following expiration of the 24 consecutive month period provided in this subdivision, 10 percent of the tax attributable to the severance of oil and gas imposed by §11-13A-3a of this article on that new well is dedicated for the use and benefit of counties and municipalities within this state and shall be distributed to the counties and municipalities as provided in this section; and

(3) As used in this article, a new well is drilled and completed when it is hydraulically fractured.

(b) Seventy-five percent of the dedicated tax for counties and municipalities shall be distributed by the State Treasurer in the manner specified in this section to the various counties of this state in which the oil and gas upon which this additional tax is imposed was located at the time it was removed from the ground. Those counties are referred to in this section as the "oil and gas producing counties". The remaining 25 percent of the net proceeds of this additional tax on oil and gas shall be distributed among all the counties and municipalities of this state in the manner specified in this section.

(c) The Tax Commissioner ~~is hereby granted~~ has plenary power and authority to promulgate:

(1) Reasonable rules requiring the furnishing by oil and gas producers of such additional information as may be necessary to compute the allocation required under the provisions of subsection (f) of this section; The Tax Commissioner is also hereby granted plenary power and authority to promulgate and

(2) Such other reasonable rules as may be necessary to implement the provisions of this section.

(d) In order to provide a procedure for the distribution of 75 percent of the dedicated tax for counties and municipalities on oil and gas to the oil and gas producing counties, the special fund known as the oil and gas county revenue fund established in the State Treasurer's office by chapter 242, Acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent act of the Legislature, is ~~hereby~~ continued. In order to provide a procedure for the distribution of the remaining 25 percent of the dedicated tax for counties and municipalities on oil and gas to all counties and municipalities of the state, without regard to oil and gas having been produced in those counties or municipalities, the special fund known as the all counties and municipalities revenue fund established in the State Treasurer's office by chapter 242, Acts of the Legislature, 1995 regular session, as amended and reenacted in the subsequent Act of the Legislature, is ~~hereby~~ continued and redesignated as the "all counties and municipalities oil and gas revenue fund". ~~and is hereby continued~~

Seventy-five percent of the dedicated tax for counties and municipalities on oil and gas shall be deposited in the oil and gas county revenue fund and 25 percent of this dedicated tax on oil and gas shall be deposited in the all counties and municipalities oil and gas revenue fund, from time to time, as the proceeds are received by the Tax Commissioner. The moneys in the funds shall be distributed to the respective counties and municipalities entitled to the moneys in the manner set forth in subsection (e) of this section.

(e) The moneys in the oil and gas county revenue fund and the moneys in the all counties and municipalities oil and gas revenue fund shall be allocated among and distributed annually to the counties and municipalities entitled to the moneys by the State Treasurer in the manner specified in this section. On or before each distribution date, the State Treasurer shall determine the total amount of moneys in each fund which will be available for distribution to the respective counties and municipalities entitled to the moneys on that distribution date. The amount to which an oil and gas producing county is entitled from the oil and gas county revenue fund shall be determined in accordance with subsection (f) of this section, and the amount to which every county and municipality shall be entitled from the all counties and municipalities oil and gas revenue fund shall be determined in accordance with subsection (g) of this section. After determining, as set forth in subsections (f) and (g) of this section, the amount each county and municipality is entitled to receive from the respective fund or funds, a warrant of the State Auditor for the sum due to the county or municipality shall issue and a check drawn thereon making payment of the sum shall thereafter be distributed to the county or municipality.

(f) The amount to which an oil and gas producing county is entitled from the oil and gas county revenue fund shall be determined by:

(1) In the case of moneys derived from tax on the severance of gas:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of gas then available for distribution by the total volume of cubic feet of gas extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of cubic feet of gas taken from the ground in the county during the preceding year; and

(2) In the case of moneys derived from tax on the severance of oil:

(A) Dividing the total amount of moneys in the fund derived from tax on the severance of oil then available for distribution by the total number of barrels of oil extracted in this state during the preceding year; and

(B) Multiplying the quotient thus obtained by the number of barrels of oil taken from the ground in the county during the preceding year.

