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March 5, 2018  
FIFTY-FIFTH DAY



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Monday, March 5, 2018

**FIFTY-FIFTH DAY**

[MR. SPEAKER, MR. ARMSTEAD, IN THE CHAIR]

The House of Delegates met at 11:00 a.m., and was called to order by the Honorable Tim Armstead, Speaker.

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

The Clerk proceeded to read the Journal of Saturday, March 3, 2018, being the first order of business, when the further reading thereof was dispensed with and the same approved.

**Committee Reports**

Delegate Hanshaw, Chair of the Joint Committee on Enrolled Bills, submitted the following report, which was received:

Your Joint Committee on Enrolled Bills has examined, found truly enrolled, and on the 3<sup>rd</sup> day of March, 2018, presented to His Excellency, the Governor, for his action, the following bills, signed by the President of the Senate and the Speaker of the House of Delegates:

**Com. Sub. for S. B. 360**, Clarifying oil and gas permits not be on flat well royalty leases,

**Com. Sub. for S. B. 415**, Permitting wagering on certain professional or collegiate sports events authorized as WV Lottery Sports Wagering activities,

And,

**Com. Sub. for H. B. 3004**, Relating to filling vacancies in certain offices.

**Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2607**, Extending the maximum period of confinement a judge may impose for certain, first-time probationary violations.

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

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

**“ARTICLE 12. PROBATION AND PAROLE.**

**§62-12-10. Violation of probation.**

(a) If at any time during the period of probation there shall be reasonable cause to believe that the probationer has violated any of the conditions of his or her probation, the probation officer may arrest him or her with or without an order or warrant, or the court which placed him or her on probation, or the judge thereof in vacation, may issue an order for his or her arrest, whereupon he or she shall be brought before the court, or the judge thereof in vacation, for a prompt and summary hearing.

(1) If the court or judge finds reasonable cause exists to believe that the probationer:

(A) Absconded supervision;

(B) Engaged in new criminal conduct other than a minor traffic violation or simple possession of a controlled substance; or

(C) Violated a special condition of probation designed either to protect the public or a victim;

~~the~~ The court or judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed, and order that sentence be executed.

(2) If the judge finds that reasonable cause exists to believe that the probationer violated any condition of supervision other than the conditions of probation set forth in §62-12-10(a)(1) of this code then, for the first violation, the judge shall may impose a period of confinement up to ~~sixty days or, for the second violation~~ six months. For subsequent violations, a period of confinement up to one hundred twenty days. ~~For the third violation,~~ the judge may revoke the suspension of imposition or execution of sentence, impose sentence if none has been imposed, and order that sentence be executed, with credit for time spent in confinement under this section.

(3) In computing the period for which the offender is to be confined, the time between his or her release on probation and his or her arrest may not be taken to be any part of the term of his or her sentence.

(b) A probationer confined for a first or second violation pursuant to §66-12-10(a)(2) of this code may be confined in jail, and the costs of confining felony probationers shall be paid out of funds appropriated for the Division of Corrections. Whenever the court orders the incarceration of a probationer pursuant to the provisions of §66-12-10(a)(2) of this section, a circuit clerk shall provide a copy of the order of confinement within five days to the Commissioner of Corrections.

(c) If, despite a violation of the conditions of probation, the court or judge is of the opinion that the interests of justice do not require that the probationer serve his or her sentence or a period of confinement, the judge may, except when the violation was the commission of a felony, again release him or her on probation: *Provided*, That a judge may otherwise depart from the sentence limitations set forth in §66-12-10(a)(2) of this code upon making specific written findings of fact supporting the basis for the departure.”

And,

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

**Com. Sub. for H. B. 2607** – “A Bill to amend and reenact §62-12-10 of the Code of West Virginia, 1931, as amended, relating to extending the maximum period of confinement a judge may impose

for certain, first-time probationary violations from 60 days to six months; and providing judges greater sentencing discretion for certain violations of probation.”

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2654**, Expanding county commissions’ ability to dispose of county or district property.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2983**, Granting priority to roadway construction, reconstruction and maintenance for roadways prone to recurring floods that hinder ingress and egress.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, with amendment, to take effect July 1, 2018, a bill of the House of Delegates, as follows:

**Com. Sub. for H. B. 4024**, Relating generally to direct cremation or direct burial expenses for indigent persons.

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

On page three, section one, line forty-seven, by striking out the word “director” and inserting in lieu thereof the word “establishment”.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 4169**, Requiring certain establishments and facilities to post human trafficking assistance notices.

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

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

**“Article 9A. Division of Justice and Community Services.**

**§15-9A-4. Human Trafficking Assistance Notices.**

(a) For the purpose of assisting victims of human trafficking to obtain help and services, the following businesses and establishments shall post a notice meeting the requirements of this section:

(1) All locations licensed by the Alcohol Beverage Control Commission to allow consumption of alcoholic beverages, pursuant to chapter 60 of this code;

(2) Exotic entertainment facilities, as defined by §60-4-23 of this code;

(3) Primary airports;

(4) Passenger rail stations;

(5) Bus stations;

(6) Locations where gasoline and diesel fuel are sold;

(7) Emergency departments within hospitals;

(8) Urgent care centers;

(9) Locations at which farm labor contractors and day haulers work, if a physical facility is available at those locations upon or in which notice can be posted;

(10) Privately operated job recruitment centers;

(11) Rest areas located along interstate highways in this state, operated by the Division of Highways;

(12) Hotels; and

(13) Any other business or establishment that the director determines, by legislative rule, is an effective location to provide notice to victims of human trafficking.

(b) Requirements for posting of notice. – The notice required by this section must be posted in English, Spanish, and any other language determined by legislative rule by the director. The notice must be posted in each public restroom for the business or establishment, and either in a conspicuous place near the public entrance of the business or establishment or in another location in clear view of the public and employees, where similar notices are customarily posted.

(c) The director shall provide hyperlinks on the division's website to downloadable posters that are eight and one-half inches by 11 inches in size that provide information regarding the National Human Trafficking Resource Center and display the telephone number for the National Human Trafficking Resource Center hotline. These downloadable posters must be available in English, Spanish, and any other language determined by legislative rule by the director. These downloadable posters, if printed and posted, will satisfy the posting requirements of this section.

(d) Any law-enforcement officer, representative of the state health department or of a county health department, representative of the State Alcoholic Beverage Control Commission, representative of the Division of Labor, or other state representative inspecting a business or establishment or otherwise lawfully acting under his or her state authority, may notify, in writing, any business or establishment that it has failed to comply with the requirements of this section. If the business or establishment does not correct the violation within 30 days from the date of receipt of such written notice, the owner shall be charged with a violation of this section and upon conviction,

is guilty of a misdemeanor offense and may be punished by a fine of not more than \$250. Upon a second or subsequent conviction, the owner is guilty of a misdemeanor and shall be punished by a fine of not more than \$500. The notice required by this subsection must be delivered to the noncomplying business or establishment by certified mail, with return receipt requested.

(e) For the purposes of this section, and unless a different meaning is plainly required:

(1) 'Day hauler' means any person who is employed by a farm labor contractor to transport, or who, for a fee, transports, by motor vehicle, workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person: *Provided*, That such term shall not include a person engaged in the production of agricultural products;

(2) 'Farm labor contractor' means any person who, for a fee, employs workers to render personal services in connection with the production of any farm products to, for, or under the direction of a third person, or who recruits, solicits, supplies, or hires workers on behalf of an employer engaged in the growing or producing of farm products, and who, for a fee, provides in connection therewith one or more of the following services: furnishes board, lodging, or transportation for those workers; supervises, times, checks, counts, weighs, or otherwise directs or measures their work; or disburses wage payments to such persons: *Provided*, That such term shall not include a person engaged in the production of agricultural products;

(3) 'Hospital' shall have the same meaning as set forth in §16-2D-2(21) of this code.

(4) 'Hotel' means any establishment which offers overnight accommodations to the public in exchange for a monetary payment;

(5) 'Primary airport' shall have the same meaning as set forth in 49 U.S.C. § 47102(16); and

(6) 'Production of agricultural products' means raising, growing, harvesting, or storing of crops; feeding, breeding, or managing livestock, equine, or poultry; producing or storing feed for use in the production of livestock."

And,

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

**Com. Sub. for H. B. 4169** - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-9A-4, relating to requiring certain businesses and establishments to post human trafficking assistance notices; establishing where notices must be posted and contents of notice; requiring the Director of the Division of Justice and Community Services to provide certain resources for giving notice on the Division's website; authorizing certain state and local agents to give notice of violations; providing for criminal penalties for failure to comply with posting of notices once given notice of lawful duty to post; and defining terms."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 301**), and there were—yeas 95, nays 4, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Foster, Marcum, McGeehan and Wilson.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4169) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4180**, Relating to wildlife resources.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect January 1, 2019, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4230**, Relating to credit for reinsurance.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4236**, Requiring agencies to provide an annual inventory of real property holdings to the Real Estate Division.

A message from the Senate, by

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

**Com. Sub. for H. B. 4268**, Co-tenancy Modernization and Majority Protection Act.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for H. B. 4268** - "A Bill to amend and reenact §22C-9-3 and §22C-9-4 of the Code of West Virginia, 1931, as amended, to amend and reenact §37-7-2 of said code; and to amend said code by adding thereto a new chapter, designated §37B-1-1, §37B-1-2, §37B-1-3, §37B-1-4, §37B-1-5, §37B-1-6, §37B-1-7, §37B-2-1, §37B-2-2, §37B-2-3, §37B-2-4, §37B-2-5, §37B-2-6, §37B-2-7, §37B-2-8, and §37B-2-9, all relating generally to real property; providing the Oil and Gas Conservation Commission enforcement authority for certain mineral development by cotenants; providing an exception to waste and trespass for certain oil or natural gas developments; providing a short title; providing declarations of public policy and legislative findings; providing definitions; providing that, in cases where there are seven or more royalty owners, consent for the lawful use and development of oil or natural gas mineral property by the persons owning an undivided three fourths of the royalty interests, as defined, in an oil or natural gas mineral property is permissible, is not waste, and is not trespass; providing that nonconsenting cotenants may elect a production royalty interest or a working interest share of production; providing an election period and default elections; providing a certain right of appeal; providing that interests owned by unknown or unlocatable owners be reserved, reported, and deposited in a fund administered by the State Treasurer; providing methods for determination of leasehold and contractual terms; providing for the development of specifically targeted stratigraphic formations; providing the Oil and Gas Conservation Commission rule-making authority; providing a mechanism for surface owners to acquire title to certain severed oil and gas interests; providing limitations of liability for certain nonconsenting cotenants and unknown



or unlocatable interest owners; prohibiting surface use or disturbance in certain circumstances; preserving common law rights; providing for severability of provisions; providing a short title; providing that the article shall be read in conjunction and not in conflict with the West Virginia Uniform Unclaimed Property Act; providing definitions; providing for quarterly reporting and remittance of each reserved interest for each unknown or unlocatable interest owner to the State Treasurer; providing reporting requirements and administrative duties; creating a fund known as the Unknown and Unlocatable Interest Owners Fund, to be administered by the State Treasurer; permitting investment of moneys in the fund with the West Virginia Board of Treasury Investments; requiring payment of lawful claims of unknown and unlocatable interest owners; permitting deduction of certain expenses; requiring that certain funds be transferred to the Oil and Gas Reclamation Fund and the Public Employees Insurance Agency Stability Fund in equal amounts; providing for certain notice requirements; providing for the crediting of certain amounts to each owner's account and payment of certain interest earned; providing for rule-making authority; providing for severability of provisions; and providing an effective date."

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 302**), and there were—yeas 58, nays 41, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hamilton, Hartman, Hicks, Hill, Hornbuckle, Iaquina, Isner, Longstreth, Love, Lovejoy, Lynch, Marcum, McGeehan, Miley, R. Miller, Moye, Paynter, Pethtel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson, Wagner and Williams.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4268) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4289**, Relating to disability pensions of municipal employees.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4343**, Relating to the delivery of financial statements to bank shareholders.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4347**, Relating to voluntary contributions to the West Virginia State Police Forensic Laboratory Fund.

A message from the Senate, by

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

**H. B. 4402**, Relating to the prevention of sexual abuse of children.

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

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

**“ARTICLE 2. STATE BOARD OF EDUCATION.**

**§18-2-41. Education and Prevention of the Sexual Abuse of Children.**

(a) Education of children in grades K-12 — Beginning July 1, 2019, children in grades K-12 shall receive body age-appropriate safety information at least once per academic school year, with a preference for four times per academic year. To facilitate this process and develop resources, the state board shall propose a legislative rule for promulgation, in accordance with §29A-3b-1 et seq. of this code, by December 31, 2018. The rule shall provide for at least the following:

(1) Developmentally appropriate education and resources;

(2) Social media usage and content;

(3) Implementation of best practices;

(4) Differing county and school sizes, demographics, etc. relating to implementation strategies;

(5) Strategies for dealing with disclosures after student education;

(6) Rules informed by family voice;

(7) Offender dynamics;

(8) Child-on-child scenarios;

(9) Rules on development of supplementary materials, including posting of the child abuse hotline, to embed into the school climate;

(10) Protocols for local crisis response in conjunction with §18-9F-9 of this code.

(b) Training of public school employees. The state board shall propose by December 31, 2018 a legislative rule for promulgation in accordance with §29A-3b-1 et seq. of this code, and if necessary may promulgate an emergency rule in accordance with said article, for the establishment of standards for training requirements of all public school employees focused on developing skills, knowledge, and capabilities related to preventing child sexual abuse and recognizing and responding to suspected abuse and neglect. The rule shall provide for at least the following:

(1) This required training shall include comprehensive instruction and information to better equip schools and their employees, including how to:

(A) Recognize sexually offending behaviors in adults, questionable behaviors such as boundary violations, and signs in adults that might indicate they pose a sexual risk to children;

(B) Recognize, appropriately respond to, and prevent sexually inappropriate, coercive, or abusive behaviors among children and youth served by schools;

(C) Recognize behaviors and verbal cues that might indicate a child or youth has been a victim of abuse or neglect;

(D) Support the healthy development of children and youth and the building of protective factors to mitigate against their sexual victimization by adults or peers;

(E) Recognize and appropriately respond to student infatuations and flirtations with adults in schools;

(F) Recognize appropriate and inappropriate social media usage by adults and children;

(G) Provide consistent and standard protocols for responding to disclosures of sexual abuse or reports of boundary-violating behaviors by adults or children in a supportive and appropriate manner which meet mandated reporting requirements;

(H) Provide adequate understanding of the age-appropriate, comprehensive, evidence-informed child sexual abuse prevention education which will be offered to their students; and

(I) Reflect the research on Adverse Childhood Experiences (ACEs) and trauma-informed care.

