

WEST VIRGINIA LEGISLATURE

SENATE JOURNAL

EIGHTY-SECOND LEGISLATURE
REGULAR SESSION, 2016
FORTY-NINTH DAY

Charleston, W. Va., Tuesday, March 1, 2016

The Senate met at 11 a.m.

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

Prayer was offered by Dr. Mervin Smith, District Superintendent of the West Virginia South District Church of the Nazarene, Charleston, West Virginia.

The Senate was then led in recitation of the Pledge of Allegiance by the Honorable Donna J. Boley, a senator from the third district.

Pending the reading of the Journal of Monday, February 29, 2016,

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

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

The Senate then proceeded to the third order of business.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 2826—A Bill to amend and reenact §17-4-49 of the Code of West Virginia, 1931, as amended, relating to access from commercial, industrial or mercantile establishments; requiring the Commissioner of the Division of Highways when he or she deems appropriate, to either place no parking signs or clearly mark right-of-way areas with yellow paint with the words “no parking” and hash marks for points of access existing on or before July 1, 2016 for business, industrial or mercantile establishments where the driveway entrance or access is more than fifty feet wide and is along a road with a speed limit of more than forty-five miles per hour; requiring owners of points of access approved after July 1, 2016 to include no parking signs, markings

and paint necessary to comply with appropriate safety requirements and with the approval of the commissioner; and designating this as “Sarah Nott’s Law”.

Referred to the Committee on Transportation and Infrastructure; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4279—A Bill to amend and reenact §20-7-8 of the Code of West Virginia, 1931, as amended, relating to maintenance and disposition of impounded and seized firearms by the Division of Natural Resources.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4317—A Bill to amend and reenact §48-9-209 of the Code of West Virginia, 1931, as amended, relating to limiting factors in parenting plans; and clarifying the court’s consideration of fraudulent reports of domestic violence and child abuse in imposing limits on a parenting plan in order to protect a child from harm.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. House Bill 4324—A Bill to amend and reenact §21A-10-11 of the Code of West Virginia, 1931, as amended, relating to authorizing information sharing by Workforce West Virginia related to administration of the Workforce Innovation and Opportunity Act with agencies of state government responsible for vocational rehabilitation, employment and training.

Referred to the Committee on Government Organization.

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

Eng. House Bill 4346—A Bill to amend and reenact §20-2-22a of the Code of West Virginia, 1931, as amended, relating to bear hunting; providing that training dogs on or pursuing bears with dogs is hunting bear; providing that it is unlawful to kill, attempt to kill, or wound or attempt to wound any bear using bait; providing examples of what constitutes bait; providing period of time after removal of bait an area is still considered baited; providing that it is unlawful to feed bears at any time; providing that it is unlawful to transport or possess any part of a bear not lawfully tagged; deleting certain bear hunting prohibitions; revising provisions relating to bears damaging or destroying property; permitting Division of Natural Resources officer or designated wildlife biologist to issue bear depredation permit or authorize hunting of bears to owners or lessees suffering damage to real or personal property from bears; permitting officer or wildlife biologist to recommend other measures to end or minimize property damage by bears; providing requirements for bear damage reports by the Division of Natural Resources for bear damage claims; providing bear damage claim limit for property covered by insurance policy; providing for establishment of procedures by Division of Natural Resources to issue bear depredation permits and organizing bear hunts; and decreasing criminal penalties.

Referred to the Committee on Natural Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4352—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §9-5-24, relating to the potential sale, renovation or leasing of certain state-owned health care facilities by the Secretary of the Department of Health and Human Resources; requiring the secretary to contract a consultant to submit a plan relating to the potential sale, renovation or lease of such facilities to the Governor and Joint Committee on Government and Finance by November 30, 2016; identifying the minimum contents of said plan; exempting the hiring of the said consultant from certain purchasing requirements; requiring the secretary to update the Joint Committee on Government and Finance regarding the selection of the consultant; requiring the Director of the Division of Personnel to assist the secretary to create a strategy related to the employees of the facilities that are the subject of the plan; creating in the State Treasury a special revenue account to be known as the “Health Care Facilities Liquidation Fund”; requiring the secretary to prepare an accounting of all such assets, and providing that expenditures from the fund are not authorized from collections deposited in the fund but are to be made only in accordance with appropriation by the Legislature; and prohibiting the secretary from acting pursuant to the plan without enactment of legislation authorizing the same.

Referred to the Committee on Health and Human Resources; and then to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4377—A Bill to amend and reenact §7-18-1 and §7-18-3 of the Code of West Virginia, 1931, as amended, all relating to exemptions from the hotel occupancy tax; eliminating exemption from the imposition of the hotel occupancy tax on consumers occupying a hotel room for thirty or more consecutive days; and excluding from the meaning of the term “hotel room” certain sleeping accommodations.

Referred to the Committee on Finance.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4448—A Bill to amend and reenact §61-3C-14a of the Code of West Virginia, 1931, as amended, relating to violations of the West Virginia Computer Crime and Abuse Act; providing an exception to the prohibition against making contact with a person after being requested by the person to desist from contacting them; and providing that communications made by a lender or debt collector to a consumer that do not violate the West Virginia Consumer Credit and Protection Act are not a violation of the West Virginia Computer Crime and Abuse Act’s prohibition against making contact with a person after being requested by the person to desist from contacting them.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4463—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §30-3-13a; and to amend said code by adding thereto a new section, designated §30-14-12d, all relating to the practice of medicine, permitting the practice of telemedicine; establishing requirements and exceptions for licensure; providing for

establishment of physician-patient or podiatrist-patient relationship through telemedicine encounter; establishing certain requirements for physician or podiatrist using telemedicine technologies to practice medicine or podiatry; establishing standard of care for telemedicine medical practice; providing requirements regarding establishment and maintenance of patient records in use of telemedicine; providing limitations on prescriptions which may be made in telemedicine encounters; providing exceptions when in-person physician-patient or podiatrist-patient relationship is established; allowing rulemaking for legislative approval by Board of Medicine and Board of Osteopathic Medicine; and preserving traditional physician-patient and podiatrist-patient relationships.

Referred to the Committee on Health and Human Resources; and then to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4502—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5-1-29, relating to reciprocity agreements with contiguous states and the District of Columbia; authorizing the governor to enter into and renew reciprocity agreements with the governors and other appropriate state governmental agencies from states that share contiguous borders with this state, and the District of Columbia, to establish regulations, licensing requirements and taxation for small businesses headquartered in this state or in contiguous states or the District of Columbia that conduct business in both this state and the contiguous state; providing the governor discretionary power to delegate such authority to the Attorney General or secretary of an executive branch department to negotiate and enter into such reciprocity agreements on behalf of the governor; requiring any reciprocity agreement that impacts or affects taxation, either the receipt or payment thereof, to be approved by Legislative act; and defining terms.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. Com. Sub. for House Bill 4505—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §29-22-15a; and to amend and reenact §29B-1-4 of said code, all relating to allowing powerball, mega millions, and hot lotto winners to remain anonymous; and providing for an exemption under the Freedom of Information Act for powerball winner information.

Referred to the Committee on the Judiciary.

A message from The Clerk of the House of Delegates announced the passage by that body and requested the concurrence of the Senate in the passage of

Eng. House Bill 4706—A Bill to amend and reenact §18-2-26a of the Code of West Virginia, 1931, as amended, relating to regional county board meetings on empowering and equipping boards to attain goals for public education; removing requirements for biennial meetings on shared services; requiring notice to legislative oversight commission; removing requirement for state board approval of meeting format in advance; requiring report of meetings and specifying content; and providing for recommendations by legislative oversight commission to legislature.

Referred to the Committee on Education.

The Senate proceeded to the sixth order of business.

Senators Williams, Stollings and Plymale offered the following resolution:

Senate Concurrent Resolution 54—Requesting Division of Highways name bridge number 12-220-4/38 (12A068) (38.92159, -79.18086), locally known as Pansy Bridge, carrying US 220 over North Mill Creek in Grant County, West Virginia, the “Union Army CPT John Bond Memorial Bridge”.

Whereas, John Bond was born April 18, 1818, in Pendleton County in what was then the State of Virginia; died October 23, 1892, and is buried in Bond Cemetery, Brushy Run, West Virginia; and

Whereas, Captain Bond was a justice of the peace from 1852 to 1859 and was also the coroner for Pendleton County; and

Whereas, Captain Bond served in Company A, West Virginia State Troops, from 1862 to 1863 as part of the loyal Virginia Troops, which were also known as the Home Guard; and

Whereas, Company A was made up of approximately fifty-three men from the area now known as Franklin Pike, but at the time was called North Mill Creek; and

Whereas, The local Home Guard was involved in several skirmishes around the Petersburg and North Mill Creek areas with the Confederate McNeill’s Rangers from the Moorefield area. They also were involved in transporting supplies from the closest railroad station at New Creek Station, now known as Keyser; and

Whereas, It is fitting that an enduring memorial be established to commemorate Union Army CPT John Bond representing Company A of the West Virginia State Troops who ably served their country in its time of greatest need; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 12-22-4/38 (12A068) (38.92159, -79.18086), locally known as Pansy Bridge, carrying US 220 over North Mill Creek in Grant County, West Virginia, the “Union Army CPT John Bond Memorial Bridge”; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to have made and be placed signs identifying the “Union Army CPT John Bond Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and to Randy Ours, Commander, 7th West Virginia Infantry Camp 37, Sons of Union Veterans of the Civil War, 5611 Franklin Pike, Petersburg, WV 26847.

Which, under the rules, lies over one day.

Senators Maynard, Stollings and Plymale offered the following resolution:

Senate Concurrent Resolution 55—Requesting portion of Sweetwater Road on U. S. Route 35 near Dunlow, Wayne County, West Virginia, beginning at longitude, latitude: 37.980503, -82.359323 and ending at longitude, latitude: 38.010280, -82.306155, be named “The Dewey ‘Duke’ Maynard Memorial Road”.

Whereas, Dewey “Duke” Maynard was born January 18, 1941, at Holden in Logan County, West Virginia, the youngest son of the late Hardin and Genevieve McNeeley Maynard. He was married to Icie

Moore Maynard for 47 years. On January 14, 2010, Dewey "Duke" Maynard died at the age of 69 after suffering from a debilitating neurological disease that robbed him of his pride and mobility. Duke was survived by his wife, daughter and son-in-law, Robin Lee and J. T. Spaulding; a son and daughter-in-law, Dewey Lee Maynard, Jr., and Sueann Maynard, all of Dunlow, West Virginia; and

Whereas, He was a retiree of the Laborers Local 543 and from his own business, Maynard Logging; a member of the Masonic Blue Lodge in Crum, WV; and was a 32nd Degree Master Mason; and

Whereas, Duke was well loved throughout his community, especially by those he visited each Christmas Eve for 21 years, providing gifts and playing Santa Clause for the school children; and

Whereas, Dewey "Duke" Maynard lived in the area near this bridge his entire life and was a kind and generous man who donated personal time and money to local youth and high school sports programs; and

Whereas, He served as a Republican Committeeman for several years, promoting community involvement in the democratic process and personally ensuring the elderly had transportation to polling places; and

Whereas, In 1991, "Duke" created and gathered signatures on a petition to request the Department of Highways to place guardrails on Sweet Water Road for the sole purpose of protecting the school buses that traveled the road; and

Whereas, He was widely known to help those who had lost their jobs by hiring them for odd jobs and aiding them to obtain membership in the Laborer's Local 543. He helped many neighbors purchase groceries at great financial burden to himself and gathered clothes and food for neighbors who had lost their homes to fire or natural disasters. He was named an Honorary Wayne County Deputy Sheriff by Sheriff Toby Shy and was called upon to locate burned vehicles, stolen property and assisting deputies carry out their duties by helping them find remote areas and people they were not familiar with; and

Whereas, Naming a portion of Sweetwater Road on U. S. Route 35 near Dunlow, Wayne County, West Virginia, beginning at longitude, latitude: 37.980503, -82.359323 and ending at longitude, latitude: 38.010280, -82.306155, "The Dewey 'Duke' Maynard Memorial Road" would be a fitting tribute and honor to the memory of Dewey "Duke" Maynard who was a loving husband, father and a valuable asset to his community, county and state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name a portion of Sweetwater Road on U. S. Route 35 near Dunlow, Wayne County, West Virginia, beginning at longitude, latitude: 37.980503, -82.359323 and ending at longitude, latitude: 38.010280, -82.306155, "The Dewey 'Duke' Maynard Memorial Road"; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the road as the "The Dewey 'Duke' Maynard Memorial Road"; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways and the surviving relatives of Dewey 'Duke' Maynard.

Which, under the rules, lies over one day.

Senators Boso, Unger, Stollings, Williams and Gaunch offered the following resolution:

Senate Resolution 55—Designating March 2016 as Healthy Bodies Healthy Spirits Month.

Whereas, West Virginia is at the top or near top of most national chronic disease lists; and

Whereas, Churches are powerful forces for positive change in West Virginia communities; and

Whereas, Almost one in four West Virginia eleven-year-olds have high blood pressure, according to West Virginia University CARDIAC testing; and

Whereas, West Virginia faith organizations want to be healthy role models for our children and adults; and

Whereas, The West Virginia Healthy Bodies Healthy Spirits Network has been formed to help faith organizations promote healthier congregations and communities; and

Whereas, Major faith denominations are collaborating with Try This West Virginia in a statewide campaign to help reverse our poor health; therefore, be it

Resolved by the Senate:

That the Senate hereby designates March 2016 as Healthy Bodies Healthy Spirits Month; and, be it

Further Resolved, The Senate encourages the collaboration of governmental agencies, community organizations and faith-based institutions to be active participants in a movement that promotes health and wellness for all West Virginians; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Try This West Virginia.

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

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and resumed business under the sixth order.

Senators Kessler, Prezioso, Williams, Unger, Stollings, Plymale and Ashley offered the following resolution:

Senate Resolution 56—Reaffirming the sister-state relationship between the State of West Virginia and Taiwan.

Whereas, Taiwan shares the same values of freedom, democracy and human rights with the United States and the State of West Virginia; and

Whereas, August 4, 2016, will mark the 36th anniversary of the sister-state relationship between West Virginia and Taiwan; and

Whereas, For the past 36 years, the sister-state relationship with Taiwan has been strengthened through the efforts of the Taipei Economic and Cultural Representative Office resulting in better mutual understanding; and

Whereas, Taiwan signed a reciprocate agreement with West Virginia to recognize driver's licenses issued by each government on July 29, 2015, reflecting the friendship, trust and cooperation

between the two governments, which benefits both the people of Taiwan and West Virginia in terms of travel and business; and

Whereas, In 2014, West Virginia exported more than \$48 million to Taiwan, making it our 23rd largest export market in the world and making Taiwan a key trading partner with West Virginia; and

Whereas, On January 16, 2016, Taiwan held its sixth direct presidential election and again demonstrated the strength and vitality of its democratic system, showcasing Taiwan as a beacon of democracy for Chinese communities around the world; and

Whereas, The 6.4 magnitude earthquake which struck Taiwan on February 10, 2016, caused devastation and the loss of lives in southern Taiwan, and the sorrow and suffering are deeply felt and shared by the people of West Virginia; and

Whereas, The United States and eleven other countries have signed the Trans-Pacific Partnership (TPP), a twenty-first century trade agreement which will boost all members' economic growth; Taiwan's inclusion in the TPP will further strengthen bilateral economic relations; enhance the welfare of the United States; and benefit all TPP members; and

Whereas, Taiwan has been proven to be a valuable contributor in a broad range of global issues and is necessary to be granted access to meaningfully participate in various international organizations including the World Health Organization, International Civil Aviation Organization, United Nation Framework Convention on Climate Change and International Criminal Police Organization; therefore, be it

Resolved by the Senate:

That the Senate hereby reaffirms the sister-state relationship between the State of West Virginia and Taiwan; and, be it

Further Resolved, That the Senate expresses its heart-felt sympathies to those affected by the February 10, 2016, earthquake that struck Taiwan; and, be it

Further Resolved, That the Clerk is hereby directed to forward a copy of this resolution to Dr. Lyushun Shen, the Representative of the Taipei Economic and Cultural Representative Office in the United States.

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

Thereafter, at the request of Senator Carmichael and by unanimous consent, the remarks by Senator Kessler regarding the adoption of Senate Resolution 56 were ordered printed in the Appendix to the Journal.

On motion of Senator Carmichael, the Senate recessed for one minute.

Upon expiration of the recess, the Senate reconvened and proceeded to the eighth order of business.

Eng. Com. Sub. for Com. Sub. for Senate Bill 12, Relating to County Local Powers 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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller,

Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 12) 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 Senate Bill 545, Relating to asbestos abatement on oil and gas pipelines.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 545) passed with its title.

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

Com. Sub. for Senate Bill 641, Transferring revenues from certain greyhound racing funds to State Excess Lottery Revenue Fund.

On third reading, coming up in regular order, with the right having been granted on yesterday, Monday, February 29, 2016, for amendments to be received on third reading, was reported by the Clerk.

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

On page thirty-seven, section eight, after line forty-two by adding a new subsection, designated subsection (d), to read as follows:

(d) *Legislative approval required for result of special election to take effect.* — Following an election held pursuant to the provisions of subsection (c) of this section, the county commission of the county in which the racetrack is located shall notify the Legislature of the results of the special election. The result of the special election shall not take effect without the express approval of both houses of the Legislature by concurrent resolution. If both houses adopt the concurrent resolution under this subsection, the result of the special election shall take effect.;

And by relettering the remaining subsections;

And,

On page fifty-six, section seven, after line forty-nine by adding a new subsection, designated subsection (h), to read as follows:

(h) *Legislative approval required for result of special election to take effect.* — Following an election held pursuant to the provisions of subsection (g) of this section, the county commission of the county in which the racetrack is located shall notify the Legislature of the results of the special election. The result of the special election shall not take effect without the express approval of both houses of the Legislature by concurrent resolution. If both houses adopt the concurrent resolution under this subsection, the result of the special election shall take effect.

There being no further amendments offered,

The bill, as just amended, was ordered to engrossment.