(g) The amount to which each county and municipality is entitled from the all counties and municipalities oil and gas revenue fund shall be determined in accordance with the provisions of this subsection. For purposes of this subsection "population" means the population as determined by the most recent decennial census taken under the authority of the United States.

(1) The State Treasurer shall first apportion the total amount of moneys available in the all counties and municipalities oil and gas revenue fund by multiplying the total amount in the fund by the percentage which the population of each county bears to the total population of the state. The amount thus apportioned for each county is the county's "base share".

(2) Each county's base share shall then be subdivided into two portions. One portion is determined by multiplying the base share by that percentage which the total population of all unincorporated areas within the county bears to the total population of the county, and the other portion is determined by multiplying the base share by that percentage which the total population of all municipalities within the county bears to the total population of the county. The former portion shall be paid to the county and the latter portion shall be the "municipalities' portion" of the county's base share. The percentage of the latter portion to which each municipality in the county is entitled shall be determined by multiplying the total of the latter portion by the percentage which the population of each municipality within the county bears to the total population of all municipalities within the county.

(h) Moneys distributed to any county or municipality under the provisions of this section, from either or both special funds, shall be deposited in the county or municipal general fund and may be expended by the county commission or governing body of the municipality for such purposes as the county commission or governing body shall determine to be in the best interest of its respective county or municipality. ~~Provided, That~~ In counties with population in excess of 200,000, at least 75 percent of the funds received from the oil and gas county revenue fund shall be apportioned to and expended within the oil and gas producing area or areas of the county, the oil and gas producing areas of each county to be determined generally by the State Tax Commissioner. ~~Provided, however, That~~ The moneys distributed to any county or municipality under the provisions of this section shall may not be budgeted for personal services in an amount to exceed one fourth of the total amount of the moneys.

(i) On or before March 28, 1997, and each March 28 thereafter, each county commission or governing body of a municipality receiving any such moneys shall submit to the Tax Commissioner on forms provided by the Tax Commissioner a special budget, detailing how the moneys are to be spent during the subsequent fiscal year. The budget shall be followed in expending the moneys unless a subsequent budget is approved by the State Tax Commissioner. All unexpended balances remaining in the county or municipality general fund at the close of a fiscal year shall remain in the General Fund and may be expended by the county or municipality without restriction.

(j) On or before December 15, 1996, and each December 15 thereafter, the Tax Commissioner shall deliver to the Clerk of the Senate and the Clerk of the House of Delegates a

consolidated report of the budgets, created by subsection (i) of this section, for all county commissions and municipalities as of July 15 of the current year.

(k) The State Tax Commissioner shall retain for the benefit of the state from the dedicated tax attributable to the severance of oil and gas the amount of \$35,000 annually as a fee for the administration of the additional tax by the Tax Commissioner.

The bill (Eng. H. B. 5687), as amended, was then ordered to third reading.

Eng. House Bill 5689, Supplemental appropriation, Department of Homeland Security.

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

Eng. House Bill 5690, Supplemental appropriation, Adjutant General.

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

Eng. House Bill 5691, Supplemental appropriation, Department of Health.

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

Eng. House Bill 5692, Supplemental appropriation, State Road Fund.

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

Eng. House Bill 5693, Supplemental appropriation, Department of Tourism Revenue.

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

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

On page 2, by striking out "4,534,628,43", and inserting in lieu thereof "4,534,268.43".

The bill (Eng. H. B. 5693), as amended, was then ordered to third reading.

Eng. House Joint Resolution 42, Homestead exemption.

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

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

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

ARTICLE X. TAXATION AND FINANCE.

§1b. Property tax limitation and homestead exemption amendment of 1982.

Ad valorem property taxation shall be in accordance with this section and other applicable provisions of this article not inconsistent with this section.

SUBSECTION A — VALUE; RATE OF ASSESSMENT; EXCEPTIONS

Notwithstanding any other provisions of this Constitution and except as otherwise provided in this section, all property subject to ad valorem taxation shall be assessed at 60 percent of its value, as directed to be ascertained in this section, except that the Legislature may, from time to time, by general law agreed to by two-thirds of the members elected to each house, establish a higher percentage for the purposes of this paragraph, which percentage shall be uniform as to all classes of property defined in section one of this article, but not more than 100 percent of ~~such~~ the value.