(2) The rule shall contain provisions to ensure public school employees complete the required training every two years.

(A) The required training shall be at least a cumulative four hours (half day) of instruction on the elements identified in this section.

(B) A skills renewal is required every two years thereafter.

(C) The mode of delivery for the trainings may include in-person or e-learning instruction and may include a series of trainings or modules.

(D) The state board shall provide certificates of satisfactory completion for the employee and the employer documenting the employee completed the required training.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 303**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4402) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**H. B. 4422**, Permitting permanent endowment funds of cemeteries to invest their principal in certain government bonds, and corporate bonds.

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, to take effect from passage, a bill of the House of Delegates as follows:

**H. B. 4433**, Declaring certain claims against an agency of the state to be moral obligations of the state.

A message from the Senate, by

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

**Com. Sub. for H. B. 4444**, Clarifying the authority of the State Fire Commission in adopting a State Building Code.

On motion of Delegate Cowles, the House of Delegates concurred in the following Senate title amendment:

**Com. Sub. for H. B. 4444** – “A Bill to amend and reenact §29-3-5b of the Code of West Virginia, 1931, as amended, relating to clarifying the authority of the State Fire Commission; modifying requirement that State Fire Commission propose certain building energy codes; and making stylistic and technical changes.”

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

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 304**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4444) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**H. B. 4621**, Relating to removing reference to certain entities with respect to work.

A message from the Senate, by

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

**H. B. 4624**, Relating to West Virginia coordinate systems.

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

On page one, section five, line three, by striking out the word “successor” and inserting in lieu thereof the word “successors”.

On page seven, section five, line one hundred sixty-eight, by striking out the word “data” and inserting in lieu thereof the word “datums”.

On page seven, section five, line one hundred seventy-six, by striking out the word “data” and inserting in lieu thereof the word “datums”.

And,

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

**H. B. 4624** - “A Bill to amend and reenact §1-1-5 of the Code of West Virginia, 1931, as amended, relating to West Virginia coordinate systems; defining terms; updating plane coordinate values; establishing conversion factor for conversion from meters to United States Survey feet; directing use of certain data published by the National Geodetic Survey; setting requirements for survey establishing coordinates that is relied on by governmental entities or the public; setting requirements for certain maps, plats, reports, descriptions or geospatial products to be relied on by governmental entities or the public; setting legal requirements for describing location of land boundary corners; requiring certification of compliance be filed for certain documents recorded in public records or deed records; setting requirements for certain plats and descriptions of surveys; requiring official geodetic data to be referenced in the State be defined for National Spatial Reference System; requiring compliance with accuracy and reporting requirements for certain maps, plats, reports, descriptions or geospatial products; clarifying that other coordinate systems, data and geodetic reference networks may be used where appropriate; eliminating obsolete language; and updating references.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 305**), and there were—yeas 98, nays 1, absent and not voting 1, with the yeas and absent and not voting being as follows:

Nays: Marcum.

Absent and Not Voting: Deem.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4624) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had refused to concur in the amendment of the House of Delegates and requested the House to recede from its amendment to

**Com. Sub. for S. B. 134**, Authorizing Division of Homeland Security and Emergency Management to engage individuals for emergency response and recovery.

On motion of Delegate Cowles, the House of Delegates receded from its amendment.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 306**), and there were—yeas 97, nays 1, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Marcum.

Absent and Not Voting: Boggs and Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 134) passed.

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

On this question, the yeas and nays were taken (**Roll No. 307**), and there were—yeas 96, nays 1, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Marcum.

Absent and Not Voting: Boggs, Deem and Thompson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 134) takes effect from its passage.

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

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, of

**S. B. 338**, Changing date for employers to file annual reconciliation and withholding statements.

A message from the Senate, by

The Clerk of the Senate, announced concurrence in the amendment of the House of Delegates and the passage, as amended, to take effect from passage, of

**Com. Sub. for S. B. 415**, Permitting wagering on certain professional or collegiate sports events authorized as WV Lottery Sports Wagering activities.

### Resolutions Introduced

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

**H. C. R. 100** - "Requesting the Division of Highways name bridge number S331-Hgh/St-0.01, locally known as the South High Street Bridge, carrying County Route 119/39 over Deckers Creek in Monongalia County, the 'Morgantown High School Veterans Bridge'."

Whereas, Through the years many students from Morgantown High School have gone on to serve in our nation's armed forces; and

Whereas, Many of these former students became veterans of combat and several of them have paid the ultimate price in service to our country, including 18 Morgantown High School boys who lost their lives in the Vietnam War; and

Whereas, Notable examples of the sacrifice made by Morgantown High School students include U.S. Army Corporal Thomas W. Bennett, posthumous recipient of the Congressional Medal of Honor and the only conscientious objector to be listed on the Vietnam Veterans Memorial, and USAF Lieutenant Colonel Carroll B. Lilly, whose plane went down while providing close air support on a search and rescue mission in bad weather conditions and whose body was never recovered; and

Whereas, Still others from Morgantown High School have heroically represented their state and their country, but yet have not been honored for their valiant, but humble service; and

Whereas, Even today students from Morgantown High School continue to carry on this record of service by joining our nation's armed forces in a steady demonstration of commitment to our nation; and

Whereas, It is fitting that an enduring memorial be established to commemorate the contributions of all these heroes to our state and country; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number S331-Hgh/St-0.01, locally known as the South High Street Bridge, carrying County Route 119/39 over Deckers Creek in Monongalia County, the "Morgantown High School Veterans Bridge"; and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and be placed signs identifying the bridge as the "Morgantown High School Veterans Bridge"; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

Delegates Howell, Blair, Cowles, Espinosa, A. Evans, Folk, Householder, Moore, Overington, Rowan, Upson and Wilson offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 101** - "Requesting the Governor's Task Force on Public Employee Insurance Agency Stability to review means and methods of including medical facilities in those out-of-state counties that border West Virginia as part of the in-network coverage for PEIA members."

Whereas, In Executive Order No. 6-18, dated February 28, 2018, Governor Jim Justice ordered that the Task Force on Public Employee Insurance Agency Stability be constituted to review, study and assess the current state of the Public Employees Insurance Agency; and

Whereas, The Task Force has been directed to prepare and issue a final report on its findings and recommendations prior to the Legislature's December 2018 interim meetings; and

Whereas, While that Executive Order set forth specific areas that the Task Force was to review, the order also directed the Task Force to include anything else that is necessary for a thorough evaluation of issues affecting PEIA members; and

Whereas, Many PEIA members live and work in West Virginia counties that border the surrounding states; and

Whereas, In some of those counties, such as the Eastern Panhandle, the nearest medical facility is actually located outside of the state's borders. When a PEIA-covered employee is treated there, the expenses are considered to be an out-of-network expense resulting in a significant monetary penalty to the employee; and

Whereas, As the use of these out-of-network facilities are causing an undue hardship on PEIA members, the Task Force should review the means and methods to include medical facilities, such as hospitals, clinics, and medical providers, in those out-of-state counties bordering West Virginia as part of the In-Network coverage for PEIA members; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Governor's Task Force on Public Employee Insurance Agency Stability is hereby requested to review means and methods of including medical facilities in those out-of-state counties that border West Virginia as part of the in-network coverage for PEIA members; and, be it

*Further Resolved*, That the Governor's Task Force on Public Employee Insurance Agency Stability is hereby requested to closely examine this issue; and, be it

*Further Resolved*, That the Clerk of the House of Delegates forward a copy of this resolution to the Governor, who shall be responsible for transmitting a copy to each person who is to serve on the Task Force on Public Employee Insurance Agency Stability.

Delegates Rowe, Robinson and White offered the following resolution, which was read by its title and referred to the Committee on Rules:

**H. C. R. 102** - "Requesting the Division of Highways name bridge number 20-60-36.23 (20A160), locally known as US 60 Cedar Grove Overpass 3565 Bridge, carrying US 60 over County Route 81, Kanawha County, the 'U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders, Jr., Memorial Bridge'."

Whereas, Earl Russell Cobb, known throughout his life as "Russell", was born on October 24, 1946, and grew up in Kanawha County, West Virginia; and

Whereas, Russell Cobb graduated from Cedar Grove High School in the Class of 1966; and

Whereas, Russell Cobb entered the United States Army to serve as a Private First Class in the 22<sup>nd</sup> Infantry Regiment of the 25<sup>th</sup> Infantry Division; and

Whereas, Private First Class Cobb was killed in action on September 4, 1967, just five months into his tour of duty and is now listed on panel 25E, line 96, of the Vietnam Veterans Memorial in Washington, D.C.; and

Whereas, Carl Bradford "Punkin" Goodson was born on October 14, 1948, and grew up in Kelleys Creek outside of Cedar Grove, West Virginia; and

Whereas, Carl Bradford Goodson graduated from Cedar Grove High School in the Class of 1967 and was a member of the Church of God at Ward, West Virginia; and

Whereas, Carl Bradford Goodson served in the United States Army, Light Weapons Infantry, 101st Airborne Division with the rank of Specialist 4; and



Whereas, Army Specialist Goodson was killed in action on April 6, 1970, just five months into his tour of duty and is now listed on panel 12W, line 101, of the Vietnam Veterans Memorial in Washington, D.C., and is buried in the Ward Cemetery at Ward, West Virginia; and

Whereas, George Thomas Saunders, Jr., was born on February 28, 1942, grew up in the community of Cedar Grove, West Virginia; and

Whereas, George Thomas Saunders, Jr., graduated from Cedar Grove High School in the Class of 1959; and

Whereas, George Thomas Saunders, Jr., joined the United States Army, served six years, and attained the rank of Staff Sergeant; and

Whereas, Staff Sergeant Saunders was posted to the First Military Police Company in the First Infantry Division in the Republic of Vietnam in 1965; and

Whereas, On October 31, 1965, less than two weeks into his tour of duty, Staff Sergeant Saunders was killed through hostile fire; and

Whereas, Staff Sergeant Saunders is now listed on panel 3E, line 10, of the Vietnam Veterans Memorial in Washington, D.C., and is buried at Woodland Cemetery in Cedar Grove, West Virginia; and

Whereas, It is fitting that an enduring, local memorial be established to commemorate the service of Private Cobb, Specialist Goodson, and Sergeant Saunders and the sacrifice of three young men from the community of Cedar Grove, West Virginia; therefore, be it

*Resolved by the Legislature of West Virginia:*

That the Division of Highways is hereby requested to name bridge number 20-60-36.23 (20A160), locally known as U. S. 60 Cedar Grove Overpass 3565 Bridge, carrying US 60 over County Route 81, Kanawha County, the "U. S. Army PFC Earl Russell Cobb; SPC4 Carl Bradford Goodson, and SSGT George T. Saunders, Jr., Memorial Bridge" and, be it

*Further Resolved,* That the Division of Highways is hereby requested to have made and placed signs identifying the bridge as the "U. S. Army PFC Earl Russell Cobb, SPC4 Carl Bradford Goodson, and SSGT George T. Saunders, Jr., Memorial Bridge"; and, be it

*Further Resolved,* That the Clerk of the House of Delegates forward a copy of this resolution to the Commissioner of the Division of Highways.

### **Special Calendar**

#### **Third Reading**

**Com. Sub. for S. J. R. 12**, No Constitutional right to abortion Amendment; on third reading, coming up in regular order, was read a third time.

During debate on the resolution, Delegate Pushkin moved that the House recess until 5:00 p.m.

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

The yeas and nays having been ordered, they were taken (**Roll No. 308**), and there were—yeas 35, nays 64, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Barrett, Bates, Boggs, Brewer, Byrd, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hartman, Hicks, Hornbuckle, Iaquina, Isner, Longstreth, Lovejoy, Lynch, Marcum, Miley, R. Miller, Moye, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, Thompson and Williams.

Absent and Not Voting: Deem.

So, a majority of the members present and voting not having voted in the affirmative, the motion to recess was rejected.

On the adoption of the resolution, the yeas and nays were taken (**Roll No. 309**), and there were—yeas 73, nays 26, absent and not voting 1, with the yeas, nays and absent and not voting being as follows:

Yeas: Adkins, Ambler, Anderson, Atkinson, Blair, Boggs, Butler, Byrd, Capito, Cooper, Cowles, Criss, Dean, Ellington, Espinosa, A. Evans, Fast, Folk, Foster, Frich, Gearheart, Graves, Hamilton, Hamrick, Hanshaw, Harshbarger, Hicks, Higginbotham, Hill, Hollen, Householder, Howell, Isner, Jennings, Kelly, Kessinger, Lane, Love, Lovejoy, Lynch, Martin, Maynard, McGeehan, C. Miler, Moore, Moye, Nelson, Overington, Pack, Paynter, Phillips, Queen, Rodighiero, Rohrbach, C. Romine, R. Romine, Rowan, Shott, Sobonya, Statler, Storch, Summers, Sypolt, Thompson, Upson, Wagner, Walters, Ward, Westfall, White, Wilson, Zatezalo and Mr. Speaker, Mr. Armstead.

Nays: Barrett, Bates, Brewer, Campbell, Canestraro, Caputo, Diserio, Eldridge, E. Evans, Ferro, Fleischauer, Fluharty, Hartman, Hornbuckle, Iaquina, Longstreth, Marcum, Miley, R. Miller, Pethel, Pushkin, Pyles, Robinson, Rowe, Sponaugle and Williams.

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the resolution (Com. Sub. for S. J. R. 12) adopted, as follows:

**Com. Sub. for S. J. R. 12** - "Proposing an amendment to the Constitution of the State of West Virginia, amending article VI thereof, by adding thereto a new section, designated section 57, relating to clarifying that nothing in the Constitution secures or protects a right to abortion, and nothing in the Constitution requires the funding of an abortion; 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 the year 2018, which proposed amendment is that article VI thereof be amended by adding thereto a new section, designated section 57, to read as follows:

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

### **§57. No constitutional right to abortion.**

Nothing in this Constitution secures or protects a right to abortion or requires the funding of abortion.

*Resolved further*, That in accordance with the provisions of §3-11-1 *et seq.* of the Code of West Virginia, 1931, as amended, such proposed amendment is hereby numbered “Amendment No. 1” and designated as “No Constitutional right to abortion Amendment”, and the purpose of the proposed amendment is summarized as follows: “To amend the West Virginia Constitution to clarify that nothing in the Constitution of West Virginia secures or protects a right to abortion or requires the funding of abortion.”