Engrossed Committee Substitute for Senate Bill 641 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Hall, Karnes, Kessler, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—29.

The nays were: Ferns, Gaunch, Kirkendoll, Laird and Unger—5.

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 S. B. 641) passed with its title.

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

Eng. Senate Bill 670, Relating to filling vacancies in elected offices.

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

On motion of Senator Carmichael, the bill was referred to the Committee on Rules.

Eng. Com. Sub. for Senate Bill 691, Modifying certain air pollution standards.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 691) 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 Senate Joint Resolution 1, County Economic Development Amendment.

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

On the adoption of the resolution, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 resolution (Eng. Com. Sub. for S. J. R. 1) adopted, as follows:

Eng. Com. Sub. for Senate Joint Resolution 1—Proposing an amendment to the Constitution of the State of West Virginia, amending article X thereof, by adding thereto a new section, designated section one-d, relating to authorizing the Legislature to, by general law, allocate a portion of ad valorem property taxes paid by owners of certain new manufacturing facilities and large capital additions to existing manufacturing facilities located in counties in which county commissions elect to fund infrastructure capital improvements, in whole or in part, using property taxes; numbering and designating such proposed amendment; and providing a summarized statement of the purpose of such proposed amendment.

Resolved by the Legislature of West Virginia, two thirds of the members elected to each house agreeing thereto:

That the question of ratification or rejection of an amendment to the Constitution of the State of West Virginia be submitted to the voters of the state at the next general election to be held in 2016, which proposed amendment is that article X thereof be amended by adding thereto a new section, designated section one-d, to read as follows:

ARTICLE X. TAXATION AND FINANCE.**§1d. Use of property taxes to finance county economic development.**

Any other provision of this Constitution notwithstanding, the Legislature may, by general law, authorize county commissions to allocate and spend a portion of property taxes imposed pursuant to section one, article X of this Constitution, but not including taxes attributable to excess levies and levies for bonded indebtedness, which are paid by owners of new manufacturing facilities in their county that cost more than \$50 million, or by owners of new capital additions to existing manufacturing facilities in their county when the capital addition costs more than \$50 million. The Legislature may, from time to time, increase these thresholds and may impose restrictions and conditions on the use of property taxes allocated pursuant to this section. The property taxes allocated pursuant to this section may be used to pay for infrastructure capital improvements on a pay-as-you go basis and to pay debt service on infrastructure capital improvement bonds. However, when the property taxes are used to pay debt service on infrastructure capital improvement bonds, the bonds may be issued without a vote of the people for a period of not more than thirty years. The allocation of property tax collections paid by a manufacturing facility described in this section ceases thirty years after the first year of the allocation in the county. For purposes of this section, the term "infrastructure capital improvement project" includes the following public facilities or assets that are owned, supported or established by county government or the state at the request of county government: (1) Water treatment and distribution facilities; (2) wastewater treatment and disposal facilities; (3) sanitary

sewers; (4) storm water, drainage and flood control facilities; (5) public primary and secondary school facilities, when owned by the county board of education; (6) public roads, bridges and rights-of-way, when owned by the state; (7) parks and recreational facilities, when owned by the county, a municipality or joint economic development entities; (8) law enforcement, emergency medical, rescue and fire protection facilities; and (9) other infrastructure capital improvement projects as defined by the Legislature.

Resolved further, That in accordance with the provisions of article eleven, chapter three of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered Amendment No. 1 and designated as the County Economic Development Amendment and the purpose of the proposed amendment is summarized as follows: "To amend the State Constitution to permit the Legislature to allow county commissions to fund county infrastructure projects to promote economic development using property taxes imposed on new manufacturing facilities and capital additions to existing manufacturing facilities when the new facility, or the capital addition, costs more than \$50 million without requiring the Legislature to make local levying body whole for some or all of the revenue foregone during the period of the property taxes are allocated pursuant to this section."

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 4228, Relating to transportation network companies.

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: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. 4228) 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 4228—A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article designated §17-29-1, §17-29-2, §17-29-3, §17-29-4, §17-29-5, §17-29-6, §17-29-7, §17-29-8, §17-29-9, §17-29-10, §17-29-11, §17-29-12, §17-29-13, §17-29-14, §17-29-15, §17-29-16, §17-29-17, §17-29-18 and §17-29-19, all relating to transportation network companies; providing definitions; declaring not common carriers, taxi cabs or for-hire vehicle services; requiring permits from the Division of Motor Vehicles for TNCs to operate in the state; outlining requirements for such permits including payment of an annual permit fee; requiring an agent for service of process; providing for fare collection, identification of TNC vehicles and drivers, and electronic receipts; requiring financial responsibility and disclosure thereof; providing for different level of financial responsibility based on circumstances; requiring disclosures of financial responsibility to TNC drivers; allowing automobile insurers to exclude certain coverages; defining the relationship between drivers and transportation network companies; providing that workers compensation coverage not required under certain circumstances; requiring transportation network companies to adopt a policy of zero tolerance of alcohol or drug use for drivers; requiring for certain record keeping practices; providing requirements for drivers; requiring background checks and other

requirements before drives may accept trip requests for TNCs; establishing criteria which disqualify persons from acting as TNC drivers; requiring vehicle inspections; requiring transportation network companies to adopt policies prohibiting solicitation or acceptance of cash payments and a policy of nondiscrimination; prohibiting additional charges for providing services to persons with physical disabilities; requiring customer records to be kept; prescribing certain tax requirements, limitations and exemptions; and prohibiting certain political subdivisions from imposition of licensure or other requirements or fees.

Senator Carmichael moved that the bill take effect July 1, 2016.

On this question, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

So, two thirds of all the members elected to the Senate having voted in the affirmative, the President declared the bill (Eng. Com. Sub. for H. B. 4228) takes effect July 1, 2016.

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

The Senate proceeded to the ninth order of business.

Com. Sub. for Senate Bill 25, Providing selection procedure for state delegates to Article V convention.

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

Com. Sub. for Senate Bill 104, Classifying Marshall University Forensic Science Center as a criminal justice agency.

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

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

On page two, section twenty-four-c, after line fourteen, by adding a new subsection, designated subsection (e), to read as follows:

(e) The superintendent shall partner with the DNA and Digital Forensics sections of the Marshall University Forensic Science Center, which is designated as a Disaster Recovery Laboratory, to enhance the ability of the superintendent and the State Police to comply with their responsibilities.

The bill (Com. Sub. for S. B. 104), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 337, Creating 5-year tax credit for businesses on post-mine sites.

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

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

On page two, section three, line four, after the word "state" by changing the period to a colon and inserting the following proviso: *Provided*, That the dollar amount of the credit claimed by an eligible new business entity may not exceed the amount of the investment the entity made on the post-mine site.

The bill (Com. Sub. for S. B. 337), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 363, Creating exemption for autocycles.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Senate Bill 363 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 363) passed with its title.

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

Senate Bill 398, Revocation of certificate of authority to conduct business.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 398 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. S. B. 398) passed with its title.

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

Com. Sub. for Com. Sub. for Senate Bill 454, Licensing and regulating medication-assisted treatment programs for substance use disorders.

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

On motion of Senator Trump, the following amendments to the bill were reported by the Clerk, considered simultaneously, and adopted:

On page thirty-two, section seven, line four, by striking out the word “shall” and inserting in lieu thereof the word “may”;

And,

On page thirty-two, section seven, line five, by striking out the word “may” and inserting in lieu thereof the word “shall”.

The bill (Com. Sub. for Com. Sub. for S. B. 454), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Com. Sub. for Senate Bill 460, Repealing regulation of opioid treatment programs and creating licenses for all medication-assisted programs.

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

On motion of Senator Carmichael, the bill was rereferred to the Committee on the Judiciary.

Com. Sub. for Com. Sub. for Senate Bill 484, Relating to reemployment rights of military personnel.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Committee Substitute for Senate Bill 484 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 484) passed with its title.

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

Senate Bill 494, Creating Legislative Oversight Commission on Department of Transportation Accountability.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 494 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. S. B. 494) passed with its title.

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

Com. Sub. for Senate Bill 528, Altering power of Higher Education Policy Commission.

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

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

Com. Sub. for Senate Bill 534, Relating to procedures for driver's license suspension and revocation in criminal proceedings.

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

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

On page nine, section two, after line one hundred sixty-eight, by adding a new subsection, designated subsection (t), to read as follows:

(t) No person convicted of a felony offense under this section shall be eligible for participation in the Motor Vehicle Alcohol Test and Lock Program as described in section three-a, article five-a of this chapter. Unless otherwise ordered by the court, any person who is convicted of a misdemeanor offense is eligible for participation in the Motor Vehicle Alcohol Test and Lock Program as described in section three-a, article five-a of this chapter.

The bill (Com. Sub. for S. B. 534), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 539, Relating to condemnation proceedings.

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

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

Com. Sub. for Senate Bill 555, Providing for 3-cent tax increase on sale of fuel when cost is less than \$2 per gallon.

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

On motions of Senators Plymale, Kessler, Stollings and Williams, 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:

That §11-14C-5 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §11-15-3 and §11-15-3c of said code be amended and reenacted; that §17A-2-13 of said code be amended and reenacted; that §17A-3-4 of said code be amended and reenacted; that §17A-4-1 and §17A-4-10 of said code be amended and reenacted; that §17A-4A-10 of said code be amended and reenacted; that §17A-10-1, §17A-10-3, §17A-10-10 and §17A-10-11 of said code be amended and reenacted; that §17B-2-1, §17B-2-3a, §17B-2-8 and §17B-2-11 of said code be amended and reenacted; and that §17D-2-2 of said code be amended and reenacted, all to read as follows:

CHAPTER 11. TAXATION.

ARTICLE 14C. MOTOR FUEL EXCISE TAX.

§11-14C-5. Taxes levied; rate.

(a) There is hereby levied on all motor fuel an excise tax composed of a flat rate equal to \$.205 per invoiced gallon and, on alternative fuel, on each gallon equivalent, plus a variable component comprised of:

(1) On motor fuel other than alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable: *Provided*, That the motor fuel excise tax shall take effect January 1, 2004: *Provided, however*, That the variable component shall be equal to five percent of the average wholesale price of the motor fuel: *Provided further*, That the average wholesale price shall be no less than 97 cents per invoiced gallon and is computed as hereinafter prescribed in this section: *And provided further*, That on and after January 1, 2010, the average wholesale price shall be no less than \$2.34 per invoiced gallon and is computed as hereinafter prescribed in this section: *And provided further*, That on and after January 1, 2017, the average wholesale price shall be no less than \$2.54 per invoiced gallon and is computed as hereinafter prescribed in this section. However, on and after July 1, 2016, the flat tax component of the invoiced value of motor fuel, other than alternative fuel, shall be increased by 3 cents in addition to the \$.205 flat tax and variable component specified in this subsection: *And provided further*, That whenever the actual calculation of the average wholesale price per gallon of motor fuel goes above \$2.00 per invoiced gallon the 3 cent addition is no longer in effect for that year when the Tax Commissioner's notification goes into effect on January 1 of that calendar year; and

(2) On alternative fuel, either the tax imposed by section eighteen-b, article fifteen of this chapter or the tax imposed under section thirteen-a, article fifteen-a of this chapter, as applicable. The tax on alternative fuel takes effect on January 1, 2014, with a variable component equal to five percent of the average wholesale price of the alternative fuel.

(b) *Determination of average wholesale price.* —

(1) To simplify determining the average wholesale price of all motor fuel, the Tax Commissioner shall, effective with the period beginning the first day of the month of the effective date of the tax and each January 1 thereafter, determine the average wholesale price of motor fuel for each annual period on the basis of sales data gathered for the preceding period of July 1 through October 31. Notification of the average wholesale price of motor fuel shall be given by the Tax Commissioner at least thirty days in advance of each January 1 by filing notice of the average wholesale price in the State Register and by other means as the Tax Commissioner considers reasonable.

(2) The "average wholesale price" means the single, statewide average per gallon wholesale price, rounded to the third decimal (thousandth of a cent), exclusive of state and federal excise taxes

on each gallon of motor fuel or on each gallon equivalent of alternative fuel as determined by the Tax Commissioner from information furnished by suppliers, importers and distributors of motor fuel and alternative-fuel providers, alternative-fuel bulk end users and retailers of alternative fuel in this state, or other information regarding wholesale selling prices as the Tax Commissioner may gather or a combination of information. In no event shall the average wholesale price be determined to be less than 97 cents per gallon of motor fuel. For calendar year 2009, the average wholesale price of motor fuel shall not exceed the average wholesale price of motor fuel for calendar year 2008 as determined pursuant to the notice filed by the Tax Commissioner with the Secretary of State on November 21, 2007, and published in the State Register on November 30, 2007. On and after January 1, 2010, in no event shall the average wholesale price be determined to be less than \$2.34 per gallon of motor fuel. On and after January 1, 2017, the average wholesale price shall be no less than \$2.54 per invoiced gallon and is computed as hereinafter prescribed in this section. On and after January 1, ~~2014~~ 2017, the average wholesale price shall not vary by more than ten percent from the average wholesale price of motor fuel as determined by the Tax Commissioner for the previous calendar year. Any limitation on the average wholesale price of motor fuel contained in this subsection shall not be applicable to alternative fuel.

(3) All actions of the Tax Commissioner in acquiring data necessary to establish and determine the average wholesale price of motor fuel, in providing notification of his or her determination prior to the effective date of a change in rate, and in establishing and determining the average wholesale price of motor fuel may be made by the Tax Commissioner without compliance with the provisions of article three, chapter twenty-nine-a of this code.

(4) In an administrative or court proceeding brought to challenge the average wholesale price of motor fuel as determined by the Tax Commissioner, his or her determination is presumed to be correct and shall not be set aside unless it is clearly erroneous.

(c) There is hereby levied a floorstocks tax on motor fuel held in storage outside the bulk transfer/terminal system as of the close of the business day preceding January 1, 2004, and upon which the tax levied by this section has not been paid. For the purposes of this section, "close of the business day" means the time at which the last transaction has occurred for that day. The floorstocks tax is payable by the person in possession of the motor fuel on January 1, 2004. The amount of the floorstocks tax on motor fuel is equal to the sum of the tax rate specified in subsection (a) of this section multiplied by the gallons in storage as of the close of the business day preceding January 1, 2004.

(1) Persons in possession of taxable motor fuel in storage outside the bulk transfer/terminal system as of the close of the business day preceding January 1, 2004, shall:

(A) Take an inventory at the close of the business day preceding January 1, 2004, to determine the gallons in storage for purposes of determining the floorstocks tax;

(B) Report no later than January 31, 2004, the gallons on forms provided by the commissioner; and

(C) Remit the tax levied under this section no later than June 1, 2004.

(2) In the event the tax due is paid to the commissioner on or before January 31, 2004, the person remitting the tax may deduct from their remittance five percent of the tax liability due.

(3) In the event the tax due is paid to the commissioner after June 1, 2004, the person remitting the tax shall pay, in addition to the tax, a penalty in the amount of five percent of the tax liability due.

(4) In determining the amount of floorstocks tax due under this section, the amount of motor fuel in dead storage may be excluded. There are two methods for calculating the amount of motor fuel in dead storage:

(A) If the tank has a capacity of less than ten thousand gallons, the amount of motor fuel in dead storage is two hundred gallons and if the tank has a capacity of ten thousand gallons or more, the amount of motor fuel in dead storage is four hundred gallons; or

(B) Use the manufacturer's conversion table for the tank after measuring the number of inches between the bottom of the tank and the bottom of the mouth of the drainpipe: *Provided*, That the distance between the bottom of the tank and the bottom of the mouth of the draw pipe is presumed to be six inches.

(d) Every licensee who, on the effective date of any rate change, has in inventory any motor fuel upon which the tax or any portion thereof has been previously paid shall take a physical inventory and file a report thereof with the commissioner, in the format as required by the commissioner, within thirty days after the effective date of the rate change, and shall pay to the commissioner at the time of filing the report any additional tax due under the increased rate.

(e) The Tax Commissioner shall determine by January 1, 2014, the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register and by other means that the Tax Commissioner considers reasonable. The Tax Commissioner may redetermine the gasoline gallon equivalent for each alternative fuel by filing a notice of the gasoline gallon equivalent in the State Register at least thirty days in advance of January 1 for the next succeeding tax year. For purposes of this notice, the Tax Commissioner may adopt or incorporate by reference provisions of the National Institute of Standards and Technology, United States Department of Commerce, the Internal Revenue Code, United States Treasury Regulations, the Internal Revenue Service publications or guidelines or other publications or guidelines which may be useful in determining, setting or describing the gasoline gallon equivalent for each alternative fuel used as motor fuel.

ARTICLE 15. CONSUMERS SALES AND SERVICE TAX.

§11-15-3. Amount of tax; allocation of tax and transfers.

(a) *Vendor to collect.* — For the privilege of selling tangible personal property or custom software and for the privilege of furnishing certain selected services defined in sections two and eight of this article, the vendor shall collect from the purchaser the tax as provided under this article and article fifteen-b of this chapter, and shall pay the amount of tax to the Tax Commissioner in accordance with the provisions of this article or article fifteen-b of this chapter.

(b) *Amount of tax.* — The general consumer sales and service tax imposed by this article shall be at the rate of 6 cents on the dollar of sales or services, excluding gasoline and special fuel sales, which remain taxable at the rate of 5 cents on the dollar of sales. Beginning January 1, 2017, the general consumer sales and service tax imposed by this article shall be at the rate of 7 cents on the dollar of sales or services.

(c) *Calculation tax on fractional parts of a dollar until January 1, 2004.* — There shall be no tax on sales where the monetary consideration is 5 cents or less. The amount of the tax shall be computed as follows:

(1) On each sale, where the monetary consideration is from 6 cents to 16 cents, both inclusive, 1 cent.

(2) On each sale, where the monetary consideration is from 17 cents to 33 cents, both inclusive, 2 cents.

(3) On each sale, where the monetary consideration is from 34 cents to 50 cents, both inclusive, 3 cents.

(4) On each sale, where the monetary consideration is from 51 cents to 67 cents, both inclusive, 4 cents.