Notwithstanding the foregoing, for July 1, 1982 and the first day of July of each year thereafter until the values may be fixed as a result of the first statewide reappraisal hereinafter required, assessments shall be made under the provisions of current statutory law, which is hereby validated for that purpose until and unless amended by the Legislature. Assessment and taxation in accord with this section ~~shall be deemed to be~~ is equal and uniform for all purposes.

SUBSECTION B — DETERMINATION OF VALUE

The Legislature shall provide by general law for periodic statewide reappraisal of all property, which reappraisal shall be related for all property to a specified base year which, as to each such reappraisal, shall be uniform for each appraisal for all classes of property and all counties. In such law, the Legislature shall provide for consideration of: (1) Trends in market values over a fixed period of years prior to the base year; (2) the location of the property; and (3) such other factors and methods as it may determine. ~~Provided, That~~ With respect to reappraisal of all property upon the base year of 1980, such reappraisals are ~~deemed~~ considered to be valid and in compliance with this section. ~~Provided, however, That~~ However, with respect to farm property, as defined, from time to time, by the Legislature by general law, the determination of value shall be according to its fair and reasonable value for farming purposes, as may be defined by general law.

The results of each statewide appraisal shall, upon completion, be certified and published and errors ~~therein~~ in the statewide appraisal may be corrected, all as provided by general law. ~~The first such statewide appraisal shall be completed, certified and published on or before March 31, 1985, for use when directed by the Legislature.~~

The Legislature shall further prescribe by general law the manner in which each statewide reappraisal shall be employed to establish the value of the various separately assessed parcels or interests in parcels of real property and various items of personal property subject to ad valorem property taxation, the methods by which increases and reductions in value subsequent to the base year of each statewide reappraisal shall be ascertained, and require the enforcement thereof.

SUBSECTION C — GENERAL HOMESTEAD EXEMPTION

Notwithstanding any other provisions of this Constitution to the contrary, the first ~~twenty thousand dollars~~ \$40,000 of assessed valuation of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his or her residence who is a citizen of this state and who is 65 years of age or older or is permanently and totally disabled as that term may be defined by the

Legislature, shall be exempt from ad valorem property taxation, subject to ~~such the~~ requirements, limitations, and conditions ~~as shall be~~ prescribed by general law. Effective January 1, 2027, the Legislature has the authority to adjust in general law the amount of the homestead exemption for citizens of the state who are 65 years of age or older or are permanently and totally disabled.

Notwithstanding any other provision of this Constitution to the contrary, the Legislature ~~shall have the authority to~~ may provide by general law for an exemption from ad valorem property taxation in an amount ~~not to exceed~~ not less than the first ~~twenty thousand dollars~~ \$40,000 of value of any real property, or of personal property in the form of a mobile home, used exclusively for residential purposes and occupied by the owner or one of the owners thereof as his or her residence who is a citizen of this state, and who is under 65 years of age and not totally and permanently disabled. ~~Provided, That~~ Upon enactment of ~~such the~~ general law, this exemption shall only apply to ~~such the~~ property in any county in which the property was appraised at its value as of January 1, 1980, or thereafter, as determined by the Legislature, and this exemption shall be phased in over ~~such the~~ period of time not to exceed five years from the date ~~such the~~ property was so appraised, or ~~such~~ longer time as the Legislature may determine by general law. ~~Provided, however, That~~ In no event ~~shall is~~ any one person and his or her spouse, or one homestead ~~be~~ entitled to more than one exemption under these provisions. ~~Provided further, That~~ In addition, these provisions are subject to ~~such the~~ requirements, limitations, and conditions as shall be prescribed by general law.

The Legislature ~~shall have the authority to~~ may provide by general law for property tax relief to citizens of this state who are tenants of residential or farm property.