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

**Com. Sub. for S. B. 73**, Modifying crime of fleeing from scene of accident; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 310**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Deem, Fast and Pyles.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 73) passed.

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

**Com. Sub. for S. B. 110**, Requiring certain licensees notify law enforcement or EMS of life-threatening emergency on premises; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 311**), and there were—yeas 84, nays 15, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Barrett, Byrd, Capito, Fluharty, Frich, Hornbuckle, Isner, Kessinger, Marcum, Moore, Pushkin, Robinson, Rowe, Sobonya and Summers.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 110) passed.

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

**Com. Sub. for S. B. 110** - “A Bill to amend and reenact §60-7-13 of the Code of West Virginia, 1931, as amended, relating generally to private club licensees; continuing Alcohol Beverage Control Enforcement Fund; requiring a private club licensee to timely notify emergency medical services or law enforcement of a life-threatening medical emergency occurring on the licensee’s premises; authorizing sanctions against licensees’ failing to notify such personnel as required; requiring a licensee to notify the Alcohol Beverage Control Administration within 48 hours of the occurrence of a life-threatening emergency; permitting the commissioner to sanction a licensee for failing to comply

with the 48-hour notification requirement; and providing examples of life-threatening medical emergencies.”

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

**Com. Sub. for S. B. 307**, Declaring fundraising on state highway or roadway by volunteer fire department is not obstruction or nuisance; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 312**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Fleischauer, Robinson and Rowe.

Absent and Not Voting: Boggs and Deem.

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

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

**Com. Sub. for S. B. 327**, Providing extortion of anything of value, including sexual contact, subjects person to criminal penalty; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 313**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 327) passed.

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

**S. B. 346**, Permitting full-time nonresident students purchase lifetime resident hunting, trapping and fishing licenses; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 314**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 346) passed.

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

**S. B. 351**, Permitting ballot commissioners serve while candidates for certain offices; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 315**), and there were—yeas 86, nays 13, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Blair, Byrd, Campbell, Cowles, Hornbuckle, Isner, Kessinger, Marcum, Pushkin, Robinson, Rowe, Thompson and Upson.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 351) passed.

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

On this question, the yeas and nays were taken (**Roll No. 316**), and there were—yeas 94, nays 5, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Hornbuckle, Isner, Marcum, Pyles and Robinson.

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 351) takes effect from its passage.

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

**Com. Sub. for S. B. 395**, Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 317**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fleischauer.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 395) passed.

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

On this question, the yeas and nays were taken (**Roll No. 318**), and there were—yeas 99, nays none, absent and not voting 1, with the absent and not voting being as follows:

Absent and Not Voting: Deem.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 395) takes effect from its passage.

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

**Com. Sub. for S. B. 397**, Creating crime of impersonating blind or disabled person; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 319**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Sponaule.

Absent and Not Voting: Deem.

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

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

**Com. Sub. for S. B. 404**, Relating to sex offender registry information; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 320**), and there were—yeas 98, nays 1, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fleischauer.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 404) passed.

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

**S. B. 539**, Increasing limit for settling claims against DOH; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 321**), and there were—yeas 98, nays none, absent and not voting 2, with the absent and not voting being as follows:

Absent and Not Voting: Deem and Robinson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 539) passed.

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

**Com. Sub. for S. B. 561**, Increasing minimum contract price requiring execution of bond with respect to building or repairing school property; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 322**), and there were—yeas 97, nays 2, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Storch and Walters.

Absent and Not Voting: Deem.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 561) passed.

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

### Second Reading

**Com. Sub. for S. B. 7**, Relating to claims under Wage Payment and Collection Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page three, section twelve, line four, after the word “claim”, by striking out the comma and inserting in lieu thereof the words “and how the amount was calculated” and a comma.

On page three, section twelve, line seven, after the word “business”, by striking out the period and inserting in lieu thereof a colon and the following proviso: “*Provided*, That if the employer is a sub-contractor, then the employer shall notify the prime contractor in writing and by certified mail.”

On page three, section twelve, line nine, after the word “offer”, by striking out the comma and inserting in lieu thereof the words “which shall include an explanation of how the amount offered was calculated, and”.

On page three, section twelve, lines thirteen and fourteen, by striking out the words “unless otherwise agreed to by the parties”, and inserting in lieu thereof the word “then”.

On page four, section twelve, line thirty-nine, after the word “fees”, by inserting the words “regarding fringe benefits”.

And,

On page four, section twelve, line forty, by striking out the words “than 105 percent of” and inserting in lieu thereof the words “favorable than”.

The bill was then ordered to third reading.

**S. B. 47**, Requiring Defense Department advocacy groups be notified in abuse or neglect of military person's child; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 102**, Creating WV Uniform Fiduciary Access to Digital Assets Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

**“CHAPTER 39B. UNIFORM POWER OF ATTORNEY ACT.**

**ARTICLE 2. AUTHORITY.**

**§39B-2-101. Authority that requires specific grant; grant of general authority.**

(a) An agent under a power of attorney may do the following on behalf of the principal or with the principal's property only if the power of attorney expressly grants the agent the authority and exercise of the authority is not otherwise prohibited by another agreement or instrument to which the authority or property is subject to:

(1) Create, amend, revoke, or terminate an inter vivos trust;

(2) Make a gift;

(3) Create or change rights of survivorship;

(4) Create or change a beneficiary designation;

(5) Delegate authority granted under the power of attorney;

(6) Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan;

(7) Exercise fiduciary powers that the principal has authority to delegate; ~~or~~

(8) Disclaim property, including a power of appointment; or

(9) Exercise authority over the content of electronic communications, as defined in 18 U.S.C. Section 2510(12) sent or received by the principal.

(b) Notwithstanding a grant of authority to do an act described in this section, unless the power of attorney otherwise provides, an agent may not exercise authority under a power of attorney to create in the agent, or in an individual to whom the agent owes a legal obligation of support, an interest in the principal's property, whether by gift, right of survivorship, beneficiary designation, disclaimer, or otherwise, ~~unless the power of attorney expresses in the grant of authority the specific act and identifies the existing property interest with particularity, rather than in general terms.~~

(c) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-101(d), and §39B-2-101(e) of this code, if a power of attorney grants to an agent authority to do all acts that a principal could do, the agent has the general authority described in §39B-2-104 through §39B-2-116 of this code.



(d) Unless the power of attorney otherwise provides, a grant of authority to make a gift is subject to the provisions of §39B-2-117 of this code.

(e) Subject to §39B-2-101(a), §39B-2-101(b), §39B-2-101(d), and §39B-2-101(e) of this code, if the subjects over which authority is granted in a power of attorney are similar or overlap, the broadest authority controls.

(f) Authority granted in a power of attorney is exercisable with respect to property that the principal has when the power of attorney is executed or acquires later, whether or not the property is located in this state and whether or not the authority is exercised or the power of attorney is executed in this state.

(g) An act performed by an agent pursuant to a power of attorney has the same effect and inures to the benefit of and binds the principal and the principal's successors in interest as if the principal had performed the act.

### ARTICLE 3. STATUTORY FORMS

#### §39B-3-101. Statutory form power of attorney.

A document substantially in the following form may be used to create a statutory form power of attorney that has the meaning and effect prescribed by this act.

STATE OF WEST VIRGINIA

#### STATUTORY FORM POWER OF ATTORNEY

#### IMPORTANT INFORMATION

This power of attorney authorizes another person (your agent) to make decisions concerning your property for you (the principal). Your agent will be able to make decisions and act with respect to your property (including your money) whether or not you are able to act for yourself. The meaning of authority over subjects listed on this form is explained in the Uniform Power of Attorney Act ~~insert citation~~, §39B-1-101 et seq. of this code.

This power of attorney does not authorize the agent to make health care decisions for you.

You should select someone you trust to serve as your agent. Unless you specify otherwise, generally the agent's authority will continue until you die or revoke the power of attorney or the agent resigns or is unable to act for you.

Your agent is entitled to reasonable compensation unless you state otherwise in the special instructions. This form provides for designation of one agent. If you wish to name more than one agent you may name a coagent in the Special Instructions. Coagents are not required to act together unless you include that requirement in the Special Instructions. If your agent is unable or unwilling to act for you, your power of attorney will end unless you have named a successor agent. You may also name a second successor agent.

This power of attorney becomes effective immediately unless you state otherwise in the Special Instructions.

If you have questions about the power of attorney or the authority you are granting to your agent, you should seek legal advice before signing this form.

DESIGNATION OF AGENT

I \_\_\_\_\_ name the following person as my agent:

(Name of Principal)

Name of Agent:\_\_\_\_\_

Agent's Address:\_\_\_\_\_

Agent's Telephone Number:\_\_\_\_\_

If my agent is unable or unwilling to act for me, I name as my successor agent:

Name of Successor Agent:\_\_\_\_\_

Successor Agent's Address:\_\_\_\_\_

Successor Agent's Telephone Number:\_\_\_\_\_

If my successor agent is unable or unwilling to act for me, I name as my second successor agent:

Name of Second Successor Agent:\_\_\_\_\_

Second Successor Agent's Address:\_\_\_\_\_

Second Successor Agent's Telephone Number:\_\_\_\_\_

GRANT OF GENERAL AUTHORITY

I grant my agent and any successor agent general authority to act for me with respect to the following subjects as defined in the Uniform Power of Attorney Act [insert citation], §39B-1-101 et seq. of this code:

(INITIAL each subject you want to include in the agent's general authority. If you wish to grant general authority over all of the subjects you may initial 'All Preceding Subjects' instead of initialing each subject.)

(\_\_\_) Real Property

(\_\_\_) Tangible Personal Property

(\_\_\_) Stocks and Bonds

(\_\_\_) Commodities and Options

(\_\_\_) Banks and Other Financial Institutions

(\_\_\_) Operation of Entity or Business

(\_\_\_) Insurance and Annuities

(\_\_\_) Estates, Trusts, and Other Beneficial Interests

- Claims and Litigation
- Personal and Family Maintenance
- Benefits from Governmental Programs or Civil or Military Service
- Retirement Plans
- Taxes
- All Preceding Subjects

#### GRANT OF SPECIFIC AUTHORITY (OPTIONAL)

My agent MAY NOT do any of the following specific acts for me UNLESS I have INITIALED the specific authority listed below:

(CAUTION: Granting any of the following will give your agent the authority to take actions that could significantly reduce your property or change how your property is distributed at your death. INITIAL ONLY the specific authority you WANT to give your agent.)

- Create, amend, revoke, or terminate an inter vivos trust
- Make a gift, subject to the limitations of the West Virginia Uniform Power of Attorney Act and any special instructions in this power of attorney
- Create or change rights of survivorship
- Create or change a beneficiary designation
- Authorize another person to exercise the authority granted under this power of attorney
- Waive the principal's right to be a beneficiary of a joint and survivor annuity, including a survivor benefit under a retirement plan
- Exercise fiduciary powers that the principal has authority to delegate
- Disclaim or refuse an interest in property, including a power of appointment
- Access the content of electronic communications

#### LIMITATION ON AGENT'S AUTHORITY

An agent that is not my ancestor, spouse, or descendant MAY NOT use my property to benefit the agent or a person to whom the agent owes an obligation of support unless I have included that authority in the Special Instructions.

#### SPECIAL INSTRUCTIONS (OPTIONAL)

You may give special instructions on the following lines:

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EFFECTIVE DATE

This power of attorney is effective immediately unless I have stated otherwise in the special instructions.

NOMINATION OF [CONSERVATOR OR GUARDIAN] (OPTIONAL)

If it becomes necessary for a court to appoint a [conservator or guardian] of my estate or [guardian] of my person, I nominate the following person(s) for appointment:

Name of Nominee for [conservator or guardian] of my estate:

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Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

Name of Nominee for [guardian] of my person: \_\_\_\_\_

Nominee's Address: \_\_\_\_\_

Nominee's Telephone Number: \_\_\_\_\_

RELIANCE ON THIS POWER OF ATTORNEY

Any person, including my agent, may rely upon the validity of this power of attorney or a copy of it unless that person knows it has terminated or is invalid. Unless expressly stated otherwise, this power of attorney is durable and shall remain valid if I become incapacitated.

SIGNATURE AND ACKNOWLEDGMENT

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Your Signature \_\_\_\_\_ Date \_\_\_\_\_

Your Name Printed \_\_\_\_\_

Your Address \_\_\_\_\_

Your Telephone Number \_\_\_\_\_

State of \_\_\_\_\_

[County] of \_\_\_\_\_

This document was acknowledged before me on \_\_\_\_\_,  
(Date)

by \_\_\_\_\_.

(Name of Principal)

\_\_\_\_\_(Seal, if any)

Signature of Notary

My commission expires: \_\_\_\_\_

[This document prepared by: \_\_\_\_\_]

### IMPORTANT INFORMATION FOR AGENT

#### Agent's Duties

When you accept the authority granted under this power of attorney, a special legal relationship is created between you and the principal. This relationship imposes upon you legal duties that continue until you resign or the power of attorney is terminated or revoked. You must:

(1) Do what you know the principal reasonably expects you to do with the principal's property or, if you do not know the principal's expectations, act in the principal's best interest; act in good faith;

(2) Do nothing beyond the authority granted in this power of attorney; and

(3) Disclose your identity as an agent whenever you act for the principal by writing or printing the name of the principal and signing your own name as 'agent' in the following manner:

\_\_\_\_\_ by \_\_\_\_\_

(Principal's Name)

(Your Signature) as Agent

Unless the special instructions in this power of attorney state otherwise, you must also:

(1) Act loyally for the principal's benefit;

(2) Avoid conflicts that would impair your ability to act in the principal's best interest;

(3) Act with care, competence, and diligence;

(4) Keep a record of all receipts, disbursements, and transactions made on behalf of the principal;

(5) Cooperate with any person that has authority to make health care decisions for the principal to do what you know the principal reasonably expects or, if you do not know the principal's expectations, to act in the principal's best interest; and attempt to preserve the principal's estate plan if you know the plan and preserving the plan is consistent with the principal's best interest.

### TERMINATION OF AGENT'S AUTHORITY

You must stop acting on behalf of the principal if you learn of any event that terminates this power of attorney or your authority under this power of attorney. Events that terminate a power of attorney or your authority to act under a power of attorney include:

- (1) Death of the principal;
- (2) The principal's revocation of the power of attorney or your authority;
- (3) The occurrence of a termination event stated in the power of attorney;
- (4) The purpose of the power of attorney is fully accomplished; or

(5) If you are married to the principal, a legal action is filed with a court to end your marriage or for your legal separation, unless the Special Instructions in this power of attorney state that such an action will not terminate your authority.