(5) On each sale, where the monetary consideration is from 68 cents to 84 cents, both inclusive, 5 cents.

(6) On each sale, where the monetary consideration is from 85 cents to \$1, both inclusive, 6 cents.

(7) If the sale price is in excess of \$1, 6 cents on each whole dollar of sale price, and upon any fractional part of a dollar in excess of whole dollars as follows: 1 cent on the fractional part of the dollar if less than 17 cents; 2 cents on the fractional part of the dollar if in excess of 16 cents but less than 34 cents; 3 cents on the fractional part of the dollar if in excess of 33 cents but less than 51 cents; 4 cents on the fractional part of the dollar if in excess of 50 cents but less than 68 cents; 5 cents on the fractional part of the dollar if in excess of 67 cents but less than 85 cents; and 6 cents on the fractional part of the dollar if in excess of 84 cents. For example, the tax on sales from \$1.01 to \$1.16, both inclusive, 7 cents; on sales from \$1.17 to \$1.33, both inclusive, 8 cents; on sales from \$1.34 to \$1.50, both inclusive, 9 cents; on sales from \$1.51 to \$1.67, both inclusive, 10 cents; on sales from \$1.68 to \$1.84, both inclusive, 11 cents and on sales from \$1.85 to \$2, both inclusive, 12 cents: *Provided*, That beginning January 1, 2004, tax due under this article shall be calculated as provided in subsection (d) of this subsection and this subsection (c) does not apply to sales made after December 31, 2003.

(d) *Calculation of tax on fractional parts of a dollar after December 31, 2003.* — Beginning January 1, 2004, the tax computation under subsection (b) of this section, and any amendments thereto, shall be carried to the third decimal place, and the tax rounded up to the next whole cent whenever the third decimal place is greater than four and rounded down to the lower whole cent whenever the third decimal place is four or less. The vendor may elect to compute the tax due on a transaction on a per item basis or on an invoice basis provided the method used is consistently used during the reporting period.

(e) *No aggregation of separate sales transactions, exception for coin-operated devices.* — Separate sales, such as daily or weekly deliveries, shall not be aggregated for the purpose of computation of the tax even though the sales are aggregated in the billing or payment therefor. Notwithstanding any other provision of this article, coin-operated amusement and vending machine sales shall be aggregated for the purpose of computation of this tax.

(f) *Rate of tax on certain mobile homes.* — Notwithstanding any provision of this article to the contrary, after December 31, 2003, the tax levied on sales of mobile homes to be used by the owner thereof as his or her principal year-round residence and dwelling shall be an amount equal to six percent of fifty percent of the sales price.

(g) *Construction; custom software.* — After December 31, 2003, whenever the words “tangible personal property” or “property” appear in this article, the same shall also include the words “custom software”.

(h) *Computation of tax on sales of gasoline and special fuel.* — The method of computation of tax provided in this section does not apply to sales of gasoline and special fuel.

(i) Dedication of tax to the State Road Fund. — 1 cent of the tax imposed and collected under this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasurer's office and used only for the purpose of construction, reconstruction, maintenance and repair of public highways and payment of principal and interest on state bonds issued for highway purposes.

§11-15-3c. Imposition of consumers sales tax on motor vehicle sales; rate of tax; use of motor vehicle purchased out of state; definition of sale; definition of motor vehicle; exemptions; collection of tax by Division of Motor Vehicles; dedication of tax to highways; legislative and emergency rules.

(a) Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, beginning on July 1, 2008, all motor vehicle sales to West Virginia residents shall be subject to the consumers sales tax imposed by this article.

(b) *Rate of tax on motor vehicles.* — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, the rate of tax on the sale and use of a motor vehicle shall be five ~~four~~ percent of its sale price, as defined in section two, article fifteen-b of this chapter; ~~Provided, That so much of the sale price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section or section four, article three, chapter seventeen-a of this code has been paid by the purchaser shall be deducted from the total actual sale price paid for the motor vehicle, whether the motor vehicle be new or used.~~

(c) *Motor vehicles purchased out of state.* — Notwithstanding this article or article fifteen-a to the contrary, the tax imposed by this section shall apply to all motor vehicles, used as defined by section one, article fifteen-a of this chapter, within this state, regardless of whether the vehicle was purchased in a state other than West Virginia.

(d) *Definition of sale.* — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, for purposes of this section, "sale", "sales" or "selling" means any transfer or lease of the possession or ownership of a motor vehicle for consideration, including isolated transactions between individuals not being made in the ordinary course of repeated and successive business and also including casual and occasional sales between individuals not conducted in a repeated manner or in the ordinary course of repetitive and successive transactions.

(e) *Definition of motor vehicle.* — For purposes of this section, "motor vehicle" means every propellable device in or upon which any person or property is or may be transported or drawn upon a highway including, but not limited to: Automobiles; buses; motor homes; motorcycles; motorboats; all-terrain vehicles; snowmobiles; low-speed vehicles; trucks, truck tractors and road tractors having a weight of less than fifty-five thousand pounds; trailers, semitrailers, full trailers, pole trailers and converter gear having a gross weight of less than two thousand pounds; and motorboat trailers, fold-down camping trailers, traveling trailers, house trailers and motor homes; except that the term "motor vehicle" does not include: Modular homes, manufactured homes, mobile homes, similar nonmotive propelled vehicles susceptible of being moved upon the highways but primarily designed for habitation and occupancy; devices operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission; mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile equipment as defined in section one, article one, chapter seventeen-a of this code; trucks, truck tractors and road tractors having a gross weight of fifty-five thousand pounds or more; trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater; *Provided, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for mobile equipment as defined in section one, article one, chapter seventeen-a of this code; special mobile*

equipment defined in section one, article one, chapter seventeen-a of this code; Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more; and Class C trailers, semitrailers, full trailers, pole trailers and converter gear having weight of two thousand pounds or greater does not subject the sale or purchase of the vehicle to the consumer sales and service tax imposed by section three of this article.

(f) *Exemptions.* — Notwithstanding any other provision of this code to the contrary, the tax imposed by this section shall not be subject to any exemption in this code other than the following:

(1) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d, chapter seventeen-a of this code. For purposes of this section, a daily passenger car means a motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The Commissioner of Motor Vehicles shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(2) The tax imposed by this section does not apply where the motor vehicle has been acquired by a corporation, partnership or limited liability company from another corporation, partnership or limited liability company that is a member of the same controlled group and the entity transferring the motor vehicle has previously paid the tax on that motor vehicle imposed by this section. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(3) The tax imposed by this section does not apply where motor vehicle has been acquired by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to be a bona fide senior citizen service organization by the Bureau of Senior Services existing under the provisions of article five, chapter sixteen of this code.

(4) The tax imposed by this section does not apply to any active duty military personnel stationed outside of West Virginia who acquires a motor vehicle by sale within nine months from the date the person returns to this state.

(5) The tax imposed by this section does not apply to motor vehicles acquired by registered dealers of this state for resale only.

(6) The tax imposed by this section does not apply to motor vehicles acquired by this state or any political subdivision thereof or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property.

(7) The tax imposed by this section does not apply to motor vehicles acquired by an urban mass transit authority, as defined in article twenty-seven, chapter eight of this code, or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code for the purpose of providing mass transportation to the public at large or designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(8) The tax imposed by this section does not apply to the registration of a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the Commissioner of Motor Vehicles may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the Commissioner of Motor Vehicles may require to show bona fide residency in this state; and

(D) Makes application to the Division of Motor Vehicles for a title and registration and pays all other fees required by chapter seventeen-a of this code within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article.

(9) On and after January 1, 2009, the tax imposed by this section does not apply to Class B trucks, truck tractors and road tractors registered at a gross weight of fifty-five thousand pounds or more or to Class C trailers, semitrailers, full trailers, pole trailers and converter gear having a weight of two thousand pounds or greater. If an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle.

(10) The tax imposed by this section does not apply to vehicles leased by residents of West Virginia. On or after January 1, 2009, a tax is imposed upon the monthly payments for the lease of any motor vehicle leased under a written contract of lease by a resident of West Virginia for a contractually specified continuous period of more than thirty days, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle. Leases of thirty days or less are taxable under the provisions of this article and article fifteen-a of this chapter without reference to this section.

(g) *Division of Motor Vehicles to collect.* — Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Division of Motor Vehicles shall collect the tax imposed by this section: *Provided*, That such tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(h) *Dedication of tax to highways.* — Notwithstanding any provision of this article or article fifteen-a of this chapter to the contrary, all taxes collected pursuant to this section, after deducting the amount of any refunds lawfully paid, shall be deposited in the State Road Fund in the State Treasury and expended by the Commissioner of Highways for design, maintenance and construction of roads in the state highway system.

(i) *Legislative rules; emergency rules.* — Notwithstanding any provision of this article, article fifteen-a and article ten of this chapter to the contrary, the Commissioner of Motor Vehicles shall promulgate legislative rules explaining and implementing this section, which rules shall be promulgated in accordance with the provisions of article three, chapter twenty-nine-a of this code and should include a minimum taxable value and set forth instances when a vehicle is to be taxed at fair market value rather than its purchase price. The authority to promulgate rules includes authority to

amend or repeal those rules. If proposed legislative rules for this section are filed in the state Register before June 15, 2008, those rules may be promulgated as emergency legislative rules as provided in article three, chapter twenty-nine-a of this code.

(j) Notwithstanding any other provision of this code, effective January 1, 2009, no municipal sales or use tax or local sales or use tax or special downtown redevelopment district excise tax or special district excise tax shall be imposed under article twenty-two, chapter seven of this code or article thirteen, chapter eight of this code or article thirteen-b of said chapter or article thirty-eight of said chapter or any other provision of this code, except this section, on sales of motor vehicles as defined in this article or on any tangible personal property excepted or exempted from tax under this section. Nothing in this subsection shall be construed to prevent the application of the municipal business and occupation tax on motor vehicle retailers and leasing companies.

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

ARTICLE 2. DIVISION OF MOTOR VEHICLES.

§17A-2-13. Authority to administer oaths and certify copies of records; information as to registration.

(a) Officers and employees of the division designated by the commissioner are, for the purpose of administering the motor vehicle laws, authorized to administer oaths and acknowledge signatures, and shall do so without fee.

(b) The commissioner and such officers of the division as he or she may designate are hereby authorized to prepare under the seal of the division and deliver upon request in conformance with article two-a of this chapter a certified copy of any record of the division, charging a fee of ~~one dollar~~ \$3 for each document so authenticated, in addition to any applicable fee required by this code for issuance, modification or duplication of a title, registration, operator's license, vehicle history, or driving record. and every such certified copy is admissible in any proceeding in any court in like manner as the original thereof.

(c) Subject to the provisions of article two-a of this chapter, the commissioner and such officers of the division as he or she may designate may furnish the requested information to any person making a written request for information regarding the registration of any vehicle at a fee of ~~one dollar~~ \$7 for each registration about which information is furnished.

ARTICLE 3. ORIGINAL AND RENEWAL OF REGISTRATION; ISSUANCE OF CERTIFICATES OF TITLE.

§17A-3-4. Application for certificate of title; fees; abolishing privilege tax; prohibition of issuance of certificate of title without compliance with consumer sales and service tax provisions; exceptions.

(a) Certificates of registration of any vehicle or registration plates for the vehicle, whether original issues or duplicates, may not be issued or furnished by the Division of Motor Vehicles or any other officer or agent charged with the duty, unless the applicant already has received, or at the same time makes application for and is granted, an official certificate of title of the vehicle in either an electronic or paper format. The application shall be upon a blank form to be furnished by the Division of Motor

Vehicles and shall contain a full description of the vehicle, which description shall contain a manufacturer's serial or identification number or other number as determined by the commissioner and any distinguishing marks, together with a statement of the applicant's title and of any liens or encumbrances upon the vehicle, the names and addresses of the holders of the liens and any other information as the Division of Motor Vehicles may require. The application shall be signed and sworn to by the applicant. A duly certified copy of the division's electronic record of a certificate of title is admissible in any civil, criminal or administrative proceeding in this state as evidence of ownership.

(b) A tax is imposed upon the privilege of effecting the certification of title of each vehicle in the amount equal to ~~five~~ four percent of the value of the motor vehicle at the time of the certification, to be assessed as follows:

(1) If the vehicle is new, the actual purchase price or consideration to the purchaser of the vehicle is the value of the vehicle. If the vehicle is a used or secondhand vehicle, the present market value at time of transfer or purchase is the value of the vehicle for the purposes of this section. ~~Provided, That so much of the purchase price or consideration as is represented by the exchange of other vehicles on which the tax imposed by this section has been paid by the purchaser shall be deducted from the total actual price or consideration paid for the vehicle, whether the vehicle be new or secondhand~~ If the vehicle is acquired through gift or by any manner whatsoever, unless specifically exempted in this section, the present market value of the vehicle at the time of the gift or transfer is the value of the vehicle for the purposes of this section.

(2) No certificate of title for any vehicle may be issued to any applicant unless the applicant has paid to the Division of Motor Vehicles the tax imposed by this section which is ~~five~~ four percent of the true and actual value of the vehicle whether the vehicle is acquired through purchase, by gift or by any other manner whatsoever, except gifts between husband and wife or between parents and children: *Provided*, That the husband or wife, or the parents or children, previously have paid the tax on the vehicles transferred to the State of West Virginia.

(3) The Division of Motor Vehicles may issue a certificate of registration and title to an applicant if the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the taxes and fees required by this section to a motor vehicle dealership that has gone out of business or has filed bankruptcy proceedings in the United States bankruptcy court and the taxes and fees so required to be paid by the applicant have not been sent to the division by the motor vehicle dealership or have been impounded due to the bankruptcy proceedings: *Provided*, That the applicant makes an affidavit of the same and assigns all rights to claims for money the applicant may have against the motor vehicle dealership to the Division of Motor Vehicles.

(4) The Division of Motor Vehicles shall issue a certificate of registration and title to an applicant without payment of the tax imposed by this section if the applicant is a corporation, partnership or limited liability company transferring the vehicle to another corporation, partnership or limited liability company when the entities involved in the transfer are members of the same controlled group and the transferring entity has previously paid the tax on the vehicle transferred. For the purposes of this section, control means ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the total combined voting power of all classes of the stock of a corporation or equity interests of a partnership or limited liability company entitled to vote or ownership, directly or indirectly, of stock or equity interests possessing fifty percent or more of the value of the corporation, partnership or limited liability company.

(5) The tax imposed by this section does not apply to vehicles to be registered as Class H vehicles or Class M vehicles, as defined in section one, article ten of this chapter, which are used or to be used in interstate commerce. Nor does the tax imposed by this section apply to the titling of Class B vehicles registered at a gross weight of fifty-five thousand pounds or more, or to the titling of Class C

semitrailers, full trailers, pole trailers and converter gear: *Provided*, That if an owner of a vehicle has previously titled the vehicle at a declared gross weight of fifty-five thousand pounds or more and the title was issued without the payment of the tax imposed by this section, then before the owner may obtain registration for the vehicle at a gross weight less than fifty-five thousand pounds, the owner shall surrender to the commissioner the exempted registration, the exempted certificate of title and pay the tax imposed by this section based upon the current market value of the vehicle: *Provided, however*, That notwithstanding the provisions of section nine, article fifteen, chapter eleven of this code, the exemption from tax under this section for Class B vehicles in excess of fifty-five thousand pounds and Class C semitrailers, full trailers, pole trailers and converter gear does not subject the sale or purchase of the vehicles to the consumers sales and service tax.

(6) The tax imposed by this section does not apply to titling of vehicles leased by residents of West Virginia. A tax is imposed upon the monthly payments for the lease of any motor vehicle leased by a resident of West Virginia, which tax is equal to five percent of the amount of the monthly payment, applied to each payment, and continuing for the entire term of the initial lease period. The tax shall be remitted to the Division of Motor Vehicles on a monthly basis by the lessor of the vehicle.

(7) The tax imposed by this section does not apply to titling of vehicles by a registered dealer of this state for resale only, nor does the tax imposed by this section apply to titling of vehicles by this state or any political subdivision thereof, or by any volunteer fire department or duly chartered rescue or ambulance squad organized and incorporated under the laws of this state as a nonprofit corporation for protection of life or property. The total amount of revenue collected by reason of this tax shall be paid into the State Road Fund and expended by the Commissioner of Highways for matching federal funds allocated for West Virginia. In addition to the tax, there is a charge of ~~\$5~~ \$40 for each original certificate of title ~~or~~ and \$35 for each duplicate certificate of title so issued: *Provided*, That this state or any political subdivision of this state or any volunteer fire department or duly chartered rescue squad is exempt from payment of the charge.

(8) The certificate is good for the life of the vehicle, so long as the vehicle is owned or held by the original holder of the certificate and need not be renewed annually, or any other time, except as provided in this section.

(9) If, by will or direct inheritance, a person becomes the owner of a motor vehicle and the tax imposed by this section previously has been paid to the Division of Motor Vehicles on that vehicle, he or she is not required to pay the tax.

(10) A person who has paid the tax imposed by this section is not required to pay the tax a second time for the same motor vehicle, but is required to pay a charge of ~~\$5~~ \$40 for the certificate of retitle of that motor vehicle, except that the tax shall be paid by the person when the title to the vehicle has been transferred either in this or another state from the person to another person and transferred back to the person.

(11) The tax imposed by this section does not apply to any passenger vehicle offered for rent in the normal course of business by a daily passenger rental car business as licensed under the provisions of article six-d of this chapter. For purposes of this section, a daily passenger car means a Class A motor vehicle having a gross weight of eight thousand pounds or less and is registered in this state or any other state. In lieu of the tax imposed by this section, there is hereby imposed a tax of not less than \$1 nor more than \$1.50 for each day or part of the rental period. The commissioner shall propose an emergency rule in accordance with the provisions of article three, chapter twenty-nine-a of this code to establish this tax.

(12) The tax imposed by this article does not apply to the titling of any vehicle purchased by a senior citizen service organization which is exempt from the payment of income taxes under the United States Internal Revenue Code, Title 26 U. S. C. §501(c)(3) and which is recognized to be a

bona fide senior citizen service organization by the senior services bureau existing under the provisions of article five, chapter sixteen of this code.

