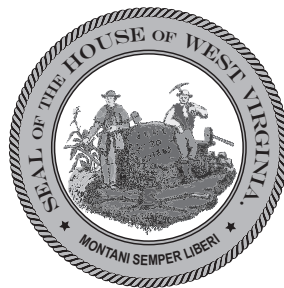


West Virginia Legislature

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March 5, 2020
FIFTY-EIGHTH DAY

Thursday, March 5, 2020

FIFTY-EIGHTH DAY

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

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

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

The Clerk proceeded to read the Journal of Wednesday, March 4, 2020, being the first order of business, when the further reading thereof was dispensed with and the same approved.

Reordering of the Calendar

Pursuant to the action of the Committee on Rules, Delegate Summers announced that Com. Sub. for S. B. 130, on Third Reading, Special Calendar, had been transferred to the House Calendar; Com. Sub. for S. B. 253 and Com. Sub. for S. B. 710, on Second Reading, Special Calendar, had been transferred to the House Calendar; and S. B. 610, on Second Reading, House Calendar, had been transferred to the Special Calendar.

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:

Com. Sub. for S. B. 752, Relating generally to medical cannabis,

And reports the same back without recommendation.

Delegate Byrd asked unanimous consent that the bill (Com. Sub. for S. B. 752) be taken up for immediate consideration, read a first time and ordered to second reading, which request was not granted, objection being heard.

Delegate Pushkin then so moved.

On this question, the yeas and nays were taken (**Roll No. 544**), and there were—yeas 55, nays 43, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Speaker Hanshaw, Anderson, Atkinson, Azinger, Barnhart, Bartlett, Bibby, Butler, Cadle, Cooper, Cowles, Criss, Espinosa, Fast, Foster, Graves, Hamrick, Hanna, Hardy, Hott, Householder, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Kump, Linville, Little, Mandt, C. Martin, P. Martin, Pack, Phillips, Porterfield, Rohrbach, Rowan, Summers, Sypolt, Toney, Waxman and Worrell.

Absent and Not Voting: Hicks and Skaff.

So, a majority of the members present and voting having in the affirmative, the motion was adopted.

The bill was then read a first time and ordered to second reading.

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. C. R. 4, Urging Congress call convention to propose amendment on congressional term limits, And reports the same back with the recommendation that it be adopted.

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

By Delegates Hardy, Wilson, Steele, Cooper, Sypolt, Kump, Phillips and Bibby:

H. C. R. 141 – “Urging the President and Congress of the United States of America take no action to employ military forces of the United States in active duty combat unless the United States Congress has passed an official declaration of war or has taken an official action or renewed action to authorize the use of military force and/or to call forth the state militias for a term no longer than two years, to explicitly execute a coherent and effectively resourced national security strategy.”

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

Whereas, Article I, Section 8 of the Constitution of the United States vests in the United States Congress the exclusive power to declare war, to raise and support armies, but no appropriation of money to that use shall be for a longer term than two years, and to call forth the militia to execute the laws of the union, suppress insurrections and repel invasions; and

Whereas, In spite of the clear language of the United States Constitution, vesting the power over war exclusively in the United States Congress, the United States Executive Branch has unconstitutionally assumed that power while the United States Congress has abdicated its constitutional duty; and

Whereas, Although the United States Congress has not declared war in over 70 years, the nation has since gone to war repeatedly at the direction of the Executive Branch and/or acted under perpetual authorizations to use military force passed by Congress empowering the

Executive Branch to engage in unending war – clearly not what the Founding Fathers intended in the Constitution; and

Whereas, When such unconstitutional actions are taken by the federal government, it is the proper role of the states themselves to take action to remedy such situations, as outlined in the Kentucky and Virginia Resolutions of 1798; and

Whereas, A founder of this country, George Washington, once wrote: “The Constitution vests the power of declaring war in Congress; therefore, no offensive expedition of importance can be undertaken until after they shall have deliberated upon the subject and authorized such a measure”; and

Whereas, The Father of the Constitution, James Madison, once wrote: “The Constitution supposes, what the History of all Governments demonstrates, that the Executive is the branch of power most interested in war, and most prone to it. It has accordingly with studied care vested the question of war to the Legislature”; and

Whereas, The author of the Declaration of Independence, Thomas Jefferson, once wrote: “We have already given in example one effectual check to the dog of war by transferring the power of letting him loose from the Executive to the Legislative body...” and “Considering that Congress alone is constitutionally invested with the power of changing our condition from peace to war, I have thought it my duty to await their authority for using force in any degree which could be avoided”; and

Whereas, Another Constitutional framer, Alexander Hamilton, once wrote: “The Congress shall have the power to declare war”; the plain meaning of which is, that it is the peculiar and exclusive duty of Congress, when the nation is at peace, to change that state into a state of war...”; therefore, be it

Resolved by the Legislature of West Virginia.

That the President and Congress of the United States of America are hereby urged to take no action to employ military forces of the United States in active duty combat unless and until the United States Congress has passed an official declaration of war or has taken an official action or renewed action to authorize the use of military force and/or to call forth the state militias for a term no longer than two years, to explicitly execute a coherent and effectively resourced national security strategy; save in instances when our forces must respond to attack; and be it

Further resolved,

That the State of West Virginia seeks to end any periods of endless or perpetual armed conflict with no clear conditions of conclusion that risks the lives of our military members; and be it

Further resolved,

That the Clerk of the House of Delegates forward a copy of this resolution to the President of the United States, to the President of the United States Senate and to the Speaker of the United States House of Representatives, and to each member of West Virginia’s congressional delegation, with the request that this resolution be officially entered into the Congressional Record.

Messages from the Executive

The following Proclamation of His Excellency, the Governor, was laid before the House of Delegates and read by the Clerk:

STATE OF WEST VIRGINIA
EXECUTIVE DEPARTMENT

Charleston

A P R O C L A M A T I O N

By the Governor

WHEREAS, the Constitution of West Virginia sets forth the respective powers, duties, and responsibilities of the three separate branches of government; and

WHEREAS, Article VI, Section 22 of the Constitution of West Virginia provides that the current regular session of the Legislature shall not exceed sixty calendar days computed from and including the second Wednesday of January two thousand twenty; and

WHEREAS, pursuant to Article VI, Section 22 of the Constitution of West Virginia, the two thousand twenty regular session of the Legislature is scheduled to conclude on the seventh day of March, two thousand twenty; and

WHEREAS, Article VI, Section 51 of the Constitution of West Virginia sets forth the obligations of the Governor and the Legislature relating to the preparation and enactment of the Budget Bill; and

WHEREAS, Subsection D, Article VI, Section 51 of the Constitution of West Virginia requires the Governor to issue a proclamation extending the regular session of the Legislature if the Budget Bill shall not have been finally acted upon by the Legislature three days before the expiration of its regular session; and

WHEREAS, the Budget Bill has not been finally acted upon by the Legislature as of this fourth day of March, two thousand twenty.

NOW, THEREFORE, I, JIM JUSTICE, Governor of the State of West Virginia, do hereby issue this Proclamation, in accordance with Subsection D, Article, VI, Section 51 of the Constitution of West Virginia, extending the two thousand twenty regular session of the Legislature for an additional period not to exceed one day, through and including the eighth day of March, two thousand twenty; but no matters other than the Budget Bill shall be considered during this extension of the regular session, except a provision for the cost thereof.

IN WITNESS WHEREOF, I have hereunto set my hand and caused the Great Seal of the State of West Virginia to be affixed.



DONE at the Capitol in the City of Charleston, State of West Virginia, this fourth day of March, in the year of our Lord, Two Thousand Twenty, and in the One Hundred Fifty-Seventh year of the State.

James Justice,

Governor.

By the Governor

Mac Warner
Secretary of State

Delegate Hanshaw (Mr. Speaker) presented a communication from His Excellency, the Governor, advising that on March 2, 2020, he approved **Com. Sub. for. H. B. 4026**.

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:

H. B. 4022, Clarifying the qualifications of the Chancellor of the Higher Education Policy Commission.

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

On page two, section five, lines twenty-five through twenty-seven, by striking out all of subsection (e) and inserting in lieu thereof a new subsection, designated subsection (e), to read as follows:

“(e) Pursuant to §6B-2-5(l) of this code, the chancellor may receive only one form of salary if such person serves as the chancellor for both the higher education policy commission and the council for community and technical colleges.”

And,

On page two, section five, lines twenty-five through twenty-seven, by striking out all of subsection (e) and inserting in lieu thereof a new subsection, designated subsection (e), to read as follows:

“(e) The commission sets the chancellor’s salary. The salary may not exceed by more than 20 percent the average annual salary of the chief executive officers of state systems of higher education in the states that comprise the membership of the Southern Regional Education Board. Pursuant to §6B-2-5(l) of this code, the chancellor may receive only one form of salary if such person serves as the chancellor for both the higher education policy commission and the council for community and technical colleges.”

And,

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

H. B. 4022 – “A Bill to amend and reenact §18B-1B-5 of the Code of West Virginia, 1931, as amended, clarifying the qualifications of the Chancellor of the Higher Education Policy Commission; modifying provisions pertaining to salary of Chancellor of the Higher Education Policy Commission; retitling the Vice Chancellor for Health Sciences; and abolishing the statutory position of Vice Chancellor for State Colleges.”

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. 545**), and there were—yeas 99, nays 1, absent and not voting none, with the nays being as follows:

Nays: Angelucci.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4022) 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. 4099, Eliminating the permit for shampoo assistants.

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. 4396, Relating to reporting suspected governmental fraud.

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. 4414, Relating to the selection of language and development milestones for the deaf and hard-of-hearing children.

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

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

“ARTICLE 1. STATE PUBLIC HEALTH SYSTEM.

§16-1-20. Definitions and purpose.

(a) For the purpose of this code:

“English” means and includes spoken English, written English, or English with the use of visual supplements;

“Language developmental milestones” means milestones of development aligned with the existing state instrument used to meet the requirements of federal law for the assessment of children from birth to five years of age, inclusive; and

“Language” includes American Sign Language (ASL) and English.

(b) For the purposes of developing and using language for a child who is deaf or hard of hearing, the following modes of communication may be used as a means for acquiring language: American Sign Language (ASL) services, spoken language services, dual language services, cued speech and tactile, or a combination thereof.

(c) This section shall apply only to children from birth to five years of age, inclusive.

(d) Implementation of this code is subject to an appropriation by the legislature.

(e) Federal regulations for children age birth through two do not require reporting of measures specific to language and literacy. However, this data is reported for children age three to five and the West Virginia Department of Health and Human Resources and the West Virginia Department of Education shall make this report available to the advisory committee, and available to others upon request.

(f) The West Virginia Department of Health and Human Resources and the West Virginia Department of Education through their agencies that serve children ages birth to five and their families shall jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families, providers, early interventionists, speech pathologists, educators, and other service providers to understand and monitor deaf and hard-of-hearing children’s receptive

and expressive language acquisition and progress toward English literacy development. This family resource shall include:

(1) Language that provides comprehensive and neutral, unbiased information regarding different modes used to learn and access language (e.g., English, American Sign Language (ASL), or both) and services and programs designed to meet the needs of children who are deaf or hard-of-hearing;

(2) Language developmental milestones selected pursuant to the process specified in this section;

(3) Language appropriate for use, in both content and administration, with deaf and hard-of-hearing children from birth to five years of age, inclusive, who use both or one of the languages of American Sign Language (ASL) or English;

(4) Developmental milestones in terms of typical development of all children, by age range;

(5) Language written for clarity and ease of use by families;

(6) Language that is aligned with the West Virginia Department of Health and Human Resources' and the West Virginia Department of Education's existing infant, toddler, and preschool guidelines, the existing instrument used to assess the development of children with disabilities pursuant to federal law, and state standards in language and literacy;

(7) Clarification that the parent(s) have the right to select which language (American Sign Language (ASL), English, or both) for their child's language(s) acquisition and developmental milestones;

(8) Clarification that the family resource is not a formal assessment of language and literacy development, and that a family's observations of their children may differ from formal assessment data presented at an individualized family service plan (IFSP) or individual education program (IEP) meeting; and

(9) Clarification that the family resource may be used during an individualized family service plan (IFSP) or individual education program (IEP) meeting for purposes of sharing the family's observations about their child's development.

(g) The West Virginia Department of Health and Human Resources and the West Virginia Department of Education shall also prepare a list of valid and reliable existing tools or assessments for providers, early interventionists, speech pathologists, educators, and other service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children. These educator tools and assessments:

(1) Shall be in a format that shows stages of language development;

(2) Shall be used by providers, early interventionists, speech pathologists, educators, and other service providers to determine the progressing development of deaf and hard-of-hearing children's receptive and expressive language acquisition and developmental stages toward English literacy;

(3) Shall be selected from existing instruments or assessments used to assess the development of all deaf and hard-of-hearing children from birth to five years of age, inclusive;

(4) Shall be appropriate, in both content and administration, for use with children who are deaf and hard-of-hearing;

(5) May be used, in addition to the assessment required by federal law, by the individualized family service plan (IFSP) team and individual education program (IEP) team, as applicable, to track deaf and hard-of-hearing children's progress, and to establish or modify individualized family service plans (IFSPs) and individual education programs (IEPs); and

(6) May reflect the recommendations of the advisory committee established pursuant to §16-1-20(e) of this code.

(h) To promote the intent of this code, the West Virginia Department of Health and Human Resources and the West Virginia Department of Education shall:

(1) Disseminate the family resource developed to families of deaf and hard-of-hearing children, as well as providers, early interventionists, speech pathologists, educators, and related service personnel; and

(2) Disseminate the educator tools and assessments selected to local educational agencies for use in the development and modification of individualized family service plans (IFSPs) and individual education programs (IEPs);

(3) Provide informational materials on the use of the resources, tools, and assessments to assist deaf and hard-of-hearing children in becoming linguistically ready for formal school entry (either itinerant services, West Virginia Universal PreK/PreK Special Needs, or Kindergarten) using the mode(s) of communication and language(s) chosen by the parents.

(i) If a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills, as measured by one of the educator tools or assessments, or by the existing instrument used to assess the development of children with disabilities pursuant to federal law, as applicable, the child's individualized family service plan (IFSP) team and individual education program (IEP) team shall, as part of the process required by federal law, explain in detail the reasons why the child is not meeting the language developmental milestones or progressing towards them, and shall recommend specific strategies, services, and programs that shall be provided to assist the child's success toward English literacy development.

(j) The West Virginia Department of Health and Human Resources and the West Virginia Department of Education shall establish an advisory committee to solicit input from stakeholders identified herein on the selection of language developmental milestones for children who are deaf or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing, for inclusion in the family resource developed pursuant to this section.

(k) The advisory committee shall be comprised of volunteer individuals representing all known modes of communication, specifically including the following:

(1) One parent of a child who is hard-of-hearing who uses the dual languages of American Sign Language (ASL) and English;

(2) One parent of a child who is deaf or hard-of-hearing who uses assistive technology to communicate with spoken English;

(3) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service providers of deaf or hard-of-hearing children who are knowledgeable in the use of the dual languages of English and American Sign Language (ASL);

(4) Two or three credentialed providers, early interventionists, speech pathologists, educators, or other service provider of deaf or hard-of-hearing children who are knowledgeable in the use of assistive technology to communicate with spoken English;

(5) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using American Sign Language (ASL) or English;

(6) One expert who researches or is knowledgeable in the research regarding language outcomes for deaf and hard-of-hearing children using assistive technology to communicate with spoken English.

(7) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in American Sign Language (ASL) and English;

(8) One credentialed educator of deaf and hard-of-hearing children whose expertise is in curriculum and instruction in assistive technology to communicate with spoken English;

(9) One advocate for the teaching and use of the dual languages of American Sign Language (ASL) and English;

(10) One advocate for the teaching and use of instruction in assistive technology to communicate with spoken English; and,

(11) One educational audiologist who can address the issues of aural habilitation and assistive technology to advocate for children using spoken language in mainstream environments.

(l) The advisory committee may also advise the West Virginia Department of Health and Human Resources and the West Virginia Department of Education on the content and administration of the existing instrument used to assess the development of children with disabilities pursuant to federal law, as used to assess deaf and hard-of-hearing children's language and literacy development to ensure the appropriate use of that instrument with those children, and make recommendations regarding future research to improve the measurement of progress of deaf and hard-of-hearing children in language and literacy.

(m) The West Virginia Department of Health and Human Resources and the West Virginia Department of Education shall provide the advisory committee with a list of existing language developmental milestones from existing standardized norms, along with any relevant information held by the departments regarding those language developmental milestones for possible inclusion in the family resource developed pursuant to this section.

(n) After reviewing, the advisory committee shall recommend to the West Virginia Department of Health and Human Resources and the West Virginia Department of Education language developmental milestones for selection.

(o) Commencing on or before July 31, 2021, and on or before each July 31 thereafter, the West Virginia Department of Education shall annually produce an aggregated report, using existing data reported in compliance with the federally required state performance plan on children with disabilities, that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age, inclusive, including those who are deaf or hard-of-hearing and have other disabilities, relative to their peers who are not deaf or hard-of-hearing. The departments shall make this report available to the advisory committee, the Legislative Oversight Commission on Education Accountability, the Legislative Oversight Commission on Health and Human Resources Accountability, and available to others upon request.

(p) All activities of the West Virginia Department of Health and Human Resources and the West Virginia Department of Education in implementing this code shall be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.”

And,

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

Com. Sub. for H. B. 4414 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-1-20, relating to authorizing certain modes of communication as a means for acquiring language for children from birth to five years of age; making implementation subject to appropriation by the Legislature; requiring reporting of measures specific to language and literacy for children age three to five to advisory committee; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to jointly select language developmental milestones from existing standardized norms, to develop a family resource for use by families and service providers to understand and monitor deaf and hard-of-hearing children’s receptive and expressive language acquisition and progress toward English literacy development; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to prepare a list of valid and reliable existing tools for assessments for service providers that can be used periodically to determine the receptive and expressive language and literacy development of deaf and hard-of-hearing children; requiring dissemination of the family resource and the educator tools and assessments, as well as the provision of informational materials on the use of the resources, tools, and assessments; imposing certain requirements on the child’s individualized family service plan team and individual education program team if a deaf or hard-of-hearing child does not demonstrate progress in receptive and expressive language skills; requiring the West Virginia Department of Health and Human Resources and the West Virginia Department of Education to establish an advisory committee to solicit input from certain stakeholders on the selection of language developmental milestones for children who are deaf or hard-of-hearing that are equivalent to those for children who are not deaf or hard-of-hearing for inclusion in the family resource; setting forth membership of advisory committee; requiring the West Virginia Department of Education to annually produce an aggregated report that is specific to language and literacy development of children whose primary exceptionality is deaf and hard-of-hearing from birth to five years of age; and requiring that all of certain activities be consistent with federal law regarding the education of children with disabilities and federal law regarding the privacy of student information.”

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. 546**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4414) 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. 4415, Relating to missing and endangered children.

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

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

“CHAPTER 15. PUBLIC SAFETY.

ARTICLE 3D. MISSING PERSONS ACT.

§15-3D-3. Definitions.

For the purposes of this article:

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

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

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

(4) “Juvenile” means any person under ~~24~~ 18 years of age.

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

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

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

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

(B) Under the age of 13;

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

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

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

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

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

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

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

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

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

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

§15-3D-9. Missing and Endangered Child Advisory System; definitions; rule-making authority.

(a) There is hereby created an advisory system, referred to in this section as the "system", to aid in the identification and location of missing and endangered children.

(b) "Missing and Endangered Child Advisory" means a system used to alert the public of a missing and endangered child to aid in the child's rapid recovery.

(c) The State Police shall promulgate emergency rules establishing procedures for local law-enforcement agency's issuance of a missing and endangered child advisory.

CHAPTER 49. CHILD WELFARE.

ARTICLE 6. MISSING CHILDREN INFORMATION ACT.

§49-6-103. Information to clearinghouse; definitions.

(a) Every The Department of Health and Human Resources and every law-enforcement agency in West Virginia shall provide to the clearinghouse or another investigating law-enforcement agency any information the law-enforcement agency has that would assist in locating or identifying a missing child.

(b) For purposes of this article:

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

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

(B) Under the age of 13;

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

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

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

§49-6-105. Missing child report forms; where filed.

(a) The clearinghouse shall distribute missing child and missing and endangered child report forms to law-enforcement agencies in the state and to the Department of Health and Human Resources.

(b) A missing child or missing and endangered child report may be made to a law-enforcement agency in person or by telephone, or other indirect method of communication, and the person taking the report may enter the information on the form for the reporter. A missing child or missing and endangered child report form may be completed by the reporter and delivered to a law-enforcement office.

(c) A copy of the ~~missing child~~ report form shall be ~~filed with~~ maintained by the clearinghouse.

§49-6-106. Missing child reports; law-enforcement agency requirements; unidentified bodies.

(a) A law-enforcement agency, upon receiving a missing child or missing and endangered child report, shall:

(1) ~~Immediately start~~ Start an investigation to determine the present location of the child if it determines that the child is in danger; and

(2) Enter the name of the missing child or missing and endangered child into the clearinghouse and the National Crime Information Center missing person file if the child meets the center's criteria, with all available identifying features, including dental records, fingerprints, other physical characteristics, and a description of the clothing worn when the missing child or missing and endangered child was last seen.

(b) Information not immediately available shall be obtained as soon as possible by the law-enforcement agency and entered into the clearinghouse and the National Crime Information Center file as a supplement to the original entry.

(c) All West Virginia law-enforcement agencies shall enter information about all unidentified bodies of children found in their jurisdiction into the clearinghouse and the National Crime Information Center unidentified person file, including all available identifying features of the body and a description of the clothing found on the body. If an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(d) A law-enforcement agency, upon receiving a missing and endangered child report, shall immediately:

(1) Start an investigation to determine the present location of the child if it determines that the child is missing and endangered; and

(2) Issue a Missing and Endangered Child Advisory pursuant to §15-3D-9 of this code.

§49-6-109. Interagency cooperation.

(a) State agencies and public and private schools shall cooperate with a law-enforcement agency that is investigating a any missing child or missing and endangered child report and shall furnish any information, including confidential information, that will assist the law-enforcement agency in completing the investigation.

(b) Information provided by a state agency or a public or private school may not be released to any person outside the law-enforcement agency or the clearinghouse, except as provided by rules of the West Virginia State Police.

§49-6-110. Confidentiality of records; rulemaking; requirements.

(a) The State Police shall promulgate rules according §29A-3-1 *et seq.* of this code to provide for the classification of information and records as confidential that:

(1) Are otherwise confidential under state or federal law or rules promulgated pursuant to state or federal law;

(2) Are related to the investigation by a law-enforcement agency of a missing child, a missing and endangered child, or an unidentified body, if the State Police, in consultation with the law-enforcement agency, determines that release of the information would be deleterious to the investigation;

(3) Are records or notations that the clearinghouse maintains for internal use in matters relating to missing children or missing and endangered children and unidentified bodies and the State Police determines that release of the internal documents might interfere with an investigation by a law-enforcement agency in West Virginia or any other jurisdiction; or

(4) Are records or information that the State Police determines might interfere with an investigation or otherwise harm a child or custodian.

(b) The rules may provide for the sharing of confidential information with the custodian of the missing child or missing and endangered child: *Provided, That confidential information, which is not believed to jeopardize an investigation, must be shared with the custodian when the legal custodian is the Department of Health and Human Resources.*

§49-6-112. Agencies to receive report; law-enforcement agency requirements.

(a) Upon completion of the missing child or missing and endangered child report the law-enforcement agency shall immediately forward the contents of the report to the missing children information clearinghouse and the National Crime Information Center's missing person file. However, if an information entry into the National Crime Information Center file results in an automatic entry of the information into the clearinghouse, the law-enforcement agency is not required to make a direct entry of that information into the clearinghouse.

(b) Within 15 days of completion of the report, if the child is less than 13 years of age the law-enforcement agency may, when appropriate, forward the contents of the report to the last:

(1) Child care center or child care home in which the child was enrolled; or

(2) School the child attended in West Virginia, if any.

(c) A law-enforcement agency involved in the investigation of a missing child or missing and endangered child shall:

(1) Update the initial report filed by the agency that received notification of the missing child or missing and endangered child upon the discovery of new information concerning the investigation;

(2) Forward the updated report to the appropriate agencies and organizations;

(3) Search the National Crime Information Center's wanted person file for reports of arrest warrants issued for persons who allegedly abducted or unlawfully retained children and compare these reports to the missing child's National Crime Information Center's missing person file; and

(4) Notify all law-enforcement agencies involved in the investigation, the missing children information clearinghouse, and the National Crime Information Center when the missing child is located.

§49-6-113. Clearinghouse Advisory Council; members, appointments and expenses; appointment, duties and compensation of director; annual reports.

(a) The Clearinghouse Advisory Council is continued as a body corporate and politic, constituting a public corporation and government instrumentality. The council shall consist of 11 members who are knowledgeable about and interested in issues relating to missing or exploited children, as follows:

(1) Six members to be appointed by the Governor, with the advice and consent of the Senate, with not more than four belonging to the same political party, three being from different congressional districts of the state and, as nearly as possible, providing broad state geographical distribution of members of the council, and at least one representing a nonprofit organization involved with preventing the abduction, runaway, or exploitation of children or locating missing or missing and endangered children;

(2) The Secretary of the Department of Health and Human Resources or his or her designee;

(3) The Superintendent of the West Virginia State Police or his or her designee;

(4) The State Superintendent of Schools or his or her designee;

(5) The Director of the ~~Criminal Justice and Highway Safety~~ Division of Administrative Services or his or her designee; and

(6) The Commissioner of the Bureau for Children and Families or his or her designee.

(b) The Governor shall appoint the six council members for staggered terms. The terms of the members first taking office on or after the effective date of this legislation shall expire as designated by the Governor. Each subsequent appointment shall be for a full three-year term. Any appointed member whose term is expired shall serve until a successor has been duly appointed and qualified. Any person appointed to fill a vacancy may serve only for the unexpired term. A member is eligible for only one successive reappointment. A vacancy shall be filled by the Governor in the same manner as the original appointment was made.

(c) Members of the council are not entitled to compensation for services performed as members but are entitled to reimbursement for all reasonable and necessary expenses actually incurred in the performance of their duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

(d) A majority of serving members constitutes a quorum for the purpose of conducting business. The chair of the council shall be designated by the Governor from among the appointed council members who represent nonprofit organizations involved with preventing the abduction, runaway, or exploitation of children or locating missing children or missing and endangered children. The term of the chair shall run concurrently with his or her term of office as a member of the council. The council shall meet semiannually at the call of the chair. The council shall conduct all meetings in accordance with the open governmental meetings law pursuant to §6-9A-1 *et seq.* of this code.

(e) The employee of the West Virginia State Police who is primarily responsible for the clearinghouse established by §49-6-101 of this code, shall serve as the executive director of the council. He or she shall receive no additional compensation for service as the executive director of the council but shall be reimbursed for any reasonable and necessary expenses actually incurred in the performance of his or her duties as executive director in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

~~(f) The expenses of council members and the executive director shall be reimbursed from funds provided by foundation grants, in-kind contributions or funds obtained pursuant to subsection (b), section one hundred fifteen of this article.~~

~~(g)~~ The executive director shall provide or obtain information necessary to support the administrative work of the council and, to that end, may contract with one or more nonprofit organizations or state agencies for research and administrative support.

~~(h)~~ (g) The executive director of the council shall be available to the Governor and to the Speaker of the House of Delegates and the President of the Senate to analyze and comment upon proposed legislation and rules which relate to or materially affect missing or exploited children.

~~(i)~~ (h) The council shall prepare and publish an annual report of its activities and accomplishments and submit it to the Governor and ~~to the Joint Committee on Government and Finance~~ the Legislature on or before December 15 of each year.

§49-6-114. Powers and duties of clearinghouse advisory council; comprehensive strategic plan required to be provided to the Legislature.

The council shall prepare a comprehensive strategic plan and recommendation of programs in furtherance thereof that will support efforts to prevent the abduction, runaway and exploitation, or any thereof, of children to locate missing children, advise the West Virginia State Police regarding operation of the clearinghouse and its other responsibilities under this article, and cooperate with and coordinate the efforts of state agencies and private organizations involved with issues relating to missing or exploited children. The council may seek public and private grants, contracts, matching funds, and procurement arrangements from the state and federal government, private industry, and other agencies in furtherance of its mission and programs. An initial comprehensive strategic plan that will support and foster efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children, shall be developed and provided to the Governor, the Speaker of the House of Delegates, and the President of the Senate no later than ~~July 1, 2015~~ July 1, 2020, and shall include, but not be limited to, the following:

(1) Findings and determinations regarding the extent of the problem in this state related to: (A) Abducted children; (B) ~~runaway~~ missing children; ~~and~~ (C) exploited children; and (D) missing and endangered children.

(2) Findings and determinations identifying the systems, both public and private, existing in the state to prevent the abduction, runaway, or exploitation of children, and to locate missing children, and assessing the strengths and weaknesses of those systems and the clearinghouse;

(3) The inclusion of exploited children within the functions of the clearinghouse. For purposes of this article, an exploited child is a person under the age of 18 years who has been: (A) Used in the production of pornography; (B) subjected to sexual exploitation or sexual offenses under §61-8B-1 *et seq.* of this code; or (C) employed or exhibited in any injurious, immoral, or dangerous business or occupation in violation of §§61-8-5 through 61-8-8 of this code;

(4) Recommendations of legislative changes required to improve the effectiveness of the clearinghouse and other efforts to prevent abduction, runaway, or exploitation of children, and to locate missing children. Those recommendations shall consider the following:

(A) Interaction of the clearinghouse with child custody proceedings;

(B) Involvement of hospitals, child care centers, and other private agencies in efforts to prevent child abduction, runaway, or exploitation, and to locate missing children;

(C) Publication of a directory of and periodic reports regarding missing children;

(D) Required reporting by public and private agencies and penalties for failure to report and false reporting;

(E) Removal of names from the list of missing children;

(F) Creating of an advocate for missing and exploited children;

(G) State funding for the clearinghouse and efforts to prevent the abduction, runaway, and exploitation of children, and to locate missing children;

(H) Mandated involvement of state agencies, such as publication of information regarding missing children in existing state publications and coordination with the state registrar of vital statistics under §§16-5-12 of this code; and

(I) Expanded requirement for boards of education to notify the clearinghouse in addition to local law-enforcement agencies under §18-2-5c of this code or if a birth certificate or school record received appears to be inaccurate or fraudulent and to receive clearinghouse approval before releasing records;

(5) Methods that will coordinate and engender collaborative efforts among organizations throughout the state, whether public or private, involved with missing or exploited children;

(6) Plans for the use of technology in the clearinghouse and other efforts related to missing or exploited children;

(7) Compliance of the clearinghouse, state law, and all rules promulgated pursuant thereto with applicable federal law so as to enhance opportunities for receiving federal grants;

(8) Consultation with the state board of education and other agencies responsible for promulgating rules under this article;

(9) Possible methods for identifying missing children prior to enrollment in a public or nonpublic school;

(10) The feasibility and effectiveness of utilizing the federal parent locator service in locating missing children; and

(11) Programs for voluntary fingerprinting.

§49-6-116. Establish a missing foster child locator unit program.

(a) The Secretary of the West Virginia Department of Health and Human Resources shall establish a Missing Foster Child Locator Unit within the department with a minimum staffing of a northern-based caseworker, a southern-based caseworker, and an identified worker located in the Centralized Intake Unit.

(b) The duties of the Missing Foster Child Locator Unit shall include, but are not limited to, the following:

(1) Receiving reports of missing foster children;

(2) Assisting law enforcement in locating missing foster children who have been reported missing;
and

(3) Interviewing missing foster children and completing trafficking screening once the child is located.

(c) For this section, “missing foster child” means missing child or missing and endangered child, as defined in §49-6-103 of this code, who is a foster child at the time he or she was reported missing.

(d) Beginning in July 1, 2021, and each year thereafter, the Secretary of the Department of Health and Human Resources shall provide a status report to the Legislative Oversight Committee on Health and Human Resources Accountability.

(e) The secretary shall implement and administer this program at least until December 31, 2022. The secretary may administer this program after such date.”

And,

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

Com. Sub. for H. B. 4415 – “A Bill to amend and reenact §15-3D-3 and the Code of West Virginia, 1931, as amended; to amend said code by adding thereto a new section, designated §15-3D-9; to amend and reenact §49-6-103, §49-6-105, §49-6-106, §49-6-109, §49-6-110, §49-6-112, §49-6-113, and §49-6-114; and to amend said code by adding thereto a new section, designated §49-6-116, all relating to children; defining terms; creating missing and endangered child advisory system; providing for rulemaking; expanding missing child information clearinghouse requirements; updating requirements for providing information; updating requirements for missing child report forms; requiring law-enforcement agency to investigate and issue advisory; providing for confidential information to be provided to Department of Health and Human Resources as legal custodian; updating clearinghouse advisory council; updating comprehensive strategic plan; establishing missing foster child locator unit program; establishing duties; providing for report; and making technical changes.”

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. 547**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4415) 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. 4417, Relating to permitting professional boards.

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. 4478, Creating a lifetime ban for commercial drivers involved in human trafficking.

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

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

“ARTICLE 1. COMMERCIAL DRIVER’S LICENSE.

§17E-1-13. Disqualification.

(a) A person may not operate a commercial motor vehicle if his or her privilege to operate a commercial motor vehicle is disqualified under the provisions of the Federal Motor Carrier Safety Improvement Act of 1999, 49 C. F. R. Part §383, Subpart D (2004) or in accordance with the provisions of this section.

(1) For the purposes of determining first and subsequent violations of the offenses listed in this section, each conviction resulting from a separate incident includes convictions for offenses committed in a commercial motor vehicle or a noncommercial motor vehicle.

(2) Any person disqualified from operating a commercial motor vehicle for life under the provisions of this chapter for offenses described in subdivisions (1), (2), (3), (4) and (6), subsection (b) of this section is eligible for reinstatement of privileges to operate a commercial motor vehicle after 10 years and after completion of the Safety and Treatment Program or other appropriate program prescribed by the division. Any person whose lifetime disqualification has been amended under the provisions of this subdivision, and who is subsequently convicted of a disqualifying offense described in subdivisions (1) through (87), inclusive, subsection (b) of this section, is not eligible for reinstatement. Any person disqualified from operating a commercial motor vehicle for life under subsection (n) of this section is not eligible for reinstatement.

(3) Any person who committed a disqualifying offense contained in paragraph (B) or (E), subdivision (1), subsection (b) of this section prior to obtaining a commercial driver's license, and who committed the disqualifying offense more than 10 years before he or she applied for a commercial driver's license, and who has completed the Safety and Treatment Program or other appropriate program prescribed by the division, shall be considered to have served the period of disqualification and ~~shall be~~ is eligible to obtain a commercial driver's license so long as all other eligibility requirements contained in §17E-1-9 and §17E-1-10 of this code are satisfied.

(4) Any disqualification imposed by this section is in addition to any action to suspend, revoke, or cancel the driver's license or driving privileges if suspension, revocation, or cancellation is required under another provision of this code.

(5) The provisions of this section apply to any person operating a commercial motor vehicle and to any person holding a commercial driver's license.

(b) Any person is disqualified from driving a commercial motor vehicle for the following offenses and time periods if convicted of:

(1) Driving a motor vehicle under the influence of alcohol or a controlled substance;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of one year.

(C) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or for refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(2) Driving a commercial motor vehicle while the person's alcohol concentration of the person's blood, breath, or urine is four hundredths of one percent or more, by weight;

(A) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For a first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(3) Refusing to submit to any designated secondary chemical test required by the provisions of this code or the provisions of 49 C. F. R. §383.72 (2004);

(A) For the first conviction or refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction or refusal to submit to any designated secondary chemical test while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction or for refusal to submit to any designated secondary chemical test while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction or refusal to submit to any designated secondary chemical test in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(4) Leaving the scene of an accident;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for life.

(5) Using a motor vehicle in the commission of any felony as defined in §17E-1-3 of this code; ~~except that the commission of any felony involving the manufacture, distribution, or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled~~

substance falls under the provisions of subdivision (8) of this subsection ~~subsection (n)~~ except as set forth specifically in subsection (n) of this section;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a noncommercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for one year.

(C) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(D) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(E) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a noncommercial motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for life.

(6) Operating a commercial motor vehicle when, as a result of prior violations committed operating a commercial motor vehicle, the driver's privilege to operate a motor vehicle has been suspended, revoked, or canceled, or the driver's privilege to operate a commercial motor vehicle has been disqualified.

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

(7) Causing a fatality through the negligent operation of a commercial motor vehicle, including, but not limited to, the crimes of motor vehicle manslaughter, homicide and negligent homicide as defined in §17B-3-5, and §17C-5-1 of this code;

(A) For the first conviction while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for one year.

(B) For the first conviction while operating a commercial motor vehicle transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004), a driver is disqualified from operating a commercial motor vehicle for a period of three years.

(C) For a second conviction in a separate incident of any combination of offenses in this subsection while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for life.

~~(8) Using a motor vehicle in the commission of any felony involving the manufacture, distribution or dispensing of a controlled substance or possession with intent to manufacture, distribute or dispense a controlled substance, a driver is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.~~

(c) Any person is disqualified from driving a commercial motor vehicle if convicted of:

(1) Speeding excessively involving any speed of 15 miles per hour or more above the posted speed limit;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder shall be disqualified from operating a commercial motor vehicle for a period of 120 days.

(2) Reckless driving as defined in §17C-5-3 of this code, careless or negligent driving, including, but not limited to, the offenses of driving a motor vehicle in willful or wanton disregard for the safety of persons or property;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(3) Making improper or erratic traffic lane changes;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(4) Following the vehicle ahead too closely;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(5) Violating any law relating to traffic control arising in connection with a fatal accident, other than a parking violation;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a second conviction of any combination of offenses in this section in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in

the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(C) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(D) For a third or subsequent conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a noncommercial motor vehicle, if the conviction results in the suspension, revocation, or cancellation of the commercial driver's license holder's privilege to operate any motor vehicle, a commercial motor vehicle license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(6) Driving a commercial motor vehicle without obtaining a commercial driver's license;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for a period of 120 days.

(7) Driving a commercial motor vehicle without a commercial driver's license in the driver's possession except that any person who provides proof of possession of a commercial driver's license to the enforcement agency that issued the citation by the court appearance or fine payment deadline is not guilty of this offense;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(8) Driving a commercial motor vehicle without the proper class of commercial driver's license or the proper endorsements for the specific vehicle group being operated or for the passengers or type of cargo being transported;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(9) Driving a commercial motor vehicle while engaged in texting and convicted pursuant to §17E-1-14a of this code or similar law of this or any other jurisdiction or 49 C. F. R. §392.80;

(A) For a second conviction of any combination of offenses in this subsection in a separate incident within a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 60 days.

(B) For a third or subsequent conviction of any combination of the offenses in this subsection in a separate incident in a three-year period while operating a commercial motor vehicle, a commercial driver's license holder is disqualified from operating a commercial motor vehicle for a period of 120 days.

(d) Any person convicted of operating a commercial motor vehicle in violation of any federal, state, or local law or ordinance pertaining to railroad crossing violations described in subdivisions (1) through (6), inclusive, of this subsection is disqualified from operating a commercial motor vehicle for the period of time specified;

(1) Failing to slow down and check that the tracks are clear of an approaching train, if not required to stop in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(2) Failing to stop before reaching the crossing, if the tracks are not clear, if not required to stop in accordance with the provisions of §17C-12-1 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(3) Failing to stop before driving onto the crossing, if required to stop in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, the driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(4) Failing to have sufficient space to drive completely through the crossing without stopping in accordance with the provisions of §17C-12-3 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(5) Failing to obey a traffic control device or the directions of an enforcement official at the crossing in accordance with the provisions of §17C-12-1 of this code;

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(6) Failing to negotiate a crossing because of insufficient undercarriage clearance in accordance with the provisions of §17C-12-3 of this code.

(A) For the first conviction, a driver is disqualified from operating a commercial motor vehicle for a period of 60 days;

(B) For a second conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for 120 days; and

(C) For a third or subsequent conviction of any combination of offenses in this subsection within a three-year period, a driver is disqualified from operating a commercial motor vehicle for one year.

(e) Any person who is convicted of violating an out-of-service order while operating a commercial motor vehicle is disqualified for the following periods of time:

(1) If convicted of violating a driver or vehicle out-of-service order while transporting nonhazardous materials;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for 180 days.

(B) For a second conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for two years.

(C) For a third or subsequent conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(2) If convicted of violating a driver or vehicle out-of-service order while transporting hazardous materials required to be placarded under 49 C. F. R. Part §172, Subpart F (2004) or while operating a vehicle designed to transport 16 or more passengers including the driver;

(A) For the first conviction of violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for 180 days.