SUBSECTION D — ADDITIONAL LIMITATIONS ON VALUE

With respect to the first statewide reappraisal, pursuant to this section, the resulting increase in value in each and every parcel of land or interest therein and various items of personal property subject to ad valorem property taxation over and above the previously assessed value shall be allocated over a period of ~~ten~~ 10 years in equal amounts annually. The Legislature may by general law also provide for the phasing in of any subsequent statewide reappraisal of property.

SUBSECTION E — LEVIES FOR FREE SCHOOLS

In equalizing the support of free schools provided by state and local taxes, the Legislature may require that the local school districts levy all or any portion of the maximum levies allowed under section one of this article which has been allocated to ~~such the~~ local school districts.

Within the limits of the maximum levies permitted for excess levies for schools or better schools in sections one and ten of this article, the Legislature may, in lieu of the exercise of such powers by the local school districts as ~~heretofore~~ provided in this section, submit to the voters, by general law, a statewide excess levy, and if it ~~be~~ is approved by the required number of voters, impose ~~such the~~ levy, subject however to all the limitations and requirements for the approval of ~~such the~~ levies as in the case of a district levy. The law submitting the question to the voters shall provide, upon approval of the levy by the voters, for the assumption of the obligation of any local excess levies for schools then in force ~~heretofore~~ authorized by the voters of a local taxing unit to the extent of ~~such the~~ excess levies imposed by the state and so as to avoid double taxation of those local districts. The Legislature may also by general law reserve to the school districts ~~such the~~ portions of the power to lay authorized excess levies as it may deem appropriate to enable local school districts to provide educational services which are not required to be furnished or supported by the state. If a statewide excess levy for the support of free schools is approved

by the required majority, the revenue from such a statewide excess levy shall be deposited in the State Treasury and be allocated first for the local obligations assumed and thereafter for ~~such~~ the part of the state effort to support free schools, by appropriation or as the law submitting the levy to the voters ~~shall require~~ requires, as the case may be.

The defeat of any such proposed statewide excess levy for school purposes ~~shall~~ does not in any way abrogate or impair any local existing excess levy for ~~such~~ that purpose nor prevent the adoption of any future local excess levy for ~~such~~ that purpose.

SUBSECTION F — IMPLEMENTATION

In the event of any inconsistency between any of the provisions of this section and other provisions of this Constitution, the provisions of this section shall prevail. The Legislature shall have plenary power to provide by general law for the equitable application of this article and, as to taxes to be assessed prior to the first statewide reappraisal, to make ~~such~~ the laws retroactive to July 1, 1982, or thereafter.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, this amendment is hereby numbered "Amendment 1" and designated as the "Homestead Exemption Increase Amendment" and the purpose of the proposed amendment is summarized as follows: "The purpose of the amendment is to raise the amount of the Homestead Exemption from a maximum of \$20,000 to a minimum of \$40,000 and to allow individual counties to raise the amount of the Homestead Exemption above \$40,000 through ballot initiatives for citizens 65 years of age or older or citizens who are permanently and totally disabled."

The resolution (Eng. H. J. R. 42), as amended, was then ordered to third reading.

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

Eng. Com. Sub. for House Bill 4538, Regarding fines in DOH work zones.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

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

Thereupon, on motion of Senator M. Maynard, the following amendment to the bill was reported by the Clerk:

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

ARTICLE 3. TRAFFIC SIGNS, SIGNALS, AND MARKINGS.

§17C-3-4a. Obedience to traffic-control instructions at site of street or highway construction or maintenance; penalty.

(a) The driver of any vehicle shall obey the traffic-control instructions of any law-enforcement officer or persons authorized by the commissioner of highways or by proper local authorities to

operate traffic-control devices, act as flagmen, or operate authorized vehicles engaged in work at or near the site of street or highway construction maintenance work, for the purpose of regulating, warning or guiding traffic, subject to the exceptions granted the driver of an authorized emergency vehicle in this chapter.

(b) Any person failing to comply with the requirements of this section is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$100; upon a second conviction within one year thereafter, shall be fined not more than \$200; and upon a third or subsequent conviction, shall be fined not more than \$500.