(13) The tax imposed by this section does not apply to the titling of any vehicle operated by an urban mass transit authority as defined in article twenty-seven, chapter eight of this code or a nonprofit entity exempt from federal and state income tax under the Internal Revenue Code and whose purpose is to provide mass transportation to the public at large designed for the transportation of persons and being operated for the transportation of persons in the public interest.

(14) The tax imposed by this section does not apply to the transfer of a title to a vehicle owned and titled in the name of a resident of this state if the applicant:

(A) Was not a resident of this state at the time the applicant purchased or otherwise acquired ownership of the vehicle;

(B) Presents evidence as the commissioner may require of having titled the vehicle in the applicant's previous state of residence;

(C) Has relocated to this state and can present such evidence as the commissioner may require to show bona-fide residency in this state;

(D) Presents an affidavit, completed by the assessor of the applicant's county of residence, establishing that the vehicle has been properly reported and is on record in the office of the assessor as personal property; and

(E) Makes application to the division for a title and registration, and pays all other fees required by this chapter within thirty days of establishing residency in this state as prescribed in subsection (a), section one-a of this article: *Provided*, That a period of amnesty of three months be established by the commissioner during the calendar year 2007, during which time any resident of this state, having titled his or her vehicle in a previous state of residence, may pay without penalty any fees required by this chapter and transfer the title of his or her vehicle in accordance with the provisions of this section.

(c) Notwithstanding any provisions of this code to the contrary, the owners of trailers, semitrailers, recreational vehicles and other vehicles not subject to the certificate of title tax prior to the enactment of this chapter are subject to the privilege tax imposed by this section: *Provided*, That the certification of title of any recreational vehicle owned by the applicant on June 30, 1989, is not subject to the tax imposed by this section: *Provided, however*, That mobile homes, manufactured homes, modular homes and similar nonmotive propelled vehicles, except recreational vehicles and house trailers, susceptible of being moved upon the highways but primarily designed for habitation and occupancy, rather than for transporting persons or property, or any vehicle operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled or physically disabled children when the application for certificate of registration for the vehicle is accompanied by an affidavit stating that the vehicle will be operated on a nonprofit basis and used exclusively for the transportation of intellectually disabled and physically disabled children, are not subject to the tax imposed by this section, but are taxable under the provisions of articles fifteen and fifteen-a, chapter eleven of this code.

(d) Beginning on July 1, 2008, the tax imposed under this subsection (b) of this section is abolished and after that date no certificate of title for any motor vehicle may be issued to any applicant unless the applicant provides sufficient proof to the Division of Motor Vehicles that the applicant has paid the fees required by this article and the tax imposed under section three-b, article fifteen, chapter eleven of this code.

(e) Any person making any affidavit required under any provision of this section who knowingly swears falsely, or any person who counsels, advises, aids or abets another in the commission of false swearing, or any person, while acting as an agent of the Division of Motor Vehicles, issues a vehicle registration without first collecting the fees and taxes or fails to perform any other duty required by this chapter or chapter eleven of this code to be performed before a vehicle registration is issued is, on the first offense, guilty of a misdemeanor and, upon conviction thereof, shall be fined not more than \$500 or be confined in jail for a period not to exceed six months or, in the discretion of the court, both fined and confined. For a second or any subsequent conviction within five years, that person is guilty of a felony and, upon conviction thereof, shall be fined not more than \$5,000 or be imprisoned in a state correctional facility for not less than one year nor more than five years or, in the discretion of the court, both fined and imprisoned.

(f) Notwithstanding any other provisions of this section, any person in the military stationed outside West Virginia or his or her dependents who possess a motor vehicle with valid registration are exempt from the provisions of this article for a period of nine months from the date the person returns to this state or the date his or her dependent returns to this state, whichever is later.

(g) No person may transfer, purchase or sell a factory-built home without a certificate of title issued by the commissioner in accordance with the provisions of this article:

(1) Any person who fails to provide a certificate of title upon the transfer, purchase or sale of a factory-built home is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined not less than \$100 nor more than \$1,000, or be confined in jail for not more than one year, or both fined and confined. For each subsequent offense, the fine may be increased to not more than \$2,000, with confinement in jail not more than one year, or both fined and confined.

(2) Failure of the seller to transfer a certificate of title upon sale or transfer of the factory-built home gives rise to a cause of action, upon prosecution thereof, and allows for the recovery of damages, costs and reasonable attorney fees.

(3) This subsection does not apply to a mobile or manufactured home for which a certificate of title has been canceled pursuant to section twelve-b of this article.

(h) Notwithstanding any other provision to the contrary, whenever reference is made to the application for or issuance of any title or the recordation or release of any lien, it includes the application, transmission, recordation, transfer of ownership and storage of information in an electronic format.

(i) Notwithstanding any other provision contained in this section, nothing herein shall be considered to include modular homes as defined in subsection (i), section two, article fifteen, chapter thirty-seven of this code and built to the State Building Code as established by legislative rules promulgated by the State Fire Commission pursuant to section five-b, article three, chapter twenty-nine of this code.

(j) A person who seeks expedited processing of an application for certificate of title or a request for a duplicate title and who appears in person at a regional office or other Division of Motor Vehicles service area may receive same-day service of production of the certificate or duplicate after paying a fee of \$10 in addition to the regular title fees required by this chapter.

ARTICLE 4. TRANSFERS OF TITLE OR INTEREST.

§17A-4-1. Registration expires on transfer by owner; transfer, surrender or retention of plates.

Whenever the owner of a registered vehicle transfers or assigns his or her title, or interest thereto, the registration of such vehicle shall expire: *Provided*, That such owner, if he or she has made

application to the department within sixty days from the date of purchase to have said registration plates transferred to be used on another vehicle owned by said owner, may then operate the other vehicle for a period of sixty days, but in no event longer than sixty days from the date of original transfer. Upon such transfer, it shall be the duty of the original owner to retain the registration plates issued therefor and to immediately notify the commissioner of such transfer upon such form as may be provided therefor and to deliver to him or her the certificate of registration, whereupon the commissioner shall, upon the payment of a fee of ~~\$5~~ \$15, issue a new certificate showing the use to be made of such plates. Such plates may then be used by such owner on another vehicle of the same class as the vehicle for which they were originally issued if such other vehicle does not require a greater license fee than was required for such original vehicle. If such other vehicle requires a greater license fee than such original vehicle, then such plates may be used by paying such difference to the commissioner. When such transfer of ownership is made to a licensed dealer in motor vehicles it shall be the duty of such dealer to immediately execute notification of transfer, in triplicate, and to have this notification properly signed by the owner making the transfer. The dealer shall immediately forward to the ~~department~~ division the original copy of the notification of transfer. One copy of the notification of transfer shall be given to the owner and one shall be retained by the dealer. The owner shall immediately send to the ~~department~~ division the transfer fee of ~~\$5~~ \$6 with any additional fee that may be required under the terms of this chapter. The owner's copy, properly signed by the dealer, will be the owner's identification until he or she receives a new registration card from the ~~department~~ division.

The owner of a set of registration plates may surrender them to the commissioner together with the registration card and, upon the payment of ~~\$5~~ \$15 as an exchange fee and upon the payment of such additional fees as are necessary to equalize the value of the plates surrendered with the value of registration plates desired, receive in exchange a set of plates and registration card for a vehicle of a different class.

§17A-4-10. Salvage certificates for certain wrecked or damaged vehicles; fee; penalty.

(a) In the event a motor vehicle is determined to be a total loss or otherwise designated as totaled by an insurance company or insurer, and upon payment of a total loss claim to an insured or claimant owner for the purchase of the vehicle, the insurance company or the insurer, as a condition of the payment, shall require the owner to surrender the certificate of title: *Provided*, That an insured or claimant owner may choose to retain physical possession and ownership of a total loss vehicle. If the vehicle owner chooses to retain the vehicle and the vehicle has not been determined to be a cosmetic total loss in accordance with subsection (d) of this section, the insurance company or insurer shall also require the owner to surrender the vehicle registration certificate. The term "total loss" means a motor vehicle which has sustained damages equivalent to seventy-five percent or more of the market value as determined by a nationally accepted used car value guide or meets the definition of a flood-damaged vehicle as defined in this section.

(b) The insurance company or insurer shall, prior to the payment of the total loss claim, determine if the vehicle is repairable, cosmetically damaged or nonrepairable. Within ten days of payment of the total loss claim, the insurance company or insurer shall surrender the certificate of title, a copy of the claim settlement, a completed application on a form prescribed by the commissioner and the registration certificate if the owner has chosen to keep the vehicle to the Division of Motor Vehicles.

(c) If the insurance company or insurer determines that the vehicle is repairable, the division shall issue a salvage certificate, on a form prescribed by the commissioner, in the name of the insurance company, the insurer or the vehicle owner if the owner has chosen to retain the vehicle. The certificate shall contain, on the reverse, spaces for one successive assignment before a new certificate at an additional fee is required. Upon the sale of the vehicle, the insurance company, insurer or vehicle owner if the owner has chosen to retain the vehicle, shall complete the assignment of ownership on the salvage certificate and deliver it to the purchaser. The vehicle may not be titled or registered for

operation on the streets or highways of this state unless there is compliance with subsection (g) of this section. The division shall charge a fee of \$15 for each salvage title issued.

(d) If the insurance company or insurer determines the damage to a totaled vehicle is exclusively cosmetic and no repair is necessary in order to legally and safely operate the motor vehicle on the roads and highways of this state, the insurance company or insurer shall, upon payment of the claim, submit the certificate of title to the division. Neither the insurance company nor the division may require the vehicle owner to surrender the registration certificate in the event of a cosmetic total loss settlement.

(1) The division shall, without further inspection, issue a title branded "cosmetic total loss" to the insured or claimant owner if the insured or claimant owner wishes to retain possession of the vehicle, in lieu of a salvage certificate. The division shall charge a fee of ~~\$5~~ \$40 for each cosmetic total loss title issued. The terms "cosmetically damaged" and "cosmetic total loss" do not include any vehicle which has been damaged by flood or fire. The designation "cosmetic total loss" on a title may not be removed.

(2) If the insured or claimant owner elects not to take possession of the vehicle and the insurance company or insurer retains possession, the division shall issue a cosmetic total loss salvage certificate to the insurance company or insurer. The division shall charge a fee of ~~\$15~~ \$40 for each cosmetic total loss salvage certificate issued. The division shall, upon surrender of the cosmetic total loss salvage certificate issued under the provisions of this paragraph and payment of the five percent motor vehicle sales tax on the fair market value of the vehicle as determined by the commissioner, issue a title branded "cosmetic total loss" without further inspection.

(e) If the insurance company or insurer determines that the damage to a totaled vehicle renders it nonrepairable, incapable of safe operation for use on roads and highways and as having no resale value except as a source of parts or scrap, the insurance company or vehicle owner shall, in the manner prescribed by the commissioner, request that the division issue a nonrepairable motor vehicle certificate in lieu of a salvage certificate. The division shall issue a nonrepairable motor vehicle certificate without charge.

(f) Any owner who scraps, compresses, dismantles or destroys a vehicle without further transfer or sale for which a certificate of title, nonrepairable motor vehicle certificate or salvage certificate has been issued shall, within forty-five days, surrender the certificate of title, nonrepairable motor vehicle certificate or salvage certificate to the division for cancellation.

(g) Any person who purchases or acquires a vehicle as salvage or scrap, to be dismantled, compressed or destroyed, shall, within forty-five days, surrender to the division the certificate of title, nonrepairable motor vehicle certificate, salvage certificate or a statement of cancellation signed by the seller, on a form prescribed by the commissioner. Subsequent purchasers of salvage or scrap are not required to comply with the notification requirement.

(h) If the motor vehicle is a "reconstructed vehicle" as defined in this section or section one, article one of this chapter, it may not be titled or registered for operation until it has been inspected by an official state inspection station and by the Division of Motor Vehicles. Following an approved inspection, an application for a new certificate of title may be submitted to the division. The applicant is required to retain all receipts for component parts, equipment and materials used in the reconstruction. The salvage certificate shall also be surrendered to the division before a certificate of title may be issued with the appropriate brand.

(i) The owner or title holder of a motor vehicle titled in this state which has previously been branded in this state or another state as salvage, reconstructed, cosmetic total loss, cosmetic total loss salvage, flood, fire, an equivalent term under another state's laws or a term consistent with the

intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 shall, upon becoming aware of the brand, apply for and receive a title from the Division of Motor Vehicles on which the brand "reconstructed", "salvage", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire" or other brand is shown. The division shall charge a fee of ~~\$5~~ \$40 for each title so issued.

(j) If application is made for title to a motor vehicle, the title to which has previously been branded reconstructed, salvage, cosmetic total loss, cosmetic total loss salvage, flood, fire or other brand by the Division of Motor Vehicles under this section and said application is accompanied by a title from another state which does not carry the brand, the division shall, before issuing the title, affix the brand "reconstructed", "cosmetic total loss", "cosmetic total loss salvage", "flood", "fire" or other brand to the title. The motor vehicle sales tax paid on a motor vehicle titled as reconstructed, cosmetic total loss, flood, fire or other brand under the provisions of this section shall be based on fifty percent of the fair market value of the vehicle as determined by a nationally accepted used car value guide to be used by the commissioner.

(k) The division shall charge a fee of ~~\$45~~ \$40 for the issuance of each salvage certificate or cosmetic total loss salvage certificate but shall not require the payment of the five percent motor vehicle sales tax. However, upon application for a certificate of title for a reconstructed, cosmetic total loss, flood or fire damaged vehicle or other brand, the division shall collect the five percent privilege tax on the fair market value of the vehicle as determined by the commissioner unless the applicant is otherwise exempt from the payment of such privilege tax. A wrecker/dismantler/rebuilder, licensed by the division, is exempt from the payment of the five percent privilege tax upon titling a reconstructed vehicle. The division shall collect a fee of \$35 per vehicle for inspections of reconstructed vehicles. These fees shall be deposited in a special fund created in the State Treasurer's Office and may be expended by the division to carry out the provisions of this article: *Provided*, That on and after July 1, 2007, any balance in the special fund and all fees collected pursuant to this section shall be deposited in the State Road Fund. Licensed wreckers/dismantlers/rebuilders may charge a fee not to exceed \$25 for all vehicles owned by private rebuilders which are inspected at the place of business of a wrecker/dismantler/rebuilder.

(l) As used in this section:

(1) "Reconstructed vehicle" means the vehicle was totaled under the provisions of this section or by the provisions of another state or jurisdiction and has been rebuilt in accordance with the provisions of this section or in accordance with the provisions of another state or jurisdiction or meets the provisions of subsection (m), section one, article one of this chapter.

(2) "Flood-damaged vehicle" means that the vehicle was submerged in water to the extent that water entered the passenger or trunk compartment.

(3) "Other brand" means a brand consistent with the intent of the National Motor Vehicle Title Information System established pursuant to 49 U. S. C. §30502 and rules promulgated by the United States Department of Justice to alert consumers, motor vehicle dealers or the insurance industry of the history of a vehicle.

(m) Every vehicle owner shall comply with the branding requirements for a totaled vehicle whether or not the owner receives an insurance claim settlement for a totaled vehicle.

(n) A certificate of title issued by the division for a reconstructed vehicle shall contain markings in bold print on the face of the title that it is for a reconstructed, flood-or fire damaged vehicle.

(o) Any person who knowingly provides false or fraudulent information to the division that is required by this section in an application for a title, a cosmetic total loss title, a reconstructed vehicle

title or a salvage certificate or who knowingly fails to disclose to the division information required by this section to be included in the application or who otherwise violates the provisions of this section is guilty of a misdemeanor and, upon conviction thereof, shall for each incident be fined not less than \$1,000 nor more than \$2,500, or imprisoned in jail for not more than one year, or both fined and imprisoned.

ARTICLE 4A. LIENS AND ENCUMBRANCES ON VEHICLES TO BE SHOWN ON CERTIFICATE OF TITLE; NOTICE TO CREDITORS AND PURCHASERS.

§17A-4A-10. Fee for recording and release of lien.

The Division of Motor Vehicles is hereby authorized to charge a fee of ~~\$5~~ \$20 for the recording of any lien either in an electronic or paper format created by the voluntary act of the owner and endorsing it upon the title certificate issued pursuant to this article, and the Division of Motor Vehicles is hereby authorized to charge a fee of ~~50¢~~ \$20 for recordation of any release of a lien created by the voluntary act of the owner: *Provided*, That no charge shall be made for the endorsement and recordation of liens or releases thereof as provided under section nine of this article. No charge shall be made for the issuance of a title to the owner of a vehicle upon the receipt of an electronic release of the final lien.

ARTICLE 10. FEES FOR REGISTRATION, LICENSING, ETC.

§17A-10-1. Classification of vehicles for purpose of registration.

Vehicles subject to registration under the provisions of this chapter shall be placed in the following classes for the purpose of registration:

Class A. Motor vehicles of passenger type and trucks with a gross weight of ten thousand pounds or less;

Class B. Motor vehicles designated as trucks with a gross weight of more than ten thousand pounds, truck tractors or road tractors;

Class C. All trailers and semitrailers, except house trailers and trailers or semitrailers designed to be drawn by Class A motor vehicles and having a gross weight of less than two thousand pounds;

Class G. Motorcycles and parking enforcement vehicles;

Class H. Motor vehicles operated regularly for the transportation of persons for compensation under a certificate of convenience and necessity or contract carrier permit issued by the Public Service Commission;

Class J. Motor vehicles operated for transportation of persons for compensation by common carriers, not running over a regular route or between fixed termini;

Class M. Mobile equipment as defined in subdivision (oo), section one, article one of this chapter;

Class R. House trailers;

Class T. Trailers or semitrailers of a type designed to be drawn by Class A vehicles and having a gross weight of less than two thousand pounds; and

Class X. Motor vehicles designated as trucks having a minimum gross weight of more than eight thousand pounds and a maximum gross weight of eighty thousand pounds, used exclusively in the

conduct of a farming business, engaged in the production of agricultural products by means of: (a) The planting, cultivation and harvesting of agricultural, horticultural, vegetable or other products of the soil; or (b) the raising, feeding and care of livestock, poultry, bees and dairy cattle. A farm truck may be used only for the transportation of agricultural products produced by the owner of the truck, for the transportation of agricultural supplies used in the production or for private passenger use.