(B) For a second conviction in a separate incident within a ten-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(C) For a third or subsequent conviction in a separate incident within a 10-year period for violating an out-of-service order while operating a commercial motor vehicle, a driver is disqualified from operating a commercial motor vehicle for three years.

(f) After disqualifying, suspending, revoking, or canceling a commercial driver's license, the division shall update its records to reflect that action within 10 days.

(g) In accordance with the provisions of 49 U. S. C. §313119(a)(19)(2004), and 49 C. F. R. §384.226 (2004), notwithstanding the provisions of §61-11-25 of this code, no record of conviction, revocation, suspension, or disqualification related to any type of motor vehicle traffic control offense, other than a parking violation, of a commercial driver's license holder or a person operating a commercial motor vehicle may be masked, expunged, deferred, or be subject to any diversion program.

(h) Notwithstanding any provision in this code to the contrary, the division may not issue any temporary driving permit, work-only driving permit, or hardship license or permit that authorizes a person to operate a commercial motor vehicle when his or her privilege to operate any motor vehicle has been revoked, suspended, disqualified, or otherwise canceled for any reason.

(i) In accordance with the provisions of 49 C. F. R. §391.15(b), a driver is disqualified from operating a commercial motor vehicle for the duration of any suspension, revocation, or cancellation of his or her driver's license or privilege to operate a motor vehicle by this state or by any other state or jurisdiction until the driver complies with the terms and conditions for reinstatement set by this state or by another state or jurisdiction.

(j) In accordance with the provisions of 49 C. F. R. §353.52 (2006), the division shall immediately disqualify a driver's privilege to operate a commercial motor vehicle upon a notice from the assistant administrator of the Federal Motor Carrier Safety Administration that the driver poses an imminent hazard. Any disqualification period imposed under the provisions of this subsection shall be served concurrently with any other period of disqualification if applicable.

(k) In accordance with the provisions of 49 C. F. R. §1572.11(a), the division shall immediately disqualify a driver's privilege to operate a commercial motor vehicle if the driver fails to surrender his or her driver's license with a hazardous material endorsement to the division upon proper notice by the division to the driver that the division received notice from the Department of Homeland Security Transportation Security Administration of an initial determination of threat assessment and immediate revocation that the driver does not meet the standards for security threat assessment provided in 49 C. F. R. §1572.5. The disqualification remains in effect until the driver either surrenders the driver's license to the division or provides the division with an affidavit attesting to the fact that the driver has lost or is otherwise unable to surrender the license.

(l) In accordance with 49 C. F. R. §391.41, a driver is disqualified from operating a commercial motor vehicle if the driver is not physically qualified to operate a commercial motor vehicle or does not possess a valid medical certification status.

(m) In accordance with the provisions of 49 C. F. R. §383.73(g), the division shall disqualify a driver's privilege to operate a commercial motor vehicle if the division determines that the licensee has falsified any information or certifications required under the provisions of 49 C. F. R. 383 Subpart J or 49 C. F. R. §383.71(a) for 60 days in addition to any other penalty prescribed by this code.

(n) Lifetime Disqualification Without Reinstatement.—

(1) Controlled substance violations — An individual who uses a commercial motor vehicle in committing a felony involving manufacturing, distributing, or dispensing a controlled substance, or involving possession with intent to manufacture, distribute, or dispense a controlled substance is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.

(2) Human trafficking violations — An individual who uses a commercial motor vehicle in committing a felony involving an act or practice described in paragraph (9) of section 103 of the Trafficking Victims Protection Act of 2000 (22 U.S.C. 7102(9)) is disqualified from operating a commercial motor vehicle for life and is not eligible for reinstatement.”

And,

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

Com. Sub. for H. B. 4478 - “A Bill to amend and reenact §17E-1-13 of the Code of West Virginia, 1931, as amended, relating to the lifetime disqualification without reinstatement from operating a commercial motor vehicle for individuals who use a commercial motor vehicle in committing certain felony acts relating to controlled substance violations or human trafficking violations.”

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. 548**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4478) 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. 4504, Relating to renewal application requirements for individuals with permanent disabilities.

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

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

“ARTICLE 13. STOPPING, STANDING, AND PARKING.

§17C-13-6. Stopping, standing, or parking privileges for persons with a mobility impairment; disabled veterans; definitions; qualification; special registration plates and removable windshield placards; expiration, application; violation; penalties.

(a)(1) The commissioner may issue up to two special registration plates or removable windshield placards to a person with a mobility impairment or a West Virginia organization which transports persons with disabilities and facilitates the mobility of its customers, patients, students, or persons otherwise placed under its responsibility.

(2) Special registration plates or placards may only be issued for placement on a Class A or Class G motor vehicle registered under the provisions of §17A-3-1 *et seq.* of this code.

(3) The applicant shall specify whether he or she is applying for a special registration plate, a removable windshield placard, or both on the application form prescribed and furnished by the commissioner.

(4) The applicant shall submit, with the application, a certificate issued by any physician, chiropractor, advanced nurse practitioner, or physician's assistant who is licensed in this state, stating that the applicant has a mobility impairment, or that the applicant is an organization which regularly transports a person with a mobility impairment as defined in this section. The physician, chiropractor, advanced nurse practitioner, or physician's assistant shall specify in the certificate whether the disability is temporary or permanent. ~~A disability which is temporary shall not exceed six months. A disability which is permanent is one which is one to five years or more in expected duration. A~~ disability which is temporary is one expected to last for a limited duration and improve during the applicant's life. A disability which is permanent is one which is expected to last during the duration of the applicant's life.

(5) Upon receipt of the completed application, the physician's certificate and the regular registration fee for the applicant's vehicle class, if the commissioner finds that the applicant qualifies for the special registration plate or a removable windshield placard as provided in this section, he or she shall issue to the applicant a special registration plate (upon remittance of the regular registration fee) or a removable windshield placard (red for temporary and blue for permanent), or both. Upon request, the commissioner shall also issue to any otherwise qualified applicant one additional placard having the same expiration date as the applicant's original placard. The placard shall be displayed by hanging it from the interior rearview mirror of the motor vehicle so that it is conspicuously visible from outside the vehicle when parked in a designated accessible parking space. The placard may be removed from the rearview mirror whenever the vehicle is being operated to ensure clear vision and safe driving. Only in the event that there is no suitable rearview mirror in the vehicle may the placard be displayed on the dashboard of the vehicle.

(6) Organizations which transport people with disabilities will be provided with a placard which will permit them to park in a designated area for the length of time necessary to load and unload passengers. These vehicles must be moved to a nondesignated space once the loading or unloading process is complete.

(b) As used in this section, the following terms have the meanings ascribed to them in this subsection:

(1) A person or applicant with a "mobility impairment" means a person who is a citizen of West Virginia and as determined by a physician, allopath, or osteopath, chiropractor, advanced nurse practitioner, or physician's assistant licensed to practice in West Virginia:

(A) Cannot walk 200 feet without stopping to rest;

(B) Cannot walk without the use of or assistance from a brace, cane, crutch, prosthetic device, wheelchair, other assistive device, or another person;

(C) Is restricted by lung disease to such an extent that the person's force (respiratory) expiratory volume for one second, when measured by spirometry, is less than one liter or the arterial oxygen tension is less than 60 mm/hg on room air at rest;

(D) Uses portable oxygen;

(E) Has a cardiac condition to such an extent that the person's functional limitations are classified in severity as Class III or Class IV according to standards established by the American Heart Association; or

(F) Is severely limited in his or her ability to walk because of an arthritic, neurological, or other orthopedic condition;

(2) "Special registration plate" means a registration plate that displays the international symbol of access, as adopted by the Rehabilitation International Organization in 1969 at its Eleventh World Congress on Rehabilitation of the Disabled, in a color that contrasts with the background, in letters and numbers the same size as those on the plate, and which may be used in lieu of a regular registration plate;

(3) "Removable windshield placard" (permanent or temporary) means a two-sided, hanger-style placard measuring three inches by nine and one-half inches, with all of the following on each side:

(A) The international symbol of access, measuring at least three inches in height, centered on the placard, in white on a blue background for permanent designations and in white on a red background for temporary designations;

(B) An identification number measuring one inch in height;

(C) An expiration date in numbers measuring one inch in height; and

(D) The seal or other identifying symbol of the issuing authority;

(4) "Regular registration fee" means the standard registration fee for a vehicle of the same class as the applicant's vehicle;

(5) "Public entity" means state or local government or any department, agency, special purpose district, or other instrumentality of a state or local government;

(6) "Public facility" means all or any part of any buildings, structures, sites, complexes, roads, parking lots, or other real or personal property, including the site where the facility is located;

(7) "Place or places of public accommodation" means a facility or facilities operated by a private entity whose operations affect commerce and fall within at least one of the following categories:

(A) Inns, hotels, motels, and other places of lodging;

(B) Restaurants, bars, or other establishments serving food or drink;

(C) Motion picture houses, theaters, concert halls, stadiums, or other places of exhibition or entertainment;

(D) Auditoriums, convention centers, lecture halls, or other places of public gatherings;

(E) Bakeries, grocery stores, clothing stores, hardware stores, shopping centers, or other sales or rental establishments;

(F) Laundromats, dry cleaners, banks, barber and beauty shops, travel agencies, shoe repair shops, funeral parlors, gas or service stations, offices of accountants and attorneys, pharmacies, insurance offices, offices of professional health care providers, hospitals, or other service establishments;

(G) Terminals, depots, or other stations used for public transportation;

(H) Museums, libraries, galleries, or other places of public display or collection;

(I) Parks, zoos, amusement parks, or other places of recreation;

(J) Public or private nursery, elementary, secondary, undergraduate, or post-graduate schools or other places of learning and day care centers, senior citizen centers, homeless shelters, food banks, adoption agencies, or other social services establishments; and

(K) Gymnasiums, health spas, bowling alleys, golf courses, or other places of exercise or recreation;

(8) "Commercial facility" means a facility whose operations affect commerce and which are intended for nonresidential use by a private entity;

(9) "Accessible parking" formerly known as "handicapped parking" is the present phrase consistent with language within the Americans with Disabilities Act (ADA).

(10) "Parking enforcement personnel" includes any law-enforcement officer as defined by §30-29-1 of this code, and private security guards, parking personnel, and other personnel authorized by a city, county, or the state to issue parking citations.

Any person who falsely or fraudulently obtains or seeks to obtain the special plate or the removable windshield placard provided for in this section, and any person who falsely certifies that a person is mobility impaired in order that an applicant may be issued the special registration plate or windshield placard under this section is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500. Any person who fabricates, uses, or sells unofficially issued windshield placards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500 per placard fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued identification cards to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$700 per identification card fabricated, used, or sold. Any person who fabricates, uses, or sells unofficially issued labels imprinted with a future expiration date to any person or organization is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$700. Any person covered by this section who sells or gives away their officially issued windshield placard to any person or organization not qualified to apply or receive the placard and then reapplies for a new placard on the basis it was stolen is committing a fraudulent act and is guilty of a misdemeanor and, upon conviction thereof, in addition to any other penalty he or she, or they may otherwise incur, shall lose their right to receive or use a special placard or special license plate for a period of not less than five years.

(c) The commissioner shall set the expiration date for special registration plates and permanent removable windshield placards on the last day of a given month and year, to be valid for a minimum of one year but not more than five years, after which time a new application must be submitted to the commissioner. After the commissioner receives the new application, signed by a certified physician, chiropractor, advanced nurse practitioner, or physician's assistant if required under this subsection, the commissioner shall issue: (i) A new special registration plate or new permanent removable windshield placard; or (ii) official labels imprinted with the new expiration date and designed so as to be placed over the old dates on the original registration plate or windshield placard: Provided, That a new application under this subsection must not be accompanied by a certificate pursuant to §17C-13-6(a)(4) of this code if a prior application is on file with the commissioner, such application includes a certificate issued pursuant to §17C-13-6(a)(4) of this code, such certificate specifies that the applicant's disability is permanent for life, and such certificate was made within 10 years of the new application.

(d) The commissioner shall set the expiration date of temporary removable windshield placards to be valid for a period of approximately six months after the application was received and approved by the commissioner.

(e) The commissioner shall issue to each applicant who is granted a special registration plate or windshield placard an identification card bearing the applicant's name, assigned identification number, and expiration date. The applicant shall thereafter carry this identification card on his or her person whenever parking in an accessible parking space. The identification card shall be identical in design for both registration plates and removable windshield placards.

(f) An accessible parking space should comply with the provisions of the Americans with Disabilities Act accessibility guidelines, contained in 28 C.F.R. 36, Appendix A, Section 4.6. In particular, the parking space should be a minimum of eight feet wide with an adjacent eight-foot access aisle for vans having side mounted hydraulic lifts or ramps, or a five-foot access aisle for standard vehicles. Access aisles should be marked using diagonal two- to four-inch-wide stripes spaced every 12 or 24 inches apart along with the words "no parking" in painted letters which are at least 12 inches in height. All accessible parking spaces must have a signpost in front or adjacent to the accessible parking space displaying the international symbol of access sign mounted at a minimum of eight feet above the pavement or sidewalk and the top of the sign. Lines or markings on the pavement or curbs for parking spaces and access aisles may be in any color, although blue is the generally accepted color for accessible parking.

(g) A vehicle displaying a disabled veterans special registration plate issued pursuant to §17A-3-14(c)(6) of this code shall be recognized and accepted as meeting the requirements of this section.

(h) A vehicle from any other state, United States territory, or foreign country displaying an officially issued special registration plate, placard, or decal bearing the international symbol of access shall be recognized and accepted as meeting the requirements of this section, regardless of where the plate, placard, or decal is mounted or displayed on the vehicle.

(i) Stopping, standing or parking places marked with the international symbol of access shall be designated in close proximity to all public entities, including state, county, and municipal buildings and facilities, places of public accommodation, and commercial facilities. These parking places shall be reserved solely for persons with a mobility impairment and disabled veterans at all times.

(j) Any person whose vehicle properly displays a valid, unexpired special registration plate or removable windshield placard may park the vehicle for unlimited periods of time in parking zones unrestricted as to length of parking time permitted: *Provided*, That this privilege does not mean that

the vehicle may park in any zone where stopping, standing, or parking is prohibited or which creates parking zones for special types of vehicles or which prohibits parking during heavy traffic periods during specified rush hours or where parking would clearly present a traffic hazard. To the extent any provision of any ordinance of any political subdivision of this state is contrary to the provisions of this section, the provisions of this section take precedence and apply.

The parking privileges provided for in this subsection apply only during those times when the vehicle is being used for the loading or unloading of a person with a mobility impairment. Any person who knowingly exercises, or attempts to exercise, these privileges at a time when the vehicle is not being used for the loading or unloading of a person with a mobility impairment is guilty of a misdemeanor and, upon first conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(k) Any person whose vehicle does not display a valid, special registration plate or removable windshield placard may not stop, stand, or park a motor vehicle in an area designated, zoned, or marked for accessible parking with signs or instructions displaying the international symbol of access, either by itself or with explanatory text. The signs may be mounted on a post or a wall in front of the accessible parking space and instructions may appear on the ground or pavement, but use of both methods is preferred. Accessible parking spaces for vans having an eight-foot adjacent access aisle should be designated as "van accessible" but may be used by any vehicle displaying a valid special registration plate or removable windshield placard.

Any person who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(l) All signs that designate areas as "accessible parking" or that display the international symbol of access shall also include the words "Up to \$500 fine".

(m) No person may stop, stand, or park a motor vehicle in an area designated or marked off as an access aisle adjacent to a van-accessible parking space or regular accessible parking space. Any person, including a driver of a vehicle displaying a valid removable windshield placard or special registration plate, who violates the provisions of this subsection is guilty of a misdemeanor and, upon conviction thereof, shall be fined \$200; upon second conviction thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$300; and upon third and subsequent convictions thereof, in addition to any other penalty he or she may otherwise incur, shall be fined \$500.

(n) Parking enforcement personnel who otherwise enforce parking violations may issue citations for violations of this section and shall reference the number on the vehicle's license plate, since the driver normally will not be present.

(o) Law-enforcement agencies may establish a program to use trained volunteers to collect information necessary to issue citations to persons who illegally park in designated accessible parking spaces. Any law-enforcement agency choosing to establish a program shall provide for workers' compensation and liability coverage. The volunteers shall photograph the illegally parked vehicle and complete a form, to be developed by supervising law-enforcement agencies, that includes the vehicle's license plate number, date, time, and location of the illegally parked vehicle. The

photographs must show the vehicle in the accessible space and a readable view of the license plate. Within the discretion of the supervising law-enforcement agency, the volunteers may issue citations or the volunteers may submit the photographs of the illegally parked vehicle and the form to the supervising law-enforcement agency, who may issue a citation, which includes the photographs and the form, to the owner of the illegally parked vehicle. Volunteers shall be trained on the requirements for citations for vehicles parked in marked, zoned, or designated accessible parking areas by the supervising law-enforcement agency.

(p) Local authorities who adopt the basic enforcement provisions of this section and issue their own local ordinances shall retain all fines and associated late fees. These revenues shall be used first to fund the provisions of subsection (o) of this section, if adopted by local authorities, or otherwise shall go into the local authorities' General Revenue Fund. Otherwise, any moneys collected as fines shall be collected for and remitted to the state.

(q) The commissioner shall prepare and issue a document to applicants describing the privileges accorded a vehicle having a special registration plate and removable windshield placard as well as the penalties when the vehicle is being inappropriately used as described in this section and shall include the document along with the issued special registration plate or windshield placard. In addition, the commissioner shall issue a separate document informing the general public regarding the new provisions and increased fines being imposed either by way of newspaper announcements or other appropriate means across the state.

(r) The commissioner shall ~~adopt and promulgate rules~~ propose rules for legislative approval in accordance with the provisions of §29A-3-1 *et seq.* of this code.”

And,

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

H. B. 4504 – “A Bill to amend and reenact §17C-13-6 of the Code of West Virginia, 1931, as amended, relating to application requirements for persons with a mobility impairment for special registration plates and removable windshield placards; modifying meaning of temporary and permanent disability; and providing for limited waiver of disability certification requirement.”

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. 549**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4504) 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. 4519, Establishing a summer youth intern pilot program within Department of Commerce.

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. 4546, Relating to tuberculosis testing for school superintendents.

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. 4551, Relating to subsidized adoption.

Delegate Kessinger moved that the House concur 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.

§49-4-112. Subsidized adoption and legal guardianship; conditions.

(a) From funds appropriated to the Department of Health and Human Resources, the secretary shall establish a system of assistance for facilitating the adoption or legal guardianship of children. An adoption subsidy shall be available for children who are legally free for adoption and who are dependents of the department. ~~or a child welfare agency licensed to place children for adoption.~~ A legal guardianship subsidy may not require the surrender or termination of parental rights. For either subsidy, the children must be in special circumstances because one or more of the following conditions inhibit their adoption or legal guardianship placement:

- (1) They have a physical or mental disability;
- (2) They are emotionally disturbed;
- (3) They are older children;
- (4) They are a part of a sibling group; or
- (5) They are a member of a racial or ethnic minority.

(b)(1) The department shall provide assistance in the form of subsidies or ~~other~~ services to parents who are found and approved for adoption or legal guardianship of a child certified as eligible for subsidy by the department, but before the final decree of adoption or order of legal guardianship is entered, there ~~must~~ shall be a written agreement between the family entering into the subsidized adoption or legal guardianship and the department.

(2) Adoption or legal guardianship subsidies in individual cases may commence with the adoption or legal guardianship placement and will vary with the needs of the child as well as the availability of other resources to meet the child's needs. The subsidy may be for ~~special services, only, or for~~ money payments, ~~and either~~ for a limited period, or for a long term, or for any combination of the foregoing.

(3) The specific financial terms of the subsidy shall be included in the agreement between the department and the adoptive parents or legal guardians. The agreement may recognize and provide for direct payment by the department of attorney's fees to an attorney representing the adoptive

parent or legal guardian. Any such payment for attorney's fees shall be made directly to the attorney representing the adoptive parent or legal guardian.

~~(4) The amount of the time-limited or long-term subsidy may in no case exceed that which would be allowable from time to time for the child under foster family care or, in the case of a special service, the reasonable fee for the service rendered.~~

~~(5) In addition, The department shall provide either Medicaid or other health insurance coverage for any special needs child for whom there is an adoption or legal guardianship assistance agreement, and between the department and the adoptive parent or legal guardian and who the department determines cannot be placed with an adoptive parent or legal guardian without medical assistance. because the child has special needs for medical, mental health, or rehabilitative care.~~

~~(c) After reasonable efforts have been made without the use of subsidy and no appropriate adoptive family or legal guardian has been found for the child, the The department shall certify the child as eligible for a subsidy to obtain in the event of adoption or a legal guardianship. Reasonable efforts to place a child without a subsidy shall not be required if it is in the best interest of the child. because of the factors as the existence of significant emotional ties developed between the child and the prospective parent or guardian while in care as a foster child.~~

~~(d) If the child is the dependent of a voluntary licensed child placing agency, that agency shall present to the department evidence of the inability to place the child for adoption or legal guardianship without the use of subsidy or evidence that the efforts would not be in the best interests of the child. In no event may the value of the services and assistance provided by the department under an agreement pursuant to this section exceed the value of assistance available to foster families in similar circumstances.~~

~~(d) All records regarding subsidized adoptions or legal guardianships are to be held in confidence; however, records regarding the payment of public funds for subsidized adoptions or legal guardianships shall be available for public inspection provided they do not directly or indirectly identify any child or person receiving funds for the child.~~

(e) A payment may not be made to adoptive parents or legal guardians of child:

(1) Who has attained 18 years of age, unless the department determines that the child has a special need which warrants the continuation of assistance or the child is continuing his or her education or actively engaging in employment;

(2) Who has obtained 21 years of age;

(3) Who has not attained 18 years of age, if the department determines that the adoptive parent or legal guardian is no longer supporting the child by performing actions to maintain a familial bond with the child.

(f) Adoptive parents and legal guardians who receive subsidy payments pursuant to this section shall keep the department informed of circumstances which would, pursuant to §49-4-112(e) of this code, make them ineligible for the payment."

And,

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

H. B. 4551 – “A Bill to amend and reenact §49-4-112 of the Code of West Virginia, 1931, as amended, relating to subsidies; providing for adoption subsidies; providing for legal guardianship subsidies; updating availability; requiring payment for attorney’s fees; updating requirements for insurance coverage; requiring certification; eliminating requirements with respect to child who is dependent of voluntary licensed child placing agency; prohibiting subsidy payment under certain circumstances; requiring adoptive parents and legal guardians receiving subsidy to inform department; and making technical changes.”

Delegate Cowles inquired regarding his previous request to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the previous ruling that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill stands and directed the Member to vote.

The House then concurred in the Senate amendments.

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. 550**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4551) 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. 4593, Authorizing the assignment of poll workers to serve more than one precinct under certain circumstances.

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

On page four, section five, line thirty-three, by striking out the word “notwithstanding” and inserting in lieu thereof the words “except as permitted by”.

And,

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

Com. Sub. for H. B. 4593 – “A Bill to amend and reenact §3-1-5 and §3-1-30 of the Code of West Virginia, 1931, as amended, all relating to authorizing the assignment of members of a standard receiving board to serve on the standard receiving board for more than one precinct in certain circumstances.”

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. 551**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4593) 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. 4621, West Virginia FinTech Regulatory Sandbox Act.

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

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

“ARTICLE 8G. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.

§31A-8G-1. The West Virginia FinTech Regulatory Sandbox Program.

This article shall be known as the West Virginia FinTech Regulatory Sandbox Act.

§31A-8G-2. Definitions.

As used in this article:

“Applicable agency” means a department or agency of the state that by law regulates certain types of business activity in the state and persons engaged in such business activity, including the issuance of licenses or other types of authorization, which the department determines would otherwise regulate a regulatory sandbox participant.

“Applicant” means an individual or entity that is applying to participate in the regulatory sandbox program.

“Consumer” means a person that purchases or otherwise enters into a transaction or agreement to receive an innovative product or service that is being tested by a regulatory sandbox participant.

“Distributed ledger” means the use of a digital database containing records of financial transactions, including blockchain technology, which can be simultaneously used and shared within a decentralized, publicly accessible network and can record transactions between two parties in a verifiable and permanent way.

“Division of Financial Institutions” and “division” mean the West Virginia Division of Financial Institutions.

“Financial product or service” means:

(A) A financial product or financial service that requires state licensure or registration; or

(B) A financial product or financial service that includes a business model, delivery mechanism, or element that may require a license or other authorization to act as a financial institution, enterprise,

or other entity that is regulated by the West Virginia Division of Financial Institutions under chapters 31, 31A, 31C, and 32A-2 of this code or other related provisions; or

(C) In consultation with applicable agencies and with written agreement, a product or service that is governed by chapters 32 and 33 of this code.

“Innovation” means the use or incorporation of a new or emerging technology or a new use of existing technology, including distributed ledger, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Division of Financial Institutions to have a comparable widespread offering in the state.

“Innovative product or service” means a financial product or service that includes an innovation.

“Regulatory sandbox program” or “regulatory sandbox” means the West Virginia FinTech Regulatory Sandbox Program created by this article, which allows a person to temporarily test an innovative product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

“Regulatory sandbox participant”, “sandbox participant”, or “participant” means a person whose application to participate in the regulatory sandbox program is approved in accordance with the provisions of this article.

“Test” means to provide an innovative product or service in accordance with the provisions of this chapter.

§31A-8G-3. Regulatory Sandbox Program; administration; application requirements; fee; rulemaking.

(a) There is created in the Division of Financial Institutions the Regulatory Sandbox Program.

(b) In administering the regulatory sandbox program, the Division of Financial Institutions:

(1) Shall consult with the West Virginia Development Office relating to the economic development opportunities relating to the potential regulatory sandbox participant and may consult with any applicable agency which otherwise may have jurisdiction or authority relating to any activity proposed for the regulatory sandbox program for which the applicant is seeking to proceed without authorization or license;

(2) Shall have the authority to promulgate rules in accordance with §31A-2-4 and §29A-3-1 et seq. of this code for the purposes of administering the regulatory sandbox program;

(3) Shall establish a program to an individual or an entity to partner with existing financial service providers operating within the state to obtain limited access to the market in the state to test an innovative product or service without obtaining a license or other authorization that might otherwise be required; and

(4) May enter into cooperative, coordinating, or information-sharing agreements with or follow the best practices of the federal Consumer Financial Protection Bureau or other states that are administering similar programs as well as other state agencies to carry out the mandates of this article.

(c) An applicant for the regulatory sandbox program shall provide to the Division of Financial Institutions an application in a form prescribed by the Division of Financial Institutions that:

(1) Demonstrates the applicant is subject to the jurisdiction of the state;

(2) Demonstrates the applicant is a domestic corporation or other organized domestic entity with an established physical location in the state; where all required records, documents, and data relating to any approved testing can be made available for review by the Division of Financial Institutions and any other applicable agency with jurisdiction;

(3) Demonstrates that the applicant has attempted to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia to implement the applicant's proposed test of an innovative product or service within the regulatory sandbox program: *Provided*, That the applicant shall not be excluded from participation in the regulatory sandbox program solely based on the applicant's ability to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia;

(4) Contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the Division of Financial Institutions;

(5) Discloses criminal convictions of the applicant or other participating personnel, if any, and submits to a criminal background investigation;

(6) Demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and a developed plan to test, monitor, and assess the innovative product or service;

(7) Contains a description of the innovative product or service to be tested, including statements regarding all of the following:

(A) How the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox program;

(B) How the innovative product or service would benefit consumers;

(C) How the innovative product or service is different from other products or services available in the state;

(D) What risks may confront consumers that use or purchase the innovative product or service;

(E) What measures will be put into place to limit potential risks and harm to consumers and to resolve complaints during the sandbox period;

(F) How participating in the regulatory sandbox program would enable a successful test of the innovative product or service;

(G) A description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(H) A description of how the applicant will perform ongoing duties after the test; and

(I) How the applicant will end the test and protect consumers if the test fails;

(8) Sets forth whether the applicant has been provided any license or authorization by any state or federal agency; whether any state or federal agency has previously investigated, sanctioned, or pursued legal action against the applicant; and whether the applicant has had licensure or authorization denied or withdrawn by any state or federal agency;

(9) Posts a consumer protection bond with the commissioner in accordance §31A-8G-4(j) of the Code as security for potential losses suffered by consumers. *Provided*, That the bond amount shall not be less than \$5,000. *Provided, further*, That the commissioner may require that a bond be increased or decreased at any time based on risk profile, and shall expire two years after the date of the conclusion of the sandbox period;

(10) Demonstrates registration with the West Virginia Secretary of State;

(11) Demonstrates that the applicant has an exit plan to limit consumer harm at the end of the sandbox period, including a plan to notify consumers and advise them of next steps; and

(12) Provides any other information as required by the Division of Financial Institutions.

(d) The Division of Financial Institutions may collect an application fee of not more than \$1,500 from an applicant.

(e) An applicant shall file a separate application for each innovative product or service that the applicant wants to test.

(f) After an application is filed, the Division of Financial Institutions may seek additional information from the applicant as it deems necessary.

(g) Subject to subsection (h) of this section, not later than 90 days after the day on which a complete application is received by the Division of Financial Institutions, the division shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox program.

(h) The Division of Financial Institutions and an applicant may mutually agree to extend the 90-day time period described in subsection (g) of this section in order for the Division to determine whether an application is approved for entry into the regulatory sandbox program.

(i)(1) In reviewing an application under this section, the Division of Financial Institutions may consult with, and seek the approval of, any applicable agency before admitting an applicant into the regulatory sandbox program.

(2) The consultation with an applicable agency may include seeking information about whether:

(A) The applicable agency has previously issued a license or other authorization to the applicant;

(B) The applicable agency has previously investigated, sanctioned, or pursued legal action against the applicant;

(C) Whether the applicant could obtain a license or other authorization from the applicable agency after exiting the regulatory sandbox program; and

(D) Whether certain licensure or other regulations should not be waived even if the applicant is accepted into the regulatory sandbox program.

(j) In reviewing an application under this section, the Division of Financial Institutions shall consider whether a competitor to the applicant is or has been a regulatory sandbox participant and, if so, weigh that as a factor in favor of allowing the applicant to also become a sandbox participant.

(k) If the Division of Financial Institutions approves admitting an applicant into the regulatory sandbox program, an applicant may become a regulatory sandbox participant.

(l)(1) The Division of Financial Institutions may deny any application submitted under this section, for any reason, at the division's discretion.

(2) If the Division of Financial Institutions denies an application submitted under this section, the division shall provide to the applicant a written description of the reasons for the denial as a regulatory sandbox participant.

(m) The division may enter into cooperative, coordinating, or information-sharing agreements with other federal and state agencies as necessary to fulfill the requirements of this article.

§31A-8G-4. Scope; testing period; licenses; consumer protections.

(a) If the Division of Financial Institutions approves an application under §31A-8G-3 of this code, the regulatory sandbox participant has 24 months after the day on which the application was approved to test the innovative product or service described in the sandbox participant's application.

(b) An innovative product or service that is tested within the regulatory sandbox program is subject to the following:

(1) All consumers participating in the innovative product or service being tested shall be residents of the state;

(2) The Division of Financial Institutions may, on a case-by-case basis, specify the maximum number of consumers that may transact through or enter into an agreement to use the innovative product or service:

(A) For a regular sandbox participant testing a consumer loan, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of an individual loan that may be issued to an individual consumer and the maximum amount of aggregate loans that may be issued to an individual consumer; and

(B) For a regulatory sandbox participant testing an innovative product or service that would normally require a money transmission license pursuant to this code, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of a single transaction for an individual consumer and the maximum aggregate amount of transactions for an individual consumer.

(c) This section does not restrict a regulatory sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(d) A regulatory sandbox participant is deemed to possess an appropriate license under the laws of this state for the purposes of any provision of federal law requiring state licensure or authorization.

(e) Except as otherwise provided in this chapter, including subsections (f), (g), and (h), a regulatory sandbox participant that is testing an innovative product or service is not subject to state laws that regulate financial products or services.

(f) Regulatory sandbox participants and the innovative products and services that they are testing in the regulatory sandbox program are subject to all applicable consumer protection laws, including, but not limited to those contained in Chapters 46A of the West Virginia Code, the Collection Agency Act contained in Chapter 47A of this code, and any limitations on interest rates, whether of not those interest rates would otherwise require licensure.

(g)(1) The Division of Financial Institutions may determine that additional state laws that regulate a financial product or service apply to a regulatory sandbox participant if the Division of Financial Institutions, at its sole discretion, determines that an applicant's proposed a testing plan or the product or service to be tested poses significant risk to consumers or to the safety and soundness of other institutions within the financial services marketplace as to warrant the imposition of other applicable state laws.

(2) The Division of Financial Institutions shall determine the applicability of certain state laws to each innovative product or service prior to approval of any application to participate in the regulatory sandbox program and shall notify the regulatory sandbox participant of the specific regulatory provisions that shall apply to the innovative product or service throughout the duration of the testing period.

(3) If at any time during the testing period, the Division of Financial Institutions determines that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers or the safety and soundness of other institutions operating within the financial services marketplace, the division may require that the regulatory sandbox participant come into compliance with such state laws within a reasonable time.

(h) Notwithstanding any other provision of this chapter, a regulatory sandbox participant does not have immunity related to any criminal offense committed during the sandbox participant's participation in the regulatory sandbox.

(i) By written notice, the Division of Financial Institutions may end a regulatory sandbox participant's participation in the program at any time and for any reason, including if the Division of Financial Institutions determines a sandbox participant is not operating in good faith to bring an innovative product or service to market.

(j) The commissioner shall require the regulatory sandbox participant to post a consumer protection bond with the commissioner as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner in consultation with the admitted sandbox participant in an amount not less than \$5,000 and shall be commensurate with the risk profile of the innovative financial product or service. The commissioner may accept electronic bonds from any participant;

(k) The commissioner may:

(1) Require that a bond be increased or decreased at any time based on risk profile and shall provide the regulatory sandbox participant with 30 days prior written notice;

(2) Use bond proceeds to offset losses suffered by consumers as a result of an innovative product or service. The bond shall expire two years after the date of the conclusion of the regulatory sandbox program period. The commissioner may accept electronic bonds from any regulatory sandbox participant;

(3) Issue any order needed to enforce any bond posted under this article, or a portion of such bond, or to distribute any bond proceeds to affected consumers;

(4) Make or cause to be made an examination of the books, accounts, and records of every regulatory sandbox participant pursuant to the provisions of this article, for the purpose of determining whether the sandbox participant is complying with the provisions. If the examination is made outside of this state, the participant shall pay the cost of the examination; and

(5) Issue any orders necessary to enforce this article, including ordering the payment of restitution, and enforce those orders in any court of competent jurisdiction;

§31A-8G-5. Additional consumer protections; disclosures.

(a) Before providing an innovative product or service to a consumer, a regulatory sandbox participant shall disclose the following to the consumer:

(1) The name and contact information of the regulatory sandbox participant;

(2) That the innovative product or service is authorized pursuant to the regulatory sandbox and, if applicable, that the regulatory sandbox participant does not have a license or other authorization to provide a product or service under state laws that regulate products or services outside the regulatory sandbox;

(3) That the innovative product or service is undergoing testing, may not function as intended, and may expose the customer to financial risk;

(4) That the provider of the innovative product or service is not immune from civil liability for any losses or damages caused by the innovative product or service;

(5) That the state does not endorse or recommend the innovative product or service;

(6) That the innovative product or service is a temporary test that may be discontinued at the end of the testing period;

(7) The expected end date of the testing period; and

(8) That a consumer may contact the Division of Financial Institutions to file a complaint regarding the innovative product or service being tested and provide the Division of Financial Institution's telephone number and website address where a complaint may be filed.

(b) The disclosures required by subsection (a) of this section shall be provided to a consumer in a clear and conspicuous form and, for an internet or application-based innovative product or service, a consumer shall acknowledge receipt of the disclosure before a transaction may be completed.

(c) The Division of Financial Institutions may investigate all consumer complaints made against the regulatory sandbox participant, pursuant to subsection (a) of this section: *Provided*, That the consumer making the complaint was directly provided the innovative product or service by the sandbox participant, and the innovative product or service was provided in the course of participation in the sandbox program.

(d) The Division of Financial Institutions may require that a regulatory sandbox participant make additional disclosures to a consumer.

§31A-8G-6. Exiting requirements; extensions.

(a) At least 30 days before the end of the 24-month regulatory sandbox testing period, a sandbox participant shall:

(1) Notify the Division of Financial Institutions that the regulatory sandbox participant will exit the regulatory sandbox program, discontinue the sandbox participant's test, and stop offering any innovative product or service in the regulatory sandbox within 60 days after the day on which the 24-month testing period ends; or

(2) Seek an extension in accordance with §31A-8G-7 of this code.

(b) Subject to subsection (c) of this section, if the Division of Financial Institutions does not receive notification as required by subsection (a) of this section, the regulatory sandbox testing period ends at the end of the 24-month testing period and the regulatory sandbox participant shall immediately stop offering each innovative product or service being tested.

(c) If a test includes offering an innovative product or service that requires ongoing duties, such as servicing a loan, the regulatory sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the sandbox participant exits the regulatory sandbox, and not less than 30 days before the conclusion of the sandbox period, notify, in writing, any consumer of the product or service of the plan related to continuation or discontinuation of duties with respect to the product or service.

§31A-8G-7. Testing period extensions.

(a) Thirty days prior to the end of the 24-month regulatory sandbox testing period, a participant may request an extension of the regulatory sandbox testing period for the purpose of obtaining a license or other authorization required by law.

(b) The Division of Financial Institutions shall grant or deny a request for an extension in accordance with subsection (a) of this section by the end of the 24-month regulatory sandbox testing period.

(c) The Division of Financial Institutions may grant an extension in accordance with this section for not more than 12 months after the end of the regulatory sandbox testing period.

(d) A regulatory sandbox participant that obtains an extension in accordance with this section shall provide the Division of Financial Institutions with a written report every three months that provides an update on efforts to obtain a license or other authorization required by law, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorization.

§31A-8G-8. Recordkeeping and reporting requirements; participant removal.

(a) A regulatory sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an innovative product or service tested in the regulatory sandbox, and shall maintain comprehensive records for not less than five years after the conclusion of the sandbox period.

(b) If an innovative product or service fails before the end of a testing period, the regulatory sandbox participant shall notify the Division of Financial Institutions and report on actions taken by the sandbox participant to ensure consumers have not been harmed as a result of the failure.

(c) The Division of Financial Institutions will collaborate with regulatory sandbox participants admitted to the program to establish periodic and reasonable reporting requirements for a sandbox participant.

(d) The Division of Financial Institutions may request records, documents, and data from a regulatory sandbox participant, and, upon the division's request, a sandbox participant shall make such records, documents, and data available for inspection by the division.

(e) If the Division of Financial Institutions determines that a regulatory sandbox participant has engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation of this chapter or that constitutes a violation of a state or federal criminal law, the Division of Financial Institutions may remove a sandbox participant from the regulatory sandbox and may refer suspected violations of law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(f) On or before December 1 of each year, the Division of Financial Institutions shall provide an annual written report to the Joint Committee on Government and Finance that provides information regarding each regulatory sandbox participant and that provides recommendations regarding the effectiveness of the regulatory sandbox program. This report shall be made publicly available on the division's website."

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

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

"ARTICLE 8G. THE WEST VIRGINIA FINTECH REGULATORY SANDBOX PROGRAM.

§31A-8G-1. The West Virginia FinTech Regulatory Sandbox Program.

This article shall be known as the West Virginia FinTech Regulatory Sandbox Act.

§31A-8G-2. Definitions.

As used in this article:

"Applicable agency" means a department or agency of the state that by law regulates certain types of business activity in the state and persons engaged in such business activity, including the issuance of licenses or other types of authorization, which the department determines would otherwise regulate a regulatory sandbox participant.

"Applicant" means an individual or entity that is applying to participate in the regulatory sandbox program.

"Consumer" means a person that purchases or otherwise enters into a transaction or agreement to receive an innovative product or service that is being tested by a regulatory sandbox participant.

"Distributed ledger" means the use of a digital database containing records of financial transactions, including blockchain technology, which can be simultaneously used and shared within a decentralized, publicly accessible network and can record transactions between two parties in a verifiable and permanent way.

“Division of Financial Institutions” and “division” mean the West Virginia Division of Financial Institutions.

“Financial product or service” means:

(A) A financial product or financial service that requires state licensure or registration; or

(B) A financial product or financial service that includes a business model, delivery mechanism, or element that may require a license or other authorization to act as a financial institution, enterprise, or other entity that is regulated by the West Virginia Division of Financial Institutions under chapters 31, 31A, and 31C of this code, §32A-2-1 et seq. of this code, or other related provisions.