### LIABILITY OF AGENT

The meaning of the authority granted to you is defined in the Uniform Power of Attorney Act ~~insert citation~~, §39B-1-101 *et seq.* of this code. If you violate the Uniform Power of Attorney Act ~~insert citation~~, as set forth in §39B-1-101 *et seq.* of this code, or act outside the authority granted, you may be liable for any damages caused by your violation.

If there is anything about this document or your duties that you do not understand, you should seek legal advice.

## CHAPTER 44. ADMINISTRATION OF ESTATES AND TRUSTS.

### **ARTICLE 5B. WEST VIRGINIA UNIFORM FIDUCIARY ACCESS TO DIGITAL ASSETS ACT.**

#### **§44-5B-1. Short title.**

This article may be cited as the West Virginia Uniform Fiduciary Access to Digital Assets Act.

#### **§44-5B-2. Definitions.**

In this article:

'Account' means an arrangement under a terms-of-service agreement in which a custodian carries, maintains, processes, receives, or stores a digital asset of the user or provides goods or services to the user;

'Agent' means an attorney-in-fact granted authority under a durable or nondurable power of attorney;

'Carries' means engages in the transmission of an electronic communication;

'Catalogue of electronic communications' means information that identifies each person with whom a user has had an electronic communication, the time and date of the communication, and the electronic address of the person;

'Conservator' means a person appointed by a court to manage the estate and financial affairs of a protected person. The term includes a limited conservator and temporary conservator;

'Content of an electronic communication' means information concerning the substance or meaning of the communication which:

(1) Has been sent or received by a user;

(2) Is in electronic storage by a custodian providing an electronic communication service to the public or is carried or maintained by a custodian providing a remote computing service to the public; and

(3) Is not readily accessible to the public;

'Court' means the circuit court of the county having jurisdiction over the fiduciary or designated recipient;

'Custodian' means a person that carries, maintains, processes, receives, or stores a digital asset of a user;

'Designated recipient' means a person chosen by a user using an online tool to administer digital assets of the user;

'Digital asset' means an electronic record in which an individual has a right or interest. The term does not include an underlying asset or liability, unless the asset or liability is itself an electronic record;

'Electronic' means relating to technology having electrical, digital, magnetic, wireless, optical, electromagnetic, or similar capabilities;

'Electronic communication' has the meaning set forth in 18 U.S.C. § 2510(12);

'Electronic communication service' means a custodian that provides to a user the ability to send or receive an electronic communication;

'Fiduciary' means an original, additional or successor personal representative, conservator, agent, or trustee;

'Information' means data, text, images, videos, sounds, codes, computer programs, software, databases, or the like;

'Online tool' means an electronic service provided by a custodian that allows the user, in an agreement distinct from the terms-of-service agreement between the custodian and user, to provide directions for disclosure or nondisclosure of digital assets to a third person;

'Person' means an individual, estate, business or nonprofit entity, public corporation, government or governmental subdivision, agency, instrumentality, or other legal entity;

'Personal representative' means an executor, administrator, special administrator, or person that performs substantially the same function under law of this state other than this article;

'Power of attorney' means a record that grants an agent authority to act in the place of a principal;

'Principal' means an individual who grants authority to an agent in a power of attorney;

'Protected person' means an individual for whom a conservator has been appointed. The term includes an individual for whom an application for the appointment of a conservator is pending;

'Record' means information that is inscribed on a tangible medium or that is stored in an electronic or other medium and is retrievable in perceivable form;

'Remote computing service' means a custodian that provides to a user computer-processing services or the storage of digital assets by means of an electronic communications system, as defined in 18 U.S.C. § 2510(14);

'Terms of service agreement' means an agreement that controls the relationship between a user and a custodian;

'Trustee' means a fiduciary with legal title to property under an agreement or declaration that creates a beneficial interest in another. The term includes a successor trustee;

'User' means a person that has an account with a custodian; and

'Will' includes a codicil, testamentary instrument that only appoints an executor, and instrument that revokes or revises a testamentary instrument.

#### **§44-5B-3. Applicability.**

(a) This article applies to:

(1) A fiduciary acting under a will or power of attorney executed before, on, or after the effective date of this article;

(2) A personal representative acting for a decedent who died before, on, or after the effective date of this article;

(3) A conservatorship proceeding commenced before, on, or after the effective date of this article; and

(4) A trustee acting under a trust created before, on, or after the effective date of this article.

(b) This article applies to a custodian if the user resides in this state or resided in this state at the time of the user's death.

(c) This article does not apply to a digital asset of an employer used by an employee in the ordinary course of the employer's business.

#### **§44-5B-4. User direction for disclosure of digital assets.**

(a) A user may use an online tool to direct the custodian to disclose or not to disclose to a designated recipient some or all of the user's digital assets, including the content of electronic communications. If the online tool allows the user to modify or delete a direction at all times, a direction regarding disclosure using an online tool overrides a contrary direction by the user in a will, trust, power of attorney, or other record.



(b) If a user has not used an online tool to give direction under §44B-5B-3(a) of this code or if the custodian has not provided an online tool, the user may allow or prohibit in a will, trust, power of attorney, or other record, disclosure to a fiduciary of some or all of the user's digital assets, including the content of electronic communications sent or received by the user.

(c) A user's direction under §44-5B-4(a) or §44-5B-4(b) of this code overrides a contrary provision in a terms-of-service agreement that does not require the user to act affirmatively and distinctly from the user's assent to the terms of service.

#### **§44-5B-5. Terms of service agreement.**

(a) This article does not change or impair a right of a custodian or a user under a terms-of-service agreement to access and use digital assets of the user.

(b) This article does not give a fiduciary or a designated recipient any new or expanded rights other than those held by the user for whom, or for whose estate, the fiduciary or designated recipient acts or represents.

(c) A fiduciary's or a designated recipient's access to digital assets may be modified or eliminated by a user, by federal law, or by a terms-of-service agreement if the user has not provided direction under §44-5B-4 of this code.

#### **§44-5B-6. Procedure for disclosing digital assets.**

(a) When disclosing digital assets of a user under this article, the custodian may at its sole discretion:

(1) Grant a fiduciary or designated recipient full access to the user's account;

(2) Grant a fiduciary or designated recipient partial access to the user's account sufficient to perform the tasks with which the fiduciary or designated recipient is charged; or

(3) Provide a fiduciary or designated recipient a copy in a record of any digital asset that, on the date the custodian received the request for disclosure, the user could have accessed if the user were alive and had full capacity and access to the account.

(b) A custodian may assess a reasonable administrative charge for the cost of disclosing digital assets under this article.

(c) A custodian need not disclose under this article a digital asset deleted by a user.

(d) If a user directs or a fiduciary requests a custodian to disclose under this article some, but not all, of the user's digital assets, the custodian need not disclose the assets if segregation of the assets would impose an undue burden on the custodian. If the custodian believes the direction or request imposes an undue burden, the custodian or fiduciary may seek an order from the court to disclose:

(1) A subset limited by date of the user's digital assets;

(2) All of the user's digital assets to the fiduciary or designated recipient;

(3) None of the user's digital assets; or

(4) All of the user's digital assets to the court for review in camera.

**§44-5B-7. Disclosure of content of electronic communications of deceased user.**

If a deceased user consented or a court directs disclosure of the contents of electronic communications of the user, the custodian shall disclose to the personal representative of the estate of the user the content of an electronic communication sent or received by the user if the representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of the letter of appointment of the representative;

(d) Unless the user provided direction using an online tool, a copy of the user's will, trust, power of attorney or other record evidencing the user's consent to disclosure of the content of electronic communications; and

(e) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) Evidence linking the account to the user; or

(3) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in §44-5B-7(e)(1) of this code;

(B) Disclosure of the content of electronic communications of the user would not violate 18 U.S.C. § 2701 et seq., 47 U.S.C. § 222, or other applicable law;

(C) Unless the user provided direction using an online tool, the user consented to disclosure of the content of electronic communications; or

(D) Disclosure of the content of electronic communications of the user is reasonably necessary for administration of the estate.

**§44-5B-8. Disclosure of other digital assets of deceased user.**

Unless the user prohibited disclosure of digital assets or the court directs otherwise, a custodian shall disclose to the personal representative of the estate of a deceased user a catalogue of electronic communications sent or received by the user and digital assets, other than the content of electronic communications of the user, if the personal representative gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the death certificate of the user;

(c) A certified copy of the letter of appointment of the representative; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(2) Evidence linking the account to the user;

(3) An affidavit stating that disclosure of the user's digital assets is reasonably necessary for administration of the estate; or

(4) A finding by the court that:

(A) The user had a specific account with the custodian, identifiable by the information specified in §44-5B-8(d)(1) of this code; or

(B) Disclosure of the user's digital assets is reasonably necessary for administration of the estate.

#### **§44-5B-9. Disclosure of content of electronic communications of principal.**

To the extent a power of attorney expressly grants an agent authority over the content of electronic communications sent or received by the principal and unless directed otherwise by the principal or the court, a custodian shall disclose to the agent the content if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or copy of the power of attorney expressly granting the agent authority over the content of electronic communications of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) Evidence linking the account to the principal.

#### **§44-5B-10. Disclosure of other digital assets of principal.**

Unless otherwise ordered by the court, directed by the principal, or provided by a power of attorney, a custodian shall disclose to an agent with specific authority over digital assets or general authority to act on behalf of a principal a catalogue of electronic communications sent or received by the principal and digital assets, other than the content of electronic communications, of the principal if the agent gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) An original or a copy of the power of attorney that gives the agent specific authority over digital assets or general authority to act on behalf of the principal;

(c) A certification by the agent, under penalty of perjury, that the power of attorney is in effect; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the principal's account; or

(2) Evidence linking the account to the principal.

**§44-5B-11. Disclosure of digital assets held in trust when trustee is original user.**

Unless otherwise ordered by the court or provided in a trust instrument, a custodian shall disclose to a trustee that is an original user of an account any digital asset of the account held in trust, including a catalogue of electronic communications of the trustee and the content of electronic communications.

**§44-5B-12. Disclosure of contents of electronic communications held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust instrument, a custodian shall disclose to a trustee that is not an original user of an account the content of an electronic communication sent or received by an original or successor user and carried, maintained, processed, received, or stored by the custodian in the account of the trust if the trustee gives the custodian:

(a) A written request for disclosure in physical or electronic form;

(b) A certified copy of the trust instrument or a certification of the trust under §44D-10-1013 of this code that includes consent to disclose the content of electronic communications to the trustee;

(c) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(d) If requested by the custodian:

(1) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(2) Evidence linking the account to the trust.

**§44-5B-13. Disclosure of other digital assets held in trust when trustee not original user.**

Unless otherwise ordered by the court, directed by the user, or provided in a trust, a custodian shall disclose, to a trustee that is not an original user of an account, a catalogue of electronic communications sent or received by an original or successor user and stored, carried, or maintained by the custodian in an account of the trust and any digital assets, other than the content of electronic communications, in which the trust has a right or interest if the trustee gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the trust instrument or a certification of the trust under §44D-10-1013 of this code;

(3) A certification by the trustee, under penalty of perjury, that the trust exists and the trustee is a currently acting trustee of the trust; and

(4) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the trust's account; or

(B) Evidence linking the account to the trust.

**§44-5B-14. Disclosure of digital assets to conservator of protected person.**

(a) After an opportunity for a hearing under §44A-1-1 et seq. of this code, the court may grant a conservator access to the digital assets of a protected person.

(b) Unless otherwise ordered by the court or directed by the user, a custodian shall disclose to a conservator the catalogue of electronic communications sent or received by a protected person and any digital assets, other than the content of electronic communications, in which the protected person has a right or interest if the conservator gives the custodian:

(1) A written request for disclosure in physical or electronic form;

(2) A certified copy of the court order that gives the conservator authority over the digital assets of the protected person; and

(3) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the account of the protected person; or

(B) Evidence linking the account to the protected person.

(c) A conservator with general authority to manage the assets of a protected person may request a custodian of the digital assets of the protected person to suspend or terminate an account of the protected person for good cause. A request made under this section must be accompanied by a certified copy of the court order giving the conservator authority over the protected person's property.

**§44-5B-15. Fiduciary duty and authority.**

(a) The legal duties imposed on a fiduciary charged with managing tangible property apply to the management of digital assets, including:

(1) The duty of care;

(2) The duty of loyalty; and

(3) The duty of confidentiality.

(b) A fiduciary's or designated recipient's authority with respect to a digital asset of a user:

(1) Except as otherwise provided in §44-5B-4 of this code, is subject to the applicable terms of service;

(2) Is subject to other applicable law, including copyright law;

(3) In the case of a fiduciary, is limited by the scope of the fiduciary's duties; and

(4) May not be used to impersonate the user.

(c) A fiduciary with authority over the property of a decedent, protected person, principal, or settlor has the right to access any digital asset in which the decedent, protected person, principal, or settlor had a right or interest and that is not held by a custodian or subject to a terms-of-service agreement.

(d) A fiduciary acting within the scope of the fiduciary's duties is an authorized user of the property of the decedent, protected person, principal, or settlor for the purpose of applicable computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 et seq. of this code.

(e) A fiduciary with authority over the tangible, personal property of a decedent, protected person, principal, or settlor:

(1) Has the right to access the property and any digital asset stored in it; and

(2) Is an authorized user for the purpose of computer fraud and unauthorized computer access laws, including the provisions of §61-3C-1 et seq. of this code.

(f) A custodian may disclose information in an account to a fiduciary of the user when the information is required to terminate an account used to access digital assets licensed to the user.

(g) A fiduciary of a user may request a custodian to terminate the user's account. A request for termination must be in writing, in either physical or electronic form, and accompanied by:

(1) If the user is deceased, a certified copy of the death certificate of the user;

(2) A certified copy of the letter of appointment of the representative, court order, power of attorney, or trust instrument giving the fiduciary authority over the account; and

(3) If requested by the custodian:

(A) A number, username, address, or other unique subscriber or account identifier assigned by the custodian to identify the user's account;

(B) Evidence linking the account to the user; or

(C) A finding by the court that the user had a specific account with the custodian, identifiable by the information specified in §44-5B-15(g)(1) of this code.