§17A-10-3. Registration fees for vehicles equipped with pneumatic tires.

The following registration fees for the classes indicated shall be paid to the division for the registration of vehicles subject to registration under this chapter when equipped with pneumatic tires:

(a) Registration fees for the following classes shall be paid to the division annually:

(1) *Class A.* — The registration fee for motor vehicles of this class is ~~\$28.50~~ \$49.

~~Provided, That~~ The registration fees and any other fees required by this chapter for Class A vehicles under the optional biennial staggered registration system shall be multiplied by two and paid biennially to the division.

No license fee may be charged for vehicles owned by churches, or by trustees for churches, which are regularly used for transporting parishioners to and from church services. Notwithstanding the exemption, the certificate of registration and license plates shall be obtained the same as other cards and plates under this article.

(2) *Class B.* — The registration fee for all motor vehicles of this class is as follows:

(A) For declared gross weights of ten thousand one pounds to sixteen thousand pounds — \$28 plus \$5 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds ten thousand pounds.

(B) For declared gross weights greater than sixteen thousand pounds, but less than fifty-five thousand pounds — \$78.50 plus \$10 for each one thousand or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds sixteen thousand pounds.

(C) For declared gross weights of fifty-five thousand pounds or more — \$737.50 plus \$15.75 for each one thousand pounds or fraction of one thousand pounds that the gross weight of the vehicle or combination of vehicles exceeds fifty-five thousand pounds.

(3) *Class G.* — The registration fee for each motorcycle or parking enforcement vehicle is \$8: *Provided,* That the registration fee and any other fees required by this chapter for Class G vehicles shall be for at least one year and under an optional biennial registration system the annual fee shall be multiplied by two and paid biennially to the division.

(4) *Class H.* — The registration fee for all vehicles for this class operating entirely within the state is \$5; and for vehicles engaged in interstate transportation of persons, the registration fee is the amount of the fees provided by this section for Class B, reduced by the amount that the mileage of the vehicles operated in states other than West Virginia bears to the total mileage operated by the vehicles in all states under a formula to be established by the Division of Motor Vehicles.

(5) *Class J.* — The registration fee for all motor vehicles of this class is \$85. Ambulances and hearses used exclusively as ambulances and hearses are exempt from the special fees set forth in this section.

(6) *Class M.* — The registration fee for all vehicles of this class is \$17.50.

(7) *Class X.* — The registration fee for all motor vehicles of this class is as follows:

(A) For farm trucks of declared gross weights of eight thousand one pounds to sixteen thousand pounds — \$30.

(B) For farm trucks of declared gross weights of sixteen thousand one pounds to twenty-two thousand pounds — \$60.

(C) For farm trucks of declared gross weights of twenty-two thousand one pounds to twenty-eight thousand pounds — \$90.

(D) For farm trucks of declared gross weights of twenty-eight thousand one pounds to thirty-four thousand pounds — \$115.

(E) For farm trucks of declared gross weights of thirty-four thousand one pounds to forty-four thousand pounds — \$160.

(F) For farm trucks of declared gross weights of forty-four thousand one pounds to fifty-four thousand pounds — \$205.

(G) For farm trucks of declared gross weights of fifty-four thousand one pounds to eighty thousand pounds — \$250: *Provided*, That the provisions of subsection (a), section eight, article one, chapter seventeen-e of this code do not apply if the vehicle exceeds sixty-four thousand pounds and is a truck tractor or road tractor.

(b) Registration fees for the following classes shall be paid to the division for a maximum period of three years, or portion of a year based on the number of years remaining in the three-year period designated by the commissioner:

(1) *Class R.* — The annual registration fee for all vehicles of this class is \$12.

(2) *Class T.* — The annual registration fee for all vehicles of this class is \$8.

(c) The fees paid to the division for a multiyear registration provided by this chapter shall be the same as the annual registration fee established by this section and any other fee required by this chapter multiplied by the number of years for which the registration is issued.

(d) The registration fee for all Class C vehicles is \$50. All Class C trailers shall be registered for the duration of the owner's interest in the trailer and do not expire until either sold or otherwise permanently removed from the service of the owner: *Provided*, That a registrant may transfer a Class C registration plate from a trailer owned less than thirty days to another Class C trailer titled in the name of the registrant upon payment of the transfer fee prescribed in section ten of this article.

§17A-10-10. Fees upon transfer of registration and issuance of certificates of title.

A fee of ~~\$5~~ \$15 shall be paid for a transfer of registration by an owner from one vehicle to another vehicle of the same class or for surrender of registration of one vehicle in exchange for registration of a vehicle of a different class in addition to the payment of any difference in fees as provided in section one, article four of this chapter.

A fee of ~~\$5~~ \$15 shall be paid for the transfer of registration from a deceased person to his or her legal heir or legatee as provided in section five, article four of this chapter.

A fee of ~~\$5~~ \$40 shall be paid for the issuance of a certificate of title.

§17A-10-11. Fees for duplicate registration plates, registration cards and certificates of title.

A fee of \$5 ~~\$15~~ shall be paid for the issuance of duplicate or substitute registration plates, registration cards or certificates of title. A fee of \$15 shall be paid for the issuance of duplicate or substitute registration plates or decals. A fee of \$35 shall be paid for the issuance of duplicate certificates of title.

CHAPTER 17B. MOTOR VEHICLE DRIVER'S LICENSES.**ARTICLE 2. ISSUANCE OF LICENSE, EXPIRATION AND RENEWAL.****§17B-2-1. Drivers must be licensed; types of licenses; licensees need not obtain local government license; motorcycle driver license; identification cards.**

(a)(1) No person, except those hereinafter expressly exempted, may drive any motor vehicle upon a street or highway in this state or upon any subdivision street used by the public generally unless the person has a valid driver's license issued pursuant to this code for the type or class of vehicle being driven.

(2) Any person licensed to operate a motor vehicle pursuant to this code may exercise the privilege thereby granted in the manner provided in this code and, except as otherwise provided by law, is not required to obtain any other license to exercise the privilege by any county, municipality or local board or body having authority to adopt local police regulations.

(b) The division, upon issuing a driver's license, shall indicate on the license the type or general class or classes of vehicles the licensee may operate in accordance with this code, federal law or rule. Licenses shall be issued in different colors for those drivers under age eighteen, those drivers age eighteen to twenty-one and adult drivers. The commissioner is authorized to select and assign colors to the licenses of the various age groups.

(c) The following drivers licenses classifications are hereby established:

(1) A Class A, B or C license shall be issued to those persons eighteen years of age or older with two years of driving experience who have qualified for the commercial driver's license established by chapter seventeen-e of this code and the federal Motor Carrier Safety and Improvement Act of 1999 and subsequent rules, and have paid the required fee.

(2) A Class D license shall be issued to those persons eighteen years and older with one year of driving experience who operate motor vehicles other than those types of vehicles which require the operator to be licensed under the provisions of chapter seventeen-e of this code and federal law and rule and whose primary function or employment is the transportation of persons or property for compensation or wages and have paid the required fee. For the purpose of regulating the operation of motor vehicles, wherever the term "chauffeur's license" is used in this code, it shall be construed to mean the Class A, B, C or D license described in this section or chapter seventeen-e of this code or federal law or rule: *Provided*, That anyone not required to be licensed under the provisions of chapter seventeen-e of this code and federal law or rule and who operates a motor vehicle registered or required to be registered as a Class A motor vehicle, as that term is defined in section one, article ten, chapter seventeen-a of this code, with a gross vehicle weight rating of less than eight thousand one pounds, is not required to obtain a Class D license.

(3) A Class E license shall be issued to those persons who have qualified for a driver's license under the provisions of this chapter and who are not required to obtain a Class A, B, C or D license and who have paid the required fee. The Class E license may be endorsed under the provisions of section seven-b of this article for motorcycle operation. The Class E or G license for any person under

the age of eighteen may also be endorsed with the appropriate graduated driver license level in accordance with the provisions of section three-a of this article.

(4) A Class F license shall be issued to those persons who successfully complete the motorcycle examination procedure provided by this chapter and have paid the required fee, but who do not possess a Class A, B, C, D or E driver's license.

(5) A Class G driver's license or instruction permit shall be issued to a person using bioptic telescopic lenses who has successfully completed an approved driver training program and complied with all other requirements of article two-b of this chapter.

(d) All licenses issued under this section may contain information designating the licensee as a diabetic, organ donor, as deaf or hard-of-hearing, or as having any other handicap or disability, or that the licensee is an honorably discharged veteran of any branch of the Armed Forces of the United States according to criteria established by the division, if the licensee requests this information on the license. An honorably discharged veteran may be issued a replacement license without charge if the request is made before the expiration date of the current license and the only purpose for receiving the replacement license is to get the veterans designation placed on the license.

(e) No person, except those hereinafter expressly exempted, may drive any motorcycle upon a street or highway in this state or upon any subdivision street used by the public generally unless the person has a valid motorcycle license, a valid license which has been endorsed under section seven-b of this article for motorcycle operation or a valid motorcycle instruction permit.

(f) (1) An identification card may be issued to any person who:

(A) Is a resident of this state in accordance with the provisions of section one-a, article three, chapter seventeen-a of this code;

(B) Has reached the age of two years. The division may also issue an identification card to a person under the age of two years for good cause shown;

(C) Has paid the required fee of ~~two dollars and fifty cents~~ \$8 per year: *Provided*, That the fee is not required if the applicant is sixty-five years or older or is legally blind; and

(D) Presents a birth certificate or other proof of age and identity acceptable to the division with a completed application on a form furnished by the division.

(2) The identification card shall contain the same information as a driver's license except that the identification card shall be clearly marked as an identification card. The division may issue an identification card with less information to persons under the age of sixteen. An identification card may be renewed annually on application and payment of the fee required by this section.

(A) Every identification card issued to a person who has attained his or her twenty-first birthday expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five. Except as provided in paragraph (B) of this subdivision, no identification card may be issued for less than three years or for more than seven years and expires on the licensee's birthday in those years in which the licensee's age is evenly divisible by five.

(B) Every identification card issued to a person who has not attained his or her twenty-first birthday expires thirty days after the licensee's twenty-first birthday.

(C) Every identification card issued to persons under the age of sixteen shall be issued for a period of two years and shall expire on the last day of the month in which the applicant's birthday occurs.

(3) The division may issue an identification card to an applicant whose privilege to operate a motor vehicle has been refused, canceled, suspended or revoked under the provisions of this code.

(g) Any person violating the provisions of this section is guilty of a misdemeanor and, upon conviction, shall be fined not more than \$500; and upon a second or subsequent conviction, shall be fined not more than \$500 or confined in jail not more than six months, or both fined and confined.

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

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

(b) Any person under the age of twenty-one, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to the provisions of section two, article five, chapter seventeen-c of this code and section two, article five-a of said chapter. Any person under the age of eighteen, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of section eleven, article eight, chapter eighteen of this code.

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

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

(A) Presents a completed application, as prescribed by the provisions of section six of this article, and which is accompanied by a writing, duly acknowledged, consenting to the issuance of the graduated driver's license and executed by a parent or guardian entitled to custody of the applicant;

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

(C) Passes the vision and written knowledge examination and completes the driving under the influence awareness program, as prescribed in section seven of this article;

(D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; and

(E) Pays a fee of \$5, which shall permit the applicant two attempts at the written knowledge test.

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under the provisions of this section is valid until thirty days after the date the applicant attains the age of eighteen and is not renewable. However, any permit holder who allows his or her permit to expire prior to successfully passing the road skills portion of the driver examination, and who has not committed any offense which requires the suspension, revocation or cancellation of the instruction permit, may reapply for a new instruction permit under the provisions of section six of this article. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of ninety days. However, after the expiration of ninety days, the person may retest if otherwise eligible. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level one instruction permit may only operate a motor vehicle under the following conditions:

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

(B) Between the hours of five a.m. and ten p.m.;

(C) All occupants must use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

(D) Without any measurable blood alcohol content, in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code; and

(E) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code.

(F) A holder of a level one instruction permit who is under the age of eighteen years shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

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

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

(A) Presents a completed application as prescribed in section six of this article;

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

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

(D) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(E) Passes the road skills examination as prescribed by section seven of this article; and

(F) Pays a fee of \$5.

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under the provisions of this section shall expire thirty days after the applicant attains the age of eighteen, or until the licensee qualifies for a level three full Class E license, whichever comes first. In addition to all other provisions of this code for which a driver's license may be restricted, suspended, revoked or canceled, the holder of a level two intermediate driver's license may only operate a motor vehicle under the following conditions:

(A) Unsupervised between the hours of five a.m. and ten p.m.;

(B) Only under the direct supervision of a licensed driver, age twenty-one years or older, between the hours of ten p.m. and five a.m. except when the licensee is going to or returning from:

(i) Lawful employment;

(ii) A school-sanctioned activity;

(iii) A religious event; or

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

(C) All occupants shall use safety belts in accordance with the provisions of section forty-nine, article fifteen, chapter seventeen-c of this code;

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

(E) Without any measurable blood alcohol content in accordance with the provisions of subsection (h), section two, article five, chapter seventeen-c of this code;

(F) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code;

(G) A holder of a level two intermediate driver's license who is under the age of eighteen years shall be prohibited from using a wireless communication device while operating a motor vehicle, unless the use of the wireless communication device is for contacting a 9-1-1 system. A person violating the provisions of this paragraph is guilty of a misdemeanor and, upon conviction thereof, shall for the first offense be fined \$25; for a second offense be fined \$50; and for a third or subsequent offense be fined \$75.

(H) Upon the first conviction for a moving traffic violation or a violation of paragraph (A), (B), (C), (D) or (G), subdivision (1), subsection (d) of this section of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under paragraph (I) of this subdivision; and

(I) Upon the second conviction for a moving traffic violation or a violation of the terms and conditions of the level two intermediate driver's license, the licensee's privilege to operate a motor vehicle shall be revoked or suspended for the applicable statutory period or until the licensee's eighteenth birthday, whichever is longer unless a greater penalty is required by this section or any other provision of this code. Any person whose driver's license has been revoked as a level two intermediate driver, upon reaching the age of eighteen years and if otherwise eligible may reapply for

an instruction permit, then a driver's license in accordance with the provisions of sections five, six and seven of this article.

(e) *Level three, full Class E license.* — The level three license is valid until thirty days after the date the licensee attains his or her twenty-first birthday. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

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

(1) Has reached the age of seventeen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article;

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

(C) Has completed any driver improvement program required under paragraph (G), subdivision (2), subsection (d) of this section; and

(D) Pays a fee of ~~\$2.50~~ \$6.50 for each year the license is valid. An additional fee of \$.50 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code;

(E) Presents a driver's eligibility certificate or otherwise shows compliance with the provisions of section eleven, article eight, chapter eighteen of this code; or

(2) Reaches the age of eighteen years; and

(A) Presents a completed application as prescribed by the provisions of section six of this article; and

(B) Pays a fee of ~~\$2.50~~ \$6.50 for each year the license is valid. An additional fee of \$.50 shall be collected to be deposited in the Combined Voter Registration and Driver's Licensing Fund established in section twelve, article two, chapter three of this code.

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

§17B-2-8. Issuance and contents of licenses; fees.

(a) The division shall, upon payment of the required fee, issue to every applicant qualifying therefor a driver's license, which shall indicate the type or general class or classes of vehicle or vehicles the licensee may operate in accordance with this chapter or chapter seventeen-e of this code, or motorcycle-only license. Each license shall contain a coded number assigned to the licensee, the full legal name, date of birth, residence address, a brief description and a color photograph of the licensee and either a facsimile of the signature of the licensee or a space upon which the signature of the licensee is written with pen and ink immediately upon receipt of the license. No license is valid until it has been so signed by the licensee.

(b) A driver's license which is valid for operation of a motorcycle shall contain a motorcycle endorsement. A driver's license which is valid for the operation of a commercial motor vehicle shall be issued in accordance with chapter seventeen-e of this code.

(c) The division shall use such process or processes in the issuance of licenses that will, insofar as possible, prevent any identity theft, alteration, counterfeiting, duplication, reproduction, forging or modification of, or the superimposition of a photograph on, the license.

(d) The fee for the issuance of a Class E driver's license is ~~\$2.50~~ \$8 per year for each year the license is valid. The fee for issuance of a Class D driver's license is ~~\$6.25~~ \$6.50 per year for each year the license is valid. An additional fee of \$0.50 shall be collected from the applicant at the time of original issuance or each renewal and the additional fee shall be deposited in the Combined Voter Registration and Driver's Licensing Fund established pursuant to the provisions of section twelve, article two, chapter three of this code. The additional fee for adding a motorcycle endorsement to a driver's license is \$1 per year for each year the license is issued.

(e) The fee for issuance of a motorcycle-only license is \$2.50 for each year for which the motorcycle license is valid. The fees for the motorcycle endorsement or motorcycle-only license shall be paid into a special fund in the State Treasury known as the Motorcycle Safety Fund as established in section seven, article one-d of this chapter.

(f) The fee for the issuance of either the level one or level two graduated driver's license as prescribed in section three-a of this article is \$5.

(g) The fee for issuance of a federally compliant driver's license or identification card for federal use is \$10 in addition to any other fee required by this chapter. Any fees collected under the provisions of this subsection shall be deposited into the Motor Vehicle Fees Fund established in accordance with section twenty-one, article two, chapter seventeen-a of this code.

(h) The division may use an address on the face of the license other than the applicant's address of residence if:

(1) The applicant has a physical address or location that is not recognized by the post office for the purpose of receiving mail;

(2) The applicant is enrolled in a state address confidentiality program or the alcohol test and lock program;

(3) The applicant's address is entitled to be suppressed under a state or federal law or suppressed by a court order; or

(4) At the discretion of the commissioner, the applicant's address may be suppressed to provide security for classes of applicants such as law-enforcement officials, protected witnesses and members of the state and federal judicial systems.