“Innovation” means the use or incorporation of a new or emerging technology or a new use of existing technology, including distributed ledger, to address a problem, provide a benefit, or otherwise offer a product, service, business model, or delivery mechanism that is not known by the Division of Financial Institutions to have a comparable widespread offering in the state.

“Innovative product or service” means a financial product or service that includes an innovation.

“Regulatory sandbox participant” means a person whose application to participate in the regulatory sandbox program is approved in accordance with the provisions of this article.

“Regulatory sandbox program” means the West Virginia FinTech Regulatory Sandbox Program created by this article, which allows a person to temporarily test an innovative product or service on a limited basis without otherwise being licensed or authorized to act under the laws of the state.

“Regulatory sandbox testing period” means a 24-month period beginning on the date an applicant is admitted to the regulatory sandbox program.

“Test” means to provide an innovative product or service in accordance with the provisions of this chapter.

§31A-8G-3. Regulatory Sandbox Program; administration; application requirements; fee; rulemaking.

(a) There is created in the Division of Financial Institutions the Regulatory Sandbox Program.

(b) In administering the regulatory sandbox program, the Division of Financial Institutions:

(1) Shall consult with the West Virginia Development Office relating to the economic development opportunities relating to the potential regulatory sandbox participant and may consult with any applicable agency which otherwise may have jurisdiction or authority relating to any activity proposed for the regulatory sandbox program for which the applicant is seeking to proceed without authorization or license;

(2) Shall have the authority to promulgate rules in accordance with §31A-2-4 and §29A-3-1 et seq. of this code for the purposes of administering the regulatory sandbox program;

(3) Shall establish a program permitting an individual or an entity to obtain limited access to the market in the state to test an innovative product or service without obtaining a license or other authorization that might otherwise be required; and

(4) May enter into cooperative, coordinating, or information-sharing agreements with or follow the best practices of the federal Consumer Financial Protection Bureau or other states that are administering similar programs as well as other state and federal agencies to carry out the mandates of this article.

(c) An applicant for the regulatory sandbox program shall provide to the Division of Financial Institutions an application in a form prescribed by the Division of Financial Institutions that:

(1) Demonstrates that the applicant is subject to the jurisdiction of the state;

(2) Demonstrates that the applicant has established a physical location in the state; where all required records, documents, and data relating to any approved testing can be made available for examination and review by the Division of Financial Institutions and any other applicable agency with jurisdiction;

(3) Demonstrates that the applicant has attempted in good faith to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia to implement the applicant's proposed test of an innovative product or service within the regulatory sandbox program: *Provided*, That the applicant shall not be excluded from participation in the regulatory sandbox program solely based on the applicant's ability to establish a partnership with a bank operating within the State of West Virginia or another financial institution licensed by the State of West Virginia;

(4) Contains relevant personal and contact information for the applicant, including legal names, addresses, telephone numbers, email addresses, website addresses, and other information required by the Division of Financial Institutions;

(5) Discloses any and all criminal convictions of the applicant or other participating personnel, if any, and submits to a criminal background investigation, including requiring fingerprints for submission to the Federal Bureau of Investigation or any governmental agency or entity authorized to receive such information for a state, national or international criminal history check;

(6) Demonstrates that the applicant has the necessary personnel, financial and technical expertise, access to capital, and a developed plan to test, monitor, and assess the innovative product or service;

(7) Contains a description of the innovative product or service to be tested, including statements regarding all of the following:

(A) How the innovative product or service is subject to licensing or other authorization requirements outside of the regulatory sandbox program;

(B) How the innovative product or service would benefit consumers;

(C) How the innovative product or service is different from other products or services available in the state;

(D) What risks may confront consumers that use or purchase the innovative product or service;

(E) What measures will be put into place to limit potential risks and harm to consumers and to resolve complaints during the regulatory sandbox testing period;

(F) How participating in the regulatory sandbox program would enable a successful test of the innovative product or service;

(G) A description of the proposed testing plan, including estimated time periods for beginning the test, ending the test, and obtaining necessary licensure or authorizations after the testing is complete;

(H) A description of how the applicant will perform ongoing duties after the test; and

(I) How the applicant will end the test and protect consumers if the test fails;

(8) Sets forth whether the applicant has been provided any license or authorization by any state or federal agency; whether any state or federal agency has previously investigated, sanctioned, or pursued legal action against the applicant; and whether the applicant has had licensure or authorization denied or withdrawn by any state or federal agency;

(9) Demonstrates registration with the West Virginia Secretary of State;

(10) Demonstrates that the applicant has an exit plan to limit consumer harm at the conclusion of the regulatory sandbox testing period, including a plan to notify consumers and advise them of next steps; and

(11) Provides any other information as required by the Division of Financial Institutions.

(d) The Division of Financial Institutions may collect an application fee of not more than \$1,500 from an applicant.

(e) An applicant shall file a separate application for each innovative product or service that the applicant wants to test.

(f) After an application is filed, the Division of Financial Institutions may seek additional information from the applicant as it deems necessary.

(g) Subject to subsection (h) of this section, not later than 90 days after the day on which a complete application is received by the Division of Financial Institutions, the division shall inform the applicant as to whether the application is approved for entry into the regulatory sandbox program.

(h) The Division of Financial Institutions and an applicant may mutually agree to extend the 90-day time period described in subsection (g) of this section in order for the Division to determine whether an application is approved for entry into the regulatory sandbox program.

(i)(1) In reviewing an application under this section, the Division of Financial Institutions may consult with, and seek the approval of, any applicable agency before admitting an applicant into the regulatory sandbox program.

(2) The consultation with an applicable agency may include but is not limited to seeking information about whether:

(A) the applicant could obtain a license or other authorization from the applicable agency after exiting the regulatory sandbox program; and

(B) certain licensure or other regulations should not be waived even if the applicant is accepted into the regulatory sandbox program.

(j) In reviewing an application under this section, the Division of Financial Institutions shall consider whether a competitor to the applicant is or has been a regulatory sandbox participant and, if so, weigh that as a factor in favor of allowing the applicant to also become a regulatory sandbox participant.

(k) If the Division of Financial Institutions approves admitting an applicant into the regulatory sandbox program, an applicant may become a regulatory sandbox participant.

(l)(1) The Division of Financial Institutions may deny any application submitted under this section, for any reason, at the division's discretion.

(2) If the Division of Financial Institutions denies an application submitted under this section, the division shall provide to the applicant a written description of the reasons for the denial as a regulatory sandbox participant.

§31A-8G-4. Scope; testing period; licenses; consumer protections.

(a) If the Division of Financial Institutions approves an application under §31A-8G-3 of this code, the regulatory sandbox participant has 24 months after the day on which the application was approved to test the innovative product or service described in the regulatory sandbox participant's application.

(b) An innovative product or service that is tested within the regulatory sandbox program is subject to the following:

(1) All consumers participating in the innovative product or service being tested shall be residents of the state;

(2) The Division of Financial Institutions may, on a case-by-case basis, specify the maximum number of consumers that may transact through or enter into an agreement to use the innovative product or service:

(A) For a regulatory sandbox participant testing a consumer loan, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of an individual loan that may be issued to an individual consumer and the maximum amount of aggregate loans that may be issued to an individual consumer; and

(B) For a regulatory sandbox participant testing an innovative product or service that would normally require a money transmission license pursuant to this code, the Division of Financial Institutions may, on a case-by-case basis, specify the maximum amount of a single transaction for an individual consumer and the maximum aggregate amount of transactions for an individual consumer.

(c) This section does not restrict a regulatory sandbox participant who holds a license or other authorization in another jurisdiction from acting in accordance with that license or other authorization.

(d) A regulatory sandbox participant is deemed to possess an appropriate license under the laws of this state for the purposes of any provision of federal law requiring state licensure or authorization.

(e) Except as otherwise provided in this chapter, including subsections (f), (g), and (h), a regulatory sandbox participant that is testing an innovative product or service is not subject to state laws that regulate financial products or services.

(f) Regulatory sandbox participants and the innovative products and services that they are testing in the regulatory sandbox program are subject to all applicable consumer protection laws, including, but not limited to those contained in chapter 46A of this code, the Collection Agency Act contained in chapter 47A of this code, and any limitations on interest rates, whether or not those interest rates would otherwise require licensure.

(g)(1) The Division of Financial Institutions may determine that additional state laws that regulate a financial product or service apply to a regulatory sandbox participant if the Division of Financial Institutions, at its sole discretion, determines that an applicant's proposed testing plan or the innovative product or service to be tested poses significant risk to consumers or to the safety and soundness of other institutions within the financial services marketplace as to warrant the imposition of other applicable state laws.

(2) The Division of Financial Institutions shall determine the applicability of certain state laws to each innovative product or service prior to approval of any application to participate in the regulatory sandbox program and shall notify the regulatory sandbox participant of the specific regulatory provisions that shall apply to the innovative product or service throughout the duration of the regulatory sandbox testing period.

(3) If at any time during the regulatory sandbox testing period, the Division of Financial Institutions determines that the imposition of certain state laws is necessary to eliminate the risk of harm to consumers or the safety and soundness of other institutions operating within the financial services marketplace, the division may require that the regulatory sandbox participant come into compliance with such state laws within a reasonable time.

(h) Notwithstanding any other provision of this chapter, a regulatory sandbox participant does not have immunity related to any criminal offense committed during the regulatory sandbox participant's participation in the regulatory sandbox program.

(i) By written notice, the Division of Financial Institutions may end a regulatory sandbox participant's participation in the regulatory sandbox program at any time and for any reason, including if the Division of Financial Institutions determines a regulatory sandbox participant is not operating in good faith to bring an innovative product or service to market.

(j) The Division of Financial Institutions shall require a regulatory sandbox participant to post a consumer protection bond as security for potential losses suffered by consumers. The bond amount shall be determined by the commissioner in an amount not less than \$5,000 and shall be commensurate with the risk profile of the innovative product or service. The commissioner may require that a bond be increased or decreased at any time based on risk profile and shall provide the regulatory sandbox participant with 30 days prior written notice of such increase or decrease. The commissioner may use bond proceeds to offset losses suffered by consumers as a result of an innovative product or service. The bond shall expire two years after the date of the conclusion of the regulatory sandbox testing period. The commissioner may accept electronic bonds from any regulatory sandbox participant.

§31A-8G-5. Additional consumer protections; disclosures.

(a) Before providing an innovative product or service to a consumer, a regulatory sandbox participant shall disclose the following to the consumer:

(1) The name and contact information of the regulatory sandbox participant;

(2) That the innovative product or service is authorized pursuant to the regulatory sandbox program and, if applicable, that the regulatory sandbox participant does not have a license or other authorization to provide a product or service under state laws that regulate products or services outside the regulatory sandbox program;

(3) That the innovative product or service is undergoing testing, may not function as intended, and may expose the consumer to financial risk;

(4) That the provider of the innovative product or service is not immune from civil liability for any losses or damages caused by the innovative product or service;

(5) That the state does not endorse or recommend the innovative product or service;

(6) That the innovative product or service is a temporary test that may be discontinued at the conclusion of the regulatory sandbox testing period;

(7) The expected end date of the regulatory sandbox testing period; and

(8) That a consumer may contact the Division of Financial Institutions to file a complaint regarding the innovative product or service being tested and provide the Division of Financial Institution's telephone number and website address where a complaint may be filed.

(b) The disclosures required by subsection (a) of this section shall be provided to a consumer in a clear and conspicuous form and, for an internet or application-based innovative product or service, a consumer shall acknowledge receipt of the disclosure before a transaction may be completed.

(c) The Division of Financial Institutions may investigate all consumer complaints made against a regulatory sandbox participant pursuant to subsection (a) of this section: *Provided*, That the consumer making the complaint was directly provided the innovative product or service by the regulatory sandbox participant, and the innovative product or service was provided in the course of participation in the regulatory sandbox program.

(d) The Division of Financial Institutions may require that a regulatory sandbox participant make additional disclosures to a consumer.

§31A-8G-6. Exiting requirements; extensions.

(a) At least 30 days before the conclusion of the regulatory sandbox testing period, a regulatory sandbox participant shall:

(1) Notify the Division of Financial Institutions that the regulatory sandbox participant will exit the regulatory sandbox program, discontinue the regulatory sandbox participant's test, and stop offering any innovative product or service in the regulatory sandbox program within 60 days after the day on which the regulatory sandbox testing period ends; or

(2) Seek an extension in accordance with §31A-8G-7 of this code.

(b) Subject to subsection (c) of this section, if the Division of Financial Institutions does not receive notification as required by subsection (a) of this section, the regulatory sandbox participant shall immediately stop offering each innovative product or service being tested at the conclusion of the regulatory sandbox testing period.

(c) If a test includes offering an innovative product or service that requires ongoing duties, such as servicing a loan, the regulatory sandbox participant shall continue to fulfill those duties or arrange for another person to fulfill those duties after the date on which the regulatory sandbox participant exits the regulatory sandbox program, and not less than 30 days before the conclusion of the regulatory sandbox testing period, notify, in writing, any consumer of the innovative product or service of the plan related to continuation or discontinuation of duties with respect to the innovative product or service.

§31A-8G-7. Testing period extensions.

(a) Thirty days prior to the conclusion of the regulatory sandbox testing period, a regulatory sandbox participant may request an extension of the regulatory sandbox testing period for the purpose of obtaining a license or other authorization required by law.

(b) The Division of Financial Institutions shall grant or deny a request for an extension in accordance with subsection (a) of this section by the conclusion of the regulatory sandbox testing period.

(c) The Division of Financial Institutions may grant an extension in accordance with this section for not more than 12 months after the conclusion of the regulatory sandbox testing period.

(d) A regulatory sandbox participant that obtains an extension in accordance with this section shall provide the Division of Financial Institutions with a written report every three months that provides an update on efforts to obtain a license or other authorization required by law, including any submitted applications for licensure or other authorization, rejected applications, or issued licenses or other authorization.

§31A-8G-8. Recordkeeping and reporting requirements; participant removal.

(a) A regulatory sandbox participant shall retain records, documents, and data produced in the ordinary course of business regarding an innovative product or service tested in the regulatory sandbox program, and shall maintain comprehensive records for not less than five years after the conclusion of the regulatory sandbox testing period.

(b) If an innovative product or service fails before the conclusion of a regulatory sandbox testing period, the regulatory sandbox participant shall notify the Division of Financial Institutions and report on actions taken by the regulatory sandbox participant to ensure consumers have not been harmed as a result of the failure.

(c) The Division of Financial Institutions will collaborate with a regulatory sandbox participant to establish periodic and reasonable reporting requirements for the regulatory sandbox participant.

(d) The Division of Financial Institutions may request records, documents, and data from a regulatory sandbox participant, and, upon the division's request, a regulatory sandbox participant shall make such records, documents, and data available for inspection by the division.

(e) If the Division of Financial Institutions determines that a regulatory sandbox participant has engaged in, is engaging in, or is about to engage in any practice or transaction that is in violation of this chapter or that constitutes a violation of a state or federal criminal law, the Division of Financial Institutions may remove a regulatory sandbox participant from the regulatory sandbox program and may refer suspected violations of law relating to this act to appropriate state or federal agencies for investigation, prosecution, civil penalties, and other appropriate enforcement actions.

(f) On or before December 1 of each year, the Division of Financial Institutions shall provide an annual written report to the Joint Committee on Government and Finance that provides information regarding each regulatory sandbox participant and that provides recommendations regarding the effectiveness of the regulatory sandbox program. This report shall be made publicly available on the division's website."

And,

The further title amendment sponsored by Delegate Shott amending the title of the bill to read as follows:

H. B. 4621 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §31A-8G-1, §31A-8G-2, §31A-8G-3, §31A-8G-4, §31A-8G-5, §31A-8G-6, §31A-8G-7, and §31A-8G-8, all relating to creating the West Virginia FinTech Regulatory Sandbox Program; defining terms; providing that the program shall be administered by the West Virginia Division of Financial Institutions, establishing requirements for participants to temporarily test innovative financial products or services on a limited basis without otherwise being licensed under the laws of the state; establishing scope of the ability to operate approved financial products or services without a license; providing consumer protections; establishing time limitations on the ability to test approved financial products or services without a license; providing reporting requirements; providing for rulemaking; and directing the West Virginia Division of Financial Institutions to provide annual reports to the Legislature.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 552**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4621) passed.

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

A message from the Senate, by

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

Com. Sub. for H. B. 4633, Expanding county commissions' ability to dispose of county or district property.

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

On page one, section three, line seventeen, by striking out the words “nonprofit community center organization” and inserting in lieu thereof the words “community center organization already in existence on the effective date of the amendments to this section made during the 2020 Regular Session of the Legislature”.

And,

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

Com. Sub. for H. B. 4633 – “A Bill to amend and reenact §7-3-3 of the Code of West Virginia, 1931, as amended, relating to expanding county commissions’ ability to dispose of county or district property; and adding the ability of county commissions to dispose of the property to community center organization in existence on effective date of amendment to this section of said code or nonprofit senior center organization without conducting a public sale.”

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. 553**), and there were—yeas 92, nays 8, absent and not voting none, with the nays being as follows:

Nays: Bibby, Butler, Cadle, Cowles, Foster, J. Jeffries, McGeehan and Wilson.

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. 4633) 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. 4655, Permitting military personnel in areas where on-the-job emergency medicine is part of the training to be granted automatic EMS or EMT certification.

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

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

“ARTICLE 4C. EMERGENCY MEDICAL SERVICES ACT.

§16-4C-8. Standards for emergency medical services personnel.

(a) Every ambulance operated by an emergency medical services agency shall carry at least two personnel. At least one person shall be certified in cardiopulmonary resuscitation or first aid and the person in the patient compartment shall be certified as an emergency medical technician-basic at a minimum except that in the case of a specialized multi-patient medical transport, only one staff person is required and that person shall be certified, at a minimum, at the level of an emergency medical technician-basic. The requirements of this subsection will remain in effect until revised by the legislative rule to be promulgated pursuant to §16-4C-8(b) of this code.

(b) On or before May 28, 2010, the commissioner shall submit a proposed legislative rule to the Emergency Medical Services Advisory Council for review, and on or before June 30, 2010, shall file the proposed legislative rule with the Office of the Secretary of State, in accordance with the provisions of §29A-3-1 *et seq.* of this code, to establish certification standards for emergency medical vehicle operators and to revise the requirements for emergency medical services personnel.

(c) As of the effective date of the legislative rule to be promulgated pursuant to §16-4C-8(b), emergency medical services personnel who operate ambulances shall meet the requirements set forth in the legislative rule.

(d) Any person desiring emergency medical services personnel certification shall apply to the commissioner using forms and procedures prescribed by the commissioner. Upon receipt of the application, the commissioner shall determine whether the applicant meets the certification requirements and may examine the applicant if necessary to make that determination.

(e) The applicant shall submit to a national criminal background check, the requirement of which is declared to be not against public policy.

(1) The applicant shall meet all requirements necessary to accomplish the national criminal background check, including submitting fingerprints, and authorizing the West Virginia Office of Emergency Medical Services, the West Virginia State Police, and the Federal Bureau of Investigation to use all records submitted and produced for the purpose of screening the applicant for certification.

(2) The results of the national criminal background check may not be released to or by a private entity.

(3) The applicant shall submit a fee of \$75 for initial certification and a fee of \$50 for recertification. The fees set forth in this subsection remain in effect until modified by legislative rule.

(f) An application for an original, renewal or temporary emergency medical service personnel certificate or emergency medical services agency license, shall be acted upon by the commissioner and the certificate or license delivered or mailed, or a copy of any order of the commissioner denying any such application delivered or mailed to the applicant, within 15 days after the date upon which the complete application, including test scores and background checks, if applicable, was received by the commissioner.

(g) Any person may report to the commissioner or the Director of the Office of Emergency Medical Services information he or she may have that appears to show that a person certified by the commissioner may have violated the provisions of this article or legislative rules promulgated pursuant to this article. A person who is certified by the commissioner, who knows of or observes another person certified by the commissioner violating the provisions of this article or legislative rules promulgated pursuant to this article, has a duty to report the violation to the commissioner or director. Any person who reports or provides information in good faith is immune from civil liability.

(h) The commissioner may issue a temporary emergency medical services personnel certificate to an applicant, with or without examination of the applicant, when he or she finds that issuance to be in the public interest. Unless suspended or revoked, a temporary certificate shall be valid initially for a period not exceeding 120 days and may not be renewed unless the commissioner finds the renewal to be in the public interest.

(i) For purposes of certification or recertification of emergency medical services personnel, the commissioner shall recognize and give full credit for all continuing education credits that have been approved or recognized by any state or nationally recognized accrediting body.

(j) Notwithstanding any other provision of code or rule, the commissioner recognizes that military personnel, National Guardsmen, members of the United States Coast Guard, and members of the Reserve Components of the Armed Services have advanced skills and training necessary to meet the requirements of this section to be certified as an emergency medical technician-paramedic upon application. Any person may seek automatic certification as an emergency medical technician-paramedic in this state if he or she has:

(1) Been honorably discharged from any branch of the United States military;

(2) Received paramedic or similar life-saving medical training in positions including, but not limited to, United States Army Combat Medic, United States Air Force Pararescue, United States Air Force Combat Rescue Officer, United States Navy Hospital Corpsman – Advanced Technical Field, United States Coast Guard Health Services Technician, National Guard Health Care Specialist, the Reserve Components of any of the preceding positions, or can otherwise demonstrate that his or her occupation in the military received substantially similar training to be certified as required by the commissioner; and

(3) Received an honorable discharge within two years of the application date.

(k) Notwithstanding any other provision of code or rule, the commissioner recognizes that military personnel, National Guardsmen, members of the United States Coast Guard, and members of the Reserve Components of the Armed Services have advanced skills and training necessary to meet the requirements of this section to be certified as an emergency medical technician-basic upon application. Any person may seek automatic certification as an emergency medical technician-basic in this state if he or she has:

(1) Been honorably discharged from any branch in the United States military;

(2) Received emergency medical technician training or similar life-saving medical training in positions including, but not limited to, United States Army Infantryman, United States Air Force Security Forces, United States Navy Hospital Corpsman, United States Coast Guard Aviation Survival Technician, United States Marines Infantryman, National Guard Infantryman, and Reserve Components of any of the preceding positions, or can otherwise demonstrate that his or her occupation in the military received substantially similar training to be certified as required by the commissioner; and

(3) Received an honorable discharge within two years of the application date.

(l) Upon reviewing an application for certification pursuant to subsection (j) and subsection (k) of this section, the commissioner shall issue an appropriate certificate to the individual applying for certification as an emergency medical technician-paramedic or emergency medical technician-basic without further examination or education. If an individual certified pursuant to this section permits his or her certification to expire, the commissioner may require examination as a condition of recertification.”

And,

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

H. B. 4655 – “A Bill to amend and reenact §16-4C-8 of the Code of West Virginia, 1931, as amended, relating to automatic certification as an emergency medical technician-paramedic or emergency medical technician-basic upon application; providing that an applicant may have previously served in any branch of the United States military, National Guard, Coast Guard, or the Reserve Components of the Armed Services; providing that an applicant must have been honorably discharged within two years of application; providing for similar military job titles that bear a rational nexus to the training and education required by the commissioner to be certified as a paramedic or emergency medical technician; providing that the commissioner must issue a license upon review of the application; and providing that if an individual permits a certification to expire the commissioner may require examination as a condition of recertification.”

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. 554**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4655) 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, to take effect from passage a bill of the House of Delegates, as follows:

H. B. 4691, Relating to employment in areas of critical need in public education.

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. 4714, Increasing the monetary threshold for requiring nonprofit organizations to register as a charitable organization.

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. 4780, Permitting county boards to offer elective courses of instruction on the Bible.

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. 4859, Accounting for state funds distributed to volunteer and part-volunteer fire companies and departments.

A message from the Senate, by

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

Com. Sub. for H. C. R. 33, U.S.A.F. Lt Col Frederick Donald Belknap Memorial Bridge.

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

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

“Whereas, Frederick Donald Belknap was born July 31, 1929, on a farm on Little Tenmile Creek, two miles west of Wallace, in Harrison County, West Virginia. His parents were Dewey and Thelma Belknap. He graduated from Wallace High School in 1948 and attended West Virginia University from 1948-1952, where he worked as a waiter in Terrace Hall, a women’s residence hall, to earn his meals; and

Whereas, Upon graduation from West Virginia University with a bachelor's degree in education, Frederick Donald Belknap was commissioned a second lieutenant in the United States Air Force, having participated in reserve officer training while at the university; and

Whereas, Frederick Donald Belknap married Hester "Hedy" Ogden, also of Wallace, West Virginia, on September 10, 1951. The couple had one child, Dianne Lynne Belknap Lunsford; and

Whereas, Frederick Donald Belknap enjoyed a 25-year-long career in the Air Force, being trained as a navigator, graduating first in his class, later rated Master Navigator, and rising to the rank of lieutenant colonel; and

Whereas, During his career USAF Lt. Col. Belknap flew missions worldwide in C124 "GlobeMaster" aircraft, participating in troop carrier and cargo missions to Germany and the rest of Europe, and

Whereas, In 1957, Lt. Col. Belknap was involved in airlifting U.S. Marines to Lebanon on orders of President Dwight D. Eisenhower, and carried out other missions in Greece, Egypt, Jordan, Libya, and Morocco, and

Whereas, In 1959, Colonel Belknap was trained as a missile launch officer and served as a Nuclear Missile Launch Officer in Germany from 1961 to 1964. Following various assignments stateside, Colonel Belknap was assigned to Saigon, Vietnam, in 1970 where he served as psychological warfare officer with the Joint United States Public Affairs Office until June of 1971; and

Whereas, Upon returning from Vietnam, Colonel Belknap was assigned to Langley Air Force Base in Hampton, Virginia, from where he flew missions in Southeast Asia. At the time of his retirement in 1977, Colonel Belknap had flown all over the world for more than 6,000 hours (including more than 88 hours of combat missions) in C124, C119, and C130 aircraft, and had been awarded the Bronze Star; and

Whereas, After his Air Force career, Colonel Belknap and his wife returned to Harrison County, where he served as personnel coordinator for District 4 of the West Virginia Department of Highways from 1978 to 1989. He was a member of the West Milford Lions Club and VFW and served as a leader for his grandson's Boy Scout troop and was inducted into the Order of the Arrow. He enjoyed hunting, fishing, gardening, camping, gathering with old friends from all over, and attending Mountaineer football games, and

Whereas, USAF Lt. Col. Belknap died on February 23, 2017, at the age of 87, having lived a life of service to his country, his community, and his family; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 17-79-119.96 (17A318), locally known as Lodgeville I-79 Bridge, carrying IS 79 over CR 50/16, 50/25 and railroad in Harrison County, the "USAF Lt. Col. Frederick Donald Belknap Memorial Bridge"; and, be it

Further Resolved, That the Commissioner of the Division of Highways is hereby requested to erect signs at both ends of the bridge containing bold and prominent letters proclaiming the bridge as the "USAF Lt. Col. Frederick Donald Belknap Memorial Bridge"; and, be it

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

And,

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

Com. Sub. for H. C. R. 33 – “Requesting the Division of Highways to name bridge number 17-79-119.96 (17A318), locally known as Lodgeville I-79 Bridge, carrying Interstate 79 over CR 50/16, 50/25 and railroad in Harrison County, the ‘USAF Lt. Col. Frederick Donald Belknap Memorial Bridge’.”

The resolution (Com. Sub. for H. C. R. 33) was then adopted.

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

Com. Sub. for S. B. 125, Prohibiting victim from being subjected to certain physical examinations for sexual offenses.

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

Com. Sub. for S. B. 163, Relating to municipal or county taxation of hotel rooms booked through marketplace facilitator.

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. 545, Authorizing transfer of moneys from Insurance Commission Fund to Workers’ Compensation Old Fund.

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. 651, Relating to definition of “mortgage loan originator”.

A message from the Senate, by

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

S. B. 854 - “A Bill expiring funds to the balance of the Department of Arts, Culture, and History, Division of Culture and History, Public Records and Preservation Revenue Account Fund, fund 3542, fiscal year 2020, organization 0432, in the amount of \$105,000, all from the Auditor’s Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2020, organization 1200, by supplementing and amending chapter 31, Acts of the Legislature, 2019, known as the Budget Bill.”

At the respective requests of Delegate Summers, and by unanimous consent, the bill (S. B. 854) was taken up for immediate consideration, read a first time and ordered to second reading.

A message from the Senate, by

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

S. B. 855 - "A Bill expiring funds to the balance of the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund, fund 8402, fiscal year 2020, organization 0804, in the amount of \$750,000, all from the Auditor's Office – Purchasing Card Administration Fund, fund 1234, fiscal year 2020, organization 1200, by supplementing and amending chapter 31, Acts of the Legislature, 2019, known as the Budget Bill."

At the respective requests of Delegate Summers, and by unanimous consent, the bill (S. B. 855) was taken up for immediate consideration, read a first time and ordered to second reading.

A message from the Senate, by

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

S. B. 856 - "A Bill expiring funds to the balance of the Department of Commerce, West Virginia Development Office, Marketing and Communications Operating Fund, fund 3002, fiscal year 2020, organization 0307, in the amount of \$222,563, from the Department of Commerce, West Virginia Development Office, Synthetic Fuel – Producing County Fund, fund 3165, fiscal year 2020, organization 0307, by supplementing and amending the appropriations for the fiscal year ending June 30, 2020."

At the respective requests of Delegate Summers, and by unanimous consent, the bill (S. B. 856) was taken up for immediate consideration, read a first time and ordered to second reading.

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 and referred to the Committee on Rules:

S. C. R. 6 - "Requesting the Division of Highways name bridge number 17-9-0.35 (17A053), locally known as Wilsonburg T-beam Bridge, carrying County Route 9 over Limestone Run in Harrison County, the "Walter E. Swiger, Jr., Memorial Bridge".

Whereas, Walter E. Swiger, Jr., was a lifelong resident of Harrison County, a graduate of Victory High School and West Virginia Business College; and

Whereas, Walter E. Swiger, Jr., retired after 43 years in petroleum marketing, having operated his own business; and

Whereas, Walter E. Swiger, Jr., was appointed to the Harrison County Solid Waste Authority in 1990 by the Harrison County Commission and served as chairman of the authority; and

Whereas, Walter E. Swiger, Jr., was chosen as the Volunteer of the Year by the Association of West Virginia Solid Waste Authority during their 12th annual conference in the fall of 2000; and

Whereas, Walter E. Swiger, Jr., was an outstanding community leader with many years of service in various organizations, serving the local emergency planning committee, Clarksburg Lions Club, Central West Virginia Community Action Association, and others; and

Whereas, As chairman, Walter E. Swiger, Jr., worked to help develop a recycling ordinance for the county, established a recycling hotline, and was recognized in several issues of the Solid Waste Reporter for his leadership in “one of the top integrated waste management programs in West Virginia”; and

Whereas, Walter E. Swiger, Jr., worked with county education leaders through the solid waste authorities’ efforts as Partner in Education with 10 county schools; and

Whereas, Walter E. Swiger, Jr., passed away on November 7, 2015; and

Whereas, It is fitting that an enduring memorial be established to commemorate Walter E. Swiger, Jr., and his contributions to his community and state; therefore, be it

Resolved by the Legislature of West Virginia:

That the Division of Highways is hereby requested to name bridge number 17-9-0.35 (17A053), locally known as Wilsonburg T-beam Bridge, carrying County Route 9 over Limestone Run in Harrison County, the “Walter E. Swiger, Jr., Memorial Bridge”; and, be it

Further Resolved, That the Division of Highways is requested to have made and be placed signs identifying the bridge as the “Walter E. Swiger, Jr., Memorial Bridge”; and, be it

Further Resolved, That the Clerk of the Senate is hereby directed to forward a copy of this resolution to the Commissioner of the Division of Highways.

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 and referred to the Committee on Rules:

Com. Sub. for S. C. R. 23 - “Requesting the Joint Committee on Government and Finance study the West Virginia State Police’s increased duties and responsibilities, and determine the number of full-time equivalent positions that are needed to meet the statutory mission of statewide enforcement of criminal and traffic laws, with emphasis on providing the necessary enforcement and citizen protection from criminal depredation throughout the state’s public streets, roads, and highways.”

Whereas, The West Virginia State Police has been protecting the citizens of this state since 1919, investigating crimes and traffic accidents, providing crowd control, directing traffic, and apprehending sexual predators and others who terrorize our neighborhoods, to ensure that we live in peace; and

Whereas, The West Virginia State Police has seen a decrease in manpower since 2001, when more than 700 troopers protected West Virginia, to today, when only 615 troopers are protecting the state; and

Whereas, The West Virginia State Police’s duties and responsibilities, including tracking and registering sex offenders, have continued to grow during that same time period. In 2001, the sex offender registry had 1,468 sex offenders within the state, and this has now grown to over 5,639 offenders; and

Whereas, In 2017, there were 833 drug overdose deaths reported in West Virginia involving opioids, making West Virginia’s age-adjusted rate of drug overdose deaths involving opioids the highest in the country; and

Whereas, The most recent figures reflect that the West Virginia State Police answered 159,552 calls for service for the citizens of West Virginia in a one-year period; and

Whereas, The Legislature finds that it should take an active role in studying, formulating, and implementing a plan to provide the necessary manpower, equipment, resources, adequate training, policies, and procedures needed for the West Virginia State Police to meet its statutory mission of statewide law enforcement, which will require cooperation with the corresponding agencies or organizations to ensure the accuracy of the information, as well as the feasibility of a concrete proposal; therefore, be it

Resolved by the Legislature of West Virginia:

That the Joint Committee on Government and Finance is hereby requested to study the West Virginia State Police's increased duties and responsibilities, and determine the number of full-time equivalent positions that are needed to meet the statutory mission of statewide enforcement of criminal and traffic laws, with emphasis on providing the necessary enforcement and citizen protection from criminal depredation throughout the state's public streets, roads, and highways; and, be it

Further Resolved, That the Joint Committee on Government and Finance report to the Legislature, by the first day of the 2021 Regular session, on its findings, conclusions, and recommendations, together with drafts of any legislation to effectuate its recommendations; and, be it

Further Resolved, That the expenses necessary to conduct this study, to prepare a report, and to draft necessary legislation be paid from legislative appropriations to the Joint Committee on Government and Finance.

Special Calendar

Third Reading

S. B. 42, Permitting faith-based electives in classroom drug prevention programs; 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. 555**), and there were—yeas 83, nays 15, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barrett, S. Brown, Diserio, Doyle, Fleischauer, Fluharty, Hansen, Hornbuckle, Pushkin, Pyles, Robinson, Rowe, C. Thompson, Walker and Williams.

Absent and Not Voting: Estep-Burton and Lavender-Bowe.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 42) passed.

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

S. B. 42 – “A Bill to amend and reenact §18-2-7b of the Code of West Virginia, 1931, as amended, relating to permitting the county boards of education to include faith-based and non-faith-based electives for drug awareness in classrooms and requiring the state board of education to promulgate a rule.”

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. 175, Requiring certain agencies maintain website which contains specific 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. 556**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bibby, Boggs, Cowles, Maynard, Paynter, Waxman and Wilson.

Absent and Not Voting: Estep-Burton and Lavender-Bowe.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 175) passed.

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

Com. Sub. for S. B. 175 - “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §5F-1-7; to amend and reenact §7-1-3rr of said code; to amend said code by adding thereto a new article, designated §8-39-1, and by amending said code by adding thereto two new sections, designated §17A-2-26 and §17A-2-27; all relating to governmental entities distribution of information; requiring executive branch agencies to maintain websites that contain specific information; requiring county commissions to maintain websites with specific information; requiring county commissions to provide certain information to the Secretary of State; allowing municipalities to maintain websites with specific information available to the public at no charge; providing for exceptions to disclosing certain information in defined circumstances; requiring information to be updated; requiring updated information to be provided to the Office of Technology; requiring the Division of Motor Vehicles to establish and maintain an enrollment list of persons who have communication disabilities; authorizing the Division of Motor Vehicles to promulgate rules; exempting Division of Motor Vehicles enrollment list from the freedom of information act; providing for submission of certain information to the Division of Motor Vehicles; and authorizing the Division of Motor Vehicles to provide enrollment list information to law enforcement officers through automated data system.”

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. 230, Requiring State Board of Education provide routine education in suicide prevention; 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. 557**), 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: Estep-Burton and Lavender-Bowe.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 230) passed.

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

Com. Sub. for S. B. 230 – “A Bill to amend and reenact §18-2-40 of the Code of West Virginia, 1931, as amended, relating to suicide prevention awareness training and dissemination of information; providing findings; requiring State Board of Education to provide routine education in suicide prevention under guidelines established by board; requiring dissemination of information; and naming provisions of section ‘Jamie’s Law’.”

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

On this question, the yeas and nays were taken (**Roll No. 558**), 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: Estep-Burton.

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. 230) takes effect from its passage.

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

Com. Sub. for S. B. 261, Creating criminal penalties for introducing ransomware into computer with intent to extort; 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. 559**), 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: Estep-Burton and Hill.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 261) 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. 269, Establishing advisory council on rare diseases; 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. 560**), 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: Estep-Burton, Hill and Linville.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 269) passed.

A title amendment, sponsored by Delegate Hill, was adopted, amending the title of the bill to read as follows:

Com. Sub. for S. B. 269 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §16-5AA-1, §16-5AA-2, §16-5AA-3, §16-5AA-4, §16-5AA-5, and §16-5AA-6, all relating to establishing an advisory council on rare diseases; creating the advisory council; providing for its composition; setting terms of members; defining terms; defining duties,

subject to the availability of resources; defining powers of the advisory council; setting out particular discretionary duties of the Secretary of the Department of Health and Human Resources; terminating the council; and establishing a special revenue account.”

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. 288, Relating to family planning and child spacing; on third reading, coming up in regular order, was read a third time.

Delegate Ellington requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 561**), and there were—yeas 78, nays 18, absent and not voting 4, with the nays and absent and not voting being as follows:

Nays: Azinger, Barnhart, Bartlett, Bibby, Butler, Cadle, Fast, D. Jeffries, Jennings, D. Kelly, P. Martin, McGeehan, Paynter, Porterfield, Sypolt, Toney, Wilson and Worrell.

Absent and Not Voting: Estep-Burton, Graves, Hill and Kessinger.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 288) passed.

A title amendment, sponsored by Delegate Hill, was adopted, amending the title of the bill to read as follows:

Com. Sub. for S. B. No. 288 – “A Bill to amend and reenact §16-2B-1 of the Code of West Virginia, 1931, as amended, relating to family planning; extending family planning resources provided by Bureau for Public Health to other entities; providing that Bureau for Medical Services shall not require multiple office visits for women who select long-acting reversible contraceptive methods unless medically necessary; requiring Bureau for Medical Services to provide payments; authorizing Bureau for Public Health to make long-acting reversible contraceptive products available in practitioner offices without upfront practitioner costs; requiring Bureau for Public Health to develop statewide plan; providing requirements for plan; and requiring an annual report by Department of Health and Human Resources.”

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. 303, Enacting Students’ Right to Know Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 562**), 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: Criss, Estep-Burton, Graves and Hill.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 303) passed.

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

On this question, the yeas and nays were taken (**Roll No. 563**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Criss, Estep-Burton, Foster, Graves, Hill and Little.

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. 303) takes effect January 1, 2021.

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. 308, Creating criminal penalties for violation of orders issued for protection of victims of financial exploitation; 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. 564**), and there were—yeas 94, nays 1, absent and not voting 5, with the nays and absent and not voting being as follows:

Nays: McGeehan.

Absent and Not Voting: Criss, Estep-Burton, Graves, Hill and Little.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 308) passed.

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

Com. Sub. for S. B. 312, Relating to provisional licensure of social workers; 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. 565**), and there were—yeas 96, nays 3, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Fleischauer, Pushkin and Rowe.

Absent and Not Voting: Hill.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 312) passed.

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

Com. Sub. for S. B. 491, Relating to Seed Certification Program; 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. 566**), and there were—yeas 85, nays 1, absent and not voting 14, with the nays and absent and not voting being as follows:

Nays: Pyles.

Absent and Not Voting: Anderson, Angelucci, Capito, Hansen, Hill, Hornbuckle, J. Jeffries, J. Kelly, Mandt, Paynter, Rohrbach, Skaff, Westfall and Williams.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 491) passed.

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

S. B. 510, Making permanent land reuse agency or municipal land bank's right of first refusal on certain tax sale properties; on third reading, coming up in regular order, was read a third time.

Delegate Porterfield requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 567**), and there were—yeas 83, nays 17, absent and not voting none, with the nays being as follows:

Nays: Bibby, Butler, Cadle, Fast, Foster, Hanna, D. Jeffries, Kump, McGeehan, Paynter, Phillips, Porterfield, Summers, Sypolt, Waxman, Wilson and Hanshaw (Mr. Speaker).