#### **§44-5B-16. Custodian compliance and immunity.**

(a) Not later than 60 days after receipt of the information required under §44-5B-7 through §44-5B-15 of this code, a custodian shall comply with a request under this article from a fiduciary or designated recipient to disclose digital assets or terminate an account. If the custodian fails to comply, the fiduciary or designated recipient may apply to the court for an order directing compliance.

(b) An order under §44-5B-16(a) of this code directing compliance must contain a finding that compliance is not in violation of 18 U.S.C. § 2702.

(c) A custodian may notify the user that a request for disclosure or to terminate an account was made under this article.

(d) A custodian may deny a request under §44-5B-1 et seq. of this code from a fiduciary or designated recipient for disclosure of digital assets or to terminate an account if the custodian is aware of any lawful access to the account following the receipt of the fiduciary's request.

(e) This article does not limit a custodian's ability to obtain or require a fiduciary or designated recipient requesting disclosure or termination under §44-5B-1 et seq. of this code to obtain a court order which:

(1) Specifies that an account belongs to the protected person or principal;

(2) Specifies that there is sufficient consent from the protected person or principal to support the requested disclosure; and

(3) Contains a finding required by law other than this article.

(f) A custodian and its officers, employees, and agents are immune from liability for an act or omission done in good faith in compliance with this article.

#### **§44-5B-17. Uniformity of application and construction.**

In applying and construing this uniform act, consideration must be given to the need to promote uniformity of the law with respect to its subject matter among states that enact it.

#### **§44-5B-18. Relation to Electronic Signatures in Global and National Commerce Act.**

This article modifies, limits, or supersedes the Electronic Signatures in Global and National Commerce Act, 15 U. S. C. Section 7001 et seq., but does not modify, limit, or supersede Section 101(c) of that act, 15 U. S. C. Section 7001(c), or authorize electronic delivery of any of the notices described in Section 103(b) of that act, 15 U. S. C. Section 7003(b).

#### **§44-5B-19. Severability.**

If any provision of §44-5B-1 et seq. of this code or its application to any person or circumstance is held invalid, the invalidity does not affect other provisions or applications of this article which can be given effect without the invalid provision or application, and to this end the provisions of this article are severable."

The bill was then ordered to third reading.

**Com. Sub. for S. B. 133**, Exempting renewal of certain contracts entered into during declared state of emergency; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

#### **"ARTICLE 3. PURCHASING DIVISION.**

**§5A-3-3c. Exemptions from purchasing requirements for contracts entered into as part of recovery from a declared state of emergency.**

(a) The provisions of this article do not apply to contracts entered into during a state of emergency declared by the Governor pursuant to §15-5-6 of this code, so long as the contract is directly and solely related to the recovery from the declared state of emergency.

(b) The provisions of this article do not apply to the renewal of a contract entered into during a state of emergency declared pursuant to §15-5-6 of this code, if the contract is directly and solely related to the recovery from the declared state of emergency during which the contract was initially entered. For purposes of this subsection, recovery does not include permanent reconstruction after the initial state of emergency has ended.

(c) The provisions of this article do not apply to the purchase of goods or services from the federal government, or an agency thereof, if the purchase of those goods and services is directly and solely related to the recovery from a state of emergency declared pursuant to §15-5-6 of this code.

(d) To qualify for the exemption contained in this section, the Director of the Division of Homeland Security and Emergency Management must certify that the contract or purchase is directly and solely related to the recovery from a declared state of emergency and attach a copy of the proclamation issued by the Governor's office to the certification. Such certifications shall be maintained by the Division of Homeland Security and Emergency Management until the contracts or purchase agreements have been fully executed.

(e) For purposes of this section, 'directly and solely related' means that the goods or services being purchased or contracted for will be used for recovery from the state of emergency only, and will not be used for any other purpose."

The bill was then ordered to third reading.

**Com. Sub. for S. B. 272**, Relating generally to drug control; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Committee on Prevention and Treatment of Substance Abuse, was reported by the Clerk and adopted, amending the bill on page two, by striking out section six in its entirety and inserting in lieu thereof a new section six, to read as follows:

**“§16-5T-6. COMMUNITY OVERDOSE RESPONSE DEMONSTRATION PILOT PROJECT.**

(a) The Director of the Office of Drug Control Policy shall establish a Community Overdose Response Demonstration Pilot Project, to be continued for a period of four years, to develop model government programs to promote public health and general welfare through a comprehensive community-based response to drug overdoses in communities across West Virginia.

(b) The purpose of the demonstration pilot project is the development of community programs that will focus and use existing resources of government agencies to create outreach programs to educate concerned family and community members, including first responders, to recognize an opioid overdose, and to immediately respond with life-saving measures and quick response teams comprised of law enforcement, emergency medical personnel, and a trained opiate case manager to conduct an in-home visit within one week of an overdose.

(c) The objective of the demonstration pilot project is to improve public health by addressing drug overdoses through a comprehensive community development plan. The plan should serve as a model to improve public health and education through a comprehensive community-based response to drug overdoses across the state.



(d) Communities that experience a high frequency of drug overdoses, compared with national averages as determined by the Office of Drug Control Policy, are eligible for participation in the demonstration pilot project.

(e) The demonstration pilot project shall be developed and administered by the Office of Drug Control Policy to encourage state and local agencies and community groups to work together and coordinate government and community responses to drug overdoses, and identify new and existing funds, personnel, and other existing resources available for the demonstration pilot project. Demonstration projects may include:

(1) Outreach programs to educate concerned family and community members, including first responders, to recognize an opioid overdose and to immediately respond with life-saving measures. This outreach may include basic information, training in the proper and safe administration of Naloxone to reverse drug overdoses, and the distribution of Naloxone kits; and

(2) Quick response teams comprised of law enforcement, emergency medical personnel, and a case manager trained in substance use disorder to conduct an in-home visit within one week of an overdose. The quick response teams would work cooperatively to triage and assess overdose survivors and provide linkage to treatment and services for rehabilitation with the goal of reducing repeated overdoses.

(f) The demonstration project may receive funding and other committed resources from federal, state, or local government and community groups.

(g) A community desiring to participate in the demonstration project shall submit a plan to the director that provides for the following elements:

(1) Community participation;

(2) Development of a community action plan with measurable, achievable, realistic, time-phased objectives;

(3) Implementation of the community action plan; and

(4) Evaluation of results.

(h) By majority vote, the Governor's Advisory Council on Substance Use Disorder Policy created pursuant to Executive Order 10-17 may select one or more communities from those that submit plans for participation in the demonstration pilot project.

(i) Commencing December 1, 2018, and each year thereafter, each participating community shall give a progress report to the director and commencing January 1, 2019, and each year thereafter, the director shall give a summary report of all the participating communities to the Legislative Oversight Commission on Health and Human Resources Accountability as established in §16-29E-1 *et seq.* of this code, on progress made by the pilot demonstration project, including suggested legislation, necessary changes to the demonstration pilot project and suggested expansion of the demonstration project.

(j) This section is not intended to, and does not, create any right or benefit, substantive or procedural, enforceable at law or in equity by any party against the state, its departments, agencies, or entities, its officers, employees, or agents, or any other person.

(k) The demonstration project terminates on July 1, 2022."

On page five, section four, line sixteen, after the word “has”, by inserting the word “designated”.

The bill was then ordered to third reading.

**S. B. 298**, Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes; on second reading, coming up in regular order, was read a second time.

On motion of Delegates Rowe and Butler, the bill was amended on page one, section two, line seven, by striking out the word “exclusively” and inserting in lieu thereof the words “primarily and immediately”.

And,

On page one, section two, line ten, by striking out the word “exclusively” and inserting in lieu thereof the words “primarily and immediately”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 319**, Allowing individuals who completed home schooling be eligible for PROMISE scholarship without equivalent diploma; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Education, was reported by the Clerk and adopted, amending the bill page two, section six, after line twenty-nine, by inserting a new subdivision, designated subdivision (3), to read as follows:

“(3) Maintain a grade point average of at least 3.0 on a 4.0 grading scale in the required core and elective course work necessary to prepare students for success in post-secondary education at the associate and baccalaureate degree levels as determined by the commission, if the individual has completed not more than one semester or term at an institution of higher education, excluding credits earned in advanced placement, international baccalaureate, dual credit and comparable courses while the student is enrolled in high school” and a semicolon.

And,

By renumbering the remaining subdivisions accordingly.

The bill was then ordered to third reading.

**S. B. 365**, Relating to Young Entrepreneur Reinvestment Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 412**, Relating to authority of county litter control officers; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 427**, Modifying form of notice for certain tax delinquencies; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page one, section twenty-three, lines fourteen through twenty, by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e), to read as follows:

“(e) Within 10 days after the filing of the list, the Secretary of State shall give final written notice of ~~the~~ any delinquency of \$1,000 or greater by registered or certified mail to each of the delinquent taxpayers at his or her, or its, last known post office address; the Secretary of State may give final written notice of any delinquency of less than \$1,000 by first class mail to each of the delinquent taxpayers at his or her, or its, last known post office address; and upon the failure of any delinquent taxpayer to pay the taxes within 30 days from the mailing of the notice.”

The bill was then ordered to third reading.

**S. B. 441**, Relating to health care provider taxes; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was reported by the Clerk and adopted, amending the bill on page two, section thirty-eight, lines forty through forty-five, by striking out subsection (e) in its entirety and inserting in lieu thereof a new subsection (e), to read as follows:

“(e) Any funds remaining in the Eligible Acute Care Provider Enhancement Account as of June 30, ~~2017~~ 2018, and on June 30 of each year thereafter, shall be transferred to the West Virginia Medical Services Fund. ~~This transfer shall occur after that June 30 but no later than the next ensuing September 30 2017.~~ These funds shall be used during the state fiscal year 2018 in which they were transferred at the discretion of the Bureau for Medical Services.”

The bill was then ordered to third reading.

**Com. Sub. for S. B. 456**, Physical Therapy Licensure Compact Act; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the on page one, section two, line one, by striking out the word “Governor” and inserting in lieu thereof the words “West Virginia Board of Physical Therapy”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 493**, Relating to guaranty associations; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 499**, Requiring one year of certain approved postgraduate clinical training for persons with foreign medical degrees; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Health and Human Resources, was reported by the Clerk and adopted, amending the bill on page eight, section ten, line one hundred eighty-five, by striking out the word “shall” and inserting in lieu thereof the word “may”.

The bill was then ordered to third reading.

**Com. Sub. for S. B. 510**, Designating hospitals for stroke treatment; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**Com. Sub. for S. B. 522**, Relating generally to Administrative Procedures Act; on second reading, coming up in regular order, was read a second time and ordered to third reading.

**S. B. 545**, Relating to driving privileges and requirements for persons under 18; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on the Judiciary, was reported by the Clerk and adopted, amending the bill on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

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

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

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

(b) Any person under the age of 21, regardless of class or level of licensure, who operates a motor vehicle with any measurable alcohol in his or her system is subject to ~~the provisions of~~ §17C-5-2 and §17C-5A-2 of this code. Any person under the age of 18, regardless of class or licensure level, is subject to the mandatory school attendance and satisfactory academic progress provisions of §18-8-11 of this code.

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

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

(A) Presents a completed application, as prescribed by ~~the provisions of~~ §17B-2-6 of this code, 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 §17B-2-7 of this code;

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

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

(2) *Terms and conditions of instruction permit.* — A level one instruction permit issued under ~~the provisions of~~ this section is valid until 30 days after the date the applicant attains the age of 18 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~~ §17B-2-6 of this code. The division shall immediately revoke the permit upon receipt of a second conviction for a moving violation of traffic

regulations and laws of the road or violation of the terms and conditions of a level one instruction permit, which convictions have become final unless a greater penalty is required by this section or any other provision of this code. Any person whose instruction permit has been revoked is disqualified from retesting for a period of 90 days. However, after the expiration of 90 days, the person may retest if otherwise eligible. 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, 21 years of age or older, or a driver's education or driving school instructor who is acting in an official capacity as an instructor, who is fully alert and unimpaired, and the only other occupant of the front seat. The vehicle may be operated with no more than two additional passengers, unless the passengers are family members;

(B) Between the hours of 5:00 a. m. and 10:00 p. m.;

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

(D) Without any measurable blood alcohol content, in accordance with ~~the provisions of §17C-5-2(h) of this code;~~ and

(E) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with ~~the provisions of §18-8-11 of this code.~~

(F) A holder of a level one instruction permit who is under the age of 18 years ~~shall be~~ is 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 16 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 §17B-2-6 of this code;

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

(C) Has completed either a driver's education course approved by the state Department of Education or 50 hours of behind-the-wheel driving experience, including a minimum of 10 hours of night time driving, certified by a parent or legal guardian or other responsible adult over the age of 21 as indicated on the form prescribed by the division: *Provided*, That nothing in this paragraph 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 §18-8-11 of this code;~~

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

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

(2) *Terms and conditions of a level two intermediate driver's license.* — A level two intermediate driver's license issued under the provisions of this section shall expire 30 days after the applicant attains the age of 18, or until the licensee qualifies for a level three full Class E license, whichever comes first. 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 5:00 a. m. and 10:00 p. m.;

(B) Only under the direct supervision of a licensed driver, age 21 years or older, between the hours of 10:00 p. m. and 5:00 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~~ §17C-15-49 of this code;

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

(E) Without any measurable blood alcohol content in accordance with ~~the provisions of~~ §17C-5-2(h) of this code;

(F) Maintains current school enrollment and is making satisfactory academic progress or otherwise shows compliance with ~~the provisions of~~ §18-8-11 of this code;

(G) A holder of a level two intermediate driver's license who is under the age of 18 years ~~shall be~~ is 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~~ §17B-2-3a(d)(2)(A), §17B-2-3a(d)(2)(B), §17B-2-3a(d)(2)(C), §17B-2-3a(d)(2)(D), or §17B-2-3a(d)(2)(G) of this code of the terms and conditions of a level two intermediate driver's license, the licensee shall enroll in an approved driver

improvement program unless a greater penalty is required by this section or by any other provision of this code; and

At the discretion of the commissioner, completion of an approved driver improvement program may be used to negate the effect of a minor traffic violation as defined by the commissioner against the one year conviction-free driving criteria for early eligibility for a level three driver's license and may also negate the effect of one minor traffic violation for purposes of avoiding a second conviction under §17B-2-3a(d)(2)(I) of this code; 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 18 years and if otherwise eligible may reapply for an instruction permit, then a driver's license in accordance with ~~the provisions of~~ §17B-2-5, §17B-2-6, and §17B-2-7 of this code.