(i) Notwithstanding any provision in this article to the contrary, a valid military identification card with an expiration date issued by the United States Department of Defense for active duty, reserve or retired military personnel containing a digitized photo and the holder's full legal name may be used to establish current full legal name and legal presence. The commissioner may at his or her discretion expand the use of military identification cards for other uses as permitted under this code or federal rule.

§17B-2-11. Duplicate permits and licenses.

In the event that an instruction permit or driver's license issued under the provisions of this chapter is lost or destroyed, or if the information contained on the license has changed, the person to whom

the permit or license was issued may upon making proper application and upon payment of a fee of ~~\$5~~ \$20 obtain a duplicate thereof upon furnishing proof satisfactory to the division that the permit or license has been lost or destroyed.

CHAPTER 17D. MOTOR VEHICLE SAFETY RESPONSIBILITY LAW.

ARTICLE 2. ADMINISTRATION OF LAW.

§17D-2-2. Commissioner to furnish abstract of operating record; fee for abstract.

The commissioner shall upon request and subject to the provisions of article two-a, chapter seventeen-a of this code, furnish any person a certified abstract of the operating record of any person subject to the provisions of this chapter, and if there is no record of any conviction of the person of a violation of any law relating to the operation of a motor vehicle or of any injury or damage caused by the person, the commissioner shall so certify. The commissioner shall collect ~~\$5~~ \$25 for each abstract.

Following extended discussion,

The question being on the adoption of the amendment offered by Senators Plymale, Kessler, Stollings and Williams to the bill, the same was put and prevailed.

The bill (Com. Sub. for S. B. 555), as amended, was then ordered to engrossment and third reading.

On motion of Senator Carmichael, the Senate recessed until 1:30 p.m. today.

Upon expiration of the recess, the Senate reconvened and resumed consideration of its second reading calendar, the next bill coming up in numerical sequence being

Senate Bill 563, Increasing retirement benefit multiplier for WV Emergency Medical Services Retirement System members.

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

Com. Sub. for Senate Bill 567, Providing protection against property crimes committed against coal mines, railroads, utilities and other industrial facilities.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Senate Bill 567 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 567) passed with its title.

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

Com. Sub. for Senate Bill 599, Relating generally to Uniform Unclaimed Property Act.

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

On motion of Senator Romano, the following amendment to the bill was reported by the Clerk:

On page two, section two, line thirty-three, after the word “Commissioner” by changing the semicolon to a colon and inserting the following proviso: *Provided, however*, That such policies, requirements and interpretations shall include a requirement that insurers on a life or endowment insurance policy or an annuity shall annually search the United States Social Security Administration’s Death Master File or any other database or service that is at least as comprehensive for determining that a person has reportedly died to determine whether its insureds have died and, therefore, an obligation to pay exists.

Following discussion,

At the request of Senator Romano, unanimous consent being granted, the bill (Com. Sub. for S. B. 599) was advanced to third reading with Senator Romano’s amendment pending and the right reserved to consider other amendments to the bill on that reading.

Com. Sub. for Senate Bill 601, Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities.

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

Com. Sub. for Senate Bill 602, Relating to Patient Injury Compensation Fund.

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

On motion of Senator Trump, 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:

That §29-12B-10 of the Code of West Virginia, 1931, as amended, be amended and reenacted; that §29-12D-1 and §29-12D-3 of said code be amended and reenacted; that said code be amended by adding thereto a new section, designated §29-12D-1a; that §55-7B-9 and §55-7B-9c of said code

be amended and reenacted; and that §59-1-11 and §59-1-28a of said code be amended and reenacted, all to read as follows:

CHAPTER 29. MISCELLANEOUS BOARDS AND OFFICES.

ARTICLE 12B. WEST VIRGINIA HEALTH CARE PROVIDER PROFESSIONAL LIABILITY INSURANCE AVAILABILITY ACT.

§29-12B-10. Deposit, expenditure and investment of premiums.

(a) The premiums charged and collected by the board under this article shall be deposited into a special revenue account hereby created in the state Treasury known as the "Medical Liability Fund", and shall not be part of the general revenues of the state. Disbursements from the special revenue fund shall be upon requisition of the executive director and in accordance with the provisions of chapter five-a of this code. Disbursements shall pay operating expenses of the board attributed to these programs and the board's share of any judgments or settlements of medical malpractice claims. Funds shall be invested with the consolidated fund managed by the West Virginia Investment Management Board and interest earned shall be used for purposes of this article.

(b) Start-up operating expenses of the medical liability fund, not to exceed \$500,000, may be transferred to the medical liability fund pursuant to an appropriation by the Legislature from any special revenue funds available. The medical liability fund shall reimburse the board within twenty-four months of the date of the transfer.

(c) For purposes of establishing a pool from which settlements and judgments may be paid, notwithstanding any other provision of this code to the contrary, a portion of the initial capitalization of the pool may be provided through a transfer of no greater than \$4,000,000 from the State Special Insurance Fund established in section five, article twelve of this chapter. All funds transferred pursuant to this section are to be repaid by transfer from the Medical Liability Fund to the State Special Insurance Fund, together with interest that would have accrued in the State Special Insurance Fund, by July 1, 2006. Funds are to be transferred only as needed for expenditures from the Medical Liability Fund created in this section. The Treasurer shall effect these transfers pursuant to this section upon written request of the Director of the Board of Risk and Insurance Management.

(d) On July 1, 2016, all funds in the Medical Liability Fund, including all funds currently invested pursuant to the terms of subsection (a) of this section, shall be transferred to the West Virginia Patient Injury Compensation Fund established by section one, article twelve-d of this chapter. Thereafter, the Medical Liability Fund established pursuant to this section shall be closed.

ARTICLE 12D. WEST VIRGINIA PATIENT INJURY COMPENSATION FUND.

§29-12D-1. Creation of the Patient Injury Compensation Fund; purpose; initial funding of Patient Injury Compensation Fund.

(a) There is created the West Virginia Patient Injury Compensation Fund, for the purpose of providing fair and reasonable compensation to claimants in medical malpractice actions for any portion of economic damages awarded that is uncollectible as a result of limitations on economic damage awards for trauma care, or as a result of the operation of the joint and several liability principles and standards, set forth in article seven-b, chapter fifty-five of this code. The fund shall consist of all contributions, revenues and moneys which may be paid into the fund, from time to time, by the State of West Virginia or from any other source whatsoever, together with any and all interest, earnings, dividends, distributions, moneys or revenues of any nature whatsoever accruing to the fund.

(b) Initial funding for the fund shall be provided as follows: during fiscal year 2005, \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund; during fiscal year 2006, \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund; and during fiscal year 2007, \$2,200,000 of the revenues that would otherwise be transferred to the tobacco account established in subsection (b), section two, article eleven-a, chapter four of this code pursuant to the provisions of section fourteen, article three, chapter thirty-three of this code shall be transferred to the fund.

(2) Beginning fiscal year 2008, if and to the extent additional funding for the fund is required, from time to time, to maintain the actuarial soundness of the fund, the additional funding may be provided by further act of the Legislature, either from the revenue stream identified in this subsection or otherwise. Payments to the tobacco fund shall be extended until the tobacco fund is repaid in full.

(c) The fund is not and shall not be considered a defendant in any civil action arising under article seven-b, chapter fifty-five of this code.

(d) The fund is not and shall not be considered an insurance company or insurer for any purpose under this code.

(e) Legal fees of claimants may not be recovered directly from the fund.

(f) The fund shall not provide compensation to claimants who file a claim with the Patient Injury Compensation Fund on or after July 1, 2016.

§29-12D-1a. Additional funding for Patient Injury Compensation Fund; assessment on licensed physicians; assessment on hospitals; assessment on certain awards.

(a) Annual assessment on licensed physicians. —

(1) The Board of Medicine and the Board of Osteopathic Medicine shall collect a biennial assessment in the amount of \$125 from every physician licensed by each board for the privilege of practicing medicine in this state. The assessment is to be imposed and collected on forms prescribed by each licensing board. The assessment shall be collected as part of licensure or license renewal beginning July 1, 2016 for licenses issued or renewed in calendar year 2016 through calendar year 2019: *Provided*, That the following physicians shall be exempt from the assessment:

(A) A resident physician who is a graduate of a medical school or college of osteopathic medicine enrolled and who is participating in an accredited full-time program of post-graduate medical education in this state;

(B) A physician who has presented suitable proof that he or she is on active duty in the armed forces of the United States and who will not be reimbursed by the armed forces for the assessment;

(C) A physician who practices solely under a special volunteer medical license authorized by section ten-a, article three, chapter thirty of this code, or section twelve-b, article fourteen of said chapter;

(D) A physician who holds an inactive license pursuant to subsection (j), section twelve, article three, chapter thirty of this code or section ten, article fourteen, of said chapter, or a physician who voluntarily surrenders his or her license: *Provided*, That a retired osteopathic physician who submits

to the Board of Osteopathic Medicine an affidavit asserting that he or she receives no monetary remuneration for any medical services provided, executed under the penalty of perjury and if executed outside the State of West Virginia, verified, may be considered to be licensed on an inactive basis: *Provided, however,* That if a physician or osteopathic physician elects to resume an active license to practice in the state and the physician or osteopathic physician has not paid the assessments during his or her inactive status, then as a condition of receiving an active status license, the physician or osteopathic physician shall pay the assessment due in the year in which the osteopathic physician resumes an active license; and

(E) A physician who practices less than forty hours a year providing medical genetic services to patients within this state.

(2) The entire proceeds of the annual assessment collected pursuant to subsection (a) of this section shall be dedicated to the Patient Injury Compensation Fund. The Board of Medicine and the Board of Osteopathic Medicine shall promptly pay over to the Board of Risk and Insurance Management all amounts collected pursuant to this subsection for deposit in the fund.

(3) Notwithstanding any provision of the code to the contrary, a physician required to pay the annual assessment who fails to do so shall not be granted a license or renewal of an existing license by the Board of Medicine or the Board of Osteopathic Medicine. Any license which expires as a result of a failure to pay the required assessment shall not be reinstated or reactivated until the assessment is paid in full.

(b) *Assessment on trauma centers.* - From July 1, 2016 through June 30, 2020, an assessment of \$25 shall be levied on trauma centers for each trauma patient treated at a health care facility designated by the Office of Emergency Medical Services as a trauma center, as reported to the West Virginia Trauma Registry. The health care facility shall remit the assessment periodically, but in no event less frequently than once each year, with the first assessment being remitted no later than June 30 2017. The assessment shall be remitted to the Board of Risk and Insurance Management to be deposited in the fund thereafter.

(c) *Assessment on claims filed under the Medical Professional Liability Act.* - From July 1, 2016, through June 30, 2020, an assessment of one percent of the gross amount of any settlement or judgment in a qualifying claim shall be levied.

(1) For purposes of this subsection, a qualifying claim is any claim for which a screening certificate of merit, as that term is defined in section six, article seven-b, chapter fifty-five of this code, is required.

(2) For any assessment levied pursuant to this subsection for which a judgment is entered by a court, the date of the entry of judgment shall be used to determine applicability of this provision. The defendant or defendants shall remit the assessment to the clerk of the court in which the qualified claim was filed. The clerk of the court shall then remit the assessment quarterly to the Board of Risk and Insurance Management to be deposited in the fund.

(3) For any assessment levied pursuant to this subsection on a settlement entered into by the parties, the date on which the agreement is formalized in writing by the parties shall be used to determine applicability of this provision. At the time that an action alleging a qualified claim is dismissed by the parties, the assessment shall be paid to the clerk of the court, who shall then remit the assessment to the Board of Risk and Insurance Management to be deposited in the fund. Collected assessments shall be remitted no less often than quarterly. If a qualifying claim is settled prior to the filing of an action, the plaintiff, or his or her counsel, shall remit the payment to the Board of Risk and Insurance Management within sixty days of the date of the settlement agreement to be paid into the fund.

(d) Termination of assessments. - The requirements of this section shall terminate on the dates set forth in this section or sooner if the liability of the Patient Injury Compensation Fund has been paid or has been funded in its entirety. The Board of Risk and Insurance Management shall submit a report to the Joint Committee of Government and Finance each year beginning January 1, 2018, giving recommendations based on actuarial analysis of the fund's liability. The recommendations shall include, but not be limited to, discontinuance of the assessments provided for in this section, closure of the fund and transfer of the fund's liability.

§29-12D-3. Payments from the Patient Injury Compensation Fund.

(a) Other than payments in connection with the ongoing operation and administration of the fund, no payments may be made from the fund other than in satisfaction of claims for economic damages to qualified claimants who would have collected economic damages but for the operation of the limits on economic damages set forth in article seven-b, chapter fifty-five of this code.

(b) For purposes of this article, a qualified claimant must be both a "patient" and a "plaintiff" as those terms are defined in article seven-b, chapter fifty-five of this code.

(c) Any qualified claimant seeking payment from the fund must establish to the satisfaction of the board that he or she has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages, following procedures prescribed by the board by legislative rule.

(d) Upon a determination by the board that a qualified claimant to the fund for compensation has exhausted all reasonable means to recover from all applicable liability insurance an award of economic damages arising under article seven-b, chapter fifty-five of this code, the board shall make a payment or payments to the claimant for economic damages. The economic damages must have been awarded but be uncollectible after the exhaustion of all reasonable means of recovery of applicable insurance proceeds. In no event shall the amount paid by the board in respect to any one occurrence exceed \$1 million or the maximum amount of money that could have been collected from all applicable insurance prior to the creation of the patient injury compensation fund under this article, regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(e) The board, in its discretion, may make payments to a qualified claimant in a lump sum amount or in the form of periodic payments. Periodic payments are to be based upon the present value of the total amount to be paid by the fund to the claimant by using federally approved qualified assignments.

(f) In its discretion, the board may make a payment or payments out of the fund to a qualified claimant in connection with the settlement of claims arising under article seven-b, chapter fifty-five of this code all according to rules promulgated by the board. The board shall prior to making payment determine that payment from the fund to a qualified claimant is in the best interests of the fund. When the claimant and the board agree upon a settlement amount, the following procedure shall be followed:

(1) A petition shall be filed by the claimant with the court in which the action is pending, or if none is pending, in a court of appropriate jurisdiction, for approval of the agreement between the claimant and the board.

(2) The court shall set the petition for hearing as soon as the court's calendar permits. Notice of the time, date and place of hearing shall be given to the claimant and to the board.

~~(3) At the hearing the court shall approve the proposed settlement~~ The authority of the court is limited to denial of the final proposed settlement or, if the court finds it to be valid, just and equitable, approval of the proposed settlement.

(g) If and to the extent that any payment to one or more qualified claimants under this section would deplete the fund during any fiscal year, payments to and among qualified claimant's shall, at the discretion of the board, be prorated, made in periodic installments during the fiscal year according to the rules promulgated by the board or be placed in a nonpayment status until such time as sufficient moneys are received by the fund to initiate or resume payments. Any amounts due and unpaid to qualified claimants in any fiscal year shall be paid in subsequent fiscal years from available funds, but only to the extent funds are available in any fiscal year, according to the board's rules.

~~(h) Payments out of the fund may be used to pay reasonable attorney fees of attorneys representing qualified claimants receiving compensation in respect of economic damages as established by the board of Risk and Insurance Management.~~

~~(i)~~ (h) The claimant may appeal a final decision made by the board pursuant to the provisions of article five, chapter twenty-nine-a of this code.

CHAPTER 55. ACTIONS, SUITS AND ARBITRATION; JUDICIAL SALE.

ARTICLE 7B. MEDICAL PROFESSIONAL LIABILITY.

§55-7B-9. Several liability.

(a) In the trial of a medical professional liability action under this article involving multiple defendants, the trier of fact shall report its findings on a form provided by the court which contains each of the possible verdicts as determined by the court. Unless otherwise agreed by all the parties to the action, the jury shall be instructed to answer special interrogatories, or the court, acting without a jury, shall make findings as to:

- (1) The total amount of compensatory damages recoverable by the plaintiff;
- (2) The portion of the damages that represents damages for noneconomic loss;
- (3) The portion of the damages that represents damages for each category of economic loss;
- (4) The percentage of fault, if any, attributable to each plaintiff; and
- (5) The percentage of fault, if any, attributable to each of the defendants.

~~(b) In assessing percentages of fault, the trier of fact shall consider only the fault of the parties in the litigation at the time the verdict is rendered and may not consider the fault of any other person who has settled a claim with the plaintiff arising out of the same medical injury: *Provided*, That, upon the creation of the Patient Injury Compensation Fund provided for in article twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the~~ The trier of fact shall, in assessing percentages of fault, consider the fault of all alleged parties, including the fault of any person who has settled a claim with the plaintiff arising out of the same medical injury.

(c) If the trier of fact renders a verdict for the plaintiff, the court shall enter judgment of several, but not joint, liability against each defendant in accordance with the percentage of fault attributed to the defendant by the trier of fact.

(d) To determine the amount of judgment to be entered against each defendant, the court shall first, after adjusting the verdict as provided in section nine-a of this article, reduce the adjusted verdict by the amount of any pre-verdict settlement arising out of the same medical injury. The court shall then, with regard to each defendant, multiply the total amount of damages remaining, with prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum recoverable against the defendant. To determine the amount of judgment to be entered against each defendant when there is no preverdict settlement, the court shall first, after adjusting the verdict as provided in section nine-a of this article, multiply the total amount of damages remaining with any prejudgment interest recoverable by the plaintiff, by the percentage of fault attributed to each defendant by the trier of fact. The resulting amount of damages, together with any post-judgment interest accrued, shall be the maximum amount recoverable damages against each defendant.