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 510) passed.

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

S. B. 510 – “A Bill to amend and reenact §31-18E-9 of the Code of West Virginia, 1931, as amended, relating to the right of first refusal which land reuse agencies and municipal land banks have on tax-delinquent properties; expanding the circumstances when the right of first refusal may be used; clarifying provisions related to the right of first refusal; authorizing land reuse agencies and municipal land banks to reject adjacent property owner's request to purchase property in certain circumstances; providing a sunset date; and requiring the submission of a report.”

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. 530, Relating to taxation of aircraft; 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. 568**), and there were—yeas 64, nays 36, absent and not voting none, with the nays being as follows:

Nays: Angelucci, Bates, Boggs, N. Brown, Cadle, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hicks, Higginbotham, Hornbuckle, Lavender-Bowe,

Lovejoy, Miller, Pethtel, Pushkin, Robinson, Rodighiero, Rohrbach, Rowe, Sponaugle, Swartzmiller, Sypolt, C. Thompson, R. Thompson, Tomblin, Walker, Williams, Worrell and Zukoff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 530) passed.

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

Com. Sub. for S. B. 530 - "A Bill to amend and reenact §11-15-9 of the Code of West Virginia, 1931, as amended, relating to taxation of the sale of certain aircraft; exempting from consumer sales and service tax the sale of aircraft sold in this state and registered in another state and removed from this state within 60 days; and providing conditions of exemption."

Delegate Summers moved that the bill take effect July 1, 2020.

On this question, the yeas and nays were taken (**Roll No. 569**), and there were—yeas 82, nays 17, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Boggs, Cadle, Campbell, Evans, Fluharty, Higginbotham, Hornbuckle, Lavender-Bowe, Lovejoy, Paynter, Pethtel, Rodighiero, C. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: S. Brown.

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. 530) takes effect July 1, 2020.

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. 575, Designating local fire department as safe-surrender site to accept physical custody of certain children from lawful custodian; 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. 570**), 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: S. Brown.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 575) passed.

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

Com. Sub. for S. B. 575 - "A Bill to amend and reenact §49-4-201 and §49-4-202 of the Code of West Virginia, 1931, as amended; and to amend said code by adding thereto a new section, designated §49-4-206, all relating to safe-surrender sites; allowing the governing entity of a local fire department to designate the premises of its fire department as a safe-surrender site; providing the criteria of the child who may be accepted from an parent or individual who has lawful custody of the child; setting forth requirements upon the fire department upon taking possession of a child; and establishing criteria for the fire department as a safe-surrender site."

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

S. B. 641, Allowing WVCHIP flexibility in rate setting; 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. 571**), and there were—yeas 98, nays 2, absent and not voting none, with the nays being as follows:

Nays: Fast and Porterfield.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 641) passed.

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

S. B. 641 – “A Bill to amend and reenact §5-16B-6d of the Code of West Virginia, 1931, as amended, relating to the children’s health insurance program; removing how reimbursements rates are calculated; and making other technical changes.”

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

S. B. 647, Permitting physician’s assistants and advanced practice registered nurses issue do-not-resuscitate orders; 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. 572**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 647) passed.

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

S. B. 647- “A Bill to amend and reenact §16-30C-6 of the Code of West Virginia, 1931, as amended, relating to permitting physician assistants and advanced practice registered nurses to issue do-not-resuscitate orders.”

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

S. B. 654, Allowing certain sheriffs transfer from PERS to Deputy Sheriff Retirement System; 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. 573**), and there were—yeas 100, nays none, absent and not voting none.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 654) passed.

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

Com. Sub. for S. B. 689, Enacting Requiring Accountable Pharmaceutical Transparency, Oversight, and Reporting Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 574**), 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: McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 689) passed.

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

S. B. 691, Limiting programs adopted by State Board of Education; 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. 575**), 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: Kump and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 691) passed.

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

Com. Sub. for S. B. 692, Clarifying persons indicted or charged jointly for felony offense can move to have separate trial; 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. 576**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: S. Brown, Rodighiero and R. Thompson.

Absent and Not Voting: Boggs and Hornbuckle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 692) passed.

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

Com. Sub. for S. B. 692 - "A Bill to amend and reenact §62-3-8 of the Code of West Virginia, 1931, as amended, relating to clarifying that persons charged with a felony offense or offenses are entitled to a separate trial as to their guilt or innocence upon moving therefor; clarifying that the statutory right to a separate trial preempts any provisions of law or judicial rule to the contrary; and adding a proviso that the court may deny the motion for separate trials if the court finds that requiring victim appearance at multiple trials will cause a victim of violence or sexual assault undue mental or emotional distress."

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. 707, Relating to nursing career pathways; 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. 577**), and there were—yeas 94, nays none, absent and not voting 6, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Boggs, S. Brown, Diserio, Fluharty and Hicks.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 707) passed.

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

Com. Sub. for S. B. 707 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §18-2E-11a, relating to making a nursing career pathway available to students statewide; setting forth legislative findings; requiring that a nursing career pathway workgroup be convened; charging the workgroup with developing a career pathway to address the unmet need for nursing assistants, licensed practical nurses, registered nurses, and registered nurses with a bachelor’s degree in nursing; requiring the nursing career pathway to be made available to students statewide; requiring report to the Legislative Oversight Commission on Education Accountability, as requested, but at least annually, on the progress in implementing the career pathway; and requiring consideration of certain specified ideas in establishing the pathway.”

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

On this question, the yeas and nays were taken (**Roll No. 578**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Boggs, N. Brown, S. Brown, Diserio, Fluharty and Hicks.

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. 707) takes effect from its passage.

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

Com. Sub. for S. B. 729, Relating to awards and disability under Deputy Sheriff Retirement Act; on third reading, coming up in regular order, was read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 579**), and there were—yeas 91, nays none, absent and not voting 9, with the absent and not voting being as follows:

Absent and Not Voting: Angelucci, Barrett, Boggs, N. Brown, S. Brown, Diserio, Fluharty, Hicks and Hornbuckle.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 729) passed.

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

Com. Sub. for S. B. 746, Providing contracted managed care companies access to uniform maternal screening tool; 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. 580**), and there were—yeas 88, nays 1, absent and not voting 11, with the nays and absent and not voting being as follows:

Nays: Staggers.

Absent and Not Voting: Angelucci, Boggs, N. Brown, S. Brown, Diserio, Fluharty, Graves, Hicks, J. Jeffries, Williams and Worrell.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 746) passed.

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

Com. Sub. for S. B. 749, Requiring Fatality and Mortality Review Team share data with CDC; 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. 581**), and there were—yeas 92, nays none, absent and not voting 8, with the absent and not voting being as follows:

Absent and Not Voting: Boggs, S. Brown, Fluharty, Graves, Hicks, J. Jeffries, Williams and Worrell.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 749) passed.

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

Com. Sub. for S. B. 760, Allowing state college or university apply to HEPC for designation as administratively exempt school; 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. 582**), and there were—yeas 91, nays 9, absent and not voting none, with the nays being as follows:

Nays: Byrd, Campbell, Hanna, Lavender-Bowe, Pushkin, Pyles, Robinson, Rowe and Walker.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 760) passed.

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

S. B. 767, Relating to licensure of hospitals; 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. 583**), and there were—yeas 70, nays 30, absent and not voting none, with the nays being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, S. Brown, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Sponaugle, R. Thompson, Walker, Williams and Zukoff.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 767) passed.

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

At 1:01 p.m., the House of Delegates recessed until 2:00 p.m.

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Afternoon Session

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

Special Calendar

Third Reading

-continued-

Com. Sub. for S. B. 770, Revising requirements for post-doctoral training; 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. 584**), and there were—yeas 93, nays none, absent and not voting 7, with the absent and not voting being as follows:

Absent and Not Voting: Byrd, Hardy, D. Kelly, McGeehan, Pushkin, Skaff and Swartzmiller.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 770) 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. 793, Relating to B&O taxes imposed on certain coal-fired electric generating units; 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. 585**), and there were—yeas 78, nays 21, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Azinger, Bates, S. Brown, Byrd, Diserio, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Lavender-Bowe, Lovejoy, Maynard, Pushkin, Pyles, Rowe, Staggers, Walker and Williams.

Absent and Not Voting: McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 793) passed.

Pursuant to House Rule 58, Delegate Espinosa, having voted on the prevailing side on the vote regarding **Com. Sub. for S. B. 793**, moved that the vote on passage be reconsidered.

The question on the motion to reconsider the vote by which the House of Delegates passed Com. Sub. for S. B. 793 was put and prevailed.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 586**), and there were—yeas 80, nays 17, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Bates, S. Brown, Diserio, Doyle, Estep-Burton, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Lavender-Bowe, Pushkin, Pyles, Rowe, Staggers, Walker and Williams.

Absent and Not Voting: N. Brown, Dean and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 793) passed.

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

S. B. 830, Eliminating special merit-based employment system for health care professionals; 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. 587**), and there were—yeas 79, nays 18, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Doyle, Ellington, Evans, Fast, Fleischauer, Fluharty, Hamrick, Hanna, Hansen, Higginbotham, Jennings, J. Kelly, Porterfield, Pyles, Storch, Walker, Wilson and Zukoff.

Absent and Not Voting: N. Brown, Dean and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 830) passed.

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

S. B. 838, Directing state police establish referral program for substance abuse treatment; 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. 588**), 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: N. Brown, Dean and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 838) passed.

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

S. B. 838 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-2-55, relating to directing the State Police, in collaboration with the Office of Drug Control Policy of the Department of Health and Human Resources, to establish a referral program for substance abuse treatment; limiting certain persons from the category of those voluntarily seeking assistance; exempting persons seeking treatment from arrest and prosecution; directing the destruction of controlled substances received from persons seeking treatment; requiring referrals to treatment of persons seeking same; specifying persons who are ineligible for referral; and immunizing the State Police and its employees civilly for making referrals and exempting records of program from freedom of information disclosure."

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

On this question, the yeas and nays were taken (**Roll No. 589**), 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: N. Brown, Dean and McGeehan.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 838) 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.

S. B. 839, Creating State Advisory Council on Postsecondary Attainment Goals; 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. 590**), 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: N. Brown, Dean and McGeehan.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 839) 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. 846, Requiring hospital publish notification prior to facility closure regarding patient medical records; on third reading, coming up in regular order, was read a third time.

Delegate Skaff requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegate was a member of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 591**), and there were—yeas 89, nays 9, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bartlett, Capito, Foster, Hardy, Higginbotham, Kessinger, McGeehan, Paynter and Steele.

Absent and Not Voting: N. Brown and Dean.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 846) passed.

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

On this question, the yeas and nays were taken (**Roll No. 592**), and there were—yeas 92, nays 5, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Capito, Foster, McGeehan, Paynter and Steele.

Absent and Not Voting: N. Brown, Byrd and Dean.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 846) takes effect from its passage.

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

S. B. 848, Clarifying persons charged with DUI may not participate in Military Service Members Court; 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. 593**), 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: Byrd.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 848) passed.

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

S. B. 851, Requiring Governor's Committee on Crime, Delinquency, and Correction propose rule in coordination with law enforcement and certain medical boards; 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. 594**), 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: Byrd and Nelson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 851) passed.

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

S. B. 851 - "A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §15-9-7, relating to requiring the Governor's Committee on Crime, Delinquency, and Correction to propose a legislative rule in coordination with law enforcement, certain medical boards, and certain representative persons; developing policies and protocols for law enforcement and medical professionals to create treatment and abstinence-based recovery referral programs for persons suffering from substance use disorder; setting forth requirements for policies and protocols; providing that existing criminal charges not affected; providing civil immunity for law-enforcement officers and medical professionals; and requiring proposal of legislative and emergency rules."

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

Second Reading

S. B. 51, Specifying forms of grandparent visitation; on second reading, coming up in regular order, was read a second time and ordered to third reading,

Com. Sub. for S. B. 120, Establishing priorities for expenditures for plugging abandoned gas or oil wells; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 180, Relating to Second Chance Driver's License Program; 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 four, after line twenty-five, by inserting a new code section, to read as follows:

§17B-7-11. Sunset Provision.

The Second Chance Driver's License Program established under §17B-7-1, et seq., of this code, shall cease to have effect on June 30, 2022, unless reauthorized by the West Virginia Legislature."

The bill was then ordered to third reading.

Com. Sub. for S. B. 193, Setting forth timeframes for continuing purchases of commodities and services over \$1 million; 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 ten, line forty-two, following "Division", by striking out the remainder of the subdivision.

The bill was then ordered to third reading.

Com. Sub. for S. B. 195, Updating powers of personal representatives of deceased person's estate; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 213, Relating to administration of trusts; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 275, Creating Intermediate Court of Appeals; 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 on page one, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“CHAPTER 3. ELECTIONS.

ARTICLE 10. FILLING VACANCIES.

§3-10-3. Vacancies in offices of state officials, justices, judges, and magistrates.

(a) Any vacancy occurring in the offices of Secretary of State, Auditor, Treasurer, Attorney General, Commissioner of Agriculture, or in any office created or made elective to be filled by the voters of the entire state, is filled by the Governor of the state by appointment and subsequent election to fill the remainder of the term, if required by §3-10-1 of this code. The Governor shall make the appointment from a list of three legally qualified persons submitted by the party executive committee of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred. The list of qualified persons to fill the vacancy shall be submitted to the Governor within 15 days after the vacancy occurs, and the Governor shall duly make his or her appointment to fill the vacancy from the list of legally qualified persons within five days after the list is received. If the list is not submitted to the Governor within the 15-day period, the Governor shall appoint, within five days thereafter, a legally qualified person of the same political party with which the person holding the office immediately preceding the vacancy was affiliated at the time the vacancy occurred: *Provided*, That the provisions of this subsection do not apply to §3-10-3(b), §3-10-3(c), §3-10-3(d), and §3-10-3(e) of this code.

(b) Any vacancy occurring in the offices of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court is filled by the Governor of the state by appointment and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code. If an election is required under §3-10-3(d) of this code, the Governor, circuit court, or the chief judge thereof in vacation, is responsible for the proper proclamation by order and notice required by §3-10-1 of this code.

(c) Any vacancy in the office of magistrate is appointed according to the provisions of §50-1-6 of this code, and, if the unexpired term be for a period of more than two years, by a subsequent election to fill the remainder of the term, as required by §3-10-3(d) of this code.

(d) (1) When the vacancy in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of the circuit court, judge of a family court, or magistrate occurs after the 84th day before a general election, and the affected term of office ends on December 31 following the succeeding general election two years later, the person appointed to fill the vacancy shall continue in office until the completion of the term.

(2) When the vacancy occurs before the close of the candidate filing period for the primary election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in the nonpartisan judicial election held concurrently with the primary election and the appointment shall continue until a successor is elected and certified.

(3) When the vacancy occurs after the close of candidate filing for the primary election and not later than 84 days before the general election, and if the unexpired term be for a period of greater than two years, the vacancy shall be filled by election in a nonpartisan judicial election held concurrently with the general election, and the appointment shall continue until a successor is elected and certified.

(e) When an election to fill a vacancy is required to be held at the general election, according to the provisions of §3-10-3(d) of this code, a special candidate filing period shall be established. Candidates seeking election to any unexpired term for Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, judge of the family court, or magistrate shall file a certificate of announcement and pay the filing fee no earlier than the first Monday in August and no later than 77 days before the general election.

§3-10-3a. Judicial Vacancy Advisory Commission.

(a) The Judicial Vacancy Advisory Commission shall assist the Governor in filling judicial vacancies. The commission shall meet and submit a list of no more than five nor less than two of the most qualified persons to the Governor within 90 days of the occurrence of a vacancy, or the formal announcement of the justice or judge by letter to the Governor of an upcoming resignation or retirement that will result in the occurrence of a vacancy, in the office of Justice of the Supreme Court of Appeals, judge of the Intermediate Court of Appeals, judge of a circuit court, or judge of a family court. The Governor shall make the appointment to fill the vacancy, as required by this article, within 30 days following the receipt of the list of qualified candidates or within 30 days following the vacancy, whichever occurs later.

(b) The commission shall consist of eight appointed members appointed by the Governor for six-year terms, including four public members and four attorney members. The Governor shall appoint attorney members from a list of nominees provided by the Board of Governors of the West Virginia State Bar. The Board of Governors of the West Virginia State Bar shall nominate no more than 20 nor less than 10 of the most qualified attorneys for appointment to the commission whenever there is a vacancy in the membership of the commission reserved for attorney members. The commission shall choose one of its appointed members to serve as chair for a three-year term. No more than four appointed members of the commission shall belong to the same political party. All members of the commission shall be citizens of this state. Public members of the commission may not be licensed to practice law in West Virginia or any other jurisdiction.

(c) (1) No more than two appointed members of the commission may be residents of the same state senatorial district, as provided in §1-2-1 of this code, at the time of appointment: *Provided*, That the members appointed to, and serving on, the commission prior to the enactment of this subdivision are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(2) No more than three appointed members of the commission may be residents of the same congressional district: *Provided*, That, if the number of congressional districts in the state is reduced to two, then no more than four appointed members of the commission may be residents of the same congressional district: *Provided, however*, That the members appointed to, and serving on, the commission prior to the date on which the number of congressional districts in the state is reduced to two are not disqualified from service for the remainder of the member's term based on the residency requirements of this subdivision.

(d) The Governor, or his or her designee, the President of the West Virginia State Bar, and the Dean of the West Virginia University College of Law shall serve as ex officio members of the commission.

(e) Members of the commission shall serve without compensation, except that commission members are entitled to reimbursement of travel and other necessary expenses actually incurred while engaged in official commission activities in accordance with the guidelines of the Travel Management Office of the Department of Administration, or its successor entity. The Governor's Office shall cooperate with the commission to ensure that all resources necessary to carrying out the official duties of the commission are provided, including staff assistance, equipment, and materials.

(f) The commission shall adopt written policies that formalize and standardize all operating procedures and ethical practices of its members, including, but not limited to, procedures for training commission members, publishing notice of judicial vacancies, recruiting qualified individuals for consideration by the commission, receiving applications from qualified individuals, notifying the public of judicial vacancies, notifying state or local groups and organizations of judicial vacancies, and soliciting public comment on judicial vacancies. The written policies of the commission are not subject to the provisions of chapter 29A of this code but shall be filed with the Secretary of State.

(g) A majority of the commission plus one shall constitute a quorum to do business.

(h) All organizational meetings of the commission shall be open to the public and subject to the requirements of §6-9A-1 *et seq.* of this code. An "organizational meeting" means an initial meeting to discuss the commission's procedures and requirements for a judicial vacancy. The commission shall hold at least one organizational meeting upon the occurrence of a judicial vacancy. All other meetings of the commission are exempt from §6-9A-1 *et seq.* of this code.

(i) The commission shall make available to the public copies of any applications and any letters of recommendation written on behalf of any applicants. All other documents or materials created or received by the commission shall be confidential and exempt from the provisions of chapter 29B of this code, except for the list of the most qualified persons or accompanying memoranda submitted to the Governor in accordance with the provisions of subsection (j) of this section, which shall be available for public inspection, and the written policies required to be filed with the Secretary of State in accordance with subsection (f) of this section.

(j) The commission shall submit its list of the most qualified persons to the Governor in alphabetical order. A memorandum may accompany the list of the most qualified persons and state facts concerning each of the persons listed. The commission shall make copies of any list of the most qualified persons and accompanying memoranda it submits to the Governor available for public inspection.

CHAPTER 16. PUBLIC HEALTH.

ARTICLE 2D. CERTIFICATE OF NEED.

§16-2D-16a. Transfer of appellate jurisdiction to Intermediate Court of Appeals.

(a) Notwithstanding any other provision of this article:

(1) The Office of Judges may not review a decision of the authority, issued after December 31, 2022, in a certificate of need review. On or before March 31, 2023, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every appeal, pending before the Office of Judges, of a decision by the authority in a certificate of need review.

(2) An appeal of a final decision in a certificate of need review, issued by the authority after December 31, 2022, shall be made to the West Virginia Intermediate Court of Appeals, as provided in §29A-5-1 et seq. of this code.

(b) If the Office of Judges does not issue a final decision or otherwise dispose of any appeal of a decision of the authority in a certificate of need review on or before March 31, 2023, the appeal shall be transferred to the Intermediate Court of Appeals. For any appeal transferred pursuant to this subsection, the Intermediate Court of Appeals shall adopt any existing records of evidence and proceedings in the Office of Judges, conduct further proceedings as it considers necessary, and issue a final decision or otherwise dispose of the case as provided in §29A-5-1 et seq. of this code.

CHAPTER 23. WORKERS' COMPENSATION.

ARTICLE 1. GENERAL ADMINISTRATIVE PROVISIONS.

§23-1-1h. Powers and duties of Office of Judges transferred to Board of Review; definition of certain terms effective January 1, 2023.

(a) Notwithstanding any other provision of this code, with regard to an objection, protest, or any other decision issued after December 31, 2022, all powers and duties of the Workers' Compensation Office of Administrative Law Judges, as provided in this chapter, shall be transferred to the Workers' Compensation Board of Review.

(b) Notwithstanding any other provision of this code, the West Virginia Intermediate Court of Appeals has exclusive appellate jurisdiction over the following matters:

(1) Decisions or orders issued by the Office of Judges after December 31, 2022 and prior to its termination; and

(2) Decisions of the Workers' Compensation Board of Review, issued after December 31, 2022, as provided in §23-5-8a and §51-11-1 et seq. of this code.

(c) Unless the context clearly indicates a different meaning, effective January 1, 2023, the following terms shall have the following meanings for the purposes of this chapter, except when used in §23-5-1 et seq. of this code:

(1) "Administrative law judge" means a member of the Workers' Compensation Board of Review, or a hearing examiner designated by the board of review as authorized in §23-5-1 et seq. of this code;

(2) "Office of judges" means the "Workers' Compensation Board of Review"; and

(3) "Workers' Compensation Board of Review" or "board of review" when used in reference to an appeal of a board of review decision, means the West Virginia Intermediate Court of Appeals, created by §51-11-1 et seq. of this code.

ARTICLE 5. REVIEW.

§23-5-1. Notice by commission or self-insured employer of decision; procedures on claims; objections and hearing.

(a) The Insurance Commissioner, private carriers, and self-insured employers may determine all questions within their jurisdiction. In matters arising under §23-2C-8(c), and under §23-3-1 et seq. and §23-4-1 et seq. of this code, the Insurance Commissioner, private carriers, and self-insured

employers, whichever is applicable, shall promptly review and investigate all claims. The parties to a claim are the claimant and, if applicable, the claimant's ~~dependants~~ dependents, and the employer, and, with respect to claims involving funds created in §23-2C-1 *et seq.* of this code for which he or she has been designated the administrator, the Insurance Commissioner. In claims in which the employer had coverage on the date of the injury or last exposure, the employer's carrier has sole authority to act on the employer's behalf in all aspects related to litigation of the claim. With regard to any issue which is ready for a decision, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall promptly send the decision to all parties, including the basis of its decision. As soon as practicable after receipt of any occupational pneumoconiosis or occupational disease claim or any injury claim in which temporary total benefits are being claimed, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall send the claimant a brochure approved by the Insurance Commissioner setting forth the claims process.

(b) (1) Except with regard to interlocutory matters, upon making any decision, upon making or refusing to make any award, or upon making any modification or change with respect to former findings or orders, as provided by §23-4-16 of this code, the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, shall give notice, in writing, to the parties to the claim of its action. The notice shall state the time allowed for filing ~~a protest~~ an objection to the finding. The action of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final unless an objection to the decision is ~~protested~~ properly filed within 60 days after the receipt of such decision ~~unless a protest is filed within the 60-day period~~, the finding or action is final. This time limitation is a condition of the right to litigate the finding or action and hence jurisdictional. ~~Any protest~~ Any objection shall be filed with the ~~Office of Judges~~ Workers' Compensation Board of Review, as provided in §23-5-8 and §23-5-8a of this code, with a copy served upon the parties to the claim, and other parties in accordance with the procedures set forth in §23-5-8 and §23-5-9 of this code. An employer may ~~protest~~ file an objection to a decisions decision incorporating findings made by the Occupational Pneumoconiosis Board, decisions made by the Insurance Commissioner acting as administrator of claims involving funds created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code.

(2) (A) With respect to every application for benefits ~~filed on or after July 1, 2008~~, in which an objection to a decision to deny benefits is ~~protested~~ filed and the matter involves an issue as to whether the application was properly filed as a new claim or a reopening of a previous claim, the party that denied the application shall begin to make conditional payment of benefits and must promptly give notice to the ~~Office of Judges~~ Workers' Compensation Board of Review that another identifiable person may be liable. The ~~Office of Judges~~ Workers' Compensation Board of Review shall promptly order the appropriate persons be joined as parties to the proceeding: *Provided*, That at any time during a proceeding in which conditional payments are being made in accordance with the provisions of this subsection, the ~~Office of Judges~~ Workers' Compensation Board of Review may, pending final determination of the person properly liable for payment of the claim, order that such conditional payments of benefits be paid by another party.

(B) Any conditional payment made pursuant to paragraph (A) of this subdivision shall not be deemed an admission or conclusive finding of liability of the person making such payments. When the ~~administrative law judge~~ Workers' Compensation Board of Review has made a determination as to the party properly liable for payment of the claim, ~~he or she~~ the Board of Review shall direct any monetary adjustment or reimbursement between or among the Insurance Commissioner, private carriers, and self-insured employers as is necessary.

(c) ~~The Office of Judges~~ The member of the Workers' Compensation Board of Review assigned to an objection, as provided in §23-5-9(b) of this code, may direct that:

(1) An application for benefits be designated as a petition to reopen, effective as of the original date of filing;

(2) A petition to reopen be designated as an application for benefits, effective as of the original date of filing; or

(3) An application for benefits or petition to reopen filed with the Insurance Commissioner, private carrier, or self-insured employer be designated as an application or petition to reopen filed with another private carrier, self-insured employer, or Insurance Commissioner, effective as of the original date of filing.

(d) Where an employer ~~protests~~ files an objection to a written decision entered pursuant to a finding of the Occupational Pneumoconiosis Board, a decision on a claim made by the Insurance Commissioner acting as the administrator of a fund created in §23-2C-1 *et seq.* of this code, or decisions entered pursuant to §23-4-7a(c)(1) of this code, and the employer does not prevail in its ~~protest objection~~, and in the event the claimant is required to attend a hearing by subpoena, or agreement of counsel, or at the express direction of the ~~Office of Judges~~ Workers' Compensation Board of Review, then the claimant, in addition to reasonable traveling and other expenses, shall be reimbursed for loss of wages incurred by the claimant in attending the hearing.

(e) The Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, may amend, correct, or set aside any order or decision on any issue entered by it which, at the time of issuance or any time after that, is discovered to be defective, or clearly erroneous, or the result of mistake, clerical error, or fraud, or with respect to any order or decision denying benefits, otherwise not supported by the evidence: ~~but~~ Provided, That any protest objection filed prior to entry of the amended decision is ~~a protest from~~ an objection to the amended decision unless and until the ~~administrative law judge before whom the matter is pending~~ Workers' Compensation Board of Review enters an order dismissing the ~~protest objection~~ as moot in light of the amendment. Jurisdiction to issue an amended decision pursuant to this subsection continues until the expiration of two years from the date of a decision to which the amendment is made unless the decision is sooner affected by an action of ~~an administrative law judge~~ the Workers' Compensation Board of Review or ~~other a~~ judicial officer or body: *Provided, however,* That corrective actions in the case of fraud may be taken at any time.

(f) The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023.

§23-5-3. Refusal to reopen claim; notice; objection.

(a) If it appears to the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, that an application filed under §23-5-2 of this code fails to disclose a progression or aggravation in the claimant's condition, or some other fact or facts which were not previously considered in its former findings, and which would entitle the claimant to greater benefits than the claimant has already received, the Insurance Commissioner, private insurance carriers, and self-insured employers, whichever is applicable, shall, within a reasonable time, notify the claimant and the employer that the application fails to establish a prima facie cause for reopening the claim. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the commission. The claimant may, within 60 days after receipt of the notice, object in writing to the finding. Unless the objection is filed within the 60-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of an objection, the ~~Office of Judges~~ Workers' Compensation Board of Review shall afford the claimant an evidentiary hearing as provided in §23-5-9 of this code.

(b) The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023.

§23-5-5. Refusal of modification; notice; objection.

(a) If in any case it appears to the ~~commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, that the application filed pursuant to §23-5-4 of this code fails to disclose some fact or facts which were not previously considered by the ~~commission~~ in its former findings, and which would entitle the employer to any modification of the previous award, the ~~commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall, within 60 days from the receipt of the application, notify the claimant and employer that the application fails to establish a just cause for modification of the award. The notice shall be in writing stating the reasons for denial and the time allowed for objection to the decision of the ~~commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable. The employer may, within 30 days after receipt of the notice, object in writing to the decision. Unless the objection is filed within the 30-day period, no objection shall be allowed. This time limitation is a condition of the right to objection and hence jurisdictional. Upon receipt of the objection, the ~~Office of Judges~~ Workers' Compensation Board of Review shall afford the employer an evidentiary hearing as provided in §23-5-9 of this code.

(b) The amendments to this section made during the 2020 regular session of the Legislature shall become effective on January 1, 2023.

§23-5-6. Time periods for objections and appeals; extensions.

(a) Notwithstanding the fact that the time periods set forth for objections, protests, and appeals to or from the ~~Office of Judges~~ Workers' Compensation Board of Review are jurisdictional, the periods may be extended or excused upon application of either party within a period of time equal to the applicable period by requesting an extension of the time period showing good cause or excusable neglect, accompanied by the objection or appeal petition. In exercising discretion, the ~~administrative law judge, appeal board~~ Workers' Compensation Board of Review or court, as the case may be, shall consider whether the applicant was represented by counsel and whether timely and proper notice was actually received by the applicant or the applicant's representative.

(b) The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023.

§23-5-8. ~~Designation of Transfer of powers and duties of the Office of Administrative Law Judges to the Workers' Compensation Board of Review; powers of chief administrative law judge~~ the Workers' Compensation Board of Review in relation to review of objections.

(a) The Workers' Compensation Office of Administrative Law Judges previously created pursuant to chapter twelve, acts of the Legislature, 1990, second extraordinary session, is hereby continued and designated to be an integral part of the workers' compensation system of this state. The Office of Judges shall be under the supervision of a chief administrative law judge who shall be appointed by the Governor with the advice and consent of the Senate.

(a) The Workers' Compensation Office of Administrative Law Judges, referred to as the Office of Judges, shall terminate on or before April 1, 2023 as provided in §23-5-8a of this code. All powers and duties of the Office of Judges to review objections, protests, or any other matter authorized by this chapter, shall be transferred to the Workers' Compensation Board of Review on January 1, 2023:

Provided, That any objection or other matter filed pursuant to this chapter and pending before the Office of Judges upon its termination, in which a final decision has not been issued, shall also be transferred to the Workers' Compensation Board of Review as provided in §23-5-8a of this code.

~~(b) The chief administrative law judge shall be a person who has been admitted to the practice of law in this state and shall also have had at least four years of experience as an attorney. The chief administrative law judge's salary shall be set by the workers' compensation board of managers. The salary shall be within the salary range for comparable chief administrative law judges as determined by the state Personnel Board created by section six, article six, chapter twenty nine of this code. The chief administrative law judge may only be removed by a vote of two thirds of the members of the Workers' Compensation Board of managers. Upon transfer of the office of judges to the Insurance Commissioner, the chief administrative law judge shall continue to serve as chief administrative law judge until December 31, 2007. Thereafter, appointments of the chief administrative law judge shall be for terms of four years beginning January 1, 2008, and the chief administrative law judge may be removed only for cause by the vote of four members of the Industrial Council. No other provision of this code purporting to limit the term of office of any appointed official or employee or affecting the removal of any appointed official or employee is applicable to the chief administrative law judge.~~

~~(c) (b) The chief administrative law judge Pursuant to §23-5-11(n) of this code, the Workers' Compensation Board of Review shall employ administrative law judges hearing examiners and other personnel that are necessary for the proper conduct of a system of administrative review of orders issued by the Workers' Compensation Commission which orders have been objected to by a party objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, made pursuant to the provisions of §23-5-1 of this code and issued after December 31, 2022. The employees shall be in the classified service of the state. Qualifications, compensation and personnel practice relating to the employees of the office of judges other than the chief administrative law judge shall be governed by the provisions of this code and rules of the classified service pursuant to §29-6-1 et seq. of this code. All additional administrative law judges All hearing examiners hired by the Workers' Compensation Board of Review shall be persons who have been admitted to the practice of law in this state and shall also have had at least two ~~four~~ years of experience as an attorney. The chief administrative law judge chair of the Workers' Compensation Board of Review shall supervise the other administrative law judges hearing examiners and other personnel of the board, which collectively shall be referred to in this chapter as the office of judges Workers' Compensation Board of Review.~~

~~(d) The administrative expense of the office of judges shall be included within the annual budget of the Workers' Compensation Commission and, upon termination of the commission, the Insurance Commissioner.~~

~~(e) The office of judges shall, from time to time, promulgate rules of practice and procedure for the hearing and determination of all objections to findings or orders of the office of judges. The office of judges shall not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 et seq. of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to sections nine through sixteen, inclusive, article three, chapter twenty nine a of this code. The office of judges shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.~~

~~(f) (c) The chief administrative law judge Workers' Compensation Board of Review has the power to hear and determine all disputed claims objections in accordance with the provisions of this article, establish a procedure for the hearing of disputed claims objections, take oaths, examine witnesses, issue subpoenas, establish the amount of witness fees, keep records, and make reports that are~~

necessary for ~~disputed claims~~ reviewing objections, and exercise any additional powers, including the delegation of powers to ~~administrative law judges or hearing examiners~~ that are necessary for the proper conduct of a system of administrative review of ~~disputed claims~~ objections. The chair of the Workers' Compensation Board of Review shall make reports that are requested of him or her by the ~~workers' compensation board of managers~~ Insurance Commissioner.

~~(g)~~ (d) Effective upon termination of the ~~commission~~ Office of Judges, ~~the office of judges and the board of review~~ shall be transferred to the Insurance Commissioner, which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers the Insurance Commissioner shall have oversight and administrative authority over the Workers' Compensation Board of Review as heretofore provided to the Insurance Commissioner over the Office of Judges.

(e) The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023.

§23-5-8a. Transfer of jurisdiction to review objections to Workers' Compensation Board of Review; termination of Office of Judges; appeals of board decisions to Intermediate Court of Appeals.

(a) The Office of Judges has no jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after December 31, 2022. The Workers' Compensation Board of Review has exclusive jurisdiction to review objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of this chapter and issued after December 31, 2022.

(b) On or before March 31, 2023, the Office of Judges shall issue a final decision in, or otherwise dispose of, each and every objection or other matter pending before the Office of Judges according to the procedure and requirements for such appeals heretofore provided in this article. If the Office of Judges does not issue a final decision or otherwise dispose of any objection or other matter pending before the Office of Judges on or before March 31, 2023, the objection or other matter shall be transferred to the Workers' Compensation Board of Review. For any objections transferred from the Office of Judges to the Workers' Compensation Board of Review, the board of review shall adopt any existing records of proceedings in the Office of Judges, conduct further proceedings and collect evidence as it determines to be necessary, and issue a final decision or otherwise dispose of the case according to the procedural rules promulgated pursuant to §23-5-11(m) of this code.

(c) Upon the Office of Judges' disposition of every matter pending before the office, or on April 1, 2023, whichever occurs earlier, the Office of Judges is terminated.

(d) The West Virginia Intermediate Court of Appeals, created in §51-11-1 et seq. of this code, has exclusive appellate jurisdiction over the following:

(1) Decisions or orders issued by the Office of Judges after December 31, 2022 and prior to its termination; and

(2) All final orders or decisions issued by the Workers' Compensation Board of Review after December 31, 2022.

§23-5-9. Hearings on objections to Insurance Commissioner; private carrier or self-insured employer decisions; mediation; remand.

(a) Objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, made pursuant to the provisions of §23-5-1 of this code, shall be filed with the ~~office of judges~~ Workers' Compensation Board of Review. Upon receipt of an objection, the ~~office of judges~~ Workers' Compensation Board of Review shall notify the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, and all other parties of the filing of the objection. The ~~office of judges~~ Workers' Compensation Board of Review shall establish by rule, promulgated in accordance with the provisions of ~~§23-5-8(e)~~ §23-5-11(m) of this code, an adjudicatory process that enables parties to present evidence in support of their positions and provides an expeditious resolution of the objection. The employer, the claimant, the Insurance Commissioner, the private carrier, or the self-insured employer, whichever are is applicable, shall be notified of any hearing at least 10 days in advance. ~~The office of judges shall review and amend, or modify, as necessary, its procedural rules by July 1, 2007.~~

(b) The chair of the Workers' Compensation Board of Review shall assign, on a rotating basis, a member of the board of review to preside over the review process and issue a decision in each objection that is properly filed with the board of review. The member of the Workers' Compensation Board of Review assigned to an objection shall review evidence, conduct proceedings, and develop a record as is necessary for a full and thorough review of the objection: *Provided*, That the board member may delegate such duties to a hearing examiner employed by the board of review, pursuant to §23-5-8 and §23-5-11(n) of this code: *Provided, however*, That any order or decision of the board of review must be issued and signed by the member of the Board assigned to the objection, as provided in subsection (e) of this section: *Provided further*, That a time frame order, continuance order, show cause order, failure to prosecute order, or other interlocutory order as permitted by the Workers' Compensation Board of Review's procedural rules may be issued and signed by a hearing examiner only, and is not subject to the general requirement that orders be issued and signed by a member of the board.

~~(b)~~ (c) The office of judges Workers' Compensation Board of Review shall establish a program for mediation to be conducted in accordance with the requirements of Rule 25 of the West Virginia Trial Court Rules. The parties may agree that the result of the mediation is binding. A case may be referred to mediation by the administrative law judge the board of review member assigned to the objection on his or her own motion, on motion of a party, or by agreement of the parties. Upon issuance of an order for mediation, the office of judges Workers' Compensation Board of Review shall assign a mediator from a list of qualified mediators maintained by the West Virginia State Bar.

~~(c)~~ (d) The office of judges Workers' Compensation Board of Review shall keep full and complete records of all proceedings concerning a ~~disputed claim~~ an objection. Subject to the rules of practice and procedure promulgated pursuant to ~~§23-5-8(e)~~ §23-5-11(m) of this code, the record upon which the matter shall be decided shall include any evidence submitted by a party to the office of judges Workers' Compensation Board of Review and evidence taken at hearings conducted by the office of judges board of review. The record may include evidence or documents submitted in electronic form or other appropriate medium in accordance with the rules of practice and procedure. The office of judges Workers' Compensation Board of Review is not bound by the usual common law or statutory rules of evidence.

~~(d)~~ (e) All hearings shall be conducted as determined by the chief administrative law judge Workers' Compensation Board of Review pursuant according to the rules of practice and procedure promulgated pursuant to section eight of this article §23-5-11(m) of this code. If a hearing examiner reviews an objection, the hearing examiner shall, at the conclusion of the review process, submit the designated record to the member of the Workers' Compensation Board of Review to whom the objection is assigned, along with the hearing examiner's recommendation of a decision affirming, reversing, or modifying the action that was subject to the objection. Upon consideration of the

designated record ~~and, if applicable, the recommendation of the hearing examiner, the chief administrative law judge or other authorized adjudicator within the office of judges~~ member of the Workers' Compensation Board of Review assigned to the objection shall, based on the determination of the facts of the case and applicable law, render a decision affirming, reversing, or modifying the action ~~protested that was subject to the objection~~. The decision shall contain findings of fact and conclusions of law, shall be signed by the member of the Workers' Compensation Board of Review rendering the decision, and shall be mailed to all parties.

~~(e)~~ (f) The ~~office of judges~~ Workers' Compensation Board of Review may remand a claim to the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, for further development of the facts or administrative matters as, in the opinion of the ~~administrative law judge~~ member of the board of review assigned to the objection, may be necessary for a full and complete disposition of the case. The ~~administrative law judge~~ member of the Workers' Compensation Board of Review assigned to the objection shall establish a time within which the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, must report back to the ~~administrative law judge~~ board of review.

~~(f)~~ (g) The decision of the ~~office of judges~~ Workers' Compensation Board of Review regarding any objections to a decision of the Insurance Commissioner, private carrier, or self-insured employer, whichever is applicable, is final, and benefits shall be paid or denied in accordance with the decision, unless an order staying the payment of benefits is specifically entered by ~~the Workers' Compensation Board of Review, created in §23-5-11 of this code~~ a court with appellate jurisdiction over the decision or by the administrative law judge member of the board of review who granted the benefits. ~~No~~ A stay with respect to any medical treatment or rehabilitation authorized by the ~~office of judges~~ Workers' Compensation Board of Review may not be granted. If the decision is subsequently appealed and reversed in accordance with the procedures set forth in this article, and any overpayment of benefits occurs as a result of ~~such~~ the reversal, ~~any such~~ the overpayment may be recovered pursuant to the provisions of §23-4-1c(h) or §23-4-1d(d) of this code, as applicable.