(c) Any person failing to comply with the requirements of this section when any worker is present is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$250; upon a second conviction within one year thereafter, shall be fined not more than \$500; and upon a third or subsequent conviction, shall be fined not more than \$1,000.

§17C-3-4b. Traffic violations in construction zones; posting requirement; criminal penalty.

(a) Where street or highway construction work is being conducted, signs and other traffic control devices, as adopted in §17C-3-1 of this code, shall be posted giving the location of the work and notifying all motorists as to the speed limit and any other traffic restrictions.

(b) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by less than 15 miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200; *Provided, That any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section when any worker is present by less than 15 miles per hour is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500.*

(c) Any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section by 15 miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$200 or confined in a regional jail not more than 20 days, or both; *Provided, That any person who exceeds any posted speed restriction or traffic restriction at a construction site referred to in subsection (a) of this section when any worker is present by 15 miles per hour or more is guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$1,000 or confined in a regional jail not more than 30 days, or both.*

(d) Notwithstanding the provisions of §17C-14-15 of this code, any person who commits a violation of §17C-14-15 of this code within a construction site referred to in subsection (a) of this section when any worker is present is guilty of a misdemeanor and, upon conviction thereof, shall be subject to fines not more than twice those authorized for the applicable offense under §17C-14-15 of this code.

~~(d)~~(e) Nothing in this section shall be construed to preclude prosecution of any operator of a motor vehicle who commits a violation of any other provision of this code for such violation.

Following discussion,

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

Engrossed Committee Substitute for House Bill 4538, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, Woodrum, and Smith (Mr. President)—34.

The nays were: None.

Absent: None.

So, a majority of all the members present and voting having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4538) passed.

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

Eng. Com. Sub. for House Bill 4538—A Bill to amend and reenact §17C-3-4a and §17C-3-4b of the Code of West Virginia, 1931, as amended; all relating to increasing fines and criminal penalties for speeding, traffic control violations, and violations of the Electronically Distracted Driving Act in construction work zones when workers are present.

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

Consideration of Engrossed Committee Substitute for House Bill 4538 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 4573, Foster Youth Post-Secondary Transition Awareness Act.

Having been read a third time in earlier proceedings today, and now coming up in deferred order, was again reported by the Clerk.

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

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

On page 2, after line 28, by adding a new section 56, to read as follows:

§18-5-56. Protection of vocational education agriculture programs.

(a) The Legislature finds that agriculture offers many benefits to the state and its individual citizens such as enhanced self-sufficiency, additional food security, contributions to the economy, and the enjoyment and satisfaction that can be experienced from various forms of agriculture.

(b) Vocational education agriculture programs shall be offered to all students, and these programs may only be terminated if the enrollment is the lowest enrollment of all vocational education programs. If a county school district terminates its program, the county school district

shall submit a report to the Legislative Oversight Commission on Education Accountability explaining the reasoning for terminating its program.

Engrossed Committee Substitute for House Bill 4573, as just amended, was then put upon its passage.

On the passage of the bill, the yeas were: Azinger, Barnhart, Barrett, Bartlett, Chapman, Charnock, Clements, Deeds, Fuller, Garcia, Grady, Hamilton, Hart, Helton, Jeffries, Martin, M. Maynard, Z. Maynard, Morris, Oliverio, Phillips, Queen, Roberts, Rose, Rucker, Takubo, Tarr, Taylor, Thorne, Weld, Willis, Woelfel, and Smith (Mr. President)—33.

The nays were: None.

Absent: Woodrum—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. 4573) passed.

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

Eng. Com. Sub. for House Bill 4573—A Bill to amend the code of West Virginia, 1931, as amended, by adding two new sections, designated §18-5-55 and 18-5-56, relating to relating to education generally; requiring the Department of Human Services to provide to the West Virginia Department of Education and county boards of education information regarding available post-secondary transition programs and services for students with current or former foster care experience; specifying minimum information that can be shared; allowing the Department of Human Services to continue sharing information directly with students in foster care and their foster families or legal guardians in certain instances; requiring county boards of education to ensure that information received is shared with appropriate school personnel and used for student informational purposes only; clarifying that new provisions do not require disclosure of foster care status in violation of state or federal privacy laws requiring vocational education agriculture programs to be offered to all students; making findings; allowing termination of a vocational education agriculture program only if enrollment is the lowest enrollment of all vocational education programs; and requiring if a county school district terminates its vocational education agriculture program that the district submit a report to the Legislative Oversight Commission on Education Accountability explaining the reasoning for terminating its program.