~~(e) Upon the creation of the Patient Injury Compensation Fund provided for in article twelve-c, chapter twenty-nine of this code, or of some other mechanism for compensating a plaintiff for any amount of economic damages awarded by the trier of fact which the plaintiff has been unable to collect, the court shall, in determining the amount of judgment to be entered against each defendant, first multiply the total amount of damages, with interest, recoverable by the plaintiff by the percentage of each defendant's fault and that amount, together with any post-judgment interest accrued, is the maximum recoverable against said defendant. Prior to the court's entry of the final judgment order as to each defendant against whom a verdict was rendered, the court shall reduce the total jury verdict by any amounts received by a plaintiff in settlement of the action. When any defendant's percentage of the verdict exceeds the remaining amounts due the plaintiff after the mandatory reductions, each defendant shall be liable only for the defendant's pro rata share of the remainder of the verdict as calculated by the court from the remaining defendants to the action. The plaintiff's total award may never exceed the jury's verdict less any statutory or court-ordered reductions.~~

(f) Nothing in this section is meant to eliminate or diminish any defenses or immunities which exist as of the effective date of this section, except as expressly noted in this section.

(g) Nothing in this article is meant to preclude a health care provider from being held responsible for the portion of fault attributed by the trier of fact to any person acting as the health care provider's agent or servant or to preclude imposition of fault otherwise imputable or attributable to the health care provider under claims of vicarious liability. A health care provider may not be held vicariously liable for the acts of a nonemployee pursuant to a theory of ostensible agency unless the alleged agent does not maintain professional liability insurance covering the medical injury which is the subject of the action in the aggregate amount of at least \$1 million for each occurrence.

§55-7B-9c. Limit on liability for treatment of emergency conditions for which patient is admitted to a designated trauma center; exceptions; emergency rules.

(a) In any action brought under this article for injury to or death of a patient as a result of health care services or assistance rendered in good faith and necessitated by an emergency condition for which the patient enters a health care facility designated by the Office of Emergency Medical Services as a trauma center, including health care services or assistance rendered in good faith by a licensed emergency medical services authority or agency, certified emergency medical service personnel or an employee of a licensed emergency medical services authority or agency, the total amount of civil damages recoverable may not exceed \$500,000, for each occurrence, exclusive of interest computed from the date of judgment, and regardless of the number of plaintiffs or the number of defendants or, in the case of wrongful death, regardless of the number of distributees.

(b) On January 1, 2016, and in each year thereafter, the limitation on the total amount of civil damages contained in subsection (a) of this section shall increase to account for inflation as determined by the Consumer Price Index published by the United States Department of Labor: *Provided*, That increases on the limitation of damages shall not exceed one hundred fifty percent of the amounts specified in said subsection.

(c) Beginning July 1, 2016, a plaintiff who suffers economic damages, as determined by the trier of fact or the agreement of the parties, in excess of the limitation of liability in section (a) of this section and for whom recovery from the Patient Injury Compensation Fund is precluded pursuant to section one, article twelve-d, chapter twenty-nine of this code may recover additional economic damages of up to \$1 million. This amount is not subject to the adjustment for inflation set forth in subsection (b) of this section.

~~(b)~~(d) The limitation of liability in subsection (a) of this section also applies to any act or omission of a health care provider in rendering continued care or assistance in the event that surgery is required as a result of the emergency condition within a reasonable time after the patient's condition is stabilized.

~~(c)~~(e) The limitation on liability provided under subsection (a) of this section does not apply to any act or omission in rendering care or assistance which:

(1) Occurs after the patient's condition is stabilized and the patient is capable of receiving medical treatment as a nonemergency patient; or

(2) Is unrelated to the original emergency condition.

~~(d)~~(f) In the event that: (1) A physician provides follow-up care to a patient to whom the physician rendered care or assistance pursuant to subsection (a) of this section; and (2) a medical condition arises during the course of the follow-up care that is directly related to the original emergency condition for which care or assistance was rendered pursuant to said subsection, there is rebuttable presumption that the medical condition was the result of the original emergency condition and that the limitation on liability provided by said subsection applies with respect to that medical condition.

~~(e)~~(g) There is a rebuttable presumption that a medical condition which arises in the course of follow-up care provided by the designated trauma center health care provider who rendered good faith care or assistance for the original emergency condition is directly related to the original emergency condition where the follow-up care is provided within a reasonable time after the patient's admission to the designated trauma center.

~~(f)~~(h) The limitation on liability provided under subsection (a) of this section does not apply where health care or assistance for the emergency condition is rendered:

(1) In willful and wanton or reckless disregard of a risk of harm to the patient; or

(2) In clear violation of established written protocols for triage and emergency health care procedures developed by the Office of Emergency Medical Services in accordance with subsection (e) of this section. In the event that the Office of Emergency Medical Services has not developed a written triage or emergency medical protocol by the effective date of this section, the limitation on liability provided under subsection (a) of this section does not apply where health care or assistance is rendered under this section in violation of nationally recognized standards for triage and emergency health care procedures.

~~(g)~~(i) The Office of Emergency Medical Services shall, prior to the effective date of this section, develop a written protocol specifying recognized and accepted standards for triage and emergency

health care procedures for treatment of emergency conditions necessitating admission of the patient to a designated trauma center.

~~(h)~~(i) In its discretion, the Office of Emergency Medical Services may grant provisional trauma center status for a period of up to one year to a health care facility applying for designated trauma center status. A facility given provisional trauma center status is eligible for the limitation on liability provided in subsection ~~(a)~~(i) of this section. If, at the end of the provisional period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility is no longer eligible for the limitation on liability provided in subsection (a) of this section.

~~(i)~~(k) The Commissioner of the Bureau for Public Health may grant an applicant for designated trauma center status a one-time only extension of provisional trauma center status, upon submission by the facility of a written request for extension, accompanied by a detailed explanation and plan of action to fulfill the requirements for a designated trauma center. If, at the end of the six-month period, the facility has not been approved by the Office of Emergency Medical Services as a designated trauma center, the facility no longer has the protection of the limitation on liability provided in subsection (a) of this section.

~~(j)~~(l) If the Office of Emergency Medical Services determines that a health care facility no longer meets the requirements for a designated trauma center, it shall revoke the designation, at which time the limitation on liability established by subsection (a) of this section ceases to apply to that health care facility for services or treatment rendered thereafter.

~~(k)~~(m) The Legislature hereby finds that an emergency exists compelling promulgation of an emergency rule, consistent with the provisions of this section, governing the criteria for designation of a facility as a trauma center or provisional trauma center and implementation of a statewide trauma/emergency care system. The Legislature therefore directs the Secretary of the Department of Health and Human Resources to file, on or before July 1, 2003, emergency rules specifying the criteria for designation of a facility as a trauma center or provisional trauma center in accordance with nationally accepted and recognized standards and governing the implementation of a statewide trauma/emergency care system. The rules governing the statewide trauma/emergency care system shall include, but not be limited to:

(1) System design, organizational structure and operation, including integration with the existing emergency medical services system;

(2) Regulation of facility designation, categorization and credentialing, including the establishment and collection of reasonable fees for designation; and

(3) System accountability, including medical review and audit to assure system quality. Any medical review committees established to assure system quality shall include all levels of care, including emergency medical service providers, and both the review committees and the providers shall qualify for all the rights and protections established in article three-c, chapter thirty of this code.

~~(l) On January 1, 2016, and in each year after that, the limitation for civil damages contained in subsection (a) of this section shall increase to account for inflation by an amount equal to the Consumer Price Index published by the United States Department of Labor, not to exceed one hundred fifty percent of said subsection.~~

CHAPTER 59. FEES, ALLOWANCES AND COSTS; NEWSPAPERS; LEGAL ADVERTISEMENTS.

ARTICLE 1. FEES AND ALLOWANCES.

§59-1-11. Fees to be charged by clerk of circuit court.

(a) The clerk of a circuit court shall charge and collect for services rendered by the clerk the following fees which shall be paid in advance by the parties for whom services are to be rendered:

(1) Except as provided in subdivisions (2) and (3) of this subsection, for instituting any civil action under the Rules of Civil Procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or removals of civil cases from magistrate court, or any other action, cause, suit or proceeding, \$200, of which \$30 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code and \$45 shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article, and \$20 deposited in the special revenue account created in section six hundred three, article twenty-six, chapter forty-eight of this code to provide legal services for domestic violence victims;

(2) For instituting an action for medical professional liability, ~~\$280~~ \$400, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(3) Beginning on and after July 1, 1999, for instituting an action for divorce, separate maintenance or annulment, \$135;

(4) For petitioning for the modification of an order involving child custody, child visitation, child support or spousal support, \$85;

(5) For petitioning for an expedited modification of a child support order, \$35; and

(6) For filing any pleading that includes a counterclaim, cross claim, third-party complaint or motion to intervene, \$200, which shall be deposited in the special revenue account designated the Fund for Civil Legal Services for Low Income Persons, established by paragraph (B), subdivision (4), subsection (c), section ten of this article: *Provided*, That this subdivision and the fee it imposes does not apply in family court cases nor may more than one such fee be imposed on any one party in any one civil action.

(b) In addition to the foregoing fees, the following fees shall be charged and collected:

(1) For preparing an abstract of judgment, \$5;

(2) For a transcript, copy or paper made by the clerk for use in any other court or otherwise to go out of the office, for each page, \$1;

(3) For issuing a suggestion and serving notice to the debtor by certified mail, \$25;

(4) For issuing an execution, \$25;

(5) For issuing or renewing a suggestee execution and serving notice to the debtor by certified mail, \$25;

(6) For vacation or modification of a suggestee execution, \$1;

(7) For docketing and issuing an execution on a transcript of judgment from magistrate court, \$3;

(8) For arranging the papers in a certified question, writ of error, appeal or removal to any other court, \$10, of which \$5 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code;

(9) For each subpoena, on the part of either plaintiff or defendant, to be paid by the party requesting the same, 50 cents;

(10) For additional service, plaintiff or appellant, where any case remains on the docket longer than three years, for each additional year or part year, \$20; and

(11) For administering funds deposited into a federally insured interest-bearing account or interest-bearing instrument pursuant to a court order, \$50, to be collected from the party making the deposit. A fee collected pursuant to this subdivision shall be paid into the general county fund.

(c) In addition to the foregoing fees, a fee for the actual amount of the postage and express may be charged and collected for sending decrees, orders or records that have not been ordered by the court to be sent by mail or express.

(d) The clerk shall tax the following fees for services in a criminal case against a defendant convicted in such court:

(1) In the case of a misdemeanor, \$85; and

(2) In the case of a felony, \$105, of which \$10 shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(e) The clerk of a circuit court shall charge and collect a fee of \$25 per bond for services rendered by the clerk for processing of criminal bonds and the fee shall be paid at the time of issuance by the person or entity set forth below:

(1) For cash bonds, the fee shall be paid by the person tendering cash as bond;

(2) For recognizance bonds secured by real estate, the fee shall be paid by the owner of the real estate serving as surety;

(3) For recognizance bonds secured by a surety company, the fee shall be paid by the surety company;

(4) For ten percent recognizance bonds with surety, the fee shall be paid by the person serving as surety; and

(5) For ten percent recognizance bonds without surety, the fee shall be paid by the person tendering ten percent of the bail amount.

In instances in which the total of the bond is posted by more than one bond instrument, the above fee shall be collected at the time of issuance of each bond instrument processed by the clerk and all fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code. Nothing in this subsection authorizes the clerk to collect the above fee from any person for the processing of a personal recognizance bond.

(f) The clerk of a circuit court shall charge and collect a fee of \$10 for services rendered by the clerk for processing of bail piece and the fee shall be paid by the surety at the time of issuance. All fees collected pursuant to this subsection shall be deposited in the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code.

(g) No clerk is required to handle or accept for disbursement any fees, cost or amounts of any other officer or party not payable into the county treasury except on written order of the court or in compliance with the provisions of law governing such fees, costs or accounts.

(h) Fees for removal of civil cases from magistrate court shall be collected by the magistrate court when the case is still properly before the magistrate court. The magistrate court clerk shall forward the fees collected to the circuit court clerk.

§59-1-28a. Disposition of filing fees in civil actions and fees for services in criminal cases.

(a) Except for those payments to be made from amounts equaling filing fees received for the institution of divorce actions as prescribed in subsection (b) of this section, and except for those payments to be made from amounts equaling filing fees received for the institution of actions for divorce, separate maintenance and annulment as prescribed in said subsection, for each civil action instituted under the rules of civil procedure, any statutory summary proceeding, any extraordinary remedy, the docketing of civil appeals or any other action, cause, suit or proceeding in the circuit court the clerk of the court shall, at the end of each month, pay into the funds or accounts described in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the action as follows:

(1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code the amount of \$60;

(2) Into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5; and

(3) Into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code the amount of \$20.

(b) For each action for divorce, separate maintenance or annulment instituted in the circuit court, the clerk of the court shall, at the end of each month, report to the Supreme Court of Appeals the number of actions filed by persons unable to pay and pay into the funds or accounts in this subsection an amount equal to the amount set forth in this subsection of every filing fee received for instituting the divorce action as follows:

(1) Into the Regional Jail and Correctional Facility Authority Fund in the State Treasury established pursuant to the provisions of section ten, article twenty, chapter thirty-one of this code the amount of \$10;

(2) Into the special revenue account of the State Treasury, established pursuant to section six hundred four, article two, chapter forty-eight of this code an amount of \$30;

(3) Into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount of \$70; and

(4) Into the Court Security Fund in the State Treasury, established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code the amount of \$5.

(c) Notwithstanding any provision of subsection (a) or (b) of this section to the contrary, the clerk of the court shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one of this code an amount equal to the amount of every fee received for petitioning for the modification of an order involving child custody, child visitation, child support or spousal support as determined by subdivision (3), subsection (a), section eleven of this article and for petitioning for an expedited modification of a child support order as provided in subdivision (4) of said subsection.

(d) The clerk of the court from which a protective order is issued shall, at the end of each month, pay into the Family Court Fund established under section twenty-two, article two-a, chapter fifty-one

of this code an amount equal to every fee received pursuant to the provisions of section five hundred eight, article twenty-seven, chapter forty-eight of this code.

(e) Of every fee for service received in any criminal case against any respondent convicted in circuit court, the clerk of each circuit court shall, at the end of each month, pay into the Regional Jail and Correctional Facility Authority Fund in the State Treasury an amount equal to \$40, into the Court Security Fund in the State Treasury established pursuant to the provisions of section fourteen, article three, chapter fifty-one of this code an amount equal to \$5 and into the Regional Jail Operations Partial Reimbursement Fund established pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code an amount equal to \$30.

(f) The clerk of the circuit court shall, at the end of each month, pay into the Medical Liability Fund established under article twelve-b, chapter twenty-nine of this code, an amount equal to ~~\$165~~ \$285 of every filing fee received for instituting a medical professional liability action: Provided, That effective July 1, 2016, payment shall be into the Patient Injury Compensation Fund created by the provisions of article twelve-d, chapter twenty-nine of this code.

(g) The clerk of the circuit court shall, at the end of each month, pay into the Courthouse Facilities Improvement Fund created by section six, article twenty-six, chapter twenty-nine of this code those amounts received by the clerk which are dedicated for deposit in the fund.

(h) The clerk of each circuit court shall, at the end of each month, pay into the Regional Jail Operations Partial Reimbursement Fund established in the State Treasury pursuant to the provisions of section ten-b, article twenty, chapter thirty-one of this code those amounts received by the clerk which are dedicated for deposit in the fund.

The bill (Com. Sub. for S. B. 602), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 614, Conforming statute with court interpretation by replacing “unconscionable” with “fraudulent” when referring to conduct.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Senate Bill 614 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 614) passed with its title.

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

Com. Sub. for Senate Bill 622, Composition of PEIA Finance Board.

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

Com. Sub. for Senate Bill 625, Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.

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

Com. Sub. for Senate Bill 628, Permitting treating physician direct palliative or emergent treatment for patients.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Committee Substitute for Senate Bill 628 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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 S. B. 628) passed with its title.

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

Com. Sub. for Senate Bill 631, Authorizing higher education boards of governors develop retirement and incentive packages.

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

Com. Sub. for Senate Bill 643, Requiring individuals receiving unemployment compensation seek seasonal employment.

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

Senate Bill 644, Authorizing counties to offer license plates customized to county.

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

Com. Sub. for Senate Bill 647, Exempting certain complimentary hotel rooms from occupancy tax.

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

Senate Bill 648, Allowing local authorities permit flashing traffic signals during low traffic times.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 648 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. S. B. 648) passed with its title.

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

Senate Bill 656, Creating Upper Kanawha Valley Resiliency and Revitalization Program.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 656 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. S. B. 656) passed with its title.

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

Senate Bill 657, Relating to damages for medical monitoring.

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

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

On page one, section thirty, lines one through ten, by striking out all of subsection (a);

And,

On page one, section thirty, line eleven, by striking out “(b)”.

The bill (S. B. 657), as amended, was then ordered to engrossment and third reading.

Senate Bill 658, Allowing licensed professionals donate time to care of indigent and needy in clinical setting.

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

On motion of Senator Carmichael, the constitutional rule requiring a bill to be read on three separate days was suspended by a vote of four fifths of the members present, taken by yeas and nays.

On suspending the constitutional rule, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (Mr. President)—34.

The nays were: None.

Absent: None.

Engrossed Senate Bill 658 was then read a third time and put upon its passage.

On the passage of the bill, the yeas were: Ashley, Beach, Blair, Boley, Boso, Carmichael, Cline, Facemire, Ferns, Gaunch, Hall, Karnes, Kessler, Kirkendoll, Laird, Leonhardt, Maynard, Miller, Mullins, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Sypolt, Takubo, Trump, Unger, Walters, Williams, Woelfel, Yost and Cole (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. S. B. 658) passed with its title.

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

Senate Bill 669, Requiring proficiency in civics as condition for high school or GED diploma.

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

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

On page one, section six, lines twelve and thirteen, after the word “diploma” by inserting a comma and striking out the words “or General Educational Development (GED) diploma” and inserting in lieu thereof the words “Test Assessing Secondary Completion (TASC) diploma or equivalent”.