(e) *Level three, full Class E license driver's license. Terms and Conditions.* — The level three license is valid until 30 days after the date the licensee attains his or her twenty-first birthday. A holder of a level three, full Class E driver's license who is under the age of 18 years is 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. Unless otherwise provided in this section or any other section of this code, the holder of a level three full Class E license is subject to the same terms and conditions as the holder of a regular Class E driver's license.

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

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

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

(B) Has held the level two intermediate license conviction free for the 12-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~~ §17B-2-3a(d)(2)(H) of this code; and

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

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

(2) Reaches the age of 18 years; and

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

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

(f) A person violating the provisions of the terms and conditions of a level one instruction permit, ~~or level two intermediate driver's license~~, or level three, full Class E 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."

The bill was then ordered to third reading.

At the request of Delegate Hanshaw, and by unanimous consent, **Com. Sub. for S. B. 395**, Providing for judicial review of appealed decisions of Air Quality Review Board, Environmental Quality Board and Surface Mine Board, was taken up for further consideration.

On motion of Delegate Cowles, the House of Delegates then reconsidered its vote to make the bill effective from passage.

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

**Com. Sub. for S. B. 395** - "A Bill to amend and reenact §22B-1-9 of the Code of West Virginia, 1931, as amended; to amend and reenact §22B-2-3 of said code; to amend and reenact §22B-3-3 of said code; and to amend and reenact §22B-4-3 of said code, all relating to the general provisions for judicial review of final orders of various environmental boards; requiring petition be filed within 30 days of entry of the final order; providing that appeal does not automatically stay any final order or action approved by a board; authorizing the chief or director to employ outside legal counsel without approval of the Attorney General; providing that decisions of the Air Quality Board, Environmental Quality Board, and Surface Mine Board denying an application for a permit, or approving or modifying the terms and conditions of a permit may be directly appealed to the Supreme Court of Appeals; and providing for exceptions to this right of direct appeal."

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

On this question, the yeas and nays were taken (**Roll No. 323**), and there were—yeas 97, nays none, absent and not voting 3, with the absent and not voting being as follows:

Absent and Not Voting: Anderson, Deem and Fluharty.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 395) takes effect from its passage.

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

### First Reading

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



**Com. Sub. for S. B. 36**, Relating generally to DNA testing,

**Com. Sub. for S. B. 51**, Relating to domestic relations,

**Com. Sub. for S. B. 116**, Providing court costs collected under Second Chance Driver's License Program are not subject to 5 percent offset,

**Com. Sub. for S. B. 261**, Transferring certain powers and programs of WV Affordable Housing Trust Fund to WV Housing Development Fund,

**S. B. 273**, Reducing use of certain prescription drugs,

**S. B. 282**, Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery,

**S. B. 297**, Eliminating taxation on annuity considerations collected by life insurer,

**S. B. 299**, Relating to mandatory insurance coverage for medical foods for amino acid-based formulas,

**S. B. 347**, Relating to operation of motorboats,

**Com. Sub. for S. B. 359**, Authorizing Supreme Court establish curricula for mental hygiene commissioners and certain magistrates,

**Com. Sub. for S. B. 461**, Extending time to file petition for motor fuel excise tax refund,

**S. B. 465**, Relating to mandated reporting of child abuse and neglect,

**Com. Sub. for S. B. 475**, Industrial Hemp Development Act,

**S. B. 479**, Establishing local government monitoring by Auditor,

**Com. Sub. for S. B. 500**, Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund,

**Com. Sub. for S. B. 543**, Relating to confidentiality of medical records,

**Com. Sub. for S. B. 555**, Providing immunity from civil liability for qualified directors of certain governmental and nonprofit entities,

**Com. Sub. for S. B. 574**, Relating to crime of misrepresentation of military honors,

**Com. Sub. for S. B. 575**, Approving additional beds for intermediate care facilities,

**S. B. 576**, Relating to Patient Injury Compensation Fund,

**Com. Sub. for S. B. 582**, Allowing candidate for political party executive committee serve as election official,

**S. B. 584**, Finding certain claims against state to be moral obligations of state,

**Com. Sub. for S. B. 589**, Relating to issuance of personalized plates for antique motor vehicles,

**Com. Sub. for S. B. 590**, Providing special license plate for curing childhood cancer,

**Com. Sub. for S. B. 616**, Establishing maximum gross weight for certain wood-bearing trucks,

**S. B. 626**, Relating generally to coal mining,

And,

**S. B. 631**, Relating generally to one-call system.

At 3:33 p.m., on motion of Delegate Cowles, the House of Delegates recessed until 7:00 p.m.

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**Evening Session**

\* \* \* \* \*

The House of Delegates was called to order by the Honorable Tim Armstead, Speaker.

**Messages from the Senate**

A message from the Senate, by

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

**Com. Sub. for H. B. 2483**, Requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any juvenile in its custody that has been transferred to adult jurisdiction of the circuit court and who reaches his or her eighteenth birthday.

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

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

**“ARTICLE 4. COURT ACTIONS.**

**§49-4-720. Prohibition on committing juveniles to adult facilities. ~~copy provided to juvenile~~**

(a) ~~No~~ A juvenile, including one who has been transferred to criminal jurisdiction of the court, ~~shall~~ may not be detained or confined in any institution in which he or she has contact with or comes within sight or sound of any adult persons incarcerated because ~~they have~~ he or she has have been convicted of a crime or are awaiting trial on criminal charges or with the security staff (including management) or direct-care staff of a jail or locked facility for adults.

(b) ~~No~~ A child who has been convicted or is awaiting trial of an offense under the adult jurisdiction of the circuit court ~~shall~~ may not be held in custody in a an adult correctional facility of this state while under the age of 18 years. The Division of Juvenile Services shall ~~be responsible for notifying~~ notify the sentencing court and copy the county prosecuting attorney of the sentencing court within forty-five 180 days, or as soon as practicable, ~~days of the child's eighteenth birthday~~ that the child will be

turning 18 years of age. The court shall, upon receipt of the notice, set the matter for a hearing. Within ten days of the child's eighteenth birthday, the court shall transfer the offender to Before the child reaches 18 years of age, the court shall hold a hearing and enter an order transferring the offender to an adult correctional facility, a facility for youthful offenders, if applicable; or to any other disposition the court deems considers appropriate, which does not violate the provisions of subsection (a) of this section; for adult offenders. Notwithstanding any other provision of this code to the contrary, prior to the transfer the child shall be returned to the sentencing court for the purpose of reconsideration and modification of the imposed sentence, which shall be based upon a review of all records and relevant information relating to the child's rehabilitation since his or her conviction under the adult jurisdiction of the court. *Provided, however,* That the court may not remand a person who reached the age of 18 years to a juvenile facility or place the person with other juveniles.

(c) The provisions of §61-11A-1 et seq. of this code, are applicable to proceedings under this section.

#### **§49-4-722. Conviction for offense while in custody.**

(a) Notwithstanding any other provision of law to the contrary, any person who is 18 years of age or older who is convicted as an adult of an offense that he or she committed while in the custody of the Division of Juvenile Services and who is therefor sentenced to a regional jail or state correctional facility for the offense may not be returned to the custody of the division upon the completion of his or her adult sentence. until a hearing is held before the court which committed the person to the custody of the Division of Juvenile Services at which hearing the division may present any objections it may have to return the person to its custody. If the division does object and the court overrules the division's objections, it shall make specific written findings as to its rationale for overruling the objections.

(b) No person who is eighteen years of age or older who is convicted as an adult of a felony crime of violence against the person while in the custody of the Division of Juvenile Services be returned to the custody of the Division of Juvenile Services upon completion of his or her adult sentence. Prior to completion of the adult sentence specified in §49-4-722(a) of this code, the circuit court having jurisdiction over the underlying juvenile matter shall conduct a hearing to determine whether the person who has turned 18 years of age shall remain in the regional jail during pendency of the underlying juvenile matter or if another disposition or pretrial placement is appropriate and available: *Provided, That the court may not remand a child who reached the age of 18 years to a juvenile facility or placement during the pendency of the underlying juvenile matter.*"

And,

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

**Com. Sub. for H. B. 2483** - "A Bill to amend and reenact §49-4-720 and §49-4-722 of the Code of West Virginia, 1931, as amended, all relating to requiring the Division of Juvenile Services to transfer to a correctional facility or regional jail any person in its custody that has been transferred to adult jurisdiction of the circuit court and who turns 18 years of age; requiring transfer of juvenile under adult jurisdiction from a juvenile facility upon reaching 18 years of age if he or she has either been convicted or is in a pretrial status; directing the Division of Juvenile Services to notify the circuit court 180 days or as soon as practicable prior to a juvenile reaching 18 years of age; requiring the circuit court to set and conduct a hearing prior to the transfer to an adult correctional facility; making provisions of law related to victims applicable to proceedings held pursuant to the section; prohibiting persons 18 or older that commit an adult offense while under the custody of the Division of Juvenile Services from being returned to the placement in a juvenile facility; requiring the court to conduct a

hearing prior to the completion of the adult sentence; and prohibiting a court from remanding a person who has reached 18 years of age and completed serving an adult sentence to a juvenile facility.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 324**), and there were—yeas 88, nays none, absent and not voting 12, with the absent and not voting being as follows:

Absent and Not Voting: Barrett, Deem, Eldridge, Ferro, Fluharty, Gearheart, Hornbuckle, Longstreth, Marcum, Maynard, Nelson and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2483) passed.

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

A message from the Senate, by

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

**Com. Sub. for H. B. 2693**, Relating to state ownership of wildlife.

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

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

**“ARTICLE 2. WILDLIFE RESOURCES.**

**§20-2-3. State ownership of wildlife.**

The ownership of and title to all ~~wild animals, wild birds, both migratory and resident, and all fish, amphibians, and all forms of aquatic life~~ wildlife in the State of West Virginia is hereby declared to be in the state, as trustee for the people. ~~No such~~ A person shall not take or hunt wildlife shall be taken or hunted in any manner, or at any time, unless the person ~~so taking or hunting the same shall consent~~ wildlife consents that the title ~~thereto shall be and remain~~ to the wildlife is and remains in the State of West Virginia for the purpose of regulating the taking, hunting, using, and disposing of the ~~same~~ wildlife. The taking or hunting of wildlife at any time or in any manner by any person ~~shall be deemed~~ such is considered consent: *Provided*, That, all fish, frogs, and other aquatic life in privately-owned ponds are, and ~~shall~~ remain, the private property of the owner or owners of ~~such the~~ the privately-owned ponds, and that ~~such the~~ the fish, frogs, and other aquatic life in ~~such the~~ the privately-owned ponds may be caught, taken or killed by ~~such the~~ the owner or owners at any time.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 325**), and there were—yeas 91, nays 2, absent and not voting 7, with the nays and absent and not voting being as follows:

Nays: Marcum and Sobonya.

Absent and Not Voting: Deem, Eldridge, Fluharty, Gearheart, Hornbuckle, Longstreth and Walters.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 2693) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 2889**, Allowing military veterans with certain military ratings to qualify for examinations required of probationary police officer.

A message from the Senate, by

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

**Com. Sub. for H. B. 2995**, Permitting certain animal euthanasia technicians who have been certified by other states be certified animal euthanasia technicians in West Virginia.

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

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

**“ARTICLE 10. VETERINARIANS.**

**§30-10-12. Requirements to be a certified animal euthanasia technician.**

(a) To be eligible to be a certified animal euthanasia technician a person must:

(1) Apply at least thirty days prior to the date the next written examinations are scheduled, using a form prescribed by the board;

(2) Have a high school diploma or GED;

(3) Pay application and examination fees;

(4) Complete the certified animal euthanasia technician’s program established by the board;

(5) Pass the written and practical skills examinations;

(6) Pass the prescribed background check; and

(7) Complete all the other requirements established by the board.

(b) A certified animal euthanasia technician may practice animal euthanasia at a legally operated animal control facility.

(c) A person certified as an animal euthanasia technician by the board prior to July 1, 2010, shall for all purposes be considered certified under this article and may renew pursuant to the provisions of this article.

(d) Notwithstanding the requirements set forth in §30-10-12(a) of this code, a person certified by another state or jurisdiction with qualifications comparable to, equivalent to, or exceeding the standards of the board may be issued a certification under this section upon the submission of a completed application and the appropriate fees as established by the board in legislative rules."

And,

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

**Com. Sub. for H. B. 2995** - "A Bill to amend and reenact §30-10-12 of the Code of West Virginia, 1931, as amended, relating to qualifications for certification as an animal euthanasia technician; authorizing issuance of animal euthanasia technician certificate to certain persons certified by another state or jurisdiction; setting requirements for issuance of certificate; and authorizing fees to be prescribed by the Board of Veterinary Medicine in legislative rule."

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

A message from the Senate, by

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

**Com. Sub. for H. B. 4186**, Relating generally to guaranteed asset protection waivers.

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

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

#### **"ARTICLE 4. GENERAL PROVISIONS.**

##### **§33-4-22. Guaranteed Asset Protection Waivers.**

(a) Short title. – This section may be cited as the 'Guaranteed Asset Protection Waiver Act.'

(b) Purpose. – The purpose of this section is to provide a framework within which guaranteed asset protection waivers are defined and may be offered within this state.

(c) Legislative intent. – The Legislature finds that guaranteed asset protection waivers are not insurance and are not subject to the provisions of this chapter, except as provided in this section. It is further the intent of the Legislature that all guaranteed asset protection waivers issued prior to and after the effective date of this section may not be construed as insurance and that persons marketing, administering, selling or offering to sell guaranteed asset protection waivers not be required to comply with insurance licensing requirements.

(d) Applicability. – This section does not apply to:

(1) An insurance policy offered by an insurer under the insurance laws of this state; or

(2) A debt cancellation or debt suspension contract being offered in compliance with 12 C.F.R. §37.1, et seq., 12 C.F.R. §721.1, et seq., or other federal law.

(e) *Waivers not insurance; exemption from licensing requirement.* – Guaranteed asset protection waivers governed by this section are not insurance and are exempt from the insurance laws of this state. Persons marketing, administering, selling or offering to sell guaranteed asset protection waivers to borrowers that comply with this section are exempt from this state’s insurance licensing requirement with regard to the marketing, selling or offering to sell guaranteed asset protection waivers.

(f) *Definitions.* – The following terms are defined for purposes of this section. These terms are not intended to be used or required in guaranteed asset protection waivers.

(1) ‘Administrator’ means a person, other than an insurer or creditor, who performs administrative or operational functions pursuant to guaranteed asset protection waiver programs. Administrative or operational functions may include, but are not limited to:

(A) Document development, processing, and support;

(B) Compliance Services;

(C) Waiver fee processing;

(D) Benefit determination and processing;

(E) Procurement and administration of the contractual liability or other insurance policy;

(F) Technology support; or

(G) Personnel support.