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

Action as to Engrossed Committee Substitute for House Bill 4573 having been concluded, the Senate proceeded to the consideration of

Eng. Com. Sub. for House Bill 4245, Authorizing Certain Agencies of the Department of Revenue to Promulgate Legislative Rules.

Having been read a second time in earlier proceedings today, and now coming up in deferred order with the Finance committee amendment pending (*shown in the Senate Journal of today, pages 66 to 75, inclusive*), was again reported by the Clerk.

The question being on the adoption of the Finance committee amendment to the bill.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4245) was advanced to third reading with the Finance committee amendment pending and the right reserved to consider other amendments to the bill on that reading.

On motion of Senator Martin, at 4:33 p.m., the Senate recessed for 15 minutes.

The Senate reconvened at 4:59 p.m.

At the request of Senator Martin, and by unanimous consent, the provisions of Rule 54 of the Rules of the Senate, relating to persons entitled to the privileges of the floor, were suspended in order to grant representatives for Somalia privileges of the floor for the day.

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

At the request of Senator Woodrum, and by unanimous consent, Senator Woodrum offered the following resolution from the floor:

Senate Resolution 65—Recognizing West Virginia as a global hub for critical mineral processing and encouraging opportunities for lawful private-sector dialogue and commercial engagement between businesses located within the State of West Virginia and rare earth critical mineral mining institutions around the world, beginning with businesses and institutions located within the Federal Republic of Somalia.

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

On motion of Senator Martin, at 5:03 p.m., the Senate recessed for five minutes.

The Senate reconvened at 5:54 p.m. and, at the request of Senator Martin, and by unanimous consent, returned to the fourth order of business.

Senator Barrett, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4004, Creating the Recharge West Virginia Program.

And has amended same.

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

Respectfully submitted,

Jason Barrett,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4004) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Barrett, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for Com. Sub. for House Bill 4006, Creating the West Virginia Aerospace and Advanced Manufacturing Growth Act.

And has amended same.

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

Respectfully submitted,

Jason Barrett,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for Com. Sub. for H. B. 4006) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Barrett, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for House Bill 4009, Relating to the creation of the Portable Benefit Account Act.

With an amendment from the Committee on Banking and Insurance 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 Finance.

Respectfully submitted,

Jason Barrett,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for H. B. 4009) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Barrett, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for Com. Sub. for House Bill 5412, Future Ready Education Act.

And has amended same.

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

Respectfully submitted,

Jason Barret,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for Com. Sub. for H. B. 5412) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Barrett, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. Com. Sub. for Com. Sub. for House Bill 5453, To modify the school aid funding formula.

With an amendment from the Committee on Education 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 Finance.

Respectfully submitted,

Jason Barrett,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. Com. Sub. for Com. Sub. for H. B. 5453) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

Senator Barrett, from the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration

Eng. House Bill 5510, Eliminate the requirement for private wedding venues to own or lease 2 acres in rural location.

And has amended same.

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

Respectfully submitted,

Jason Barrett,
Chair.

At the request of Senator Martin, unanimous consent being granted, the bill (Eng. H. B. 5510) contained in the preceding report from the Committee on Finance was taken up for immediate consideration, read a first time, and ordered to second reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senator Morris.

Thereafter, at the request of Senator Martin, and by unanimous consent, the remarks by Senator Morris were ordered printed in the Appendix to the Journal.

The Senate proceeded to the thirteenth order of business.