§23-5-10. Appeal from administrative law judge a Workers' Compensation Board of Review decision to appeal board the Intermediate Court of Appeals.

~~(a)~~ The employer, claimant, ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, may appeal to the ~~appeal board created in §23-5-11 of this code~~ West Virginia Intermediate Court of Appeals, created by §51-11-1 et seq. of this code, for a review of a decision by ~~an administrative law judge~~ the Workers' Compensation Board of Review. No appeal or review shall lie unless application ~~therefor~~ is made within 30 days of receipt of notice of the ~~administrative law judge's~~ Workers' Compensation Board of Review's final action or in any event within 60 days of the date of such final action, regardless of notice and, unless the application for appeal or review is filed within the time specified, no such appeal or review shall be allowed, such time limitation being hereby declared to be a condition of the right of such appeal or review and hence jurisdictional.

~~(b)~~ The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023.

§23-5-11. Workers' Compensation Board of Review generally; administrative powers and duties of the board.

~~(a)~~ On January 31, 2004, the Workers' Compensation Appeal Board heretofore established in this section is hereby abolished.

~~(b)~~ (a) ~~There is created the~~ The Workers' Compensation Board of Review, which may also be referred to as the "board of review" or the "board", is continued and granted Effective February 1, 2004, the board of Review shall exercise exclusive jurisdiction over all appeals from the Workers' Compensation Office of Judges objections to decisions of the Insurance Commissioner, private carriers, and self-insured employers, whichever is applicable, including any and all appeals matters pending with the board of Appeals on January 31, 2004 before the Office of Judges after March 31, 2023.

~~(e)~~ (b) The board of review consists of three members.

~~(e)~~ (c) The Governor shall appoint, from names submitted by the Workers' Compensation Board of Review Nominating Committee, with the advice and consent of the Senate, three qualified attorneys to serve as members of the board of review. If the Governor does not select a nominee for any vacant position from the names provided by the nominating committee, he or she shall notify the nominating committee of that circumstance, and the committee shall provide additional names for consideration by the Governor. A member of the board of review may be removed by the Governor for official misconduct, incompetence, neglect of duty, gross immorality, or malfeasance and then, only after notice and opportunity to respond and present evidence. No more than two of the members of the board may be of the same political party. ~~The members of the board of Review shall be paid an annual salary of \$85,000: Provided, That on and after July 1, 2008 the Governor shall set the salary of the members of the board: Provided, however, That the annual salary of a member of the board of review shall not exceed \$140,000~~ \$125,000. Members are entitled to be reimbursed for actual and necessary travel expenses incurred in the discharge of official duties in a manner consistent with the guidelines of the Travel Management Office of the Department of Administration.

~~(e)~~ (d) The nominating committee consists of the following members: (1) The President of the West Virginia State Bar who serves as the chairperson of the committee; (2) an active member of the West Virginia State Bar Workers' Compensation Committee, selected by the major trade association representing employers in this state; (3) an active member of the West Virginia State Bar Workers' Compensation Committee, selected by the highest-ranking officer of the major employee organization representing workers in this state; (4) the Dean of the West Virginia University School of Law; and (5) the Chairman of the Judicial Investigation Committee.

~~(f)~~ (e) The nominating committee is responsible for reviewing and evaluating candidates for possible appointment to the board of review by the Governor. In reviewing candidates, the nominating committee may accept comments from, and request information from, any person or source.

~~(g)~~ (f) Each member of the nominating committee may submit up to three names of qualified candidates for each position on the board of review: *Provided*, That the member of the nominating committee selected by the major trade organization representing employers of this state shall submit at least one name of a qualified candidate for each position on the board who either is, or who represents, small business employers of this state. After careful review of the candidates, the committee shall select a minimum of one candidate for each position on the board.

~~(h)~~ (g) Of the initial appointments, one member shall be appointed for a term ending December 31, 2006; one member shall be appointed for a term ending December 31, 2008; and one member shall be appointed for a term ending December 31, 2010. Thereafter, the appointments shall be for six-year terms.

~~(i)~~ (h) A member of the board of review must, at the time he or she takes office and thereafter during his or her continuance in office, be a resident of this state, be a member in good standing of the West Virginia State Bar, have a minimum of 10 years' experience as an attorney admitted to

practice law in this state prior to appointment, and have a minimum of five years' experience in preparing and presenting cases or hearing actions and making decisions on the basis of the record of those hearings before administrative agencies, regulatory bodies, or courts of record at the federal, state, or local level.

~~(j)~~ (i) No member of the board of review may hold any other office, or accept any appointment or public trust, nor may he or she become a candidate for any elective public office or nomination thereto. Violation of this subsection requires the member to vacate his or her office. No member of the Board of Review may engage in the practice of law during his or her term of office.

~~(k)~~ (j) A vacancy occurring on the board other than by expiration of a term shall be filled in the manner original appointments were made, for the unexpired portion of the term.

~~(l)~~ (k) The board shall designate one of its members in rotation to be chair of the board for as long as the board may determine by order made and entered of record. In the absence of the chair, any other member designated by the members present shall act as chair.

~~(m)~~ (l) The board of review shall meet as often as necessary to ~~hold review hearings~~ conduct the board's administrative business and make rules of practice and procedure, at such times and places as the chair may determine. Two members shall be present in order to ~~conduct review hearings or other administrative business and make rules of practice and procedure~~. All decisions of the board upon administrative matters, pursuant to this section, shall be determined by a majority of the members of the board.

~~(n)~~ (m) The board of review shall, ~~make general rules regarding the pleading, including the form of the petition and any responsive pleadings, practice and procedure to be used by the board~~ promulgate rules of practice and procedure for the review and determination of all objections filed with the board. The board does not have the power to initiate or to promulgate legislative rules as that phrase is defined in §29A-3-1 et seq. of this code. Any rules adopted pursuant to this section which are applicable to the provisions of this article are not subject to §29A-3-9 through §29A-3-16, inclusive, of this code. The board shall follow the remaining provisions of chapter 29A of this code for giving notice to the public of its actions and the holding of hearings or receiving of comments on the rules.

~~(o)~~ (n) The board of review may hire a clerk, hearing examiners, and other professional and clerical staff necessary to carry out the requirements of this article. It is the duty of the clerk of the Board of Review to attend in person, or by deputy, all the sessions of the board, to obey its orders and directions, to take care of and preserve in an office, kept for the purpose, all records and papers of the board and to perform other duties as prescribed by law or required of him or her by the board. All employees of the board serve at the will and pleasure of the board. The board's employees are exempt from the salary schedule or pay plan adopted by the Division of Personnel: Provided, That for the purpose of any applicable Division of Personnel Class Specifications, hearing examiners must be within a class with "attorney" in the class title. All personnel of the board of review are under the supervision of the chair of the board of review.

~~(p)~~ (o) The administrative expenses of the board of review shall be included within the annual budget of the Insurance Commissioner, and the Insurance Commissioner shall have administrative authority and oversight over the board of review.

~~(q)~~ (p) The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023: Provided, That the Board is authorized to promulgate rules and hire staff, pursuant to subsection (m) and (n) of this section, respectively, prior to January 1,

2023, to the extent necessary to comply with the requirements of this article that become effective on that date.

~~(p) If considered necessary by the board, the board may, through staffing or other resources, procure assistance in review of medical portions of decisions.~~

~~(q) Upon the conclusion of any hearing, or prior thereto with concurrence of the parties, the board shall promptly determine the matter and make an award in accordance with its determination.~~

~~(r) The award shall become a part of the commission file. A copy of the award shall be sent forthwith by mail to all parties in interest.~~

~~(s) The award is final when entered. The award shall contain a statement explaining the rights of the parties to an appeal to the board of Review and the applicable time limitations involved.~~

~~(t) The board shall submit to the Insurance Commissioner a budget sufficient to adequately provide for the administrative and other operating expenses of the board.~~

~~(u) The board shall report monthly to the Industrial Council on the status of all claims on appeal.~~

~~(v) Effective upon termination of the commission, the board of Review shall be transferred to The Insurance Commissioner which shall have the oversight and administrative authority heretofore provided to the executive director and the board of managers.~~

§23-5-12. Appeal to of board decisions to the Intermediate Court of Appeals; procedure; remand and supplemental hearing.

~~(a) Any employer, employee, claimant, or dependent who shall feel aggrieved at any final action of the administrative law judge taken after a hearing held in accordance with the provisions of section nine of this article by a decision of the Workers' Compensation Board of Review shall have the right to appeal to the board created in §23-5-11 of this code the West Virginia Intermediate Court of Appeals, created by §51-11-1 et seq. of this code, for a review of such action. The Workers' Compensation Commission, the successor to the commission Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, shall likewise have the right to appeal to the board Intermediate Court of Appeals any final action taken by the administrative law judge Workers' Compensation Board of Review. The aggrieved party shall file a written notice of appeal with the board of review Intermediate Court of Appeals, with a copy to the office of judges Workers' Compensation Board of Review, within 30 days after receipt of notice of the action complained of or, in any event, regardless of notice, within 60 days after the date of the action complained of: and *Provided, That* unless the notice of appeal is filed within the time specified, no appeal shall be allowed: *Provided, however, That* the time limitation is a condition of the right to appeal and hence jurisdictional. The board shall notify the other parties immediately upon the filing of a notice of appeal. The notice of appeal shall state the ~~ground~~ grounds for review and whether oral argument is requested. The office of judges Workers' Compensation Board of Review, after receiving a copy of the notice of appeal, shall forthwith make up a transcript of the any proceedings before the office of judges board of review and certify and transmit it to the board Intermediate Court of Appeals. The certificate shall incorporate a brief recital of the proceedings in the case matter and recite each order entered or decision issued and the date thereof.~~

~~(b) The board Intermediate Court of Appeals shall set a time and place for the hearing of arguments on each claim and shall notify the interested parties thereof. The review by the board court shall be based upon the record submitted to it and such oral argument as may be requested and received. The board Intermediate Court of Appeals may affirm, reverse, modify, or supplement the~~

decision of the ~~administrative law judge~~ Workers' Compensation Board of Review and make such disposition of the case as it determines to be appropriate. Briefs may be filed by the interested parties in accordance with the rules of procedure prescribed by the ~~board~~ court. The ~~board~~ Intermediate Court of Appeals may affirm the order or decision of the ~~administrative law judge~~ Workers' Compensation Board of Review or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the ~~administrative law judge~~ Workers' Compensation Board of Review, if the substantial rights of the petitioner or petitioners have been prejudiced because the ~~administrative law judge's~~ board of review's findings are:

(1) In violation of statutory provisions; ~~or~~

(2) In excess of the statutory authority or jurisdiction of the ~~administrative law judge~~ board of review; ~~or~~

(3) Made upon unlawful procedures; ~~or~~

(4) Affected by other error of law; ~~or~~

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record;
or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(c) After a review of the case, the ~~board~~ Intermediate Court of Appeals shall issue a written decision and send a copy by mail to the parties.

(1) All decisions, findings of fact, and conclusions of law of the ~~board of review~~ Intermediate Court of Appeals shall be in writing and state with specificity the laws and facts relied upon to sustain, reverse, or modify the ~~administrative law judge's~~ board of review's decision.

~~(2) Decisions of the board of review shall be made by a majority vote of the board of review.~~

~~(3) (2) A decision of the board of review~~ Intermediate Court of Appeals is binding upon the ~~executive director and the commission and the successor to the commission, other private insurance carriers, and self-insured employers, whichever is applicable, with respect to the parties involved in the particular appeal. The executive director, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, employee, employees, claimant, or dependents, whichever is applicable, shall have the right to seek judicial review of a ~~board of review decision~~ final decision of the Intermediate Court of Appeals, pursuant to §51-11-13 of this code, irrespective of whether or not he or she appeared or participated in the appeal to the ~~board of review~~.

(d) Instead of affirming, reversing, or modifying the decision of the ~~administrative law judge~~ Workers' Compensation Board of Review, the ~~board~~ Intermediate Court of Appeals may, upon motion of any party or upon its own motion, for good cause shown, to be set forth in the order of the ~~board court~~, remand the case to the ~~chief administrative law judge~~ board of review for the taking of such new, additional, or further evidence as in the opinion of the ~~board court~~ may be court considers necessary for a full and complete development of the facts of the case. In the event the ~~board~~ Intermediate Court of Appeals shall remand the case to the ~~chief administrative law judge~~ Board of Review for the taking of further evidence, the ~~administrative law judge~~ Board of Review shall proceed to take new, additional, or further evidence in accordance with any instruction given by the ~~board court~~ within 30 days after receipt of the order remanding the case. The ~~chief administrative law judge~~

Workers' Compensation Board of Review shall give to the interested parties at least 10 days' written notice of the supplemental hearing, unless the taking of evidence is postponed by agreement of parties, or by the ~~administrative law judge~~ board of review for good cause. After the completion of a supplemental hearing, the ~~administrative law judge~~ Workers' Compensation Board of Review shall, within 60 days, render ~~his or her~~ its decision affirming, reversing, or modifying the former action of the ~~administrative law judge~~ Workers' Compensation Board of Review. The decision shall be appealable to, and proceeded with, by the ~~board of review~~ Intermediate Court of Appeals in the same manner as other appeals. In addition, upon a finding of good cause, the ~~board~~ court may remand the case to the ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and ~~or~~ or self-insured employers, whichever is applicable, for further development. Any decision made by the ~~commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and ~~or~~ or self-insured employers, whichever is applicable, following a remand, shall be subject to objection to the ~~office of judges~~ Workers' Compensation Board of Review and not to the ~~board~~ Intermediate Court of Appeals. The ~~board~~ Intermediate Court of Appeals may remand any case as often as, in its opinion, is necessary for a full development and just decision of the case.

~~(e) All appeals from the action of the administrative law judge shall be decided by the board at the same session at which they are heard, unless good cause for delay thereof be shown and entered of record.~~

~~(f) (e) In all proceedings before the board~~ Intermediate Court of Appeals, any party may be represented by counsel.

(f) The amendments to this section made during the 2020 Regular Session of the Legislature become effective on January 1, 2023.

§23-5-13. Continuances and supplemental hearings; claims not to be denied on technicalities.

(a) It is the policy of this chapter that the rights of claimants for workers' compensation be determined as speedily and expeditiously as possible to the end that those incapacitated by injuries and the dependents of deceased workers may receive benefits as quickly as possible in view of the severe economic hardships which immediately befall the families of injured or deceased workers. Therefore, the criteria for continuances and supplemental hearings "for good cause shown" are to be strictly construed by the ~~chief administrative law judge and his or her~~ Workers' Compensation Board of Review and its authorized representatives to prevent delay when granting or denying continuances and supplemental hearings. It is also the policy of this chapter to prohibit the denial of just claims of injured or deceased workers or their dependents on technicalities.

(b) The amendments to this section made during the 2020 Regular Session of the Legislature become effective on January 1, 2023.

§23-5-15. Appeals from final decisions of board to Supreme Court of Appeals prior to January 1, 2023; procedure; costs.

(a) As provided in §23-5-8a of this code, the provisions of this section do not apply to any decision issued by the Workers' Compensation Board of Review after December 31, 2022.

~~(a) (b) Review of any final decision of the board, including any order of remand, may be prosecuted by either party or by the Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, to the Supreme Court of Appeals within 30 days from the date of the final order by filing a petition therefor with the court against the board and the adverse party or parties as

respondents. Unless the petition for review is filed within the 30-day period, no appeal or review shall be allowed, such time limitation is a condition of the right to such appeal or review and hence jurisdictional. The clerk of the Supreme Court of Appeals shall notify each of the respondents and the ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, of the filing of such petition. The board shall, within 10 days after receipt of the notice, file with the clerk of the court the record of the proceedings had before it, including all the evidence. The court or any judge thereof in vacation may thereupon determine whether or not a review shall be granted. If review is granted to a nonresident of this state, he or she shall be required to execute and file with the clerk before an order or review shall become effective, a bond, with security to be approved by the clerk, conditioned to perform any judgment which may be awarded against him or her. The board may certify to the court and request its decision of any question of law arising upon the record, and withhold its further proceeding in the case, pending the decision of court on the certified question, or until notice that the court has declined to docket the same. If a review is granted or the certified question is docketed for hearing, the clerk shall notify the board and the parties litigant or their attorneys and the ~~Workers' Compensation Commission, the successor to the commission~~ Insurance Commissioner, other private insurance carriers, and self-insured employers, whichever is applicable, of that fact by mail. If a review is granted or the certified question docketed, the case shall be heard by the court in the same manner as in other cases, except that neither the record nor briefs need be printed. Every review granted or certified question docketed prior to 30 days before the beginning of the term, shall be placed upon the docket for that term. The Attorney General shall, without extra compensation, represent the board in such cases. The court shall determine the matter brought before it and certify its decision to the board and to the commission. The cost of the proceedings on petition, including a reasonable attorney's fee, not exceeding \$30 to the claimant's attorney, shall be fixed by the court and taxed against the employer if the latter is unsuccessful. If the claimant, or the commission (in case the latter is the applicant for review) is unsuccessful, the costs, not including attorney's fees, shall be taxed against the commission, payable out of the Workers' Compensation Fund, or shall be taxed against the claimant, in the discretion of the court: But there shall be no cost taxed upon a certified question.

~~(b)~~ (c) In reviewing a decision of the board of review, the Supreme Court of Appeals shall consider the record provided by the board and give deference to the board's findings, reasoning, and conclusions, in accordance with subsections ~~(c)~~, and (d) and (e) of this section.

~~(e)~~ (d) If the decision of the board represents an affirmation of a prior ruling by both the commission and the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provision, is clearly the result of erroneous conclusions of law, or is based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record. The court may not conduct a de novo reweighing of the evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was based upon the board's material misstatement or mischaracterization of particular components of the evidentiary record.

~~(d)~~ (e) If the decision of the board effectively represents a reversal of a prior ruling of either the commission or the Office of Judges that was entered on the same issue in the same claim, the decision of the board may be reversed or modified by the Supreme Court of Appeals only if the decision is in clear violation of constitutional or statutory provisions, is clearly the result of erroneous conclusions of law, or is so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision. The court may not conduct a de novo reweighing of the

evidentiary record. If the court reverses or modifies a decision of the board pursuant to this subsection, it shall state with specificity the basis for the reversal or modification and the manner in which the decision of the board clearly violated constitutional or statutory provisions, resulted from erroneous conclusions of law, or was so clearly wrong based upon the evidentiary record that even when all inferences are resolved in favor of the board's findings, reasoning, and conclusions, there is insufficient support to sustain the decision.

§23-5-16. Fees of attorney for claimant; unlawful charging or receiving of attorney fees.

(a) An attorney's fee in excess of 20 percent of any award granted may not be charged or received by an attorney for a claimant or dependent. In no case may the fee received by the attorney of the claimant or dependent be in excess of 20 percent of the benefits, to be paid during a period of 208 weeks. The interest on disability or dependent benefits, as provided in this chapter, may not be considered as part of the award in determining the attorney's fee. However, any contract entered into in excess of 20 percent of the benefits to be paid during a period of 208 weeks, as herein provided, is unlawful and unenforceable as contrary to the public policy of this state and any fee charged or received by an attorney in violation thereof is an unlawful practice and renders the attorney subject to disciplinary action.

(b) On a final settlement an attorney may charge a fee not to exceed 20 percent of the total value of the medical and indemnity benefits: *Provided*, That this attorney's fee, when combined with any fees previously charged or received by the attorney for permanent partial disability or permanent total disability benefits may not exceed 20 percent of an award of benefits to be paid during a period of 208 weeks.

(c) Except attorney's fees and costs recoverable pursuant to §23-2C-21(c) of this code, an attorney's fee for successful recovery of denied medical benefits may be charged or received by an attorney and paid by the private carrier or self-insured employer, for a claimant or dependent under this section. In no event may attorney's fees and costs be awarded pursuant to both this section and §23-2C-21(c) of this code.

(1) If a claimant successfully prevails in a proceeding relating to a denial of medical benefits brought before the ~~commission, successor to the commission~~ Insurance Commissioner, other private carrier, or self-insured employer, whichever is applicable, as a result of utilization review, arbitration, mediation, or other proceedings, or a combination thereof, relating to denial of medical benefits before the ~~Office of Judges~~ Workers' Compensation Board of Review, or a court, there shall additionally be charged against the private carriers or self-insured employers, whichever is applicable, the reasonable costs and reasonable hourly attorney's fees of the claimant. Following the successful resolution of the denial in favor of the claimant, a fee petition shall be submitted by the claimant's attorney to the Insurance Commissioner or his or her successors, arbitrators, mediator, the ~~Office of Judges~~ Workers' Compensation Board of Review or a court, whichever enters a final decision on the issue. An attorney representing a claimant must submit a claim for attorney's fees and costs within 30 days following a decision in which the claimant prevails and the order becomes final.

(2) The Insurance Commissioner or his or her successors, arbitrators, ~~mediator~~ mediators, the ~~Office of Judges~~ Workers' Compensation Board of Review, or a court shall enter an order within 30 days awarding reasonable attorney's fees not to exceed \$125 per hour and reasonable costs of the claimant to be paid by the private carriers or self-insured employers, whichever is applicable, which shall be paid as directed. In no event may an award of the claimant's attorney's fees under this subsection exceed \$500 per litigated medical issue, not to exceed \$2,500 in a claim.

(3) In determining the reasonableness of the attorney's fees to be awarded, the Insurance Commissioner, arbitrator, mediator, ~~Office of Judges~~ Workers' Compensation Board of Review, or court shall consider the experience of the attorney, the complexity of the issue, the hours expended, and the contingent nature of the fee.

(d) The amendments to this section made during the 2020 regular session of the Legislature become effective on January 1, 2023.

CHAPTER 29A. STATE ADMINISTRATIVE PROCEDURES ACT.

ARTICLE 5. CONTESTED CASES.

§29A-5-4. Judicial review of contested cases.

(a) Any party adversely affected by a final order or decision in a contested case is entitled to judicial review thereof under this chapter, but nothing in this chapter shall be deemed to prevent other means of review, redress, or relief provided by law.

(b) Proceedings for review of any final order or decision issued on or before December 31, 2022, shall be instituted by filing a petition, at the election of the petitioner, in either the Circuit Court of Kanawha County, West Virginia, or in the circuit court of the county in which the petitioner or any one of the petitioners resides or does business, or with the judge thereof in vacation, within 30 days after the date upon which such party received notice of the final order or decision of the agency. Notwithstanding any provision of this code to the contrary, proceedings for judicial review of any final order or decision issued after December 31, 2022, must be instituted by filing an appeal, at the election of a party desiring appeal, to the Intermediate Court of Appeals as provided in §51-11-1 et seq. of this code. A copy of the petition shall be served upon the agency and all other parties of record by registered or certified mail. The petition shall state whether the appeal is taken on questions of law or questions of fact, or both. No appeal bond shall be required to effect any such appeal.

(c) The filing of the petition shall not stay enforcement of the agency order or decision or act as a supersedeas thereto, but the agency may stay such enforcement, and the appellant, at any time after the filing of his or her petition, may apply to such ~~circuit~~ court for a stay of or supersedeas to such final order or decision. Pending the appeal, the court may grant a stay or supersedeas upon such terms as it deems proper.

(d) Within 15 days after receipt of a copy of the petition by the agency, or within such further time as the court may allow, the agency shall transmit to such ~~circuit~~ court the original or a certified copy of the entire record of the proceeding under review, including a transcript of all testimony and all papers, motions, documents, evidence, and records as were before the agency, all agency staff memoranda submitted in connection with the case, and a statement of matters officially noted; but, by stipulation of all parties to the review proceeding, the record may be shortened. The expense of preparing such record shall be taxed as a part of the costs of the appeal. The appellant shall provide security for costs satisfactory to the court. Any party unreasonably refusing to stipulate to limit the record may be taxed by the court for the additional costs involved. Upon demand by any party to the appeal, the agency shall furnish, at the cost of the party requesting same, a copy of such record. In the event the complete record is not filed with the court within the time provided for in this section, the appellant may apply to the court to have the case docketed, and the court shall order such record filed.

(e) Appeals taken on questions of law, fact, or both, shall be heard upon assignments of error filed in the cause or set out in the briefs of the appellant. Errors not argued by brief may be disregarded, but the court may consider and decide errors which are not assigned or argued. The

court or judge shall fix a date and time for the hearing on the petition, but such hearing, unless by agreement of the parties, shall not be held sooner than 10 days after the filing of the petition, and notice of such date and time shall be forthwith given to the agency.

(f) The review shall be conducted by the court without a jury and shall be upon the record made before the agency, except that in cases of alleged irregularities in procedure before the agency, not shown in the record, testimony thereon may be taken before the court. The court may hear oral arguments and require written briefs.

(g) The court may affirm the order or decision of the agency or remand the case for further proceedings. It shall reverse, vacate, or modify the order or decision of the agency if the substantial rights of the petitioner or petitioners have been prejudiced because the administrative findings, inferences, conclusions, decision, or order are:

(1) In violation of constitutional or statutory provisions; or

(2) In excess of the statutory authority or jurisdiction of the agency; or

(3) Made upon unlawful procedures; or

(4) Affected by other error of law; or

(5) Clearly wrong in view of the reliable, probative, and substantial evidence on the whole record;
or

(6) Arbitrary or capricious or characterized by abuse of discretion or clearly unwarranted exercise of discretion.

(h) The judgment of the circuit court or the Intermediate Court of Appeals, whichever is applicable, shall be final unless reversed, vacated, or modified on appeal to the Supreme Court of Appeals of this state in accordance with the provisions of §29A-6-1 of this code.

ARTICLE 6. APPEALS.

§29A-6-1. Supreme Court of Appeals.

(a) Any party adversely affected by the final judgment of the circuit court under this chapter may seek review thereof by appeal to the Supreme Court of Appeals of this state, and jurisdiction is hereby conferred upon such court to hear and entertain such appeals upon application made therefor in the manner and within the time provided by law for civil appeals generally: Provided, That a circuit court has no jurisdiction to review a final order or decision in a contested case issued after December 31, 2022.

(b) Any party adversely affected by the final order, decision, or judgment of the Intermediate Court of Appeals under this chapter may seek review thereof by petition to the Supreme Court of Appeals, pursuant to the requirements of §51-11-1 et seq. of this code.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 2A. FAMILY COURTS.

§51-2A-24. Review by Intermediate Court of Appeals; transfer of jurisdiction from circuit courts.

(a) Notwithstanding any provision of this code to the contrary, an appeal of a final order or decision entered by a family court after December 31, 2022, must be made to the Intermediate Court of Appeals, as provided in §51-11-1 et seq. of this code.

(b) Notwithstanding any provision of this code to the contrary, a circuit court has no jurisdiction to review a final order or decision entered by a family court after December 31, 2022, if review of the final order or decision is within the jurisdiction of the Intermediate Court of Appeals, as provided in §51-11-5 of this code.

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

§51-9-1a. Definitions.

(a) As used in this article, the term “judge”, “judge of any court of record”, or “judge of any court of record of this state” means, refers to, and includes judges of the several circuit courts, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals. For purposes of this article, the terms do not mean, refer to, or include family court judges.

(b) “Actuarially equivalent” or “of equal actuarial value” means a benefit of equal value computed upon the basis of the mortality table and interest rates as set and adopted by the retirement board in accordance with the provisions of this article: *Provided*, That when used in the context of compliance with the federal maximum benefit requirements of Section 415 of the Internal Revenue Code, “actuarially equivalent” shall be computed using the mortality tables and interest rates required to comply with those requirements.

(c) “Beneficiary” means any person, except a member, who is entitled to an annuity or other benefit payable by the retirement system.

(d) “Board” means the Consolidated Public Retirement Board created pursuant to §5-10D-1 et seq. of this code.

(e) “Final average salary” means the average of the highest 36 consecutive months’ compensation received by the member as a judge of any court of record of this state.

(f) “Internal Revenue Code” means the Internal Revenue Code of 1986, as it has been amended.

(g) “Member” means a judge participating in this system.

(h) “Plan year” means the 12-month period commencing on July 1 of any designated year and ending the following June 30.

(i) “Required beginning date” means April 1 of the calendar year following the later of: (1) The calendar year in which the member attains age 70 and one-half; or (2) the calendar year in which the member retires or otherwise separates from covered employment.

(j) “Retirement system” or “system” means the Judges’ Retirement System created and established by this article. Notwithstanding any other provision of law to the contrary, the provisions of this article are applicable only to circuit judges, judges of the Intermediate Court of Appeals, and justices of the Supreme Court of Appeals in the manner specified in this article. No service as a family court judge may be construed to qualify a person to participate in the Judges’ Retirement System or used in any manner as credit toward eligibility for retirement benefits under the Judges’ Retirement System.

ARTICLE 11. THE WEST VIRGINIA APPELLATE REORGANIZATION ACT.**§51-11-1. Short title.**

This article is known and may be cited as the West Virginia Appellate Reorganization Act of 2020.

§51-11-2. Findings.

The Legislature finds that:

(1) Section one, article VIII of the Constitution of West Virginia explicitly recognizes the power of the Legislature to establish an intermediate court of appeals;

(2) Section six, article VIII of the Constitution of West Virginia acknowledges that appellate jurisdiction “may be conferred by law exclusively upon an intermediate appellate court” and numerous additional references to the potential creation of an intermediate appellate court by the Legislature appear throughout the Constitution; and

(3) Section three, article VIII of the Constitution of West Virginia grants the West Virginia Supreme Court of Appeals supervisory control over all intermediate appellate courts in the state, including the power to promulgate rules for the procedures of an intermediate appellate court created by statute. The same constitutional provisions name the Chief Justice of the Supreme Court of Appeals the “administrative head” of such courts, empowering the chief justice to exercise supervisory control over an intermediate court of appeals.

§51-11-3. Definitions.

For the purpose of this article:

“Circuit court” means a circuit court of this state, as provided in §51-2-1 of this code.

“Clerk” means the Clerk of the West Virginia Supreme Court of Appeals, as provided in §51-1-11 of this code.

“Intermediate Court of Appeals” means the Intermediate Court of Appeals created by this article.

“Judge” means a person elected to serve as a judge for the Intermediate Court of Appeals, pursuant to this article, or a person appointed to fill a vacancy in the office of judge for the Intermediate Court of Appeals.

“Supreme Court of Appeals” means the West Virginia Supreme Court of Appeals.

§51-11-4. West Virginia Intermediate Court of Appeals created; geographical districts.

(a) In accordance with section one, article VIII of the Constitution of West Virginia, the Intermediate Court of Appeals is hereby created. The court shall be established and operable on January 1, 2023.

(b) The Intermediate Court of Appeals is composed of two geographical districts: The Intermediate Court of Appeals for the Northern District and the Intermediate Court of Appeals for the Southern District. Each district has jurisdiction over appeals of final decisions, judgments, or orders entered within the district’s designated counties, as follows:

(1) The Intermediate Court of Appeals for the Northern District has jurisdiction over appeals of decisions, judgments, or orders entered within the following counties: Barbour, Berkeley, Brooke, Doddridge, Grant, Hampshire, Hancock, Hardy, Harrison, Jefferson, Marion, Marshall, Mineral, Monongalia, Morgan, Ohio, Pendleton, Pleasants, Preston, Randolph, Ritchie, Taylor, Tucker, Tyler, Wetzel, Wirt, and Wood.

(2) The Intermediate Court of Appeals for the Southern District has jurisdiction over appeals of decisions, judgments, or orders entered within the following counties: Boone, Braxton, Cabell, Calhoun, Clay, Fayette, Gilmer, Greenbrier, Jackson, Kanawha, Lewis, Lincoln, Logan, Mason, McDowell, Mercer, Mingo, Monroe, Nicholas, Pocahontas, Putnam, Raleigh, Roane, Summers, Upshur, Wayne, Webster, and Wyoming.

(c) Each district of the Intermediate Court of Appeals shall convene, conduct proceedings, and issue decisions, rulings, and opinions of the court in panels of three judges.

(d) The Intermediate Court of Appeals for the Northern District shall conduct proceedings and have its usual and customary seat and offices for all judges and staff in the city of Clarksburg in Harrison County, but may conduct proceedings in other locations within its district by special assignment. The Intermediate Court of Appeals for the Southern District shall conduct proceedings and have its usual and customary seat and offices for all judges and staff in the city of Beckley in Raleigh County, but may conduct proceedings in other locations within its district by special assignment.

§51-11-5. Jurisdiction; limitations.

(a) The Intermediate Court of Appeals has no original jurisdiction.

(b) Unless specifically provided otherwise in this article, appeals of the following matters shall be made to the Intermediate Court of Appeals, which has appellate jurisdiction over such matters:

(1) Final judgments or orders of a circuit court in a criminal case, entered after December 31, 2022, or writs of habeas corpus issued by a circuit court after December 31, 2022;

(2) Final judgments or orders of a circuit court in a civil case, entered after December 31, 2022;

(3) Final judgments or orders of a family court, entered after December 31, 2022;

(4) Final judgments or orders of a circuit court concerning guardianship or conservatorship matters, pursuant to §44A-1-1 *et seq.* of this code, entered after December 31, 2022;

(5) Final judgments, orders, or decisions of an agency or an administrative law judge entered after December 31, 2022, heretofore appealable to the Circuit Court of Kanawha County pursuant to §29A-5-4 or any other provision of this code;

(6) Final orders or decisions of the Health Care Authority issued prior to December 31, 2022, in a certificate of need review, but transferred to the jurisdiction of the Intermediate Court of Appeals upon termination of the Office of Judges pursuant to §16-2D-16a of this code;

(7) Final orders or decisions issued by the Office of Judges after December 31, 2022, and prior to its termination, as provided in §16-2D-16 and §23-5-8a of this code; and

(8) Final orders or decisions of the Workers' Compensation Board of Review pursuant to §23-5-1 *et seq.* of this code, entered after December 31, 2022.

(c) In appeals properly filed pursuant to subsection (b) of this section, the parties shall be afforded a full and meaningful review on the record of the lower tribunal and an opportunity to be heard.

(d) The Intermediate Court of Appeals does not have appellate jurisdiction over the following matters:

(1) Judgments or final orders issued in any juvenile proceeding pursuant to §49-4-701 et seq. of this code;

(2) Judgments or final orders issued in child abuse and neglect proceedings pursuant to §49-4-601 et seq. of this code;

(3) Orders of commitment, pursuant to §27-5-1 et seq. of this code;

(4) Final decisions of the Public Service Commission, pursuant to §24-5-1 of this code;

(5) Interlocutory appeals;

(6) Certified questions of law; and

(7) Extraordinary remedies, as provided in §53-1-1 et seq. of this code, and any appeal of a decision or order of another court regarding an extraordinary remedy: *Provided*, That this subdivision does not apply to appeals of writs of habeas corpus issued by a circuit court.

§51-11-6. Motion for direct review by Supreme Court of Appeals.

(a) Within 10 days after a petition for appeal is properly filed in the Intermediate Court of Appeals, a party to the petition may file a motion to the West Virginia Supreme Court of Appeals for direct review of a final judgment or order that is otherwise within the appellate jurisdiction of the Intermediate Court of Appeals pursuant to §51-11-5 of this code, in any of the following cases:

(1) The appeal involves issues of first impression;

(2) The appeal involves a question of fundamental public importance; or

(3) The appeal involves exigencies, in which time is of the essence, necessitating immediate direct review of the appeal by the Supreme Court of Appeals.

(b) Notwithstanding any other provision of this code, if the Supreme Court of Appeals grants a motion filed pursuant to this section within 20 days after such motion is filed, jurisdiction over the appeal is transferred to the Supreme Court of Appeals according to all applicable rules of the court: *Provided*, That the Intermediate Court of Appeals shall have jurisdiction over any matter remanded to the jurisdiction of the Intermediate Court of Appeals by the Supreme Court of Appeals.

(c) The Legislature requests that the Supreme Court of Appeals develop and adopt rules permitting parties to file a motion for direct appeal to the Supreme Court of Appeals, as described in this section, and that the rules provide for the granting of such a motion only in the extraordinary circumstances described in subsection (a) of this section.

§51-11-7. Qualifications of judges.

A person must meet the following eligibility criteria to serve as a judge of the Intermediate Court of Appeals:

(1) The person must be a member, in good standing, of the West Virginia State Bar;

(2) The person must be admitted to practice law in the State of West Virginia for 10 years prior to election to the Intermediate Court of Appeals;

(3) The person must be a resident of the State of West Virginia for five years prior to election to the Intermediate Court of Appeals;

(4) The person must be a resident of the district of the West Virginia Intermediate Court of Appeals in which he or she serves; and

(5) The person may not be engaged in the practice of law while serving as a judge of the Intermediate Court of Appeals.

§51-11-8. Election of judges; vacancies; length of terms.

(a) Judges of the Intermediate Court of Appeals shall be elected on a nonpartisan basis to serve 10-year terms, subject to the exception for the initial election to stagger terms, as provided in subsection (c) of this section. Each judge shall be elected by the voters of the counties within the geographical district of the court in which he or she will serve.

(b) If no candidate for judge of the Intermediate Court of Appeals receives more than 40 percent of the votes cast in the primary election, a runoff election shall be conducted concurrently with the general election. The ballot for the runoff election shall include a provision for selection only between those two candidates who received the highest and second highest number of ballots cast in the applicable division for judge of the Intermediate Court of Appeals in the election for that office held concurrently with the primary election.

(c) *Initial Election.* — The initial election of judges to the Intermediate Court of Appeals shall take place during the primary election of 2022. Each judge shall be elected to a term beginning on January 1, 2023, with one judge elected to serve a 10-year term in each district, one judge to serve a six-year term in each district, and one judge to serve a four-year term in each district. For the purposes of the initial election of judges pursuant to this subsection, the Secretary of State shall, in each district, establish three separate divisions corresponding to the judicial terms on the ballot. The candidates for election in each numbered division shall be tallied separately, and the eligible candidate receiving the highest numbers of votes cast within a numbered division in his or her district shall be elected to serve the corresponding judicial term.

(d) *Regular election of judges.* — Following the initial election of judges pursuant to subsection (c) of this section, during the primary election in every year during which a sitting judge's term will expire, a judge shall be elected to each district of the Intermediate Court of Appeals to serve a 10-year term commencing on January 1 of the following year.

(e) *Vacancies.* — If a vacancy arises before the expiration of a judicial term, the vacancy shall be filled as provided in §3-10-1 *et seq.* of this code. A judge appointed to fill a vacancy must meet the requirements in §51-11-7 of this code at the time of appointment.

(f) The judges of each district of the West Virginia Intermediate Court of Appeals shall periodically select one judge to serve as chief judge for their respective district, pursuant to rules promulgated by the Supreme Court of Appeals.

(g) A person sitting as a judge of the Intermediate Court of Appeals may not retain his or her position as judge upon becoming a pre-candidate or candidate for any other elected public office, judicial or nonjudicial.

(h) The Legislature recognizes that the Chief Justice of the West Virginia Supreme Court of Appeals has authority to temporarily assign judges to the Intermediate Court of Appeals pursuant to section eight, article VIII of the Constitution of West Virginia, in the event that a judge is temporarily unable to serve on the court.

§51-11-9. Rules of practice and procedure; fees; deadlines.

(a) Unless specifically provided otherwise in this article, the pleadings, practice, and procedure in all matters before the Intermediate Court of Appeals are governed by rules promulgated by the Supreme Court of Appeals.

(b) Filing; records. —

All notices of appeals, petitions, documents, and records in connection with an appeal to the Intermediate Court of Appeals shall be filed in accordance with rules promulgated by the Supreme Court of Appeals.

(c) Fees. —

(1) The Clerk of the West Virginia Supreme Court of Appeals may charge a party appealing to the Intermediate Court of Appeals a filing fee in the amount of \$200.

(2) All moneys collected pursuant to this subsection shall be deposited in the State Police Forensic Laboratory Fund, created by §15-2-24d of this code, and all expenditures from the fund shall comply with the requirements of that section.

(d) Appeal bonds. —

The court may order the payment of an appeal bond before an appeal to the Intermediate Court of Appeals may commence, pursuant to rules promulgated by the Supreme Court of Appeals, and when applicable, the requirements of §58-5-14 of this code.

§51-11-10. Administration of court.

(a) In accordance with section three, article VIII of the Constitution of West Virginia, the Intermediate Court of Appeals is subject to the administrative control, supervision, and oversight of the West Virginia Supreme Court of Appeals.