(2) ‘Borrower’ means a debtor, retail buyer, or lessee under a finance agreement.

(3) ‘Contractual liability’ means a contract or other agreement that obligates a third party to indemnify a creditor under (g)(4) of this section and is insurance under the insurance laws of this state.

(4) ‘Creditor’ means:

(A) The lender in a loan or credit transaction;

(B) The lessor in a lease transaction;

(C) A retail dealer of motor vehicles licensed under §17A-6-1 et seq. of this code, that provides credit to buyers as part of a retail sale, provided the dealer complies with the requirements of this section;

(D) The seller in a commercial retail installment transaction; or

(E) The assignees of any of the foregoing persons to whom the credit obligation is payable.

(5) ‘Finance agreement’ means a loan, lease or retail installment sales contract for the purchase or lease of a motor vehicle.

(6) 'Free look period' means the period of time from the effective date of the guaranteed asset protection waiver until the date the borrower may cancel the contract without penalty, fees or costs to the borrower. This period of time may not be less than thirty days.

(7) 'Guaranteed asset protection waiver' means a contractual agreement that is part of or a separate addendum to the finance agreement in which a creditor agrees, upon payment of a separate charge, to cancel or waive all or part of amounts due to it on a borrower's finance agreement if there is a total physical damage loss or unrecovered theft of a motor vehicle. A guaranteed asset protection waiver is not insurance due to the purchase, administration or operation of the contractual liability or other insurance policy authorized under subdivision (g)(4) of this section.

(8) 'Insurer' means an insurance company required to be licensed, registered, or otherwise authorized to do business under the insurance laws of this state.

(9) 'Motor vehicle' means a self-propelled or towed vehicle designed for personal or commercial use, including, but not limited to, an automobile, truck, motorcycle, recreational vehicle, all-terrain vehicle, snowmobile, camper, boat or personal watercraft, and the trailer used to transport a motorcycle, boat, camper or personal watercraft.

(10) 'Person' includes an individual, company, association, organization, partnership, limited liability company, business trust, corporation and every form of legal entity.

(g) Requirements for offering guaranteed asset protection waivers. –

(1) Guaranteed asset protection waivers may be offered, sold or provided to borrowers in this state in compliance with this section.

(2) Guaranteed asset protection waivers may, at the option of the creditor, be sold for a single payment or may be offered with a monthly or periodic payment option.

(3) Notwithstanding any other provision of law, any cost to the borrower for a guaranteed asset protection waiver entered into in compliance with the Truth in Lending Act, 15 U.S.C. §1601, et. seq., must be separately stated and may not be considered a finance charge or interest.

(4) A retail dealer of motor vehicles shall insure its guaranteed asset protection waiver obligations under a contractual liability or other insurance policy issued by an insurer. A creditor, other than a retail dealer of motor vehicles, may insure its guaranteed asset protection waiver obligations under a contractual liability policy or similar policy issued by an insurer. The insurance policy may be directly obtained by a creditor, a retail dealer of motor vehicles or may be procured by an administrator to cover a creditor's or retail dealer's obligations: *Provided*, That retail dealers of motor vehicles that are lessors of motor vehicles are not required to insure obligations related to guaranteed asset protection waivers on leased vehicles.

(5) The guaranteed asset protection waiver remains a part of the finance agreement upon the assignment, sale, or transfer of the finance agreement by the creditor.

(6) The extension of credit, the terms of credit or the terms of the related motor vehicle sale or lease may not be conditioned upon the purchase of a guaranteed asset protection waiver.

(7) A creditor that offers a guaranteed asset protection waiver shall report the sale of and forward funds received on all guaranteed asset protection waivers to the designated party, if any, as prescribed in any applicable administrative services agreement, contractual liability policy, other insurance policy or other specified program document.



(8) Funds received or held by a creditor or administrator and belonging to an insurer, creditor or administrator, pursuant to the terms of a written agreement must be held by the creditor or administrator in a fiduciary capacity.

(h) Contractual liability or other insurance policies. –

(1) Contractual liability or other insurance policies insuring guaranteed asset protection waivers must state the obligation of the insurer to reimburse or pay to the creditor any sums the creditor is legally obligated to waive under the guaranteed asset protection waivers issued by the creditor and purchased or held by the borrower.

(2) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must also cover any subsequent assignee upon the assignment, sale, or transfer of the finance agreement.

(3) Coverage under a contractual liability or other insurance policy insuring a guaranteed asset protection waiver must remain in effect unless canceled or terminated in compliance with applicable insurance laws of this state.

(4) The cancellation or termination of a contractual liability or other insurance policy may not reduce the insurer's responsibility for guaranteed asset protection waivers issued by the creditor prior to the date of cancellation or termination and for which premiums have been received by the insurer.

(i) Disclosures. –

Guaranteed asset protection waivers must disclose, as applicable, in writing and in clear, understandable language, the following:

(A) The name and address of the initial creditor and the borrower at the time of sale and the identity of any administrator if different from the creditor;

(B) The purchase price and the terms of the guaranteed asset protection waiver, including without limitation the requirements for protection, conditions or exclusions associated with the guaranteed asset protection waiver;

(C) That the borrower may cancel the guaranteed asset protection waiver within a free look period as specified in the waiver, and may receive a full refund of the purchase price, so long as no benefits have been provided under the waiver; or if benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(D) That in order to obtain guaranteed asset waiver protection benefits under its terms and conditions, the borrower must provide notice of the total physical loss or unrecovered theft of the motor vehicle to the creditor or its designated administrator and the manner in which such notice must be provided;

(E) Whether the guaranteed asset protection waiver may be canceled after the free look period and the conditions under which it may be canceled or terminated, including the procedures for requesting any refund due;

(F) That in order to receive any refund due if a borrower cancels the guaranteed asset protection waiver agreement or early termination of the finance agreement after the free look period of the guaranteed asset protection waiver, the borrower, in accordance with terms of the waiver, shall provide a written request to cancel to the creditor, administrator or other party as specified in the

guaranteed asset protection waiver. If a borrower is canceling the guaranteed asset protection waiver due to early termination of the finance agreement, the borrower shall provide a written request to the creditor, administrator or other party within ninety days of the occurrence of the event terminating the finance agreement;

(G) The methodology for calculating any refund of the unearned purchase price of the guaranteed asset protection waiver due if there is cancellation of the guaranteed asset protection waiver or early termination of the finance agreement; and

(H) That neither the extension of credit, the terms of the credit, nor the terms of the related motor vehicle sale or lease, may be conditioned upon the purchase of the guaranteed asset protection waiver.

(j) Cancellation. –

(1) Guaranteed asset protection waiver agreements may be cancellable or non-cancellable after the free look period. Guaranteed asset protection waivers must provide that if a borrower cancels a guaranteed asset protection waiver within the free look period, so long as no benefits have been provided, the borrower is entitled to a full refund of the purchase price. If benefits have been provided, the borrower may receive a full or partial refund pursuant to the terms of the guaranteed asset protection waiver;

(2) If the borrower cancels the guaranteed asset protection waiver or terminates the finance agreement early but after the agreement has been in effect beyond the free look period, the borrower may receive a refund of any unearned portion of the purchase price of the guaranteed asset protection waiver unless the guaranteed asset protection waiver provides otherwise. In order to receive a refund, the borrower, in accordance with any applicable terms of the waiver, shall provide a written request to the creditor, administrator or other party. If the borrower is canceling the guaranteed asset protection waiver due to the early termination of the finance agreement, the borrower shall provide a written request within ninety days of the event terminating the finance agreement;

(3) If the cancellation of a guaranteed asset protection waiver occurs as a result of a default under the finance agreement, or the repossession of the motor vehicle associated with the finance agreement, or any other termination of the finance agreement, any refund due may be paid directly to the creditor or administrator and applied as set forth in subdivision (4) of this subsection (i), below:

(4) A cancellation or termination refund under subdivision (1), (2) or (3) of this subsection (i) may be applied by the creditor as a reduction of the amount owed under the finance agreement, unless the borrower can show that the finance agreement has been paid in full.

(k) Commercial transaction exempted. – Subsections (g), (h) and (i) of this section do not apply to a guaranteed asset protection waiver offered in connection with a lease or retail installment sale associated with a commercial transaction.”

And,

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

**Com. Sub. for H. B. 4186** - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-4-22, relating generally to guaranteed asset protection waivers; providing short title, purpose, legislative intent, and applicability of section; providing that guaranteed asset protection waivers are not insurance and are exempt from the insurance laws of

this state; providing further exemptions; defining certain terms; providing requirements for offering guaranteed asset protection waivers; requiring contractual liability or other insurance policies on guaranteed asset protection waivers in certain circumstances; requiring certain disclosures; providing for cancellation or non-cancellation; specifying requirements upon cancellation in certain circumstances; and exempting certain requirements in commercial transactions.”

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

A message from the Senate, by

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

**Com. Sub. for H. B. 4207**, Authorizing an online application to receive a commission to act as a notary public, and eliminating the bond requirement.

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

On page one, section twenty, line fifteen, by striking out the words “I have” and inserting in lieu thereof the words “he or she has”.

On page two, section twenty, line seventeen, by striking out the word “I” and inserting in lieu thereof the words “he or she”.

And,

On page two, section twenty, line seventeen, by striking out the word “my” and inserting in lieu thereof the words “his or her”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 326**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Deem, Fluharty, Gearheart, Hornbuckle and Longstreth.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4207) passed.

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

A message from the Senate, by

The Clerk of the Senate, announced that the Senate had passed, without amendment, a bill of the House of Delegates as follows:

**Com. Sub. for H. B. 4238**, Authorizing counties and municipalities to establish a joint airport hazard comprehensive plan.

A message from the Senate, by

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

**H. B. 4410**, Removing the requirement that the State Auditor receive copies of the Limited Video Lottery bids.

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

On page two, section one thousand one hundred seven, line thirty-two, after the word “purchasing” by striking out the comma and the words “West Virginia Department of Administration” and inserting in lieu thereof the words “of the Purchasing Division within the Department of Administration”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 327**), and there were—yeas 95, nays none, absent and not voting 5, with the absent and not voting being as follows:

Absent and Not Voting: Deem, Fluharty, Gearheart, Hornbuckle and Longstreth.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4410) passed.

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

A message from the Senate, by

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

**H. B. 4436**, Clarifying when a minor between the ages of 16 and 18 may be employed by or elected as a member of a volunteer fire department.

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

On page one, section two, line one, by striking out the word “No” and inserting in lieu thereof the word “A”.

On page one, section two, line one, after the word “may” by inserting the word “not”.

On page two, section two, line twenty-four, by striking out the word “No” and inserting in lieu thereof the word “A”.

On page two, section two, line twenty-four, after the word “may” by inserting the word “not”.

On page two, section two, line twenty-seven, by striking out the word “No” and inserting in lieu thereof the word “A”.

On page two, section two, line twenty-seven, after the word “may” by inserting the word “not”.

And,

On page two, section two, line thirty, after the word “requirements” by inserting the word “of”.

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 328**), and there were—yeas 96, nays none, absent and not voting 4, with the absent and not voting being as follows:

Absent and Not Voting: Deem, Fluharty, Gearheart and Longstreth.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4436) passed.

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

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

### **Committee Reports**

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

Your Committee on the Judiciary has had under consideration:

**S. B. 585**, Altering boundary line between Doddridge and Harrison counties,

And,

**Com. Sub. for S. B. 603**, Relating to proceedings for involuntary custody for examination,

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

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

Your Committee on the Judiciary has had under consideration:

**S. B. 242**, Requiring health insurance providers provide coverage for certain Lyme disease treatment,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 275**, Relating to tax on purchases of intoxicating liquors,

And reports the same back with the recommendation that it do pass, and with the recommendation that second reference of the bill to the Committee on Finance be dispensed with.

In the absence of objection, reference of the bill (Com. Sub. for S. B. 275) to the Committee on Finance was abrogated.

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

Your Committee on Government Organization has had under consideration:

**Com. Sub. for S. B. 392**, Reconfiguring membership of Emergency Medical Services Advisory Council,

**S. B. 463**, Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture,

**Com. Sub. for S. B. 506**, Deregulating persons who perform work on heating, ventilating, and cooling systems,

And,

**Com. Sub. for S. B. 525**, Relating to certification for emergency medical training - mining,

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

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

Your Committee on Government Organization has had under consideration:

**S. B. 322**, Relating to employees of Department of Agriculture,

**S. B. 411**, Removing Commissioner of Bureau for Public Health from State Board of Sanitarians,

**S. B. 498**, Creating two-year pilot program allowing all-terrain or recreational vehicles in Cabwaylingo State Forest,

**Com. Sub. for S. B. 508**, Establishing State Trail Authority,

And,

**Com. Sub. for S. B. 556**, Creating small business and minority populations economic and workforce development taskforce to assist Economic Development Authority,

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

Delegate Gearheart, Chair of the Committee on Roads and Transportation, submitted the following report, which was received:

Your Committee on Roads and Transportation has had under consideration:

**H. C. R. 11**, Charleston Police Department Captain Jerry D. Hill Memorial Bridge,

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

**Com. Sub. for H. C. R. 11** - "Requesting the Division of Highways to name the bridge number 20-61-13.51 (20A817), locally known as New Chesapeake Bridge, carrying WV Route 61 over Fields Creek in Kanawha County, the 'Charleston Police Capt. Jerry D. Hill Memorial Bridge'."

**H. C. R. 40**, U. S. Air Force SMSgt Billie E. "Bunky" Hodge Bridge,

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

**Com. Sub. for H. C. R. 40** - "Requesting the Division of Highways to name bridge number 41-1-12.89 (41A006), locally known as "Artie Bridge", carrying County Route 1 over Clear Fork in Raleigh County, the 'U. S. Air Force SMSgt Billie E. 'Bunky' Hodge Memorial Bridge'."

**H. C. R. 54**, U. S. Army SPC 4 Thurman "Duwayne" Young Memorial Road,

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

**Com. Sub. for H. C. R. 54** - "Requesting the Division of Highways to name County Route 5/5, known as Jordan Creek Road, from its intersection with U.S. Route 119, to its intersection with County Route 5/3, known as Wills Creek Road, in Kanawha County, the 'U. S. Army SPC Thurman "Duwayne" Young Memorial Road'."