The following communication was reported by the Clerk:

The Senate of West Virginia
Charleston

LEE CASSIS
CLERK OF THE SENATE



STATE CAPITOL, ROOM M-211
1900 KANAWHA BLVD. EAST
CHARLESTON, WV 25305-0800
304-357-7800

March 12, 2026

The Honorable Patrick Morrisey
Governor, State of West Virginia
1900 Kanawha Boulevard, East
Charleston, West Virginia 25305

Dear Governor Morrisey,

The following bill, authenticated by the signature of the Clerk of each House, and signed by the President of the Senate and the Speaker of the House of Delegates, has been examined and found truly enrolled:

Com. Sub. for S. B. 137, Modifying parole eligibility for crime of second degree murder and voluntary manslaughter.

This bill is presented to you on this day, March 12, 2026.

Respectfully submitted,

A handwritten signature in black ink, appearing to read "Lee Cassis".

Lee Cassis
Clerk of the Senate

C: The Honorable Jeffrey Pack
Clerk of the House of Delegates

Pending announcement of a meeting of the Committee on Rules,

On motion of Senator Martin, at 6:01 p.m., the Senate adjourned until tomorrow, Friday, March 13, 2026, at 10 a.m.

SENATE CALENDAR

**Friday, March 13, 2026
10:00 AM**

UNFINISHED BUSINESS

S. R. 63 - Designating March 13, 2026, as Veterans Visibility Day

S. R. 64 - Opposing China's Misuse of UN Resolution 2758

THIRD READING

Eng. Com. Sub. for H. B. 4007 - Relating to industrial access roads - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4010 - Providing a statutory program for loaning financial assistance to local airports for airplane hangar construction in this state

Eng. Com. Sub. for H. B. 4012 - Relating to reducing the regulatory burden on utility companies when constructing and maintaining electric power generation and transmission facilities within this state - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4025 - Exempting certain employees from the classified civil service system - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4087 - To create a West Virginia-Ireland Education Alliance.

Eng. H. B. 4106 - Allowing constitutional carry for 18- to 20-year-olds - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4176 - To allow youth and handicapped hunters to harvest a buck deer or doe during youth/handicapped special hunts

Eng. Com. Sub. for H. B. 4191 - Relating to providing child care generally

Eng. Com. Sub. for H. B. 4198 - E-Verify Safe Harbor Act - (Com. amend. pending) - (With right to amend) (original similar to SB462)

Eng. Com. Sub. for H. B. 4245 - Authorizing Certain Agencies of the Department of Revenue to Promulgate Legislative Rules - (Com. amend. pending) - (With right to amend) (original similar to SB292)

Eng. Com. Sub. for H. B. 4345 - Relating to the preservation of missing persons records and evidence

Eng. Com. Sub. for H. B. 4418 - Creating "The Tax Efficiency Act of 2026"

Eng. H. B. 4425 - To repeal the provision allowing for students to transfer from one school to another without losing eligibility.

Eng. H. B. 4452 - To remove Mortmain restrictions on religious organizations - (With right to amend)

Eng. Com. Sub. for H. B. 4577 - Relating to driver's licenses - (Com. title amend. pending)

Eng. Com. Sub. for Com. Sub. for H. B. 4588 - Relating to participating in the federal tax credit scholarship program (original similar to SB644)

Eng. Com. Sub. for H. B. 4592 - Relating to college campus safety

Eng. H. B. 4602 - Relating to requiring the Department of Human Services to establish a pilot program to contract for supplemental caseworker aide services for the Bureau for Social Services - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4603 - Relating to the creation of the process of obtaining and adjudicating a pre-adjudicatory alternative disposition

Eng. Com. Sub. for H. B. 4606 - Relating to the meaning of residence for the purpose of bail

Eng. Com. Sub. for H. B. 4710 - Changing the limit on switching parties before filing to run for office from 60 days to 180 days prior to an election.

Eng. Com. Sub. for H. B. 4712 - Increasing the criminal penalties for DUI causing death to be known as "Baylea's Law." - (Com. title amend. pending)

Eng. H. B. 4765 - Teacher, School Personnel, and State Police Pay Raise - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 4865 - Providing for a program allowing election official trainees to be appointed as election officials - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 4869 - Establish narrow, clearly bounded guaranteed-issue rights for Medicare Supplement policies in West Virginia.