(b) Filing; records. — Appeals to the Intermediate Court of Appeals shall be filed with the Clerk of the West Virginia Supreme Court of Appeals. All appeals and other related documents shall be filed by electronic means, when available.

(c) Facilities. — The West Virginia Intermediate Court of Appeals shall hear arguments in the court's respective districts in the locations specified in §51-11-4 of this code. The Administrative Director of the West Virginia Supreme Court of Appeals shall arrange for facilities in the required locations, where each district of the court will have its usual and customary seat and offices. Facilities may include, but are not limited to, courtrooms in county courthouses, courtrooms in federal courthouses, county commission rooms in county courthouses, rooms or facilities at institutions of

higher education, and other suitable spaces in federal, state, county, or municipal buildings throughout the state.

(d) Oral argument. — The Intermediate Court of Appeals has discretion to determine whether appellate review of a case before the court requires oral argument.

(e) Staff. — The Administrative Director of the West Virginia Supreme Court of Appeals shall provide administrative support and may employ additional staff, as necessary, for the efficient operation of the Intermediate Court of Appeals. The budget for the payment of compensation and expenses of the Intermediate Court of Appeals staff shall be included in the appropriation to the Supreme Court of Appeals.

§51-11-11. Reporting of judicial information.

(a) The chief judge of each district of the West Virginia Intermediate Court of Appeals shall prepare a biannual report, available to the public, that contains the following information, as it pertains to the judge's district:

(1) The number of motions that have been pending before the court for more than three months and the name and case number assigned to each appeal in which such motion has been pending; and

(2) The number of appeals that have not been disposed of within six months after filing and the name and case number assigned to each case.

(b) The chief judge of each district of the West Virginia Intermediate Court of Appeals shall submit and certify the list required by this section to the Supreme Court of Appeals and Joint Committee on Government and Finance on a biannual basis.

§51-11-12. Written opinions; precedential effect.

(a) The Intermediate Court of Appeals is a court of record and shall issue, as appropriate in each appeal, written opinions, orders, and decisions: *Provided*, That a written decision on the merits shall be issued as a matter of right in each appeal that is properly filed and within the jurisdiction of the Intermediate Court of Appeals.

(b) A written opinion, order, or decision of the Intermediate Court of Appeals is binding precedent for the decisions of all circuit courts, family courts, magistrate courts, and agencies that lie within the court's district unless the opinion, order, or decision is overruled or modified by the Supreme Court of Appeals.

§51-11-13. Discretionary review by Supreme Court of Appeals by petition.

(a) A party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(b) Upon the proper filing of a notice of appeal in the Supreme Court of Appeals, the order or judgment of the Intermediate Court of Appeals may be stayed pending the appeal, in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The Supreme Court of Appeals has discretion to grant or deny the petition for appeal or certiorari of a decision by the Intermediate Court of Appeals.

(d) Any party who seeks to appeal a final order or judgment of the Intermediate Court of Appeals to the Supreme Court of Appeals, pursuant to this section, and who does not substantially prevail on said appeal, shall pay a post judgment interest rate on the underlying order or judgment from the circuit court in an amount double that authorized by §56-6-31 of this code from the date of the filing of the petition, pursuant to subsection (b) of this section, until the judgment is paid.

§51-11-14. Judicial compensation and benefits; expenses.

(a) The annual salary of a judge of the Intermediate Court of Appeals is \$130,000. The budget for the payment of compensation and expenses of Intermediate Court of Appeals judges shall be included in the appropriation for the Supreme Court of Appeals.

(b) Intermediate Court of Appeals judges and staff shall be reimbursed for their actual and necessary expenses incurred in the performance of their duties under the guidelines prescribed by the Administrative Director of the Supreme Court of Appeals.

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS AND THE SUPREME COURT OF APPEALS.

§58-5-1. When appeal lies.

(a) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: *Provided*, That an appeal of a final order or judgment of a circuit court entered after December 31, 2022, shall be to the Intermediate Court of Appeals, as required by §51-11-1 *et seq.* of this code.

(b) As provided in §51-11-13 of this code, a party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.

(c) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction, or which affirms a conviction obtained in an inferior court.”

Delegate Zukoff moved to amend the amendment, on page thirty-six, section one, after line nine, by inserting the following:

“CHAPTER 49. CHILD WELFARE.

ARTICLE 4. COURT ACTIONS.

§49-4-102. Procedure for appealing decisions.

Cases under this chapter, if tried in any inferior court, may be reviewed by writ of error or appeal to the circuit court, and if tried or reviewed in a circuit court, by writ of error or appeal to the Supreme Court of Appeals. After December 31, 2022, the direct right of appeal for any matter tried or reviewed in a circuit court pursuant to this chapter shall be transferred to the Intermediate Court of Appeals, and any such appeal must be initiated by petition or appeal to the Intermediate Court of Appeals.

§49-4-710. Waiver and transfer of jurisdiction.

(a) Upon written motion of the prosecuting attorney filed at least eight days prior to the adjudicatory hearing and with reasonable notice to the juvenile, his or her counsel, and his or her parents, guardians or custodians, the court shall conduct a hearing to determine if juvenile jurisdiction should or must be waived and the proceeding transferred to the criminal jurisdiction of the court. Any motion filed in accordance with this section is to state, with particularity, the grounds for the requested transfer, including the grounds relied upon as set forth in subsection (d), (e), (f) or (g) of this section, and the burden is upon the state to establish the grounds by clear and convincing evidence. Any hearing held under this section is to be held within seven days of the filing of the motion for transfer unless it is continued for good cause.

(b) No inquiry relative to admission or denial of the allegations of the charge or the demand for jury trial may be made by or before the court until the court has determined whether the proceeding is to be transferred to criminal jurisdiction.

(c) The court shall transfer a juvenile proceeding to criminal jurisdiction if a juvenile who has attained the age of fourteen years makes a demand on the record to be transferred to the criminal jurisdiction of the court. The case may then be referred to magistrate or circuit court for further proceedings, subject to the court's jurisdiction.

(d) The court shall transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile is at least fourteen years of age and has committed the crime of treason under §61-1-1 of this code; the crime of murder under sections §61-2-1, §61-2-2, and §61-2-3 of this code; the crime of robbery involving the use or presenting of firearms or other deadly weapons under §61-2-12 of this code; the crime of kidnapping under §61-2-14a of this code; the crime of first degree arson under §61-2-1 of this code; or the crime of sexual assault in the first degree under section §61-8b-3 of this code;

(2) The juvenile is at least fourteen years of age and has committed an offense of violence to the person which would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged delinquent for the commission of an offense of violence to the person which would be a felony if the juvenile was an adult; or

(3) The juvenile is at least fourteen years of age and has committed an offense which would be a felony if the juvenile was an adult. However, the juvenile has been twice previously adjudged delinquent for the commission of an offense which would be a felony if the juvenile was an adult.

(e) The court may transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (1), subsection (d) of this section, but who is younger than fourteen years of age.

(f) The court may, upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that the juvenile would otherwise satisfy the provisions of subdivision (2) or (3), subsection (d) of this section, but who is younger than fourteen years of age.

(g) The court may, upon consideration of the juvenile's mental and physical condition, maturity, emotional attitude, home or family environment, school experience and similar personal factors, transfer a juvenile proceeding to criminal jurisdiction if there is probable cause to believe that:

(1) The juvenile, who is at least fourteen years of age, has committed an offense of violence to a person which would be a felony if the juvenile was an adult;

(2) The juvenile, who is at least fourteen years of age, has committed an offense which would be a felony if the juvenile was an adult. However, the juvenile has been previously adjudged delinquent for the commission of a crime which would be a felony if the juvenile was an adult;

(3) The juvenile, who is at least fourteen years of age, used or presented a firearm or other deadly weapon during the commission of a felony; or

(4) The juvenile has committed a violation of §61A-4-401 of this code which would be a felony if the juvenile was an adult involving the manufacture, delivery or possession with the intent to deliver a narcotic drug. For purposes of this subdivision, the term narcotic drug has the same definition as that set forth in section one hundred one, article one of that chapter;

(5) The juvenile has committed the crime of second degree arson as defined in §61A-3-2 of this code involving setting fire to or burning a public building or church. For purposes of this subdivision, the term public building means a building or structure of any nature owned, leased or occupied by this state, a political subdivision of this state or a county board of education and used at the time of the alleged offense for public purposes. For purposes of this subdivision, the term church means a building or structure of any nature owned, leased or occupied by a church, religious sect, society or denomination and used at the time of the alleged offense for religious worship or other religious or benevolent purpose, or as a residence of a minister or other member of clergy.

(h) For purposes of this section, the term offense of violence means an offense which involves the use or threatened use of physical force against a person.

(i) If, after a hearing, the court directs the transfer of any juvenile proceeding to criminal jurisdiction, it shall state on the record the findings of fact and conclusions of law upon which its decision is based or shall incorporate findings of fact and conclusions of law in its order directing transfer.

(j) A juvenile who has been transferred to criminal jurisdiction pursuant to subsection (e), (f) or (g) of this section, by an order of transfer, has the right to either directly appeal an order of transfer ~~to the supreme court of appeals~~ or to appeal the order of transfer following a conviction of the offense of transfer. On or before December 31, 2022, any appeal under this section shall be directed to the Supreme Court of Appeals. On and after January 1, 2023, any appeal under this section shall be directed to the Intermediate Court of Appeals. If the juvenile exercises the right to a direct appeal from an order of transfer, the notice of intent to appeal and a request for transcript is to be filed within ten days from the date of the entry of any order of transfer, and the petition for appeal is to be presented to the ~~Supreme Court of Appeals~~ appropriate appellate court within forty-five days from the entry of the order of transfer. Article five, chapter fifty-eight of this code pertaining to the appeals of judgments in civil actions applies to appeals under this chapter except as modified in this section. The court may, within forty-five days of the entry of the order of transfer, by appropriate order, extend and reextend the period in which to file the petition for appeal for additional time, not to exceed a total extension of sixty days, as in the court's opinion may be necessary for preparation of the transcript. However, the request for a transcript was made by the party seeking appeal within ten days of entry of the order of transfer. In the event any notice of intent to appeal and request for transcript be timely filed, proceedings in criminal court are to be stayed upon motion of the defendant pending final action of the ~~Supreme Court of Appeals~~ appropriate appellate court.

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

(a) The services provided by the department for juveniles adjudicated as status offenders shall be consistent with part ten, article two of this chapter and shall be designed to develop skills and supports within families and to resolve problems related to the juveniles or conflicts within their families. Services may include, but are not limited to, referral of juveniles and parents, guardians or custodians and other family members to services for psychiatric or other medical care, or psychological, welfare, legal, educational or other social services, as appropriate to the needs of the juvenile and his or her family.

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

(1) For a valid court order, as defined in section two hundred seven, article one of this chapter, to enforce compliance with a service plan or to restrain actions that interfere with or defeat a service plan; or

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

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

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

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

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

(B) The community services which were previously attempted.

(e) The disposition of the juvenile may not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. ~~Any~~ On or before December 31, 2022, any order providing disposition other than mandatory referral to the department for services is subject to appeal to the

Supreme Court of Appeals. On and after January 1, 2023, any such appeal shall be filed with the Intermediate Court of Appeals.

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

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

§49-4-714. Disposition of juvenile delinquents; appeal.

(a) In aid of disposition of juvenile delinquents, the juvenile probation officer assigned to the juvenile shall, upon request of the court, make an investigation of the environment of the juvenile and the alternative dispositions possible. The court, upon its own motion, or upon request of counsel, may order the use of a standardized screener, as defined in §49-1-206 of this code or, if additional information is necessary, a psychological examination of the juvenile. The report of an examination and other investigative and social reports shall not be relied upon the court in making a determination of adjudication. Unless waived, copies of the report shall be provided to counsel for the petitioner and counsel for the juvenile no later than 72 hours prior to the dispositional hearing.

(b) Following the adjudication, the court shall receive and consider the results of a needs assessment, as defined in §49-1-206 of this code, and shall conduct the disposition, giving all parties an opportunity to be heard. The disposition may include reasonable and relevant orders to the parents, custodians or guardians of the juvenile as is necessary and proper to effectuate the disposition. At disposition the court shall not be limited to the relief sought in the petition and shall, in electing from the following alternatives, consider the best interests of the juvenile and the welfare of the public:

(1) Dismiss the petition;

(2) Refer the juvenile and the juvenile's parent or custodian to a community agency for needed assistance and dismiss the petition;

(3) Upon a finding that the juvenile is in need of extra-parental supervision: (A) Place the juvenile under the supervision of a probation officer of the court or of the court of the county where the juvenile has his or her usual place of abode or other person while leaving the juvenile in custody of his or her parent or custodian; and (B) prescribe a program of treatment or therapy or limit the juvenile's activities under terms which are reasonable and within the child's ability to perform, including participation in the litter control program established pursuant to §22-15A-3 of this code or other appropriate programs of community service;

(4) Upon a finding that a parent or custodian is not willing or able to take custody of the juvenile, that a juvenile is not willing to reside in the custody of his or her parent or custodian or that a parent or custodian cannot provide the necessary supervision and care of the juvenile, the court may place the juvenile in temporary foster care or temporarily commit the juvenile to the department or a child welfare agency. The court order shall state that continuation in the home is contrary to the best interest of the juvenile and why; and whether or not the department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible. Whenever the court transfers custody of a youth to the department, an appropriate order

of financial support by the parents or guardians shall be entered in accordance with §49-4-801 through §49-4-803 *et seq.* of this code and guidelines promulgated by the Supreme Court of Appeals;

(5) (A) Upon a finding that the best interests of the juvenile or the welfare of the public require it, and upon an adjudication of delinquency, the court may commit the juvenile to the custody of the Director of the Division of Corrections and Rehabilitation for placement in a juvenile services facility for the treatment, instruction and rehabilitation of juveniles. The court maintains discretion to consider alternative sentencing arrangements.

(B) Notwithstanding any provision of this code to the contrary, in the event that the court determines that it is in the juvenile's best interests or required by the public welfare to place the juvenile in the custody of the Division of Corrections and Rehabilitation, the court shall provide the Division of Corrections and Rehabilitation with access to all relevant court orders and records involving the underlying offense or offenses for which the juvenile was adjudicated delinquent, including sentencing and presentencing reports and evaluations, and provide the division with access to school records, psychological reports and evaluations, needs assessment results, medical reports and evaluations or any other such records as may be in the court's possession as would enable the Division of Corrections and Rehabilitation to better assess and determine the appropriate counseling, education and placement needs for the juvenile offender.

(C) Commitments may not exceed the maximum term for which an adult could have been sentenced for the same offense and any such maximum allowable term of confinement to be served in a juvenile correctional facility shall take into account any time served by the juvenile in a detention center pending adjudication, disposition or transfer. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible; or

(6) After a hearing conducted under the procedures set out in §27-5-4(c) and §27-5-4(d) of this code, commit the juvenile to a mental health facility in accordance with the juvenile's treatment plan; the director of the mental health facility may release a juvenile and return him or her to the court for further disposition. The order shall state that continuation in the home is contrary to the best interests of the juvenile and why; and whether or not the state department made a reasonable effort to prevent the placement or that the emergency situation made those efforts unreasonable or impossible.

The court shall make all reasonable efforts to place the juvenile in the least restrictive alternative appropriate to the needs of the juvenile and the community: *Provided*, That a juvenile adjudicated delinquent for a nonviolent misdemeanor offense may not be placed in an out-of-home placement within the Division of Corrections and Rehabilitation or the department if that juvenile has no prior adjudications as either a status offender or as a delinquent, or no prior dispositions to a pre-adjudicatory improvement period or probation for the current matter, excluding placements made for abuse or neglect: *Provided, however*, That if the court finds by clear and convincing evidence that there is a significant and likely risk of harm, as determined by a needs assessment, to the juvenile, a family member or the public and that continued placement in the home is contrary to the best interest of the juvenile, such juvenile may be ordered to an out-of-home placement: *Provided further*, That the department has made all reasonable efforts to prevent removal of the juvenile from his or her home, or that reasonable efforts are not required due to an emergent situation.

(c) In any case in which the court decides to order the juvenile placed in an out-of-state facility or program, it shall set forth in the order directing the placement the reasons the juvenile was not placed in an in-state facility or program.

(d) The disposition of the juvenile shall not be affected by the fact that the juvenile demanded a trial by jury or made a plea of not guilty. Any On and before December 31, 2022, any disposition is subject to appeal to the Supreme Court of Appeals. On and after January 1, 2023, any such appeal must be filed with the Intermediate Court of Appeals.

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

(f) Following a disposition under §49-4-714(b)(4), §49-4-714(b)(5), or §49-4-714(b)(6) of this code, the court shall include in the findings of fact the treatment and rehabilitation plan the court has adopted upon recommendation of the multidisciplinary team under §49-4-406 of this code.

(g) Notwithstanding any other provision of this code to the contrary, if a juvenile charged with delinquency under this chapter is transferred to adult jurisdiction and there tried and convicted, the court may make its disposition in accordance with this section in lieu of sentencing the person as an adult.”

And,

On page forty, section five, line nine, immediately following the end of subsection three, by inserting the following additional subsection:

“(4) Final orders or decisions of a circuit court pertaining to child welfare under Chapter 49, Article 4, entered after December 31, 2022.”

And renumbering the remaining subdivisions accordingly.

And,

On page forty-one, section five, lines twenty-seven through thirty, by striking out the provisions of subdivisions one and two in their entirety, and renumbering the remaining subdivisions accordingly.

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

The yeas and nays having been ordered, they were taken (**Roll No. 595**), and there were—yeas 51, nays 48, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Azinger, Barnhart, Bartlett, Bibby, Butler, Cadle, Capito, Cooper, Cowles, Criss, Ellington, Espinosa, Foster, Graves, Hamrick, Hardy, Higginbotham, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Linville, Little, Mandt, C. Martin, Maynard, Nelson, Pack, Phillips, Porterfield, Queen, Rowan, Shott, Steele, Storch, Summers, Toney, Waxman, Westfall, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Delegate Lovejoy moved to amend the amendment, on page 39 and 40, section 4, lines 20 through 26, by striking out subsection (d) in its entirety and inserting in lieu thereof, the following:

“(d) The proceedings of the West Virginia Intermediate Court of Appeals may take place in any location geographically located within the district the court serves that is convenient to litigants, in a facility provided by the clerk pursuant to §51-11-10 of this code.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 596**), and there were—yeas 51, nays 48, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Anderson, Atkinson, Azinger, Barnhart, Bartlett, Bates, Bibby, Capito, Cooper, Cowles, Criss, Dean, Ellington, Espinosa, Foster, Graves, Hamrick, Hanna, Hardy, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, Jennings, D. Kelly, J. Kelly, Kessinger, Little, Mandt, Maynard, Nelson, Pack, Phillips, Queen, Rowan, Shott, Steele, Storch, Summers, Sypolt, Toney, Waxman, Westfall, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

Pursuant to House Rule 58, Delegate Wilson having voted on the prevailing side on the vote regarding the adoption of the amendment offered by Delegate Zukoff, moved that the vote be reconsidered.

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

The yeas and nays having been ordered, they were taken (**Roll No. 597**), and there were—yeas 45, nays 54, absent and not voting 1, with the yeas and absent and not voting being as follows:

Yeas: Atkinson, Azinger, Barnhart, Bartlett, Bibby, Capito, Cooper, Cowles, Criss, Ellington, Espinosa, Foster, Graves, Hamrick, Hanna, Hardy, Higginbotham, Hill, Hott, Householder, Howell, D. Jeffries, J. Jeffries, Jennings, D. Kelly, Kessinger, Linville, Little, Mandt, Maynard, Nelson, Pack, Phillips, Queen, Rowan, Shott, Steele, Storch, Summers, Sypolt, Waxman, Westfall, Wilson, Worrell and Hanshaw (Mr. Speaker).

Absent and Not Voting: Kump.

So, a majority of the members present and voting not having voted in the affirmative, the motion to reconsider the vote by which the House adopted the amendment by Delegate Zukoff did not prevail.

An amendment, offered by Delegate Steele, was reported by the Clerk.

Delegate Steele moved to amend the amendment, on page forty-seven, after section fourteen, by inserting a new section, designated section fifteen, to read as follows:

“§51-11-15. Attorney General as counsel for state.

The Attorney General shall appear as counsel for the state in all cases pending in the Intermediate Court of Appeals, subject to the same requirements and restrictions provided in §5-3-2 of this code

that apply to the Attorney General's representation of the state in cases pending in the Supreme Court of Appeals.”;

And,

On pages forty-seven and forty-eight, lines one through thirteen, by striking out all of section one, and inserting in lieu thereof a new section one, to read as follows:

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS AND THE SUPREME COURT OF APPEALS.

§58-50-1. When appeal lies.

(a) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: Provided, That an appeal of a final order or judgment of a circuit court entered after December 31, 2022, shall be to the Intermediate Court of Appeals, as required by §51-11-1, et seq. of this code.

(b) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction, or which affirms a conviction obtained in an inferior court: Provided, That an appeal of a final order or judgment of a circuit court entered after December 31, 2022, shall be to the Intermediate Court of Appeals, as required by §51-11-1, et seq. of this code.

(c) As provided in §51-11-13 of this code, a party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.”

“§51-11-15. Attorney General as counsel for state.

The Attorney General shall appear as counsel for the state in all cases pending in the Intermediate Court of Appeals, subject to the same requirements and restrictions provided in §5-3-2 of this code that apply to the Attorney General's representation of the state in cases pending in the Supreme Court of Appeals.”;

And,

On pages forty-seven and forty-eight, lines one through thirteen, by striking out all of section one, and inserting in lieu thereof a new section one, to read as follows:

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS AND THE SUPREME COURT OF APPEALS.

§58-50-1. When appeal lies.

(a) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more

but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: Provided, That an appeal of a final order or judgment of a circuit court entered after June 30, 2021, shall be to the Intermediate Court of Appeals, as required by §51-11-1, et seq. of this code.

(b) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction, or which affirms a conviction obtained in an inferior court: Provided, That an appeal of a final order or judgment of a circuit court entered after June 30, 2021, shall be to the Intermediate Court of Appeals, as required by §51-11-1, et seq. of this code.

(c) As provided in §51-11-13 of this code, a party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.”

Delegate Steele then obtained unanimous consent that the amendment be reformed, as follows:

On page forty-seven, after section fourteen, by inserting a new section, designated section fifteen, to read as follows:

“§51-11-15. Attorney General as counsel for state.

The Attorney General shall appear as counsel for the state in all cases pending in the Intermediate Court of Appeals, subject to the same requirements and restrictions provided in §5-3-2 of this code that apply to the Attorney General’s representation of the state in cases pending in the Supreme Court of Appeals.”;

And,

On pages forty-seven and forty-eight, lines one through thirteen, by striking out all of section one, and inserting in lieu thereof a new section one, to read as follows:

CHAPTER 58. APPEAL AND ERROR.

ARTICLE 5. APPELLATE RELIEF IN THE INTERMEDIATE COURT OF APPEALS AND THE SUPREME COURT OF APPEALS.

§58-50-1. When appeal lies.

(a) A party to a civil action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court or from an order of any circuit court constituting a final judgment as to one or more but fewer than all claims or parties upon an express determination by the circuit court that there is no just reason for delay and upon an express direction for the entry of judgment as to such claims or parties: Provided, That an appeal of a final order or judgment of a circuit court entered after June 30, 2021, shall be to the Intermediate Court of Appeals, as required by §51-11-1, et seq. of this code.

(b) The defendant in a criminal action may appeal to the Supreme Court of Appeals from a final judgment of any circuit court in which there has been a conviction, or which affirms a conviction obtained in an inferior court: Provided, That an appeal of a final order or judgment of a circuit court entered after June 30, 2021, shall be to the Intermediate Court of Appeals, as required by §51-11-1, et seq. of this code.

(c) As provided in §51-11-13 of this code, a party in interest may petition the Supreme Court of Appeals for appeal of a final order or judgment of the Intermediate Court of Appeals in accordance with rules promulgated by the Supreme Court of Appeals.”

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

The yeas and nays having been ordered, they were taken (**Roll No. 598**), and there were—yeas 54, nays 45, absent and not voting 1, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Cadle, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, P. Martin, McGeehan, Miley, Miller, Paynter, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Kump.

So, a majority of the members present and voting having voted in the affirmative, the amendment was adopted.

The Committee on Finance amendment, as amended, was then adopted.

The bill was then ordered to third reading.

S. B. 278, Providing various methods to deal with defendant who becomes incompetent during trial; 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, amending the bill on page one, after the enacting clause, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 1. WORDS AND PHRASES DEFINED.

§27-1-11. Addiction.

(a) As used in this chapter, “addiction” or substance use disorder means a maladaptive pattern of substance use leading to clinically significant impairment or distress as manifested by one or more of the following occurring within 30 days prior to the filing of the petition:

(1) Recurrent substance use resulting in a failure to fulfill major role obligations at work, school, or home, including, but not limited to, repeated absences or poor work performance related to substance use; substance-related absences, suspensions, or expulsions from school; or neglect of children or household;

(2) Recurrent use in situations in which it is physically hazardous, including, but not limited to, driving while intoxicated or operating a machine when impaired by substance use;

(3) Recurrent substance-related legal problems; or

(4) Continued use despite knowledge or having persistent or recurrent social or interpersonal problems caused or exacerbated by the effects of the substance.

(b) As used in this section, “substance” shall ~~mean~~ means alcohol, controlled substances as defined in sections §60A-2-204, §60A-2-206, §60A-2-208, and §60A-2-210 of this code, or anything consumed for its psychoactive effect whether or not designed for human consumption.

ARTICLE 5. INVOLUNTARY HOSITALIZATION.

§27-5-1. Appointment of mental hygiene commissioner; duties of mental hygiene commissioner; duties of prosecuting attorney; duties of sheriff; duties of Supreme Court of Appeals; use of certified municipal law-enforcement officers.

(a) *Appointment of mental hygiene commissioners.* — The chief judge in each judicial circuit of this state shall appoint a competent attorney and may, if necessary, appoint additional attorneys to serve as mental hygiene commissioners to preside over involuntary hospitalization hearings. Mental hygiene commissioners shall be persons of good moral character and of standing in their profession and they shall, before assuming the duties of ~~such a~~ a commissioner, take the oath required of other special commissioners as provided in §6-1-1 *et seq.* of this code.

~~Prior to presiding over an involuntary hospitalization hearing, each All persons~~ newly appointed person to serve as a mental hygiene commissioners and all magistrates shall attend and complete an orientation course ~~that, within one year of their appointment, consisting~~ consists of training provided annually by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health and Human Resources. In addition, existing mental hygiene commissioners and ~~any all magistrates designated by the chief judge of a judicial circuit~~ trained to hold probable cause and emergency detention hearings involving involuntary hospitalization shall attend and complete a course provided by the Supreme Court of Appeals and complete an orientation program to be developed by the Secretary of the Department of Health and Human Resources. Persons attending ~~such the~~ the courses outside the county of their residence shall be reimbursed out of the budget of the Supreme Court—General Judicial for reasonable expenses incurred. The Supreme Court of Appeals shall establish curricula and rules for ~~such the~~ the courses, including rules providing for the reimbursement of reasonable expenses as authorized ~~herein in this section.~~ The Secretary of the Department of Health and Human Resources shall consult with the Supreme Court of Appeals regarding the development of the orientation program.

(b) *Duties of mental hygiene commissioners.* —

(1) Mental hygiene commissioners may sign and issue summonses for the attendance, at any hearing held pursuant to §27-5-4 of this code, of the individual sought to be committed; may sign and issue subpoenas for witnesses, including subpoenas duces tecum; may place any witness under oath; may elicit testimony from applicants, respondents, and witnesses regarding factual issues raised in the petition; and may make findings of fact on evidence and may make conclusions of law, but ~~such the~~ the findings and conclusions ~~shall not be~~ are not binding on the circuit court. All mental hygiene commissioners shall be reasonably compensated at a uniform rate determined by the Supreme Court of Appeals. Mental hygiene commissioners shall submit all requests for compensation to the administrative director of the courts for payment. Mental hygiene commissioners shall discharge their duties and hold their offices at the pleasure of the chief judge of the judicial circuit in which he or she is appointed and may be removed at any time by ~~such the~~ the chief judge. ~~It shall be the duty of a~~ A mental hygiene commissioner ~~to shall~~ shall conduct orderly inquiries into the mental health of the individual sought to be committed concerning the advisability of committing the individual to a mental health facility. The mental hygiene commissioner shall safeguard, at all times, the rights and interests of the individual as well as the interests of the state. The mental hygiene commissioner shall make a written report of his or her findings to the circuit court. In any proceedings before any court of record as set forth in this article, the court of record shall appoint an interpreter for any

individual who is deaf or cannot speak, or who speaks a foreign language, and who may be subject to involuntary commitment to a mental health facility.

(2) A mental hygiene commissioner appointed by the circuit court of one county or multiple county circuits may serve in ~~such that~~ capacity in a jurisdiction other than that of his or her original appointment if ~~such be~~ it is agreed upon by the terms of a cooperative agreement between the circuit courts and county commissions of two or more counties entered into to provide prompt resolution of mental hygiene matters during ~~noncourt~~ hours when the courthouse is closed or on nonjudicial days.

(c) *Duties of prosecuting attorney.* — ~~It shall be the duty of the~~ The prosecuting attorney or one of his or her assistants ~~to shall~~ represent the applicants in all final commitment proceedings filed pursuant to the provisions of this article. The prosecuting attorney may appear in any proceeding held pursuant to the provisions of this article if he or she ~~deems~~ determines it to be in the public interest.

(d) *Duties of sheriff.* — Upon written order of the circuit court, mental hygiene commissioner, or magistrate in the county where the individual formally accused of being mentally ill or ~~addicted~~ having a substance use disorder is a resident or is found, the sheriff of that county shall take ~~said the~~ individual into custody and transport him or her to and from the place of hearing and the mental health facility. The sheriff shall also maintain custody and control of the accused individual during the period of time in which the individual is waiting for the involuntary commitment hearing to be convened and while ~~such the~~ hearing is being conducted: *Provided*, That an individual who is a resident of a state other than West Virginia shall, upon a finding of probable cause, be transferred to his or her state of residence for treatment pursuant to §27-5-4(p) of this code: *Provided, however*, That where an individual is a resident of West Virginia but not a resident of the county in which he or she is found and there is a finding of probable cause, the county in which the hearing is held may seek reimbursement from the county of residence for reasonable costs incurred by the county attendant to the mental hygiene proceeding. Notwithstanding any provision of this code to the contrary, sheriffs may enter into cooperative agreements with sheriffs of one or more other counties, with the concurrence of their respective circuit courts and county commissions, ~~whereby~~ by which transportation and security responsibilities for hearings held pursuant to the provisions of this article during ~~noncourt~~ hours when the courthouse is closed or on nonjudicial days may be shared in order to facilitate prompt hearings and to effectuate transportation of persons found in need of treatment. In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff shall contact the state hospital in advance of the transportation to determine if the state hospital has available suitable bed capacity to place the individual.

(e) *Duty of sheriff upon presentment to mental health care facility.* — When a person is brought to a mental health care facility for purposes of evaluation for commitment under this article, if he or she is violent or combative, the sheriff or his or her designee shall maintain custody of the person in the facility until the evaluation is completed, or the county commission shall reimburse the mental health care facility at a reasonable rate for security services provided by the mental health care facility for the period of time the person is at the hospital prior to the determination of mental competence or incompetence.

(f) *Duties of Supreme Court of Appeals.* — The Supreme Court of Appeals shall provide uniform petition, procedure, and order forms which shall be used in all involuntary hospitalization proceedings brought in this state.

(g) *Duties of the Department of Health and Human Resources.* — The secretary shall develop an orientation program as provided in subsection (a) of this section. The orientation program shall include, but not be limited to, instruction regarding the nature and treatment of mental illness and

substance use disorder; the goal and purpose of commitment; community-based treatment options; and less restrictive alternatives to inpatient commitment.

§27-5-2. Institution of proceedings for involuntary custody for examination; custody; probable cause hearing; examination of individual.

(a) Any adult person may make an application for involuntary hospitalization for examination of an individual when the person making the application has reason to believe that the individual to be examined ~~is addicted,~~ has a substance use disorder as defined in § 27-1-11 of this code, by the most recent edition of the American Psychiatric Association in the Diagnostic and Statistical Manual of Mental Disorders, inclusive of substance use withdrawal, or is mentally ill and, because of his or her ~~addiction~~ substance use disorder or mental illness, the individual is likely to cause serious harm to himself, herself, or to others if allowed to remain at liberty while awaiting an examination and certification by a physician, ~~or psychologist,~~ licensed professional counselor, licensed independent social worker, an advanced nurse practitioner, or physician assistant as provided in subsection (e) of this section: *Provided*, That a diagnosis of dementia alone may not serve as a basis for involuntary commitment.

Notwithstanding any language in this subsection to the contrary, if the individual to be examined under the provisions of this section is incarcerated in a jail, prison, or other correctional facility, then only the chief administrative officer of the facility holding the individual may file the application, and the application must include the additional statement that the correctional facility itself cannot reasonably provide treatment and other services for the individual's mental illness or ~~addiction~~ substance use disorder.

(b) The person making the application shall make the application under oath.

(c) Application for involuntary custody for examination may be made to the circuit court, magistrate court, or a mental hygiene commissioner of the county in which the individual resides or of the county in which he or she may be found. ~~When no circuit court judge or mental hygiene commissioner is available for immediate presentation of the application, the application may be made to a magistrate designated by the chief judge of the judicial circuit to accept applications and hold probable cause hearings.~~ A designated magistrate before whom an application or matter is pending may, upon the availability of a mental hygiene commissioner or circuit court judge for immediate presentation of an application or pending matter, transfer the pending matter or application to the mental hygiene commissioner or circuit court judge for further proceedings unless otherwise ordered by the chief judge of the judicial circuit.

(d) The person making the application shall give information and state facts in the application ~~as~~ may be required by the form provided for this purpose by the Supreme Court of Appeals.

(e) The circuit court, mental hygiene commissioner, or ~~designated~~ magistrate may enter an order for the individual named in the application to be detained and taken into custody for the purpose of holding a probable cause hearing as provided in §27-5-2(g) of this code for the purpose of an examination of the individual by a physician, psychologist, a licensed professional counselor practicing in compliance with §30-31-1 *et seq.* of this code, a licensed independent clinical social worker practicing in compliance with §30-30-1 *et seq.* of this code, an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 *et seq.* of this code, a physician's assistant practicing in compliance with §30-3-1 *et seq.* of this code, or a physician's assistant practicing in compliance with §30-3E-1 *et seq.* of this code: *Provided*, That a licensed professional counselor, a licensed independent clinical social worker, a physician's assistant, or an advanced nurse practitioner with psychiatric certification may only perform the examination if he or she has

previously been authorized by an order of the circuit court to do so, the order having found that the licensed professional counselor, the licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has particularized expertise in the areas of mental health and mental hygiene or ~~addiction~~ substance use disorder sufficient to make the determinations ~~as are~~ required by the provisions of this section. The examination is to be provided or arranged by a community mental health center designated by the Secretary of the Department of Health and Human Resources to serve the county in which the action takes place. The order is to specify that the hearing be held ~~forthwith~~ immediately and is to provide for the appointment of counsel for the individual: *Provided, however,* That the order may allow the hearing to be held up to 24 hours after the person to be examined is taken into custody rather than ~~forthwith~~ immediately if the circuit court of the county in which the person is found has previously entered a standing order which establishes within that jurisdiction a program for placement of persons awaiting a hearing which assures the safety and humane treatment of persons: *Provided further,* That the time requirements set forth in this subsection only apply to persons who are not in need of medical care for a physical condition or disease for which the need for treatment precludes the ability to comply with the time requirements. During periods of holding and detention authorized by this subsection, upon consent of the individual or in the event of a medical or psychiatric emergency, the individual may receive treatment. The medical provider shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications. As used in this section, "psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others. Where a physician, psychologist, licensed professional counselor, licensed independent clinical social worker, physician's assistant, or advanced nurse practitioner with psychiatric certification has, within the preceding 72 hours, performed the examination required by the provisions of this subsection, the community mental health center may waive the duty to perform or arrange another examination upon approving the previously performed examination. Notwithstanding the provisions of this subsection, §27-5-4(r) of this code applies regarding payment by the county commission for examinations at hearings. If the examination reveals that the individual is not mentally ill or ~~addicted~~ has no substance use disorder, or is determined to be mentally ill or ~~addicted~~ has a substance use disorder but not likely to cause harm to himself, herself, or others, the individual shall be immediately released without the need for a probable cause hearing and the examiner is not civilly liable for the rendering of the opinion absent a finding of professional negligence. The examiner shall immediately provide the mental hygiene commissioner, circuit court, or ~~designated~~ magistrate before whom the matter is pending the results of the examination on the form provided for this purpose by the Supreme Court of Appeals for entry of an order reflecting the lack of probable cause.

(f) A probable cause hearing is to be held before a magistrate, ~~designated by the chief judge of the judicial circuit~~, the mental hygiene commissioner, or circuit judge of the county of which the individual is a resident or where he or she was found. If requested by the individual or his or her counsel, the hearing may be postponed for a period not to exceed 48 hours.

The individual must be present at the hearing and has the right to present evidence, confront all witnesses and other evidence against him or her, and ~~to~~ examine testimony offered, including testimony by representatives of the community mental health center serving the area. Expert testimony at the hearing may be taken telephonically or via videoconferencing. The individual has the right to remain silent and to be proceeded against in accordance with the Rules of Evidence of the Supreme Court of Appeals, except as provided in §27-1-12 of this code. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is reliably predictable that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental

illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself or herself or to others.

(g) Probable cause hearings may occur in the county where a person is hospitalized. The judicial hearing officer may: Use videoconferencing and telephonic technology; permit persons hospitalized for ~~addiction~~ substance use disorder to be involuntarily hospitalized only until detoxification is accomplished; and specify other alternative or modified procedures that are consistent with the purposes and provisions of this article. The alternative or modified procedures shall fully and effectively guarantee to the person who is the subject of the involuntary commitment proceeding and other interested parties due process of the law and access to the least restrictive available treatment needed to prevent serious harm to self or others.

(h) If the magistrate, mental hygiene commissioner, or circuit court judge at a probable cause hearing or a mental hygiene commissioner or circuit judge at a final commitment hearing held pursuant to the provisions of §27-5-4 of this code finds that the individual, as a result of mental illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself, herself, or others and because of mental illness or ~~addiction~~ a substance use disorder requires treatment, the magistrate, mental hygiene commissioner, or circuit court judge may consider evidence on the question of whether the individual's circumstances make him or her amenable to outpatient treatment in a nonresidential or nonhospital setting pursuant to a voluntary treatment agreement. At the conclusion of the hearing, the magistrate, mental hygiene commissioner, or circuit court judge shall find and enter an order stating whether or not it is reliably predictable that deterioration will occur without clinically necessary treatment, or there is probable cause to believe that the individual, as a result of mental illness or substance use disorder, it is likely to cause serious harm to himself or herself or others. The agreement is to be in writing and approved by the individual, his or her counsel, and the magistrate, mental hygiene commissioner, or circuit court judge. If the magistrate, mental hygiene commissioner, or circuit court judge determines that appropriate outpatient treatment is available in a nonresidential or nonhospital setting, the individual may be released to outpatient treatment upon the terms and conditions of the voluntary treatment agreement. The failure of an individual released to outpatient treatment pursuant to a voluntary treatment agreement to comply with the terms of the voluntary treatment agreement constitutes evidence that outpatient treatment is insufficient and, after a hearing before a magistrate, mental hygiene commissioner, or circuit judge on the issue of whether or not the individual failed or refused to comply with the terms and conditions of the voluntary treatment agreement and whether the individual as a result of mental illness or ~~addiction~~ substance use disorder remains likely to cause serious harm to himself, herself, or others, the entry of an order requiring admission under involuntary hospitalization pursuant to the provisions of §27-5-3 of this code may be entered. ~~In the event a person released pursuant to a voluntary treatment agreement is unable to pay for the outpatient treatment and has no applicable insurance coverage, including, but not limited to, private insurance or Medicaid, the Secretary of the Department of Health and Human Resources may transfer funds for the purpose of reimbursing community providers for services provided on an outpatient basis for individuals for whom payment for treatment is the responsibility of the department: *Provided*, That the department may not authorize payment of outpatient services for an individual subject to a voluntary treatment agreement in an amount in excess of the cost of involuntary hospitalization of the individual. The secretary shall establish and maintain fee schedules for outpatient treatment provided in lieu of involuntary hospitalization.~~ Nothing in the provisions of this article regarding release pursuant to a voluntary treatment agreement or convalescent status may be construed as creating a right to receive outpatient mental health services or treatment, or as obligating any person or agency to provide outpatient services or treatment. Time limitations set forth in this article relating to periods of involuntary commitment to a mental health facility for hospitalization do not apply to release pursuant to the terms of a voluntary treatment agreement: *Provided*, That release pursuant to a voluntary treatment agreement may not be for a period of more than six months if the individual has not been found to be involuntarily committed

during the previous two years and for a period of no more than two years if the individual has been involuntarily committed during the preceding two years. If in any proceeding held pursuant to this article the individual objects to the issuance or conditions and terms of an order adopting a voluntary treatment agreement, then the circuit judge, magistrate, or mental hygiene commissioner may not enter an order directing treatment pursuant to a voluntary treatment agreement. If involuntary commitment with release pursuant to a voluntary treatment agreement is ordered, the individual subject to the order may, upon request during the period the order is in effect, have a hearing before a mental hygiene commissioner or circuit judge where the individual may seek to have the order canceled or modified. Nothing in this section affects the appellate and habeas corpus rights of any individual subject to any commitment order.