And,

**H. C. R. 85**, Requesting the legislatures and departments of transportation of Maryland, Pennsylvania, and Virginia to endorse and pursue the construction of a new four-lane, limited access highway,

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

**Com. Sub. for H. C. R. 85** - "Requesting the legislatures and departments of transportation of Maryland, Pennsylvania, and Virginia to endorse and pursue the construction of a new four-lane, limited access highway, extending Interstate Highway 99 from its present terminus at Bedford, Pennsylvania to Covington, Virginia."

With the recommendation that the committee substitutes each be adopted, but that they first be referred to the Committee on Rules.

In accordance with the former direction of the Speaker, the resolutions (Com. Sub. for H. C. R. 11, Com. Sub. for H. C. R. 40, Com. Sub. for H. C. R. 54 and Com. Sub. for H. C. R. 85) were each referred to the Committee on Rules.

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

Your Committee on the Judiciary has had under consideration:

**S. B. 632**, Allowing retired judicial officers recalled to service to avoid limit on temporary payments under certain circumstances,

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

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

Your Committee on the Judiciary has had under consideration:

**Com. Sub. for S. B. 290**, Relating to DEP standards of water quality and effluent limitations,

And,

**Com. Sub. for S. B. 548**, Authorizing county commissions to pay election officials,

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

### **Messages from the Senate**

A message from the Senate, by

The Clerk of the Senate, announced the adoption by the Senate and requested the concurrence of the House of Delegates in the adoption of the following concurrent resolution, which was read by its title:

**S. C. R. 51** - "Extending the Committee of Conference relating to consideration of Engrossed Committee Substitute for House Bill 4013, *Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.*"

*Resolved by the Legislature of West Virginia:*

That pursuant to Rule No. 3 of the Joint Rules of the Senate and House of Delegates, the Committee of Conference is hereby extended for a period of three days for the express purpose of consideration of matters of disagreement between the two houses as to extending the Committee of Conference relating to consideration of Engrossed Committee Substitute for House Bill 4013, *Clarifying venue in West Virginia state courts as it applies to nonresidents of the state.*

At the respective requests of Delegate Cowles, and by unanimous consent, reference of the resolution (S. C. R. 51) to a committee was dispensed with, and it was taken up for immediate consideration.

On motion of Delegate Cowles, the resolution was amended on page one, line six, by striking out the word "three" and inserting in lieu thereof the word "one".

The resolution, as amended, was then adopted.

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

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

### **Committee Reports**

Delegate Nelson, Chair of the Committee on Finance, submitted the following report, which was received:

Your Committee on Finance has had under consideration:

**H. B. 4019**, Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution,

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

**Com. Sub. for H. B. 4019** - "A Bill making appropriations of public money out of the Treasury in accordance with section fifty-one, article VI of the Constitution,"



With the recommendation that the committee substitute do pass.

At the respective requests of Delegate Cowles, and by unanimous consent, the bill (Com. Sub. for H. B. 4019) was taken up for immediate consideration, read a first time and ordered to second reading, with right to amend on third reading, and the rule was suspended to permit the consideration of amendments on that reading.

### **Leaves of Absence**

At the request of Delegate Cowles, and by unanimous consent, leave of absence for the day was granted Delegate Deem.

### **Miscellaneous Business**

Delegate Fast announced that he was absent on today when the vote was taken on Com. Sub. for S. B. 73, and that had he been present, he would have voted "Yea" thereon.

Delegate Pyles announced that he was absent on today when the vote was taken on Com. Sub. for S. B. 73, and that had he been present, he would have voted "Yea" thereon.

Delegate Boggs announced that he was absent on today when the vote was taken on Roll No. 312, and that had he been present, he would have voted "Yea" thereon.

Delegate Ellington noted to the Clerk that he was absent on today when the vote was taken on Roll No. 324 and had he been present, he would have voted "Yea" thereon.

Pursuant to House Rule 94b, Members filed forms with the Clerk's Office to be removed as a cosponsor of the following bills:

- Delegate Summers for H. B. 4329
- Delegate Longstreth for H. B. 4471

Pursuant to House Rule 132, unanimous consent was requested and obtained to print the remarks of the following Members in the Appendix to the Journal:

- Delegates Barrett and Espinosa during the colloquy regarding the Conference Committee for Com. Sub. for H. B. 4145

At 7:45 p.m., the House of Delegates adjourned until 11:00 a.m., Tuesday, March 6, 2018.



**SPECIAL CALENDAR**

**Tuesday, March 6, 2018**

**56<sup>th</sup> Day**

**11:00 A. M.**

**THIRD READING**

- Com. Sub. for S. B. 7 - Relating to claims under Wage Payment and Collection Act (SHOTT) (REGULAR)
- S. B. 47 - Requiring Defense Department advocacy groups be notified in abuse or neglect of military person's child (SHOTT) (REGULAR)
- Com. Sub. for S. B. 102 - Creating WV Uniform Fiduciary Access to Digital Assets Act (SHOTT) (REGULAR)
- Com. Sub. for S. B. 133 - Exempting renewal of certain contracts entered into during declared state of emergency (SHOTT) (REGULAR)
- Com. Sub. for S. B. 272 - Relating generally to drug control (ELLINGTON) (REGULAR)
- S. B. 298 - Authorizing county assessors make separate entries in landbooks when real property is partly used for exempt and partly for nonexempt purposes (NELSON) (REGULAR)
- Com. Sub. for S. B. 319 - Allowing individuals who completed home schooling be eligible for PROMISE scholarship without equivalent diploma (ESPINOSA) (JULY 1, 2018)
- S. B. 365 - Relating to Young Entrepreneur Reinvestment Act (HILL) (REGULAR)
- Com. Sub. for S. B. 412 - Relating to authority of county litter control officers (SHOTT) (REGULAR)
- S. B. 427 - Modifying form of notice for certain tax delinquencies (NELSON) (REGULAR)
- S. B. 441 - Relating to health care provider taxes (NELSON) (JULY 1, 2018)
- Com. Sub. for S. B. 456 - Physical Therapy Licensure Compact Act (ELLINGTON) (REGULAR)

- Com. Sub. for S. B. 493 - Relating to guaranty associations (WESTFALL) (REGULAR)
- Com. Sub. for S. B. 499 - Requiring one year of certain approved postgraduate clinical training for persons with foreign medical degrees (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 510 - Designating hospitals for stroke treatment (ELLINGTON) (REGULAR)
- Com. Sub. for S. B. 522 - Relating generally to Administrative Procedures Act (SHOTT) (REGULAR)
- S. B. 545 - Relating to driving privileges and requirements for persons under 18 (SHOTT) (EFFECTIVE FROM PASSAGE)

### **SECOND READING**

- Com. Sub. for S. B. 36 - Relating generally to DNA testing (SHOTT) (REGULAR)
- Com. Sub. for S. B. 51 - Relating to domestic relations (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 116 - Providing court costs collected under Second Chance Driver's License Program are not subject to 5 percent offset (SHOTT) (REGULAR)
- Com. Sub. for S. B. 261 - Transferring certain powers and programs of WV Affordable Housing Trust Fund to WV Housing Development Fund (NELSON) (JULY 1, 2018) (FINANCE COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 273 - Reducing use of certain prescription drugs (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 282 - Exempting State Conservation Committee from Purchasing Division requirements for contracts related to flood recovery (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 297 - Eliminating taxation on annuity considerations collected by life insurer (NELSON) (REGULAR)
- S. B. 299 - Relating to mandatory insurance coverage for medical foods for amino acid-based formulas (NELSON) (REGULAR) (FINANCE COMMITTEE AMENDMENT PENDING)

Com. Sub. for S. B. 347 - Relating to operation of motorboats (SHOTT) (REGULAR)

Com. Sub. for S. B. 359 - Authorizing Supreme Court establish curricula for mental hygiene commissioners and certain magistrates (NELSON) (EFFECTIVE FROM PASSAGE)

Com. Sub. for S. B. 461 - Extending time to file petition for motor fuel excise tax refund (NELSON) (REGULAR) (FINANCE COMMITTEE AMENDMENT PENDING)

Com. Sub. for S. B. 465 - Relating to mandated reporting of child abuse and neglect (SHOTT) (REGULAR)

Com. Sub. for S. B. 475 - Industrial Hemp Development Act (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)

S. B. 479 - Establishing local government monitoring by Auditor (NELSON) (REGULAR)

Com. Sub. for S. B. 500 - Authorizing City of White Sulphur Springs to expend principal and interest from special interest-bearing fund (NELSON) (EFFECTIVE FROM PASSAGE)

Com. Sub. for S. B. 543 - Relating to confidentiality of medical records (SHOTT) (REGULAR)

Com. Sub. for S. B. 555 - Providing immunity from civil liability for qualified directors of certain governmental and nonprofit entities (SHOTT) (REGULAR)

Com. Sub. for S. B. 574 - Relating to crime of misrepresentation of military honors (SHOTT) (REGULAR)

Com. Sub. for S. B. 575 - Approving additional beds for intermediate care facilities (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)

S. B. 576 - Relating to Patient Injury Compensation Fund (NELSON) (REGULAR) (FINANCE COMMITTEE AMENDMENT PENDING)

Com. Sub. for S. B. 582 - Allowing candidate for political party executive committee serve as election official (SHOTT) (EFFECTIVE FROM PASSAGE)

S. B. 584 - Finding certain claims against state to be moral obligations of state (NELSON) (EFFECTIVE FROM PASSAGE) (FINANCE COMMITTEE AMENDMENT PENDING)

- Com. Sub. for S. B. 589 - Relating to issuance of personalized plates for antique motor vehicles (NELSON) (REGULAR)
- Com. Sub. for S. B. 590 - Providing special license plate for curing childhood cancer (NELSON) (REGULAR)
- Com. Sub. for S. B. 616 - Establishing maximum gross weight for certain wood-bearing trucks (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 626 - Relating generally to coal mining (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 631 - Relating generally to one-call system (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4019 - Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution (NELSON) (EFFECTIVE FROM PASSAGE)

#### **FIRST READING**

- S. B. 242 - Requiring health insurance providers provide coverage for certain Lyme disease treatment (SHOTT) (REGULAR)
- Com. Sub. for S. B. 275 - Relating to tax on purchases of intoxicating liquors (SHOTT) (REGULAR)
- Com. Sub. for S. B. 290 - Relating to DEP standards of water quality and effluent limitations (SHOTT) (REGULAR)
- S. B. 322 - Relating to employees of Department of Agriculture (HOWELL) (REGULAR)
- Com. Sub. for S. B. 392 - Reconfiguring membership of Emergency Medical Services Advisory Council (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- S. B. 411 - Removing Commissioner of Bureau for Public Health from State Board of Sanitarians (HOWELL) (REGULAR)
- S. B. 463 - Establishing group to examine benefits and need of transferring milk rules and regulations from DHHR to Agriculture (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)

- S. B. 498 - Creating two-year pilot program allowing all-terrain or recreational vehicles in Cabwaylingo State Forest (HOWELL) (REGULAR)
- Com. Sub. for S. B. 506 - Deregulating persons who perform work on heating, ventilating, and cooling systems (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 508 - Establishing State Trail Authority (HOWELL) (REGULAR)
- S. B. 525 - Relating to certification for emergency medical training – mining (HOWELL) (REGULAR) (GOVERNMENT ORGANIZATION COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 548 - Authorizing county commissions to pay election officials (SHOTT) (REGULAR)
- Com. Sub. for S. B. 556 - Creating small business and minority populations economic and workforce development taskforce to assist Economic Development Authority (HOWELL) (REGULAR)
- S. B. 585 - Altering boundary line between Doddridge and Harrison counties (SHOTT) (EFFECTIVE FROM PASSAGE) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- Com. Sub. for S. B. 603 - Relating to proceedings for involuntary custody for examination (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)
- S. B. 632 - Allowing retired judicial officers recalled to service to avoid limit on temporary payments under certain circumstances (SHOTT) (REGULAR) (JUDICIARY COMMITTEE AMENDMENT PENDING)





## **HOUSE CALENDAR**

**Tuesday, March 6, 2018**

**56<sup>th</sup> Day**

**11:00 A. M.**

### **THIRD READING**

- Com. Sub. for H. B. 4235 - Permitting full-time nonresident students attending an in-state college or university to purchase lifetime resident hunting, trapping, and fishing licenses (NELSON) (REGULAR)
- Com. Sub. for H. B. 4296 - Establishing the Southern West Virginia Lake Development Study Commission (NELSON) (REGULAR)

### **SECOND READING**

- S. B. 385 - Decreasing and adding appropriations out of Treasury to DHHR and MAPS (NELSON) (EFFECTIVE FROM PASSAGE)
- H. B. 2114 - Providing a procedure for West Virginia to select delegates to an Article V convention for proposing amendments to the Constitution of the United States of America (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2383 - Providing for the redistricting office of the Joint Committee on Government and Finance to propose redistricting plans during census years (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4158 - Relating to municipal home rule (HOWELL) (REGULAR)
- Com. Sub. for H. B. 4241 - Transitioning foster children into managed care (NELSON) (REGULAR)
- Com. Sub. for H. B. 4563 - Relating to the severance tax on oil and gas produced from low producing wells (NELSON) (REGULAR)

### **FIRST READING**

- Com. Sub. for H. B. 4494 - Authorizing certain motor vehicle manufacturers to operate as new car dealers (SHOTT) (REGULAR)



**WEST VIRGINIA  
HOUSE OF DELEGATES**

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**TUESDAY, MARCH 6, 2018**

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**PUBLIC HEARING – COMMITTEE ON THE JUDICIARY  
COM. SUB. FOR S. B. 434, SPECIFYING DOCUMENTS NOT SUBJECT TO DISCOVERY IN  
CERTAIN PROCEEDINGS.**

**8:30 A.M. – HOUSE CHAMBER**

**COMMITTEE ON THE JUDICIARY**

**9:00 A.M. – ROOM 418M**

**CONFERENCE COMMITTEE**

**H. B. 4145, INCREASING THE ANNUAL SALARIES OF MEMBERS OF THE WEST VIRGINIA  
STATE POLICE, PUBLIC SCHOOL TEACHERS AND SCHOOL SERVICE PERSONNEL.**

**9:00 A.M. – ROOM 451M**

**COMMITTEE ON FINANCE**

**9:30 A.M. – ROOM 460M**

**COMMITTEE ON RULES**

**10:45 A.M. – BEHIND CHAMBER**

HOUSE OF DELEGATES  
STEPHEN J. HARRISON, Clerk  
Building 1, Room M-212  
1900 Kanawha Blvd., East  
Charleston, WV 25305-0470