Eng. Com. Sub. for Com. Sub. for H. B. 4995 - Require the use of video cameras in certain special education classrooms - (With right to amend)

Eng. Com. Sub. for H. B. 4996 - Relating to bail in cases involving terroristic threats to schools or children - (Com. title amend. pending)

Eng. H. B. 5048 - To ensure virtual instruction for foster students while in temporary placement facilities.

Eng. Com. Sub. for H. B. 5065 - Relating to hotel occupancy tax. - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5074 - Relating to changing the allocation of proceeds in the Medical Cannabis Program Fund.

Eng. Com. Sub. for H. B. 5101 - The Joanna Phillips Domestic Violence Prevention Act

Eng. H. B. 5166 - To provide notice to any political committees violating the filing requirements prior to assessing any civil fines and giving the Secretary of State authority to grant additional time for compliance not to exceed an additional 14 days. - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5168 - To increase funding for EMS first responders.

Eng. Com. Sub. for H. B. 5182 - Relating generally to authorizing security personnel employed by the State Treasurer to carry concealed weapons while performing his or her official duties

Eng. Com. Sub. for H. B. 5212 - Relating to financial aid for post-secondary education.

Eng. Com. Sub. for H. B. 5214 - Relating to drug testing of parents who have had abuse and/or neglect claims substantiated against them prior to reunification. - (Com. amend. and title amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5353 - To bring virtual currency kiosks within the purview of money transmission licensure and create disclosure requirements and daily transaction limitations for new and existing customers.

Eng. H. B. 5366 - Relating to rules governing the practice of law - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5401 - Relating to voting in West Virginia elections while residing overseas - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5438 - To modify the foundation allowance to improve instructional programs.

Eng. Com. Sub. for H. B. 5441 - Reforming State Personnel System - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5462 - Relating to Mine Subsidence

Eng. Com. Sub. for H. B. 5484 - Creating the crime of conspiracy to deny medical treatment to victim of sexual offense - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5515 - Relating to modernizing and updating workers' compensation statutes. - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5527 - Relating to Wellness Reimbursement Programs

Eng. Com. Sub. for H. B. 5528 - Relating to protection of personal residential information of certain public officials. - (Com. title amend. pending)

Eng. Com. Sub. for H. B. 5537 - Repealing obsolete and outdated sections of the Education code. - (Com. amend. pending) - (With right to amend)

Eng. Com. Sub. for H. B. 5582 - Extending program for drug screening of applicants for TANF - (Com. amend. and title amend. pending) - (With right to amend)

Eng. H. B. 5687 - Relating to reducing the tax rate imposed on the gross value of metallurgical coal produced in this state

Eng. H. B. 5689 - Supplemental appropriation, Department of Homeland Security

Eng. H. B. 5690 - Supplemental appropriation, Adjutant General

Eng. H. B. 5691 - Supplemental appropriation, Department of Health

Eng. H. B. 5692 - Supplemental appropriation, State Road Fund

Eng. H. B. 5693 - Supplemental appropriation, Department of Tourism Revenue

Eng. H. J. R. 42 - Homestead exemption - (Com. title amend. pending)

SECOND READING

Eng. Com. Sub. for Com. Sub. for H. B. 4004 - Creating the Recharge West Virginia Program - (Com. amend. pending)

Eng. Com. Sub. for H. B. 4006 - Creating the West Virginia Aerospace and Advanced Manufacturing Growth Act - (Com. amend. pending)

Eng. Com. Sub. for H. B. 4009 - Relating to the creation of the Portable Benefit Account Act - (Com. amend. pending)

Eng. Com. Sub. for Com. Sub. for H. B. 5412 - Future Ready Education Act - (Com. amend. pending)

Eng. Com. Sub. for Com. Sub. for H. B. 5453 - To modify the school aid funding formula. - (Com. amend. pending) - (With right to amend)

Eng. H. B. 5510 - Eliminate the requirement for private wedding venues to own or lease 2 acres in rural location. - (Com. amend. pending)

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2026

Friday, March 13, 2026

9:45 a.m.

Rules

(Room 219M)