Notwithstanding anything in this article to the contrary, the commitment of any individual as provided in this article shall be in the least restrictive setting and in an outpatient community-based treatment program to the extent resources and programs are available, unless the clear and convincing evidence of the certifying professional under subsection (e) of this section, who is acting in a manner consistent with the standard of care, establishes that the commitment or treatment of that individual requires an inpatient hospital placement. Outpatient treatment will be based upon a plan jointly prepared by the department and the comprehensive community mental health center or licensed behavioral health provider.

(i) If the certifying ~~physician or psychologist~~ professional determines that ~~a person~~ an individual requires involuntary hospitalization for a ~~an addiction to a substance~~ substance use disorder which, due to the degree of ~~addiction~~ the disorder, creates a reasonable likelihood that withdrawal or detoxification ~~from the substance of addiction~~ will cause significant medical complications, the person certifying the individual shall recommend that the individual be closely monitored for possible medical complications. If the magistrate, mental hygiene commissioner, or circuit court judge presiding orders involuntary hospitalization, he or she shall include a recommendation that the individual be closely monitored in the order of commitment.

(j) The Supreme Court of Appeals and the Secretary of the Department of Health and Human Resources shall specifically develop and propose a statewide system for evaluation and adjudication of mental hygiene petitions which shall include payment schedules and recommendations regarding funding sources. Additionally, the Secretary of the Department of Health and Human Resources shall also immediately seek reciprocal agreements with officials in contiguous states to develop interstate/intergovernmental agreements to provide efficient and efficacious services to out-of-state residents found in West Virginia and who are in need of mental hygiene services.

§27-5-2a. Process for involuntary hospitalization.

(a) As used in this section:

(1) "Addiction" has the same meaning as the term is defined in §27-1-11 of this code.

(2) "Authorized staff physician" means a physician, authorized pursuant to the provisions of §30-3-1 et seq. or §30-14-1 et seq. of this code, who is a bona fide member of the hospital's medical staff.

(3) "Hospital" means a facility licensed pursuant to the provisions of §16-5b-1 et seq. of this code, and any acute care facility operated by the state government that primarily provides inpatient diagnostic, treatment, or rehabilitative services to injured, disabled, or sick individuals under the supervision of physicians.

(4) "Psychiatric emergency" means an incident during which an individual loses control and behaves in a manner that poses substantial likelihood of physical harm to himself, herself, or others.

(b)(1) If a mental hygiene commissioner, magistrate, and circuit judge are unavailable or unable to be immediately contacted, an authorized staff physician may order the involuntary hospitalization of an individual who is present at, or presented at, a hospital emergency department in need of treatment, if the authorized staff physician believes, following an examination of the individual, that the individual is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself or to others if allowed to remain at liberty. The authorized staff physician shall sign a statement attesting to his or her decision that the patient presents a harm to himself, herself or others and needs to be held involuntarily for up to 72 hours. The West Virginia Supreme Court of Appeals is requested to generate a form for the statement to be signed by the authorized staff physician or other person authorized by the hospital and provided to the individual.

(2) Immediately upon admission, or as soon as practicable thereafter, but in no event later than 24 hours after an involuntary hospitalization pursuant to this section, the authorized staff physician or designated employee shall file a mental hygiene petition in which the authorized staff physician certifies that the individual for whom the involuntary hospitalization is sought is addicted or is mentally ill and, because of his or her addiction or mental illness, is likely to cause serious harm to himself, herself, or to other individuals if allowed to remain at liberty. The authorized staff physician shall also certify the same in the individual's health records. Upon receipt of this filing, the mental hygiene commissioner, a magistrate, or circuit judge shall conduct a hearing pursuant to §27-5-2 of this code.

(3) An individual who is involuntarily hospitalized pursuant to this section shall be released from the hospital within 72 hours, unless further detained under the applicable provisions of this article.

(c) During a period of involuntary hospitalization authorized by this section, upon consent of the individual, or in the event of a medical or psychiatric emergency, the individual may receive treatment. The hospital or authorized staff physician shall exercise due diligence in determining the individual's existing medical needs and provide treatment the individual requires, including previously prescribed medications.

(d) Each hospital or authorized staff physician which provides services under this section shall be paid for the services at the same rate the hospital or authorized staff physician negotiates with the patient's insurer. If the patient is uninsured, the hospital or authorized staff physician may file a claim for payment with the West Virginia Legislative Claims Commission in accordance with §14-2-1 *et seq.* of this code.

(e) Authorized staff physicians and hospitals and their employees carrying out duties or rendering professional opinions as provided in this section shall be free from liability for their actions, if the actions are performed in good faith and within the scope of their professional duties and in a manner consistent with the standard of care.

(f) The West Virginia Supreme Court of Appeals is requested, by no later than July 1, 2020, to provide each hospital with a list of names and contact information of the mental hygiene commissioners, magistrates, and circuit judges to address mental hygiene petitions in the county where the hospital is located. The West Virginia Supreme Court of Appeals is requested to update this list regularly and the list shall reflect on-call information. If a mental hygiene commissioner, county magistrate, or circuit judge does not respond to the request within 24 hours, a report shall be filed to the West Virginia Supreme Court of Appeals.

(g) An action taken against an individual pursuant to this section may not be construed to be an adjudication of the individual, nor shall any action taken pursuant to this section be construed to satisfy the requirements of §61-7-7(a)(4) of this code.

§27-5-3. Admission under involuntary hospitalization for examination; hearing; release.

(a) *Admission to a mental health facility for examination.* — Any individual may be admitted to a mental health facility for examination and treatment upon entry of an order finding probable cause as provided in §27-5-2 of this code ~~and upon a finding by a licensed physician that the individual is medically stable, and~~ upon certification by a physician, psychologist, licensed professional counselor, licensed independent clinical social worker practicing in compliance with the provisions of §30-30-1 *et seq.* of this code, ~~or an advanced nurse practitioner with psychiatric certification practicing in compliance with §30-7-1 et seq. of this code, or a physician's assistant practicing in compliance with §30-3E-1 et seq. of this code with advanced duties in psychiatric medicine~~ that he or she has examined the individual and is of the opinion that the individual is mentally ill or ~~addicted~~ has a substance use disorder and, because of ~~such the~~ the mental illness or ~~addiction~~ substance use disorder, is likely to cause serious harm to himself, herself, or to others if not immediately restrained: *Provided*, That the opinions offered by an independent clinical social worker, ~~or an advanced nurse practitioner with psychiatric certification, or a physician's assistant with advanced duties in psychiatric medicine~~ must be within ~~their~~ his or her particular areas of expertise, as recognized by the order of the authorizing court.

(b) *Three-day time limitation on examination.* — If the examination does not take place within three days from the date the individual is taken into custody, the individual shall be released. If the examination reveals that the individual is not mentally ill or ~~addicted~~ has a substance use disorder, the individual shall be released.

(c) *Three-day time limitation on certification.* — The certification required in §27-5-3(a) of this code ~~shall be~~ is valid for three days. Any individual with respect to whom the certification has been issued may not be admitted on the basis of the certification at any time after the expiration of three days from the date of the examination.

(d) *Findings and conclusions required for certification.* — A certification under this section must include findings and conclusions of the mental examination, the date, time, and place of the examination, and the facts upon which the conclusion that involuntary commitment is necessary is based.

(e) *Notice requirements.* — When an individual is admitted to a mental health facility or a state hospital pursuant to the provisions of this section, the chief medical officer of the facility shall immediately give notice of the individual's admission to the individual's spouse, if any, and one of the individual's parents or guardians or if there is no spouse and are no parents or guardians, to one of the individual's adult next of kin if the next of kin is not the applicant. Notice shall also be given to the community mental health facility, if any, having jurisdiction in the county of the individual's residence. The notices other than to the community mental health facility shall be in writing and shall be transmitted to the person or persons at his, her, or their last known address by certified mail, return receipt requested.

(f) *Five-day ~~Three-day~~ time limitation for examination and certification at mental health facility or state hospital.* — After the individual's admission to a mental health facility or state hospital, he or she may not be detained more than ~~five~~ three days, excluding Sundays and holidays, unless, within the period, the individual is examined by a staff physician and the physician certifies that in his or her opinion the patient is mentally ill or ~~addicted~~ has a substance use disorder and is likely to injure himself, herself, or others if allowed to be at liberty. In the event the staff physician determines that the individual does not meet the criteria for continued commitment, that the individual can be treated in an available outpatient community-based treatment program and poses no present danger to himself, herself or others, or that the individual has an underlying medical issue or issues that resulted

in a determination that the individual should not have been committed, the staff physician shall release and discharge the individual as appropriate as soon as practicable.

(g) ~~Fifteen-day~~ Ten-day *time limitation for institution of final commitment proceedings.* — If, in the opinion of the examining physician, the patient is mentally ill or ~~addicted~~ has a substance use disorder and because of the mental illness or ~~addiction~~ substance use disorder is likely to injure himself, herself, or others if allowed to be at liberty, the chief medical officer shall, within ~~15~~ 10 days from the date of admission, institute final commitment proceedings as provided in §27-5-4 of this code. If the proceedings are not instituted within ~~such 15-day~~ the 10-day period, the ~~patient~~ individual shall be immediately released. After the request for hearing is filed, the hearing may not be canceled on the basis that the individual has become a voluntary patient unless the mental hygiene commissioner concurs in the motion for cancellation of the hearing.

(h) ~~Thirty-day~~ Twenty-day *time limitation for conclusion of all proceedings.* — If all proceedings as provided in §27-3-1 *et seq.* and §27-4-1 *et seq.* of this code are not completed within ~~30~~ 20 days from the date of institution of the proceedings, the ~~patient~~ individual shall be immediately released.

§27-5-4. Institution of final commitment proceedings; hearing requirements; release.

(a) *Involuntary commitment.* — Except as provided in §27-5-3 of this code, no individual may be involuntarily committed to a mental health facility or state hospital except by order entered of record at any time by the circuit court of the county in which the person resides or was found, or if the individual is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or was found, in the county of the mental health facility and then only after a full hearing on issues relating to the necessity of committing an individual to a mental health facility or state hospital. If the individual objects to the hearing being held in the county where the mental health facility is located, the hearing shall be conducted in the county of the individual's residence.

(b) *How final commitment proceedings are commenced.* — Final commitment proceedings for an individual may be commenced by the filing of a written application under oath by an adult person having personal knowledge of the facts of the case. The certificate or affidavit is filed with the clerk of the circuit court or mental hygiene commissioner of the county where the individual is a resident or where he or she may be found, or the county of a mental health facility if he or she is hospitalized in a mental health facility or state hospital located in a county other than where he or she resides or may be found.

(c) *Oath; contents of application; who may inspect application; when application cannot be filed.* —

(1) The person making the application shall do so under oath.

(2) The application shall contain statements by the applicant that the individual is likely to cause serious harm to self or others due to what the applicant believes are symptoms of mental illness or ~~addiction~~ substance use disorder. The applicant shall state in detail the recent overt acts upon which the belief is based.

(3) The written application, certificate, affidavit, and any warrants issued pursuant thereto, including any related documents, filed with a circuit court, mental hygiene commissioner, or ~~designated~~ magistrate for the involuntary hospitalization of an individual are not open to inspection by any person other than the individual, unless authorized by the individual or his or her legal representative or by order of the circuit court. The records may not be published unless authorized by the individual or his or her legal representative. Disclosure of these records may, however, be made by the clerk, circuit court, mental hygiene commissioner, or ~~designated~~ magistrate to provide notice to the Federal National Instant Criminal Background Check System established pursuant to

section 103(d) of the Brady Handgun Violence Prevention Act, 18 U.S.C. § 922, and the central state mental health registry, in accordance with §61-7A-1 *et seq.* of this code. Disclosure may also be made to the prosecuting attorney and reviewing court in an action brought by the individual pursuant to §61-7A-5 of this code to regain firearm and ammunition rights.

(4) Applications may not be accepted for individuals who only have epilepsy, ~~a mental deficiency, senility dementia, or an intellectual or developmental disability.~~

(d) *Certificate filed with application; contents of certificate; affidavit by applicant in place of certificate.* —

(1) The applicant shall file with his or her application the certificate of a physician or a psychologist stating that in his or her opinion the individual is mentally ill or ~~addicted~~ has a substance use disorder and that because of the mental illness or ~~addiction~~ substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty and, therefore, should be hospitalized. The certificate shall state in detail the recent overt acts on which the conclusion is based.

(2) A certificate is not necessary when an affidavit is filed by the applicant showing facts and the individual has refused to submit to examination by a physician or a psychologist.

(e) *Notice requirements; eight days' notice required.* — Upon receipt of an application, the mental hygiene commissioner or circuit court shall review the application, and if it is determined that the facts alleged, if any, are sufficient to warrant involuntary hospitalization, ~~forthwith~~ immediately fix a date for and have the clerk of the circuit court give notice of the hearing:

(1) To the individual;

(2) To the applicant or applicants;

(3) To the individual's spouse, one of the parents or guardians, or, if the individual does not have a spouse, parents or parent or guardian, to one of the individual's adult next of kin if the next of kin is not the applicant;

(4) To the mental health authorities serving the area;

(5) To the circuit court in the county of the individual's residence if the hearing is to be held in a county other than that of the individual's residence; and

(6) To the prosecuting attorney of the county in which the hearing is to be held.

(f) The notice shall be served on the individual by personal service of process not less than eight days prior to the date of the hearing and shall specify:

(1) The nature of the charges against the individual;

(2) The facts underlying and supporting the application of involuntary commitment;

(3) The right to have counsel appointed;

(4) The right to consult with and be represented by counsel at every stage of the proceedings; and

(5) The time and place of the hearing.

The notice to the individual's spouse, parents or parent or guardian, the individual's adult next of kin or to the circuit court in the county of the individual's residence may be by personal service of process or by certified or registered mail, return receipt requested, and shall state the time and place of the hearing.

(g) Examination of individual by court-appointed physician, ~~or~~ psychologist, advanced nurse practitioner, or physician's assistant; custody for examination; dismissal of proceedings. —

(1) Except as provided in subdivision (3) of this subsection, within a reasonable time after notice of the commencement of final commitment proceedings is given, the circuit court or mental hygiene commissioner shall appoint a physician, ~~or~~ psychologist, an advanced nurse practitioner with psychiatric certification, or a physician's assistant with advanced duties in psychiatric medicine to examine the individual and report to the circuit court or mental hygiene commissioner his or her findings as to the mental condition or ~~addiction~~ substance use disorder of the individual and the likelihood of causing serious harm to self or others.

(2) If the designated physician, ~~or~~ psychologist, advanced nurse practitioner, or physician assistant reports to the circuit court or mental hygiene commissioner that the individual has refused to submit to an examination, the circuit court or mental hygiene commissioner shall order him or her to submit to the examination. The circuit court or mental hygiene commissioner may direct that the individual be detained or taken into custody for the purpose of an immediate examination by the designated physician, ~~or~~ psychologist, nurse practitioner, or physician's assistant. All ~~such~~ orders shall be directed to the sheriff of the county or other appropriate law-enforcement officer. After the examination has been completed, the individual shall be released from custody unless proceedings are instituted pursuant to §27-5-3 of this code.

(3) If the reports of the appointed physician, ~~or~~ psychologist, nurse practitioner, or physician's assistant do not confirm that the individual is mentally ill or ~~addicted~~ has a substance use disorder and might be harmful to self or others, then the proceedings for involuntary hospitalization shall be dismissed.

(h) Rights of the individual at the final commitment hearing; seven days' notice to counsel required. —

(1) The individual shall be present at the final commitment hearing, and he or she, the applicant and all persons entitled to notice of the hearing shall be afforded an opportunity to testify and to present and cross-examine witnesses.

(2) In the event the individual has not retained counsel, the court or mental hygiene commissioner, at least six days prior to hearing, shall appoint a competent attorney and shall inform the individual of the name, address, and telephone number of his or her appointed counsel.

(3) The individual has the right to have an examination by an independent expert of his or her choice and to present testimony from the expert as a medical witness on his or her behalf. The cost of the independent expert is paid by the individual unless he or she is indigent.

(4) The individual may not be compelled to be a witness against himself or herself.

(i) Duties of counsel representing individual; payment of counsel representing indigent. —

(1) Counsel representing an individual shall conduct a timely interview, make investigation, and secure appropriate witnesses, be present at the hearing, and protect the interests of the individual.

(2) Counsel representing an individual is entitled to copies of all medical reports, psychiatric or otherwise.

(3) The circuit court, by order of record, may allow the attorney a reasonable fee not to exceed the amount allowed for attorneys in defense of needy persons as provided in §29-21-1 *et seq.* of this code.

(j) *Conduct of hearing; receipt of evidence; no evidentiary privilege; record of hearing.* —

(1) The circuit court or mental hygiene commissioner shall hear evidence from all interested parties in chamber, including testimony from representatives of the community mental health facility.

(2) The circuit court or mental hygiene commissioner shall receive all relevant and material evidence which may be offered.

(3) The circuit court or mental hygiene commissioner is bound by the rules of evidence promulgated by the Supreme Court of Appeals except that statements made to ~~physicians or psychologists~~ health care professionals appointed under subsection (g) of this section by the individual may be admitted into evidence by ~~physician's or psychologist's~~ the health care professional's testimony, notwithstanding failure to inform the individual that this statement may be used against him or her. A ~~psychologist or physician~~ health care professional testifying shall bring all records pertaining to the individual to the hearing. The medical evidence obtained pursuant to an examination under this section, or §27-5-2 or §27-5-3 of this code, is not privileged information for purposes of a hearing pursuant to this section.

(4) All final commitment proceedings shall be reported or recorded, whether before the circuit court or mental hygiene commissioner, and a transcript made available to the individual, his or her counsel or the prosecuting attorney within 30 days if requested for the purpose of further proceedings. In any case where an indigent person intends to pursue further proceedings, the circuit court shall, by order entered of record, authorize and direct the court reporter to furnish a transcript of the hearings.

(k) *Requisite findings by the court.* —

(1) Upon completion of the final commitment hearing and the evidence presented in the hearing, the circuit court or mental hygiene commissioner shall make findings as to the following:

(A) Whether the individual is mentally ill or ~~addicted~~ has a substance use disorder;

(B) Whether, because of illness or ~~addiction~~ substance use disorder, the individual is likely to cause serious harm to self or others if allowed to remain at liberty;

(C) Whether the individual is a resident of the county in which the hearing is held or currently is a patient at a mental health facility in the county; and

(D) Whether there is a less restrictive alternative than commitment appropriate for the individual. The burden of proof of the lack of a less restrictive alternative than commitment is on the person or persons seeking the commitment of the individual: Provided, That for any commitment to a state hospital as defined by §27-1-6 of this code, a specific finding shall be made that the commitment of, or treatment for, the individual requires inpatient hospital placement and that no suitable outpatient community-based treatment program exists in the individual's area.

(2) The findings of fact shall be incorporated into the order entered by the circuit court and must be based upon clear, cogent, and convincing proof.

(l) *Orders issued pursuant to final commitment hearing; entry of order; change in order of court; expiration of order.* —

(1) Upon the requisite findings, the circuit court may order the individual to a mental health facility or state hospital for an indeterminate period or for a temporary observatory period not exceeding six months; a period not to exceed 90 days except as otherwise provided in this subdivision. During that period and solely for individuals who are committed under §27-6A-1 et seq. of this code, the chief medical officer of the mental health facility or state hospital shall conduct a clinical assessment of the individual at least every 30 days to determine if the individual requires continued placement at the mental health facility or state hospital and whether the individual is suitable to receive any necessary treatment at an outpatient community-based treatment program. If at any time the chief medical officer, acting in good faith and in a manner consistent with the standard of care, determines that: (i) The individual is suitable for receiving outpatient community-based treatment; (ii) necessary outpatient community-based treatment is available in the individual's area as evidenced by a discharge and treatment plan jointly developed by the department and the comprehensive community mental health center or licensed behavioral health provider; and (iii) the individual's clinical presentation no longer requires inpatient commitment, the chief medical officer shall provide written notice to the court of record and prosecuting attorney as provided in subdivision (2) of this section that the individual is suitable for discharge. The chief medical officer may discharge the patient 30 days after the notice unless the court of record stays the discharge of the individual. In the event the court stays the discharge of the individual, the court shall conduct a hearing within 45 days of the stay, and the individual shall be thereafter discharged unless the court finds by clear and convincing evidence that the individual is a significant and present danger to self or others, and that continued placement at the mental health facility or state hospital is required.

If the chief medical officer determines that the individual requires commitment at the mental health facility or state hospital at any time for a period longer than 90 days, then the individual shall remain at the mental health facility or state hospital until the chief medical officer of the mental health facility or state hospital determines that the individual's clinical presentation no longer requires further commitment. The chief medical officer shall provide notice to the court and the prosecuting attorney that the individual requires commitment for a period in excess of 90 days and, in the notice, the chief medical officer shall describe the reasons for ongoing commitment. In its discretion, the court or prosecuting attorney may request any information from the chief medical officer that the court or prosecuting attorney considers appropriate to justify the need for the individual's ongoing commitment.

(2) Notice to the court of record and prosecuting attorney shall be provided by personal service or certified mail, return receipt requested. The chief medical officer shall make the following findings:

(A) Whether the individual has a mental illness or substance use disorder that does not require inpatient treatment, and the mental illness or serious emotional disturbance is in remission;

(B) Whether the individual's condition resulting from mental illness or substance use disorder is likely to deteriorate to the point that the individual will pose a likelihood of serious harm to self or others unless treatment is continued;

(C) Whether the individual is likely to participate in outpatient treatment with a legal obligation to do so;

(D) Whether the individual is not likely to participate in outpatient treatment unless legally obligated to do so;

(E) Whether the individual is not a danger to self or others; and

(F) Whether mandatory outpatient treatment is a suitable, less restrictive alternative to ongoing commitment.

(2) (3) The individual may not be detained in a mental health facility or state hospital for a period in excess of 10 days after a final commitment hearing pursuant to this section unless an order has been entered and received by the facility.

~~(3) If the order pursuant to a final commitment hearing is for a temporary observation period, the circuit court or mental hygiene commissioner may, at any time prior to the expiration of such period on the basis of a report by the chief medical officer of the mental health facility in which the patient is confined, hold another hearing pursuant to the terms of this section and in the same manner as the hearing was held as if it were an original petition for involuntary hospitalization to determine whether the original order for a temporary observation period should be modified or changed to an order of indeterminate hospitalization of the patient. At the conclusion of the hearing, the circuit court shall order indeterminate hospitalization of the patient or dismissal of the proceedings.~~

~~(4) An order for an indeterminate period expires of its own terms at the expiration of two years from the date of the last order of commitment unless prior to the expiration, the Department of Health and Human Resources, upon findings based on an examination of the patient by a physician or a psychologist, extends the order for indeterminate hospitalization. If the patient or his or her counsel requests a hearing, a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.~~

(4) An individual committed pursuant to §27-6A-3 of this code may be committed for the period he or she is determined by the court to remain an imminent danger to self or others.

(5) In the event the commitment of the individual as provided under subdivision (1) of this subsection exceeds two years, the individual or his or her counsel may request a hearing and a hearing shall be held by the mental hygiene commissioner or by the circuit court of the county as provided in subsection (a) of this section.

~~(m) *Dismissal of proceedings.* — In the event the individual is discharged as provided in subsection (l) of this section, if the circuit court or mental hygiene commissioner shall find that the individual is not mentally ill or addicted, the proceedings shall be dismissed. If the circuit court or mental hygiene commissioner finds that the individual is mentally ill or addicted but is not, because of the illness or addiction, likely to cause serious harm to self or others if allowed to remain at liberty, the proceedings shall be dismissed. dismiss the proceedings.~~

~~(n) *Immediate notification of order of hospitalization.* — The clerk of the circuit court in which an order directing hospitalization is entered, if not in the county of the individual's residence, shall immediately upon entry of the order forward a certified copy of the order to the clerk of the circuit court of the county of which the individual is a resident.~~

~~(o) *Consideration of transcript by circuit court of county of individual's residence; order of hospitalization; execution of order.* —~~

(1) If the circuit court or mental hygiene commissioner is satisfied that hospitalization should be ordered but finds that the individual is not a resident of the county in which the hearing is held and

the individual is not currently a resident of a mental health facility or state hospital, a transcript of the evidence adduced at the final commitment hearing of the individual, certified by the clerk of the circuit court, shall ~~forthwith~~ immediately be forwarded to the clerk of the circuit court of the county of which the individual is a resident. The clerk shall immediately present the transcript to the circuit court or mental hygiene commissioner of the county.

(2) If the circuit court or mental hygiene commissioner of the county of the residence of the individual is satisfied from the evidence contained in the transcript that the individual should be hospitalized as determined by the standard set forth ~~above~~ in subdivision one of this subsection, the circuit court shall order the appropriate hospitalization as though the individual had been brought before the circuit court or its mental hygiene commissioner in the first instance.

(3) This order shall be transmitted ~~forthwith~~ immediately to the clerk of the circuit court of the county in which the hearing was held who shall execute the order promptly.

(p) *Order of custody to responsible person.* — In lieu of ordering the ~~patient individual~~ to a mental health facility or state hospital, the circuit court may order the individual delivered to some responsible person who will agree to take care of the individual and the circuit court may take from the responsible person a bond in an amount to be determined by the circuit court with condition to restrain and take proper care of the individual until further order of the court.

(q) *Individual not a resident of this state.* — If the individual is found to be mentally ill or ~~addicted~~ to have a substance use disorder by the circuit court or mental hygiene commissioner is a resident of another state, this information shall be ~~forthwith~~ immediately given to the Secretary of the Department of Health and Human Resources, or to his or her designee, who shall make appropriate arrangements for transfer of the individual to the state of his or her residence conditioned on the agreement of the individual, except as qualified by the interstate compact on mental health.

(r) *Report to the Secretary of the Department of Health and Human Resources.* —

(1) The chief medical officer of a mental health facility or state hospital admitting a patient pursuant to proceedings under this section shall ~~forthwith~~ immediately make a report of the admission to the Secretary of the Department of Health and Human Resources or to his or her designee.

(2) Whenever an individual is released from custody due to the failure of an employee of a mental health facility or state hospital to comply with the time requirements of this article, the chief medical officer of the mental health or state hospital facility shall ~~forthwith~~ immediately, after the release of the individual, make a report to the Secretary of the Department of Health and Human Resources or to his or her designee of the failure to comply.

(s) *Payment of some expenses by the state; mental hygiene fund established; expenses paid by the county commission.* —

(1) The state shall pay the commissioner's fee and the court reporter fees that are not paid and reimbursed under §29-21-1 *et seq.* of this code out of a special fund to be established within the Supreme Court of Appeals to be known as the Mental Hygiene Fund.

(2) The county commission shall pay out of the county treasury all other expenses incurred in the hearings conducted under the provisions of this article whether or not hospitalization is ordered, including any fee allowed by the circuit court by order entered of record for any physician, psychologist, and witness called by the indigent individual. The copying and mailing costs associated with providing notice of the final commitment hearing and issuance of the final order shall be paid by the county where the involuntary commitment petition was initially filed.

§27-5-10. Transportation for the mentally ill or ~~substance abuser~~ persons with substance use disorder.

(a) Whenever transportation of an individual is required under the provisions of §27-4-1 *et seq.* and §27-5-1 *et seq.* of this code, ~~it shall be the duty of the sheriff to~~ shall provide immediate transportation to or from the appropriate mental health facility or state hospital: *Provided*, That, where hospitalization occurs pursuant to §27-4-1 *et seq.* of this code, the sheriff may permit, upon the written request of a person having proper interest in the individual's hospitalization, for the interested person to arrange for the individual's transportation to the mental health facility or state hospital if the sheriff determines that ~~such~~ those means are suitable given the individual's condition.

(b) Upon written agreement between the county commission on behalf of the sheriff and the directors of the local community mental health center and emergency medical services, an alternative transportation program may be arranged. The agreement shall clearly define the responsibilities of each of the parties, the requirements for program participation, and the persons bearing ultimate responsibility for the individual's safety and well-being.

(c) *Use of certified municipal law-enforcement officers.* — Sheriffs and municipal governments ~~are hereby authorized to~~ may enter into written agreements ~~whereby~~ by which certified municipal law-enforcement officers may perform the duties of the sheriff as described in this article. The agreement shall determine jurisdiction, responsibility of costs, and all other necessary requirements, including training related to the performance of these duties, and shall be approved by the county commission and circuit court of the county in which the agreement is made. For purposes of this subsection, "certified municipal law-enforcement officer" means any duly authorized member of a municipal law-enforcement agency who is empowered to maintain public peace and order, make arrests, and enforce the laws of this state or any political subdivision thereof, other than parking ordinances, and who is currently certified as a law-enforcement officer pursuant to §30-29-1 *et seq.* of this code.

(d) In the event an individual requires transportation to a state hospital as defined by §27-1-6 of this code, the sheriff or certified municipal law-enforcement officer shall contact the state hospital in advance of the transportation to determine if the state hospital has suitable bed capacity to place the individual.

(e) ~~(d)~~ Nothing in this section is intended to alter security responsibilities for the patient by the sheriff unless mutually agreed upon as provided in subsection (c) of this section.

ARTICLE 6A. COMPETENCY AND CRIMINAL RESPONSIBILITY OF PERSONS CHARGED OR CONVICTED OF A CRIME.

§27-6A-1. Qualified forensic evaluator; qualified forensic psychiatrist; qualified forensic psychologist; definitions and requirements.

(a) For purposes of this article:

(1) "Court of record" means the circuit court with jurisdiction over the charge or charges against the individual or acquittee.

(2) "Department" means the Department of Health and Human Resources.

(3) A "qualified forensic evaluator" is either a qualified forensic psychiatrist or a qualified forensic psychologist as defined in this section.

(4) A qualified forensic psychiatrist" is:

(A) A psychiatrist licensed under the laws in this state to practice medicine who has completed post-graduate education in psychiatry in a program accredited by the Accreditation Council of Graduate Medical Education; and

(B) Board eligible or board certified in forensic psychiatry by the American Board of Psychiatry and Neurology or actively enrolled in good standing in a West Virginia training program accredited by the Accreditation Council of Graduate Medical Education to make the evaluator eligible for board certification by the American Board of Psychiatry and Neurology in forensic psychiatry or has two years of experience in completing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

~~(2)~~ (5) A “qualified forensic psychologist” is:

(A) A licensed psychologist licensed under the laws of this state to practice psychology; and

(B) Board eligible or board certified in forensic psychology by the American Board of Professional Psychology or actively enrolled in good standing in a West Virginia training program approved by the American Board of Forensic Psychology to make the evaluator eligible for board certification in forensic psychology or has at least two years of experience in performing court-ordered forensic criminal evaluations, including having been qualified as an expert witness by a West Virginia circuit court.

~~(3) A “qualified forensic evaluator” is either a qualified forensic psychiatrist or a qualified forensic psychologist as defined in this section.~~

~~(4) “Department” means the Department of Health and Human Resources.~~

(b) No qualified forensic evaluator may perform a forensic evaluation on an individual under this chapter if the qualified forensic evaluator has been the individual’s treating psychologist or psychiatrist within one year prior to any evaluation order.

§27-6a-2. Competency of defendant to stand trial; cause for appointment of qualified forensic evaluator; written report; observation period.

(a) Whenever a court of record has reasonable cause to believe that a defendant in which an indictment has been returned, or a warrant or summons issued, may be incompetent to stand trial it shall, sua sponte or upon motion filed by the state or by or on behalf of the defendant, at any stage of the proceedings order a forensic evaluation of the defendant’s competency to stand trial to be conducted by ~~one or more~~ a qualified forensic psychiatrists, or ~~one or more~~ a qualified forensic psychologists. If a court of record or other judicial officer orders both a competency evaluation and a criminal responsibility or diminished capacity evaluation, the competency evaluation shall be performed first, and if a qualified forensic evaluator is of the opinion that a defendant is not competent to stand trial, no criminal responsibility or diminished capacity evaluation may be conducted without further order of the court. The initial forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant resides is a current patient there and the court of record has found that the initial forensic evaluation cannot be performed at a community mental health center consistent with §27-2A-1(b)(4) of this code, at an outpatient facility, or at the office of a qualified forensic psychiatrist or qualified forensic psychologist.

(b) The court shall require the party making the motion for the evaluation, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluations within 10 business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports, and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical, or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluations are to include a diminished capacity assessment, the nature of any lesser included criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange for the prompt completion of any court-ordered evaluation which may include record review and defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of competency to stand trial. If it is the qualified forensic evaluator's opinion that the defendant is not competent to stand trial, the report shall state whether the defendant is substantially likely to attain competency within the next ~~three months~~ 90 days and, as provided in this section, in order to attain competency to stand trial, whether the defendant requires inpatient management in a mental health facility may attain competency by receiving competency restoration services at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program. If the qualified forensic evaluator determines that a defendant is likely to attain competency but that competency restoration can be attained only by inpatient management in a mental health facility or state hospital, the qualified forensic evaluator shall make findings that establish reasons why competency restoration services at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program would be unsuccessful or are unavailable. Any report by the qualified forensic evaluator shall further address the following:

(1) A diagnosis of the defendant's mental condition;

(2) If the defendant is mentally ill, an opinion as to:

(A) The defendant's ability to understand the criminal proceedings and participate in his or her own defense;

(B) Whether the defendant presents an imminent risk of serious danger to another, is imminently suicidal, or otherwise needs emergency intervention;

(C) Any treatment required for the defendant to attain or maintain competence and an explanation of appropriate treatment alternatives by order of preference, including the extent to which the defendant can be treated without commitment to an institution and the reasons for rejecting such treatment if institutionalization is recommended;

(D) Whether a substantial probability exists that the defendant will ever attain competency to proceed;

(E) The estimated time required to attain competency to proceed;

(F) The availability of acceptable treatment programs in the state, including the provider and type of treatment; and

(G) The factual basis for the diagnosis and opinions.

The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during the forensic evaluation ordered pursuant to subsection (a) of this section or there have been one or more inadequate or conflicting forensic evaluations performed pursuant to subsection (a) of this section and the court has reason to believe that an observation period is necessary in order to determine if a person is competent to stand trial, the court may order the defendant be committed to a mental health facility designated by the department for a period not to exceed 15 days and an additional evaluation be conducted in accordance with subsection (a) of this section by ~~one or more~~ a qualified forensic psychiatrist, or a qualified forensic psychiatrist and a qualified forensic psychologist. The court shall order that at the conclusion of the 15-day observation period the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(e) A mental health facility not operated by the state is not obligated to admit and treat a defendant under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

§27-6A-3. Competency of defendant to stand trial determination; preliminary finding; hearing; evidence; disposition

(a) Within five days of the receipt of the qualified forensic evaluator's report and opinion on the issue of competency to stand trial, the court of record shall make a preliminary finding on the issue of whether the defendant is competent to stand trial. If the court of record finds that the defendant is and if not competent, the court shall make a finding of whether there is a substantial likelihood that the defendant will attain competency within the next three months 90 days and whether such competency can be attained by receiving competency restoration services at an outpatient mental health facility, outpatient mental health practice, or a jail-based competency restoration program. If the court of record orders, or if the state or defendant or defendant's counsel within 20 days of receipt of the preliminary findings requests a hearing, then a hearing shall be held by the court of record within 15 days of the date of the preliminary finding, absent good cause being shown for a continuance. If a hearing order or request is not filed within 20 days, the preliminary findings of the court become the final order.

(b) At a hearing to determine a defendant's competency to stand trial the defendant has the right to be present and he or she has the right to be represented by counsel and introduce evidence and cross-examine witnesses. The defendant shall be afforded timely and adequate notice of the issues at the hearing and shall have access to all forensic evaluator's opinions. All rights generally afforded a defendant in criminal proceedings shall be afforded to a defendant in the competency proceedings, except trial by jury.

(c) The court of record pursuant to a preliminary finding or hearing on the issue of a defendant's competency to stand trial and with due consideration of any forensic evaluation conducted pursuant to §27-6A-2 and §27-6A-3 of this code shall make a finding of fact upon a preponderance of the evidence as to the defendant's competency to stand trial based on whether or not the defendant has sufficient present ability to consult with his or her lawyer with a reasonable degree of rational

understanding and whether he or she has a rational as well as a factual understanding of the proceedings against him or her.

(d) If at any point in the proceedings the defendant is found competent to stand trial, the court of record shall forthwith proceed with the criminal proceedings.

(e) If at any point in the proceedings the defendant is found not competent to stand trial, the court of record shall at the same hearing, upon the evidence, make further findings as to whether or not there is a substantial likelihood that the defendant will attain competency within the next ensuing ~~three months~~ 90 days.

(f) If at any point in the proceedings the defendant is found not competent to stand trial and is found substantially likely to attain competency, the court of record shall in the same order, upon the evidence, make further findings as to whether the defendant requires, in order to attain competency, inpatient management in a mental health facility. If inpatient management is required, the court shall order the defendant be committed to an inpatient mental health facility designated by the department to attain competency to stand trial and for a competency evaluation. The term of this commitment may not exceed three months from the time of entry into the facility. However, upon request by the chief medical officer of the mental health facility and based on the requirement for additional management to attain competency to stand trial, the court of record may, prior to the termination of the three-month period, extend the period up to nine months from entry into the facility. A forensic evaluation of competency to stand trial shall be conducted by a qualified forensic evaluator and a report rendered to the court, in like manner as subsections (a) and (c), section two of this article, every three months until the court determines the defendant is not competent to stand trial and is not substantially likely to attain competency.

(g) If at any point in the proceedings the defendant who has been indicted or charged with a misdemeanor or felony which does not involve an act of violence against a person is found not competent to stand trial and is found not substantially likely to attain competency ~~and if the defendant has been indicted or charged with a misdemeanor or felony which does not involve an act of violence against a person, the criminal charges shall be dismissed. after having received competency restoration services for 90 days shall be dismissed.~~ The ~~dismissal~~ discharge order may, however, be stayed for 20 days to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this code. Provided: That should a conflict arise between the provisions of this article and those of §27-5-1 *et seq.*, the provisions of this article shall control. The defendant shall be immediately released from any inpatient facility unless civilly committed.

(h) If at any point in the proceedings the defendant is found not competent to stand trial and is found not substantially likely to attain competency, and if the defendant has been indicted or charged with a misdemeanor or felony in which the misdemeanor or felony does involve an act of violence against a person, then the court shall determine on the record the offense or offenses of which the person otherwise would have been convicted, and the maximum sentence he or she could have received. A defendant shall remain under the court's jurisdiction until the expiration of the maximum sentence unless the defendant attains competency to stand trial and the criminal charges reach resolution or the court dismisses the indictment or charge. The court shall order the defendant be committed to a mental health facility designated by the department that is the least restrictive environment to manage the defendant and that will allow for the protection of the public. Notice of the maximum sentence period with an end date shall be provided to the mental health facility. The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within 30 days of admission to the mental health facility and a report rendered to the court within 10 business days of the completion of the evaluation. The medical director of the mental health facility shall provide the court a written clinical summary report

of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction shall continue an additional 10 days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to article five of this chapter. The defendant shall then be immediately released from the facility unless civilly committed.

(i) If the defendant has been ordered to a mental health facility pursuant to subsection (h) of this section and the court receives notice from the medical director or other responsible official of the mental health facility that the defendant no longer constitutes a significant danger to self or others, the court shall conduct a hearing within 30 days to consider evidence, with due consideration of the qualified forensic evaluator's dangerousness report or clinical summary report to determine if the defendant shall be released to a less restrictive environment. The court may order the release of the defendant only when the court finds that the defendant is no longer a significant danger to self or others. When a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated as a result of any treatment, the court, in its discretion, may make the continuance of appropriate treatment, including medications, a condition of the defendant's release from inpatient hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said subsection. Upon notice that a defendant ordered to a mental health facility pursuant to said subsection who is released on the condition that he or she continues treatment does not continue his or her treatment, the prosecuting attorney shall, by motion, cause the court to reconsider the defendant's release. Upon a showing that defendant is in violation of the conditions of his or her release, the court shall reorder the defendant to a mental health facility under the authority of the department which is the least restrictive setting that will allow for the protection of the public.