On motion of Senator Plymale, the following amendment to bill (S. B. 669) was next reported by the Clerk and adopted:

On page one, section six, line fourteen, after the word “test” by changing the period to a colon and inserting the following proviso: *Provided*, That any necessary modifications pursuant to any student’s individualized education plan (IEP) or education plan established pursuant to Section 504 of the Rehabilitation Act of 1973, as amended, 29 U. S. C. §794, shall apply.

The bill (S. B. 669), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 677, Relating to tuition rates set by higher education institutional governing boards.

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

Senate Bill 678, Relating to ownership and use of conduit providing telephone service.

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

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

On page one, section three, line five, after the word "apparatus" by changing the period to a colon and inserting the following proviso: *Provided*, That the customer and all occupants of the conduit or other underground apparatus shall comply with the national electrical safety code and all other reasonable standards and practices to be established by the Public Service Commission.

The bill (S. B. 678), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Bill 686, Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction.

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

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

On page one, section three-pp, lines five and six, by striking out the words "to provide immunity from damages;";

And,

On page four, section five-g, lines five and six, by striking out the words "to provide immunity from damages;".

The bill (Com. Sub. for S. B. 686), as amended, was then ordered to engrossment and third reading.

Senate Bill 701, Relating generally to resort area districts.

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

Senate Bill 702, Allowing title of real estate to pass to individuals entitled to sale proceeds if executor fails to do so within 5 years of closing estate.

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

Senate Bill 703, Relating to deposit of overpayment of certain fees into Children's Trust Fund.

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

Senate Bill 704, Dispatching of towing service for emergency towing of vehicles.

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

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

Senate Bill 705, Reducing coal severance tax to 3 percent over two years.

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

On motion of Senator Kessler, the following amendments to the bill were reported by the Clerk and considered simultaneously:

On page one, section three, line six, by striking out "2018" and inserting in lieu thereof "2016";

And,

On page one, section three, line eight, by striking out "2019" and inserting in lieu thereof "2017".

The question being on the adoption of Senator Kessler's amendments to the bill, the same was put and did not prevail.

On motion of Senator Kessler, the following amendment to the bill (S. B. 705) was next reported by the Clerk:

On page two, section three, after line sixteen, by inserting a new subsection, designated subsection (c), to read as follows:

(c) Notwithstanding any provision of this code to the contrary, the tax imposed in subsection (a) of this section for each fiscal year shall be five percent of the gross value of the natural resource produced, as shown by the gross income derived from the sale or furnishing thereof and the provisions of subsection (b) shall not apply to any entity unless it employs full-time employees in West Virginia at a number that is at least ninety percent of the full-time employees it employed in West Virginia on July 1, 2011.

The question being on the adoption of Senator Kessler's amendment to the bill, the same was put and did not prevail.

On motion of Senator Snyder, the following amendments to the bill (S. B. 705) were next reported by the Clerk and considered simultaneously:

On page three, after section three, by inserting a new section, designated section three-a, to read as follows:

§11-13A-3a. Imposition of tax on privilege of severing natural gas or oil; Tax Commissioner to develop a uniform reporting form.

(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 hereby levied and shall be collected from every person exercising such privilege an annual privilege tax: *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 five thousand 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 ten 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 shall be 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, except as otherwise provided in this article: Provided, That if the coal severance tax imposed in section three of this article is changed to some amount other than five percent, then the severance tax imposed by this subsection shall adjust on the same dates and to the same percentages such that the two severance taxes continue to be equivalent percentages of the gross value of the natural resource produced.

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

(d)(1) The Legislature finds that in addition to the production reports and financial records which must be filed by oil and gas producers with the State Tax Commissioner in order to comply with this section, oil and gas producers are required to file other production reports with other agencies, including, but not limited to, the office of oil and gas, the Public Service Commission and county assessors. The reports required to be filed are largely duplicative, the compiling of the information in different formats is unnecessarily time consuming and costly, and the filing of one report or the sharing of information by agencies of government would reduce the cost of compliance for oil and gas producers.

(2) On or before July 1, 2003, the Tax Commissioner shall design a common form that may be used for each of the reports regarding production that are required to be filed by oil and gas producers, which form shall readily permit a filing without financial information when such information is unnecessary. The commissioner shall also design such forms so as to permit filings in different formats, including, but not limited to, electronic formats.

(3) Effective July 1, 2006, this subsection shall have no force or effect.

And,

By striking out the enacting section and inserting in lieu thereof a new enacting section to read as follows:

That §11-13A-3 and §11-13A-3a of the Code of West Virginia, 1931, as amended, be amended and reenacted, all to read as follows:.

Following discussion,

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

On motion of Senator Hall, the following amendments to the bill (S. B. 705) were next reported by the Clerk, considered simultaneously, and adopted:

On page one, section three, line six, by striking "2018" and inserting in lieu thereof "2017";

And,

On page one, section three, line eight, by striking "2019" and inserting in lieu thereof "2018".

The bill (S. B. 705), as amended, was then ordered to engrossment and third reading.

Com. Sub. for Senate Joint Resolution 14, Right to Farm and Ranch Amendment.

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

Eng. Com. Sub. for House Bill 4012, West Virginia Religious Freedom Restoration Act.

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

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

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

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4, §5-11C-5, §5-11C-6 and §5-11C-7, all to read as follows:

ARTICLE 11C. WEST VIRGINIA RELIGIOUS FREEDOM PROTECTION ACT.

§5-11C-1. Short title.

This article may be known and cited as the West Virginia Religious Freedom Protection Act.

§5-11C-2. Purposes.

The purpose of this article is to affirm the rights of West Virginians as enumerated in Section fifteen, Article III of the Constitution of the State of West Virginia and the First Amendment to the United States Constitution; to codify the application of the compelling interest test and strict scrutiny standard set forth in *Sherbert v. Verner*, 374 U.S. 398 (1963) and *Wisconsin v. Yoder*, 406 U.S. 205 (1972), and affirmed by *State v. Everly*, 150 W.Va. 423 (1966); and to guarantee its application in all cases in which any person's free exercise of religion is alleged to have been substantially burdened by governmental action.

§5-11C-3. Definitions.

As used in this article:

"Exercise of religion" means the sincere practice or observance of religion under the rights enumerated in Section 15, Article III of the Constitution of the State of West Virginia and the First Amendment to the Constitution of the United States of America.

"Governmental action" means any action by a branch, department, agency, board, commission, instrumentality, official, or a person or entity acting in an agency capacity, of the State of West Virginia or a political subdivision thereof.

"Substantially burden" means a governmental action which does any of the following:

(1) Significantly constrains or inhibits conduct or expression mandated by a person's sincerely held religious beliefs;

(2) Significantly curtails a person's ability to express adherence to his or her religious faith;

(3) Denies a person a reasonable opportunity to engage in activities which are fundamental to that person's religion; or

(4) Compels conduct or expression by a person which violates a specific tenet of that person's religious faith.

§5-11C-4. Applicability; construction; remedies.

(a) Except as authorized by the provisions of this article, governmental action may not substantially burden a person's right to the free exercise of his or her religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to a person's free exercise of religion in this particular instance:

(1) Is in furtherance of a compelling governmental interest; and

(2) Is the least restrictive means of furthering that compelling governmental interest.

(b) A person who believes his or her free exercise of religion has been substantially burdened, or is likely to be substantially burdened, in may assert such alleged violation or impending violation as a claim for injunctive or declaratory relief or as a defense in a judicial or administrative proceeding. If the person asserting such a claim or defense prevails, then he or she may obtain relief against the state or its political subdivisions: *Provided*, That such relief is limited to injunctive or declaratory relief.

(c) Nothing in this article may be construed to constitute a defense to any cause of action based upon a refusal to provide emergency medical treatment.

(d) This article does not apply to any local or regional jail, or any state or federal correctional facility, nor any facility that treats civilly committed sexually violent offenders.

§5-11C-5. Churches and religious institutions.

A person's free exercise of religion shall apply equally to churches and religious institutions in or through which persons exercise and express their religious faith, and including also the pastors, ministers, priests, rabbis and other clerics of such churches and religious institutions.

§5-11C-6. Governmental actions expressly prohibited.

No governmental entity may:

(1) Compel a church, religious institution or cleric thereof to perform any sacrament, ceremony, practice, ritual or service of its, his or her faith against its, his or her will;

(2) Compel a cleric of any church or religious institution to recognize, for purposes of practicing his or her religious duties, any marriage which violates the tenets of his or her faith;

(3) Preclude a cleric of any church or religious institution from performing any sacrament, ceremony, practice ritual or service of his or her faith that is not prohibited by a state law, rule or county or municipal ordinance regulating health and safety;

(4) Compel any person to participate in or undergo any religious sacrament, ceremony, practice, ritual or service which violates his or her religious beliefs.

§5-11C-7. Scope of article; legislative intent.

(a) In enacting this article, it is not the intention of the legislature to expand or diminish the rights of persons under the United States Constitution, the Constitution of West Virginia, applicable laws of

the United States, the laws of the State of West Virginia or ordinances enacted by political subdivisions of the State of West Virginia. Rather, it is the sole intention of the Legislature in enacting this article to codify the test and standard of review under which governmental actions are to be judicially reviewed when those action are alleged to be substantially burdening to one person's sincerely held religious beliefs.

(b) Nothing in this article shall be construed to create a cause of action for monetary damages.

On motion of Senator Gaunch, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4012) were reported and considered simultaneously:

On page one, section one, by striking out the word "Protection" and inserting in lieu thereof the word "Restoration";

On page one, section three, after the word "America.", by striking out the remainder of the amendment and inserting in lieu thereof the following:

"State action" means action by a branch, department, agency, board, commission, instrumentality, official, or other person acting under color of law, of the state of West Virginia or any political subdivision thereof.

§5-11C-4. Applicability; construction; remedies.

(a) State action may not substantially burden a person's right to exercise of religion, even if the burden results from a rule of general applicability, unless it is demonstrated that applying the burden to that person's exercise of religion in this particular instance:

- (1) Is in furtherance of a compelling governmental interest; and
- (2) Is the least restrictive means of furthering that compelling governmental interest.

(b) A person whose exercise of religion has been substantially burdened, or is likely to be substantially burdened, in violation of this article may assert such violation or impending violation as a claim for injunctive or declaratory relief or as a defense in any judicial or administrative proceeding. The person asserting such a claim or defense may obtain relief against the state or its political subdivisions: *Provided*, That such relief is limited to injunctive or declaratory relief and reimbursement of costs and reasonable attorney fees. Nothing in this article shall be construed to create a cause of action by an employee against a nongovernmental employer; nor shall anything in this article be construed to constitute a defense to any claim based upon a refusal to provide emergency medical services.

(c) This article applies to all state and local laws, and the implementation of those laws, whether statutory or otherwise, and whether adopted before or after the effective date of this article. This article does not apply to any local or regional jail, or any state or federal correctional facility, nor any facility that treats civilly committed sexually violent offenders.

§5-11C-5. Severability.

If a subsection or portion of this article is declared invalid, that declaration does not affect the validity of the remaining portions.;

And,

On page one, by striking out the enacting section and inserting in lieu thereof a new enacting section, to read as follows:

That the Code of West Virginia, 1931, as amended, be amended by adding thereto a new article, designated §5-11C-1, §5-11C-2, §5-11C-3, §5-11C-4 and §5-11C-5, all to read as follows:.

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

The question being on the adoption of Senator Gaunch's amendments to the Judiciary committee amendment to the bill, and on this question, Senator Gaunch demanded the yeas and nays.

The roll being taken, the yeas were: Ashley, Blair, Boley, Boso, Cline, Gaunch, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Sypolt and Cole (Mr. President)—13.

The nays were: Beach, Carmichael, Facemire, Ferns, Hall, Kessler, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost—21.

Absent: None.

So, a majority of those present and voting not having voted in the affirmative, the President declared Senator Gaunch's amendments to the Judiciary committee amendment to the bill rejected.

On motions of Senators Palumbo and Stollings, the following amendments to the Judiciary committee amendment to the bill (Eng. Com. Sub. for H. B. 4012) were next reported by the Clerk and considered simultaneously:

On page two, section four, after subsection (c), by inserting the following:

(d) Notwithstanding any provision of this code to the contrary, this article does not apply to any federal, state or local antidiscrimination laws or ordinances, whether adopted before or after the effective date of this article. Antidiscrimination laws and ordinances are hereby determined to be both a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.

(e) Notwithstanding any provision of this code to the contrary, this article does not apply to any federal, state or local child health laws or ordinances concerning child vaccinations, whether adopted before or after the effective date of this article. Child vaccination laws and ordinances are hereby determined to be both a compelling governmental interest and the least restrictive means of furthering that compelling governmental interest.;

And,

By relettering the remaining subsection.

Following extended discussion,

The question being on the adoption of the amendments offered by Senators Palumbo and Stollings to the Judiciary committee amendment to the bill, and on this question, Senator Karnes demanded the yeas and nays.

The roll being taken, the yeas were: Beach, Boley, Carmichael, Cline, Facemire, Ferns, Hall, Kessler, Laird, Miller, Palumbo, Plymale, Prezioso, Romano, Snyder, Stollings, Takubo, Trump, Unger, Walters, Williams, Woelfel and Yost—23.

The nays were: Ashley, Blair, Boso, Gaunch, Karnes, Kirkendoll, Leonhardt, Maynard, Mullins, Sypolt and Cole (Mr. President)—11.

Absent: None.

So, a majority of those present and voting having voted in the affirmative, the President declared the amendments offered by Senators Palumbo and Stollings 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.

Thereafter, at the request of Senator Kessler, and by unanimous consent, the remarks by Senator Carmichael regarding the adoption of the amendments offered by Senators Palumbo and Stollings to the Judiciary committee amendment to Engrossed Committee Substitute for House Bill 4012 were ordered printed in the Appendix to the Journal.

The bill (Eng. Com. Sub. for H. B. 4012), as amended, was then ordered to third reading.

The Senate proceeded to the twelfth order of business.

Remarks were made by Senators Cline and Woelfel.

Pending announcement of meetings of standing committees of the Senate,

On motion of Senator Carmichael, the Senate adjourned until tomorrow, Wednesday, March 2, 2016, at 11 a.m.

SENATE CALENDAR

Wednesday, March 02, 2016

11:00 AM

UNFINISHED BUSINESS

- S. C. R. 54 - Union Army CPT John Bond Memorial Bridge.
S. C. R. 55 - Dewey "Duke" Maynard Memorial Road.

THIRD READING

- Eng. Com. Sub. for S. B. 25 - Providing selection procedure for state delegates to Article V convention.
- Eng. Com. Sub. for S. B. 104 - Classifying Marshall University Forensic Science Center as a criminal justice agency (original similar to HB4443).
- Eng. Com. Sub. for S. B. 337 - Creating 5-year tax credit for businesses on post-mine sites (original similar to HB4596).
- Eng. Com. Sub. for Com. Sub. for S. B. 454 - Licensing and regulating medication-assisted treatment programs for substance use disorders (original similar to HB4293).
- Com. Sub. for S. B. 528 - Altering power of Higher Education Policy Commission - (With right to amend).
- Eng. Com. Sub. for S. B. 534 - Relating to procedures for driver's license suspension and revocation in criminal proceedings.
- Com. Sub. for S. B. 539 - Relating to condemnation proceedings - (With right to amend).
- Eng. Com. Sub. for S. B. 555 - Providing for 3-cent tax increase on sale of fuel when cost is less than \$2 per gallon.
- Eng. S. B. 563 - Increasing retirement benefit multiplier for WV Emergency Medical Services Retirement System members (original similar to HB4425).
- Com. Sub. for S. B. 599 - Relating generally to Uniform Unclaimed Property Act - (amend. pending) - (With right to amend).
- Eng. Com. Sub. for S. B. 601 - Relating to exception from jurisdiction of PSC for materials recovery facilities or mixed waste processing facilities.
- Eng. Com. Sub. for S. B. 602 - Relating to Patient Injury Compensation Fund.
- Eng. Com. Sub. for S. B. 622 - Composition of PEIA Finance Board.
- Eng. Com. Sub. for S. B. 625 - Revising exceptions from FOIA provided for in Aboveground Storage Tank Act.
- Eng. Com. Sub. for S. B. 631 - Authorizing higher education boards of governors develop retirement and incentive packages.

- Eng. Com. Sub. for S. B. 643 - Requiring individuals receiving unemployment compensation seek seasonal employment.
- Eng. S. B. 644 - Authorizing counties to offer license plates customized to county.
- Eng. Com. Sub. for S. B. 647 - Exempting certain complimentary hotel rooms from occupancy tax.
- Eng. S. B. 657 - Relating to damages for medical monitoring - (Com. title amend. pending).
- Eng. S. B. 669 - Requiring proficiency in civics as condition for high school or GED diploma.
- Eng. Com. Sub. for S. B. 677 - Relating to tuition rates set by higher education institutional governing boards.
- Eng. S. B. 678 - Relating to ownership and use of conduit providing telephone service.
- Eng. Com. Sub. for S. B. 686 - Authorizing local governing authorities hold sanctioned motor vehicle races on roads, streets or airports under their jurisdiction.
- Eng. S. B. 701 - Relating generally to resort area districts.
- Eng. S. B. 702 - Allowing title of real estate to pass to individuals entitled to sale proceeds if executor fails to do so within 5 years of closing estate.
- Eng. S. B. 703 - Relating to deposit of overpayment of certain fees into Children's Trust Fund.
- S. B. 704 - Dispatching of towing service for emergency towing of vehicles - (With right to amend).
- Eng. S. B. 705 - Reducing coal severance tax to 3 percent over two years (original similar to HB 4210, HB 4486, HB 4536, SB 421, SB 654, SB 655).
- Eng. Com. Sub. for S. J. R. 14 - Right to Farm and Ranch Amendment.
- Eng. Com. Sub. for H. B. 4012 - West Virginia Religious Freedom Restoration Act - (Com. title amend. pending) (original similar to SB11).

ANNOUNCED SENATE COMMITTEE MEETINGS

Regular Session 2016

Wednesday, March 2, 2016

10 a.m.	Judiciary	(Room 208W)
2 p.m.	Natural Resources	(Room 451M)
2 p.m.	Pensions	(Room 208W)