(j) The prosecuting attorney may, by motion, and in due consideration of any chief medical officer's or forensic evaluator's reports, cause the competency to stand trial of a defendant subject to the court's jurisdiction pursuant to subsection (h) of this section or released pursuant to subsection (i) of this section to be determined by the court of record while the defendant remains under the jurisdiction of the court, and in which case the court may order a forensic evaluation of competency to stand trial be conducted by a qualified forensic evaluator and a report rendered to the court in like manner as subsections (a) and (c), section two of this article.

(k) Any defendant found not competent to stand trial may at any time petition the court of record for a hearing on his or her competency however may do so no more often than every six months.

(l) Notice of court findings of a defendant's competency to stand trial, of commitment for inpatient management to attain competency, of dismissal of charges, of order for inpatient management to protect the public, of release or conditional release, or any hearings to be conducted pursuant to this section shall be sent to the prosecuting attorney, the defendant and his or her counsel, and the mental health facility and state hospital. Notice of court release hearing or order for release or conditional release pursuant to subsection (i) of this section shall be made available to the victim or next of kin of the victim of the offense for which the defendant was charged. The burden is on the victim or next of kin of the victim to keep the court apprised of that person's current mailing address.

(m) A mental health facility not operated by the state is not obligated to admit or treat a defendant under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

(n) Notwithstanding anything in this article to the contrary, for each individual who is committed to a state hospital or committed to a state hospital and diverted to a licensed hospital prior to the effective date hereof and who has received or will receive the maximum amount of competency restoration treatment authorized under this section prior to January 31, 2021, and who the medical director of such hospital has determined is not restorable, the medical director shall inform the court and prosecutor of record for each such individual as soon as practicable but no later than March 31,

2021, and the medical director shall forthwith provide a recommendation to the court and prosecutor for the clinical disposition, placement, or treatment of each such individual. The state hospital or prosecutor shall thereafter file a civil commitment proceeding, if warranted, as provided under §27-5-1 et seq. of this code for each such individual or make other appropriate recommendations to the court of record. The court shall hold any hearing for each such individual as soon as practicable but no later than June 30, 2021.

§27-6A-4. Criminal responsibility or diminished capacity evaluation; court jurisdiction over persons found not guilty by reason of mental illness

(a) If the court of record finds, upon hearing evidence or representations of counsel for the defendant, that there is probable cause to believe that the defendant's criminal responsibility or diminished capacity will be a significant factor in his or her defense, the court shall appoint ~~one or more~~ a qualified forensic psychiatrists or qualified forensic psychologists to conduct a forensic evaluation of the defendant's state of mind at the time of the alleged offense. However, if a qualified forensic evaluator is of the opinion that the defendant is not competent to stand trial that no criminal responsibility or diminished capacity evaluation may be conducted. The forensic evaluation may not be conducted at a state inpatient mental health facility unless the defendant has been ordered to a mental health facility or state hospital in accordance with §27-6A-2(c) or §27-6A-3(f) or (h) of this code. To the extent possible, qualified forensic evaluators who have conducted evaluations of competency under §27-6A-2(a) of this code shall be used to evaluate criminal responsibility or diminished capacity under this subsection.

(b) The court shall require the party making the motion for the evaluations, and other parties as the court considers appropriate, to provide to the qualified forensic evaluator appointed under subsection (a) of this section any information relevant to the evaluation within 10 business days of its evaluation order. The information shall include, but not be limited to:

(1) A copy of the warrant or indictment;

(2) Information pertaining to the alleged crime, including statements by the defendant made to the police, investigative reports, and transcripts of preliminary hearings, if any;

(3) Any available psychiatric, psychological, medical, or social records that are considered relevant;

(4) A copy of the defendant's criminal record; and

(5) If the evaluation is to include a diminished capacity assessment, the nature of any lesser criminal offenses.

(c) A qualified forensic evaluator shall schedule and arrange within 15 days of the receipt of appropriate documents the completion of any court-ordered evaluation which may include record review and defendant interview and shall, within 10 business days of the date of the completion of any evaluation, provide to the court of record a written, signed report of his or her opinion on the issue of criminal responsibility and if ordered, on diminished capacity. The court may extend the 10-day period for filing the report if a qualified forensic evaluator shows good cause to extend the period, but in no event may the period exceed 30 days. If there are no objections by the state or defense counsel, the court may, by order, dismiss the requirement for a written report if the qualified forensic evaluator's opinion may otherwise be made known to the court and interested parties.

(d) If the court determines that the defendant has been uncooperative during a forensic evaluation ordered pursuant to subsection (a) of this section or there are inadequate or conflicting forensic

evaluations performed pursuant to subsection (a) of this section, and the court has reason to believe that an observation period and additional forensic evaluation or evaluations are necessary in order to determine if a defendant was criminally responsible or with diminished capacity, the court may order the defendant be admitted to a mental health facility or state hospital designated by the department for a period not to exceed 15 days and an additional evaluation be conducted and a report rendered in like manner as subsections (a) and (b) of this section by one or more qualified forensic psychiatrists or one or more qualified forensic psychologists. At the conclusion of the observation period, the court shall enter a disposition order and the sheriff of the county where the defendant was charged shall take immediate custody of the defendant for transportation and disposition as ordered by the court.

(e) If the verdict in a criminal trial is a judgment of not guilty by reason of mental illness, the court shall determine on the record the offense or offenses of which the acquittee could have otherwise been convicted, and the maximum sentence he or she could have received. The acquittee shall remain under the court's jurisdiction until the expiration of the maximum sentence or until discharged by the court. ~~The court shall commit the acquittee to a mental health facility designated by the department that is the least restrictive environment to manage the acquittee and that will allow for the protection of the public. Notice of the maximum sentence period with end date shall be provided to the mental health facility.~~ The court shall order a qualified forensic evaluator to conduct a dangerousness evaluation to include dangerousness risk factors to be completed within 30 days of admission to the mental health facility and a report rendered to the court within 10 business days of the completion of the evaluation. The medical director of the mental health facility shall provide the court a written clinical summary report of the defendant's condition at least annually during the time of the court's jurisdiction. The court's jurisdiction continues an additional 10 days beyond any expiration to allow civil commitment proceedings to be instituted by the prosecutor pursuant to §27-5-1 *et seq.* of this code. The defendant shall then be immediately released from the facility unless civilly committed.

(f) The court shall place persons so acquitted under section (e) in the temporary custody of the department for evaluation to determine if the acquittee may be released with or without conditions or if the acquittee requires commitment. The court may authorize that the evaluation be conducted on an outpatient basis. If the court authorizes an outpatient evaluation, the department shall determine, on the basis of all information available, whether the evaluation shall be conducted on an outpatient basis or whether the acquittee shall be confined in a hospital for evaluation. If the court does not authorize an outpatient evaluation, the acquittee shall be confined in a hospital for evaluation. If an acquittee who is being evaluated on an outpatient basis fails to comply with such evaluation, the department shall petition the court for an order to confine the acquittee in a hospital for evaluation. A copy of the petition shall be sent to the acquittee's attorney and the prosecutor of the acquittee's case. The evaluation shall be conducted by a psychiatrist or a clinical psychologist skilled in the diagnosis of mental illness and intellectual disability and qualified by training and experience to perform such evaluations. The evaluator shall determine whether the acquittee currently has mental illness or intellectual disability and shall assess the acquittee and report on his or her condition and need for hospitalization with respect to the factors set forth in §27-6A-5(b) of this code. The evaluator shall conduct his or her examination and report his or her findings separately within 30 days of the department's assumption of custody of the acquittee. Copies of the report shall be sent to the acquittee's attorney, the prosecuting attorney for the jurisdiction where the person was acquitted, and the comprehensive community mental health center designated by the department. If the evaluator recommends conditional release or release without conditions of the acquittee, the court shall extend the evaluation period to permit the department and the comprehensive community mental health center or licensed behavioral health provider to jointly prepare a conditional release or discharge plan, as applicable, prior to the hearing.

(f) (g) In addition to any court-ordered evaluations completed pursuant to section two, three or four of this article, the defendant or the state has the right to an evaluation or evaluations by a forensic evaluator or evaluators of his or her choice and at his or her expense.

~~(g)~~ (h) A mental health facility not operated by the state is not required to admit or treat a defendant or acqutee under this section except as otherwise provided by §27-2A-1(b)(4) and §27-5-9 of this code.

§27-6A-5. Release of acqutee to less restrictive environment; discharge from jurisdiction of the court; conditional release; and commitment.

~~(a) If, at any time prior to the expiration of the court's jurisdiction, the chief medical officer or responsible official of the mental health facility to which an acqutee has been ordered pursuant to subsection (e), section four of this article believes that the acqutee is not mentally ill or does not have significant dangerousness risk factors associated with mental illness, he or she shall file with the court of record notice of the belief and shall submit evidence in support of the belief to include a forensic evaluation dangerousness report conducted in like manner as said subsection and recommendations for treatment, including medications, that reduce or eliminate the dangerousness risk factors associated with mental illness. The court of record shall hold a hearing within thirty days of receipt of the notice to consider evidence as to whether the acqutee shall be released from the mental health facility to a less restrictive environment. Notice of the hearing shall be made available to the prosecuting attorney responsible for the charges brought against the acqutee at trial, the acqutee and his or her counsel and the mental health facility. If upon consideration of the evidence the court determines that an acqutee may be released from a mental health facility to a less restrictive setting, the court shall order, within fifteen days of the hearing, the acqutee be released upon terms and conditions, if any, the court considers appropriate for the safety of the community and the well being of the acqutee. Any terms and conditions imposed by the court must be protective and therapeutic in nature, not punitive. When a defendant's dangerousness risk factors associated with mental illness are reduced or eliminated as a result of any treatment, the court, in its discretion, may make the continuance of appropriate treatment, including medications, a condition of the defendant's release from inpatient hospitalization. The court shall maintain jurisdiction of the defendant in accordance with said subsection. Upon notice that an acqutee released on the condition that he or she continues appropriate treatment does not continue his or her treatment, the prosecuting attorney responsible for the charges brought against the acqutee at trial shall, by motion, cause the court to reconsider the acqutee's release and upon a showing that the acqutee is in violation of the conditions of his or her release, the court may reorder the acqutee to a mental health facility designated by the department which is the least restrictive setting appropriate to manage the acqutee and protect the public.~~

~~(b) No later than thirty days prior to the release from a mental health facility or other management setting of an acqutee because of the expiration of the court's jurisdiction as set in accordance with subsection (e), section four of this article, if the acqutee's physician, psychologist, chief medical officer or other responsible party is of the opinion that the acqutee's mental illness renders the acqutee to be likely to cause serious harm to self or others, the supervising physician, psychologist, chief medical officer or other responsible party shall notify the court of record who shall promptly notify the prosecuting attorney in the county of the court having jurisdiction of the opinion and the basis for the opinion. Following notification, the prosecuting attorney may file, within ten days, a civil commitment application against the acqutee pursuant to article five of this chapter.~~

(a) Upon receipt of the evaluation report as provided in §27-6A-4(e) of this code and, if applicable, a conditional release or discharge plan, the court shall schedule the matter for hearing on an expedited basis to determine the appropriate disposition of the acqutee. Except as otherwise

ordered by the court, the attorney who represented the defendant at the criminal proceedings shall represent the acquittee through the proceedings pursuant to this section. The matter may be continued on motion of either party for good cause shown. The acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross examine witnesses at the hearing. The hearing is a civil proceeding.

(b) At the conclusion of the hearing, the court shall commit the acquittee to a mental health facility or state hospital if it finds by clear and convincing evidence that the acquittee has a mental illness or an intellectual disability and that because of the nature or severity of acquittee's condition the acquittee cannot be treated on an outpatient basis and requires inpatient management. The decision of the court shall be based upon consideration of the following factors:

(1) To what extent the acquittee has mental illness or an intellectual disability;

(2) The likelihood that the acquittee will engage in conduct presenting a substantial risk of bodily harm to other persons or to himself in the foreseeable future;

(3) The likelihood that the acquittee can be adequately controlled with supervision and treatment on an outpatient basis; and

(4) Such other factors as the court deems relevant.

(c) If inpatient hospitalization is ordered by the court, the mental health facility or state hospital shall periodically provide written clinical reports to the court regarding the continued need for hospitalization as provided by this subsection. A report shall be sent to the court after the initial six months of treatment and every two years after the initial report is made. The court shall provide copies of any such reports to the prosecutor and counsel for the acquittee. Within 30 days after its receipt of the report, the court shall hold a hearing to consider the issue of the continued commitment of the acquittee. The acquittee may request a change in the conditions of confinement, and the trial court shall conduct a hearing on that request if six months or more have elapsed since the most recent hearing was conducted under this section.

(d) Notwithstanding anything in this section to the contrary, the court shall order the acquittee released if the court finds that the acquittee meets the criteria for conditional release as set forth in subsection (b). The court may order such other conditions that it deems necessary in accordance with subsection (c). If the court finds that the acquittee does not need inpatient hospitalization nor does the acquittee meet the criteria for conditional release, the court shall release the acquittee without conditions, provided the court has approved a discharge plan prepared by the appropriate comprehensive community mental health center or licensed behavioral health provider in consultation with the department.

(e) The court shall order that any person acquitted by reason of insanity and committed pursuant to this section who is sentenced to a term of incarceration for any other offense in the same proceeding or in any proceeding conducted prior to the proceeding in which the person is acquitted by reason of insanity complete any sentence imposed for such other offense prior to being placed in the custody of the department until released from commitment pursuant to this chapter. The court shall order that any person acquitted by reason of insanity and committed pursuant to this section who is sentenced to a term of incarceration in any proceeding conducted during the period of commitment be transferred to the custody of the correctional facility where he or she is to serve his or her sentence, and, upon completion of his or her sentence, such person shall be placed in the custody of the department until released from commitment pursuant to this chapter.

(f) At any time the court considers the acquittee's need for inpatient hospitalization pursuant to this section, the court shall place the acquittee on conditional release if it finds that (i) based on consideration of the factors which the court must consider in its commitment decision as provided in subsection (b), the acquittee does not need inpatient hospitalization but may receive outpatient treatment or monitoring to prevent his or her condition from deteriorating to a degree that he or she would need inpatient hospitalization; (ii) appropriate outpatient supervision and treatment are reasonably available; (iii) is not mentally ill or does not have significant dangerousness risk factors associated with mental illness; (iv) there is significant reason to believe that the acquittee, if conditionally released, would comply with the conditions specified; and (v) conditional release will not present an undue risk to public safety. The court shall subject a conditionally released acquittee to such orders and conditions it deems will best meet the acquittee's need for treatment and supervision and best serve the interests of justice and society.

(g) The comprehensive community mental health center or licensed behavioral health provider as designated by the department shall implement the court's conditional release orders and shall submit written reports to the court on the acquittee's progress and adjustment in the community no less frequently than every six months. An acquittee's conditional release shall not be revoked solely because of his or her voluntary admission to a state hospital.

(h) If at any time the court that conditionally released an acquittee finds reasonable grounds to believe that an acquittee on conditional release (i) has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (ii) requires inpatient hospitalization, it may order an evaluation of the acquittee by a psychiatrist or clinical psychologist qualified by training and experience to perform forensic evaluations. If the court, based on the evaluation and after hearing evidence on the issue, finds by a preponderance of the evidence that an acquittee on conditional release (a) has violated the conditions of his or her release or is no longer a proper subject for conditional release based on application of the criteria for conditional release and (b) has a mental illness or an intellectual disability and requires inpatient hospitalization, the court may revoke the acquittee's conditional release and order him or her returned to the custody of the department.

(i) At any hearing pursuant to this section, the acquittee shall be provided with adequate notice of the hearing, of the right to be present at the hearing, the right to the assistance of counsel in preparation for and during the hearing, and the right to introduce evidence and cross-examine witnesses at the hearing. The hearing shall be scheduled on an expedited basis. Written notice of the hearing shall be provided to the prosecuting attorney for the committing jurisdiction. The hearing is a civil proceeding.

(j) If during the term of the acquittee's conditional release the court finds that the acquittee has violated the conditions of his or her release but does not require inpatient hospitalization, the court may hold the acquittee in contempt of court for violation of the conditional release order.

(k) The court may modify conditions of release or remove conditions placed on release pursuant to subsection (f) upon petition by the comprehensive community mental health center or licensed behavioral health provider, the prosecuting attorney, the acquittee, or upon its own motion based upon the report or reports of such comprehensive community mental health center or behavioral health provider. However, the acquittee may petition no more frequently than annually and only six months after the conditional release order is entered. Upon petition, the court shall require the comprehensive community mental health center or behavioral health provider to provide a report on the acquittee's progress while on conditional release.

(l) As it deems appropriate and based on the report from the comprehensive community mental health center or behavioral health provider and any other evidence provided to it, the court may issue a proposed order for modification or removal of conditions. The court shall provide notice of the order, and their right to object to it, within ten days of its issuance, to the acquittee, the comprehensive community mental health center or behavioral health provider, and the prosecuting attorney for the committing jurisdiction and for the jurisdiction where the acquittee is residing on conditional release. The proposed order shall become final if no objection is filed within ten days of its issuance. If an objection is so filed, the court shall conduct a hearing at which the acquittee, the prosecuting attorney, and the comprehensive community mental health center or behavioral health provider have an opportunity to present evidence challenging the proposed order. At the conclusion of the hearing, the court shall issue an order specifying conditions of release or removing existing conditions of release, as the court deems appropriate.

§27-6A-12. Study of adult criminal competency and responsibility issues; requiring and requesting report and proposed legislation; submission to legislature.

(a) The Secretary of the Department of Health and Human Resources shall, in collaboration with designees of the Supreme Court of Appeals, the Prosecuting Attorney's Institute Association, the Public Defender Services, Disability Rights of West Virginia, and designees of the Board of Medicine, Board of Osteopathy, and the Board Examiners of Psychologists with experience in issues of competence and criminal responsibility, undertake an evaluation of the provisions of this article in the context of current constitutional requirements related to competency and responsibility issues, best medical practices, and pharmacological developments and draft proposed legislation to update the provisions of this article.

(b) The legislation required by the provisions of subsection (a) of this section shall be submitted to the President of the Senate and the Speaker of the House of Delegates on or before July 31, 2020."

Speaker Pro Tempore Cowles in the Chair

The amendment was adopted and the bill was then ordered to third reading.

Com. Sub. for S. B. 291, Requiring PEIA and health insurance providers provide mental health parity; 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 eleven, section seven, following line two hundred sixty-seven, by inserting a new subdivision to read as follows:

"(5) After the initial report required by this subsection, annual reports are only required for any year thereafter during which the Public Employees Insurance Agency makes significant changes to how it designs and applies medical management protocols."

On page seventeen, section four-u, line one hundred twenty-one, following the words "year 2021" and the period, by inserting a new sentence to read as follows: "The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.";

On page twenty-two, section three-a, line one hundred twenty, following the words "year 2021" and the period, by inserting a new sentence to read as follows: "The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules

are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.”;

On page twenty-nine, section seven-u, line one hundred eighteen, following the words “year 2021” and the period, by inserting a new sentence to read as follows: “The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.”;

On page thirty-five, section eight-r, line one hundred twenty, following the words “year 2021” and the period, by inserting a new sentence to read as follows: “The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.”;

And,

On page forty-one, section eight-u, line one hundred twenty, following the words “year 2021” and the period, by inserting a new sentence to read as follows: “The rules shall require that each carrier first submit the report to the Insurance Commissioner no earlier than one year after the rules are promulgated, and any year thereafter during which the carrier makes significant changes to how it designs and applies medical management protocols.”.

The bill was then ordered to third reading.

S. B. 322, Relating to prequalifications for state contract vendors; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 472, Providing alternative sentencing program for work release; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 517, Creating State Parks and Recreation Endowment Fund; 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 to compensation awards to crime victims; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 547, Relating to employer testing, notice, termination, and forfeiture of unemployment compensation; on second reading, coming up in regular order, was read a second time.

On motion of Delegate Fast, the bill was amended on page 1, immediately following the enacting section by inserting the following heading:

“CHAPTER 21. LABOR.

ARTICLE 3E. THE WEST VIRGINIA SAFER WORKPLACE ACT.”

AND

On page 1, line 18, immediately following the word “chapter.” by inserting the following new section:

“CHAPTER 21A. UNEMPLOYMENT COMPENSATION.**ARTICLE 6. EMPLOYEE ELIGIBILITY; BENEFITS.****§21A-6-3. Disqualification for benefits.**

Upon the determination of the facts by the commissioner, an individual is disqualified for benefits:

(1) For the week in which he or she left his or her most recent work voluntarily without good cause involving fault on the part of the employer and until the individual returns to covered employment and has been employed in covered employment at least thirty working days.

For the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer if the individual leaves his or her most recent work with an employer and if he or she in fact, within a fourteen-day calendar period, does return to employment with the last preceding employer with whom he or she was previously employed within the past year prior to his or her return to work, and which last preceding employer, after having previously employed the individual for thirty working days or more, laid off the individual because of lack of work, which layoff occasioned the payment of benefits under this chapter or could have occasioned the payment of benefits under this chapter had the individual applied for benefits. It is the intent of this paragraph to cause no disqualification for benefits for an individual who complies with the foregoing set of requirements and conditions. Further, for the purpose of this subdivision, an individual has not left his or her most recent work voluntarily without good cause involving fault on the part of the employer, if the individual was compelled to leave his or her work for his or her own health-related reasons and notifies the employer prior to leaving the job or within two business days after leaving the job or as soon as practicable and presents written certification from a licensed physician within thirty days of leaving the job that his or her work aggravated, worsened or will worsen the individual's health problem.

(2) For the week in which he or she was discharged from his or her most recent work for misconduct and the six weeks immediately following that week; or for the week in which he or she was discharged from his or her last thirty-day employing unit for misconduct and the six weeks immediately following that week. The disqualification carries a reduction in the maximum benefit amount equal to six times the individual's weekly benefit. However, if the claimant returns to work in covered employment for thirty days during his or her benefit year, whether or not the days are consecutive, the maximum benefit amount is increased by the amount of the decrease imposed under the disqualification; except that:

If he or she were discharged from his or her most recent work for one of the following reasons, or if he or she were discharged from his or her last thirty days employing unit for one of the following reasons: Gross misconduct consisting of willful destruction of his or her employer's property; assault upon the person of his or her employer or any employee of his or her employer; if the assault is committed at the individual's place of employment or in the course of employment; reporting to work in an intoxicated condition, or being intoxicated while at work; reporting to work under the influence of any controlled substance, as defined in chapter sixty-a of this code without a valid prescription, or being under the influence of any controlled substance, as defined in said chapter without a valid prescription, while at work; adulterating or otherwise manipulating a sample or specimen in order to thwart a drug or alcohol test lawfully required of an employee; refusal to submit to random testing for alcohol or illegal controlled substances for employees in safety sensitive positions as defined in section two, article one-d, chapter twenty-one of this code; violation of an employer's drug free workplace program; violation of an employer's alcohol free workplace program; arson, theft, larceny, fraud or embezzlement in connection with his or her work; or any other gross misconduct, he or she

is disqualified for benefits until he or she has thereafter worked for at least thirty days in covered employment: *Provided*, That for the purpose of this subdivision, the words "any other gross misconduct" includes, but is not limited to, any act or acts of misconduct where the individual has received prior written warning that termination of employment may result from the act or acts.

(3) For the week in which he or she failed without good cause to apply for available, suitable work, accept suitable work when offered, or return to his or her customary self-employment when directed to do so by the commissioner, and for the four weeks which immediately follow for such additional period as any offer of suitable work shall continue open for his or her acceptance. The disqualification carries a reduction in the maximum benefit amount equal to four times the individual's weekly benefit amount.

(4) For any week or portion thereof in which he or she did not work as a result of:

(a) A strike or other bona fide labor dispute which caused him or her to leave or lose his or her employment;

(b) A lockout is not a strike or a bona fide labor dispute and no individual may be denied benefits by reason of a lockout. However, the operation of a facility by non-striking employees of the company, contractors or other personnel is not a reason to grant employees of the company on strike unemployment compensation benefit payments. If the operation of a facility is with workers hired to permanently replace the employees on strike, the employees would be eligible for benefits.

(c) For the purpose of this subsection, an individual shall be determined to leave or lose his or her employment by reason of a lockout where the individual employee has established that: (i) The individual presented himself or herself physically for work at the workplace on the first day of such lockout or on the first day he or she is able to present himself at the workplace or herself; and (ii) the employer denied the individual the opportunity to perform work.

(d) For purposes of this subsection, an individual is determined to be permanently replaced where the individual employee establishes that: (i) He or she is currently employed by an employer who is the subject of a strike or other bona fide labor dispute; and (ii) the position of the employee has been occupied by another employee who has been notified they are permanently replacing the employee who previously occupied the position. Employees or contractors who are hired to perform striking employees' work on a temporary basis, such as the duration of a strike or other bona fide labor dispute, or a shorter period of time, may not be determined to have permanently replaced a striking employee.

(5) For a week with respect to which he or she is receiving or has received:

(a) Wages in lieu of notice;

(b) Compensation for temporary total disability under the workers' compensation law of any state or under a similar law of the United States; or

(c) Unemployment compensation benefits under the laws of the United States or any other state.

(6) For the week in which an individual has voluntarily quit employment to marry or to perform any marital, parental or family duty, or to attend to his or her personal business or affairs and until the individual returns to covered employment and has been employed in covered employment at least thirty working days: *Provided*, That an individual who has voluntarily quit employment to accompany a spouse serving in active military service who has been reassigned from one military assignment to another is not disqualified for benefits pursuant to this subdivision: *Provided however*, That the

account of the employer of an individual who leaves the employment to accompany a spouse reassigned from one military assignment to another may not be charged.

(7) Benefits may not be paid to any individual on the basis of any services, substantially all of which consist of participating in sports or athletic events or training or preparing to so participate, for any week which commences during the period between two successive sport seasons (or similar periods) if the individual performed the services in the first of the seasons (or similar periods) and there is a reasonable assurance that the individual will perform the services in the later of the seasons (or similar periods).

(8) (a) Benefits may not be paid on the basis of services performed by an alien unless the alien is an individual who was lawfully admitted for permanent residence at the time the services were performed, was lawfully present for purposes of performing the services or was permanently residing in the United States under color of law at the time the services were performed (including an alien who is lawfully present in the United States as a result of the application of the provisions of Section 203(a)(7) or Section 212(d)(5) of the Immigration and Nationality Act): *Provided*, That any modifications to the provisions of Section 3304(a)(14) of the federal Unemployment Tax Act as provided by Public Law 94-566 which specify other conditions or other effective date than stated in this subdivision for the denial of benefits based on services performed by aliens and which modifications are required to be implemented under state law as a condition for full tax credit against the tax imposed by the federal Unemployment Tax Act are applicable under the provisions of this section.

(b) Any data or information required of individuals applying for benefits to determine whether benefits are not payable to them because of their alien status shall be uniformly required from all applicants for benefits.

(c) In the case of an individual whose application for benefits would otherwise be approved, no determination that benefits to the individual are not payable because of his or her alien status may be made except upon a preponderance of the evidence.

(9) For each week in which an individual is unemployed because, having voluntarily left employment to attend a school, college, university or other educational institution, he or she is attending that school, college, university or other educational institution, or is awaiting entrance thereto or is awaiting the starting of a new term or session thereof, and until the individual returns to covered employment.

(10) For each week in which he or she is unemployed because of his or her request, or that of his or her duly authorized agent, for a vacation period at a specified time that would leave the employer no other alternative but to suspend operations.

(11) In the case of an individual who accepts an early retirement incentive package, unless he or she: (i) Establishes a well-grounded fear of imminent layoff supported by definitive objective facts involving fault on the part of the employer; and (ii) establishes that he or she would suffer a substantial loss by not accepting the early retirement incentive package.

(12) For each week with respect to which he or she is receiving or has received benefits under Title II of the Social Security Act or similar payments under any Act of Congress, or remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from any trust or fund contributed to by a base period employer or chargeable employer or any combination of the above, the weekly benefit amount payable to the individual for that week shall be reduced (but not below zero) by the prorated weekly amount of those benefits, payments or

remuneration: *Provided*, That if the amount of benefits is not a multiple of \$1, it shall be computed to the next lowest multiple of \$1: *Provided, however*, That there is no disqualification if in the individual's base period there are no wages which were paid by the base period employer or chargeable employer paying the remuneration, or by a fund into which the employer has paid during the base period: *Provided further*, That notwithstanding any other provision of this subdivision to the contrary, the weekly benefit amount payable to the individual for that week may not be reduced by any retirement benefits he or she is receiving or has received under Title II of the Social Security Act or similar payments under any Act of Congress. A claimant may be required to certify as to whether or not he or she is receiving or has been receiving remuneration in the form of an annuity, pension or other retirement pay from a base period employer or chargeable employer or from a trust fund contributed to by a base period employer or chargeable employer.

(13) For each week in which and for fifty-two weeks thereafter, beginning with the date of the decision, if the commissioner finds the individual who within twenty-four calendar months immediately preceding the decision, has made a false statement or representation knowing it to be false or knowingly fails to disclose a material fact, to obtain or increase any benefit or payment under this article: *Provided*, That disqualification under this subdivision does not preclude prosecution under section seven, article ten of this chapter."

The bill was then ordered to third reading.

Com. Sub. for S. B. 551, Relating to Water and Wastewater Investment and Infrastructure Improvement Act; 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, four, section four-g, line 23, after the words "negotiate a" by striking the word "fair";

On page four, section four-g, line 23, after the word "assets" by striking the following phrase "that lies between ascertainable minimum and maximum values set forth in this section";

On page four, section four-g, line 25, after the words "assets in" by striking the following phrase "the acquiring utility's";

On page five, section four-g, line 42, following "(b)", by striking the words "Fair value" and inserting in lieu thereof the word "Value";

On page five, section four-g, line 45 after the words "assets that" by striking "falls between the depreciated original cost and the reproduction cost new less depreciation, and in that case the applicants will present evidence of those two values in the application." and inserting in lieu thereof the following:

"is in accordance with utility asset valuation methodologies, such as depreciated original cost, or reproduction cost new less depreciation, or other industry standard utility asset valuation methods, excluding the use of fair market appraisal valuation methods: *Provided*, That the applicants will present evidence of those asset values in the application: *Provided, however*, That the utility asset valuation methodologies and definitions referenced in 24-2-4g (d) apply solely to cases filed pursuant to Chapter 24 of this code.";

On page five, section four-g, line 51, after the word "then" by striking "if the negotiated sale price:" and inserting in lieu thereof the following "the commission will establish the rate based addition at the negotiated sale price, as determined and in accordance with subdivision (1) of this subsection.";

On page six, section four-g, line 53 by striking out paragraph (A) and paragraph (B) in their entirety;

On page eight, section four-g, line 116, after the word “assets” by inserting the following “, net of depreciation.”;

And,

On page eight, section four-g, line 123, after subdivision (8) by inserting a new subdivision (9) to read as follows: “(9) “Utility Asset Valuation” means industry standard valuation methods of determining the value of utility assets, regardless of original sources of funding.”.

The bill was then ordered to third reading.

Com. Sub. for S. B. 579, Changing and adding fees to wireless enhanced 911 fee; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 589, Creating Critical Needs/Failing Systems Sub Account; 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 1, following the enacting clause by striking the remainder of the bill and inserting in lieu thereof the following:

“ARTICLE 15A. WEST VIRGINIA INFRASTRUCTURE AND JOBS DEVELOPMENT COUNCIL.

§31-15A-17c. Critical Needs and Failing Systems Sub Account.

Notwithstanding any provision of this article to the contrary:

(a) The Water Development Authority shall establish a separate and segregated sub account in the Infrastructure Fund designated the Critical Needs and Failing Systems Sub Account into which the council may instruct the Water Development Authority to transfer from the uncommitted loan balances for each congressional district on June 30 each year up to \$4 million per congressional district.

(b) The council shall direct the Water Development Authority to make loans or grants from the Critical Needs and Failing Systems Sub Account when the council determines that a project will address a critical immediate need by:

(1) The continuation of water or wastewater services;

(2) Addressing water facility or wastewater facility failure due to the age of the facility or facilities;
or

(3) Providing extensions to a water facility or wastewater facility that will add customers with a total project cost of less than \$1 million.

(c) Grant limitations and allocations contained in §31-15A-10(b) and §31-15A-10(c) of this code do not apply to grants made from the Critical Needs and Failing Systems Sub Account.”

The bill was then ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 599**), 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: Speaker Hanshaw, Higginbotham, Jennings, Kump and Wilson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 600**), 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: Speaker Hanshaw, Dean, Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. 589) 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. 597, Relating to judicial branch members' salaries and pensions; 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 on page 1, following the enacting clause, by striking the remainder of the bill and inserting in lieu thereof the following:

“CHAPTER 50. MAGISTRATE COURTS.

ARTICLE I. COURTS AND OFFICERS.

§50-1-3. Salaries of magistrates.

(a) The Legislature finds and declares that:

(1) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate the equal protection clause of the Constitution of the United States;

(2) The West Virginia Supreme Court of Appeals has held that a salary system for magistrates which is based upon the population that each magistrate serves does not violate section thirty-nine, article VI of the Constitution of West Virginia;

(3) The Administrative Office of the Supreme Court of Appeals of West Virginia has stated that the utilization of a two-tiered salary schedule for magistrates is no longer an equitable and rational manner by which magistrates should be compensated for work performed;

(4) Organizing the two tiers of the salary schedule into one tier for magistrates serving less than seven thousand three hundred in population and a second tier for magistrates serving seven thousand three hundred or more in population is no longer rational and equitable given current statistical information relating to population and caseload; and

(5) That, by January 1, 2017, all magistrates should be compensated equally.

(b) The salary of each magistrate shall be paid by the state. Magistrates who serve fewer than seven thousand three hundred in population shall be paid annual salaries of \$51,125 and magistrates who serve seven thousand three hundred or more in population shall be paid annual salaries of \$57,500.

(c) For the purpose of determining the population served by each magistrate, the number of magistrates authorized for each county shall be divided into the population of each county. For the purpose of this article, the population of each county is the population as determined by the last preceding decennial census taken under the authority of the United States government.

(d) Notwithstanding any provision of this code to the contrary, the amendments made to this section during the 2013 First Extraordinary Session are effective upon passage and are retroactive to January 1, 2013.

(e) On or before July 1, 2013, the Joint Committee on Government and Finance shall request a study by the National Center for State Courts, working in conjunction with the Administrative Office of the Supreme Court of Appeals of West Virginia, to review the weighted case loads in each of the magistrate courts in this state, and present recommendations as to how the present resources and personnel in the magistrate court system could be better apportioned to equitably and timely meet the collective needs of the magistrate court system in West Virginia. Based on the findings and data generated by that study, the National Center for State Courts shall make recommendations as to the equitable redistribution of personnel and resources, by temporary or permanent reassignment, to better meet the needs and weighted loads that are demonstrated to exist in the various magistrate courts in this state. This study shall be presented to the Joint Committee on Government and Finance no later than December 1, 2014, and shall include recommendations and proposed legislation resulting from such study and shall also include a plan to continue the efficient delivery of justice by the magistrate court system and the justification for equalization of pay for all magistrates. As a part of the submitted study, the plan shall consider the reassignment of magistrates or the extension of their duties and jurisdiction to include holding court or delivering services to adjacent counties with higher caseloads, as part of their regular duties, or being on call as needed to serve other needs in other adjacent counties or within the same judicial circuit.

On or before January 15, 2015, the Supreme Court of Appeals of West Virginia shall present its recommendations to the Legislature regarding how to allocate or assign a maximum of one hundred fifty- eight magistrates throughout this state to improve the magistrate process, and more equitably distribute the magistrate court resources to efficiently and effectively meet the needs of the citizens of this state.

(f) Notwithstanding any provision of this code to the contrary, beginning January 1, 2017, all magistrates shall be compensated equally and the annual salary of all magistrates shall be \$57,500.

(g) Notwithstanding any provisions of this code to the contrary, beginning July 1, 2021, the annual salary of a magistrate shall be \$60,375, and beginning July 1, 2022, the annual salary of a magistrate shall be \$63,250.

CHAPTER 51. COURTS AND THEIR OFFICERS.

ARTICLE 1. SUPREME COURT OF APPEALS.**§51-1-10A. SALARY OF JUSTICES.**

The salary of each of the justices of the Supreme Court of Appeals shall be \$95,000 per year: *Provided*, That beginning July, 1, 2005, the salary of each of the justices of the Supreme Court shall be \$121,000: *Provided, however*, That beginning July 1, 2011, the annual salary of a justice of the Supreme Court shall be \$136,000: *Provided, further*, That beginning July 1, 2021, the annual salary of a justice of the Supreme Court of Appeals shall be \$142,800, and beginning July 1, 2022, the annual salary of a justice of the Supreme Court of Appeals shall be \$149,600.

ARTICLE 2. CIRCUIT COURTS; CIRCUIT JUDGES.**§51-2-13. Salaries of judges of circuit courts.**

The salaries of the judges of the various circuit courts shall be paid solely out of the State Treasury. No county, county commission, board of commissioners or other political subdivision shall supplement or add to such salaries.

The annual salary of all circuit judges shall be \$90,000 per year: *Provided*, That beginning July 1, 2005, the annual salary of all circuit judges shall be \$116,000 per year: *Provided, however*, That beginning July 1, 2011, the annual salary of a circuit court judge shall be \$126,000: *Provided, further*, That beginning July 1, 2021, the annual salary of a circuit judge shall be \$132,300 and beginning July 1, 2022, the annual salary of a circuit court judge shall be \$138,600.

ARTICLE 2A. FAMILY COURTS.**§51-2A-6. Compensation and expenses of family court judges and their staffs.**

(a) A family court judge is entitled to receive as compensation for his or her services an annual salary of \$62,500: *Provided*, That beginning July 1, 2005, a family court judge is entitled to receive as compensation for his or her services an annual salary of \$82,500: *Provided, however*, That beginning July 1, 2011, the annual salary of a family court judge shall be \$94,500: *Provided, further*, beginning July 1, 2020, the annual salary of a family court judge shall be \$103,950.

(b) The secretary-clerk of the family court judge is appointed by the family court judge and serves at his or her will and pleasure. The secretary-clerk of the family court judge is entitled to receive an annual salary of \$27,036: *Provided*, That on and after July 1, 2006, the annual salary of the secretary-clerk shall be established by the Administrative Director of the Supreme Court of Appeals, but may not exceed \$39,000. In addition, any person employed as a secretary-clerk to a family court judge on the effective date of the enactment of this section during the sixth extraordinary session of the Legislature in the year 2001 who is receiving an additional \$500 per year up to 10 years of a certain period of prior employment under the provisions of the prior enactment of §51-2A-8 of this code during the second extraordinary session of the Legislature in the year 1999 shall continue to receive such additional amount. Further, the secretary-clerk will receive such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in §5-5-1 *et seq.* of this code.

(c) The family court judge may employ not more than one family case coordinator who serves at his or her will and pleasure. The annual salary of the family case coordinator of the family court judge shall be established by the Administrative Director of the Supreme Court of Appeals but may not exceed \$36,000: *Provided*, That on and after July 1, 2006, the annual salary of the family case coordinator of the family court judge may not exceed \$51,000. The family case coordinator will receive

such percentage or proportional salary increases as may be provided by general law for other public employees and is entitled to receive the annual incremental salary increase as provided in §5-5-1 *et seq.* of this code.

(d) The sheriff or his or her designated deputy shall serve as a bailiff for a family court judge. The sheriff of each county shall serve or designate persons to serve so as to assure that a bailiff is available when a family court judge determines the same is necessary for the orderly and efficient conduct of the business of the family court.

(e) Disbursement of salaries for family court judges and members of their staffs are made by or pursuant to the order of the Director of the Administrative Office of the Supreme Court of Appeals.

(f) Family court judges and members of their staffs are allowed their actual and necessary expenses incurred in the performance of their duties. The expenses and compensation will be determined and paid by the Director of the Administrative Office of the Supreme Court of Appeals under such guidelines as he or she may prescribe, as approved by the Supreme Court of Appeals.

(g) Notwithstanding any other provision of law, family court judges are not eligible to participate in the retirement system for judges under the provisions of §51-9-1 *et seq.* of this code.”

The bill was then ordered to third reading.

S. B. 610, Removing resident manager requirement for Alcohol Beverage Control Administration; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 615, Declaring certain claims against state as moral obligations of state; 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 2, section 1, subsection (b) following the word “from”, by deleting “general revenue fund” and inserting in lieu thereof “federal funds”;

On page 2, section 1, subsection (c), by striking the subdivision (1) and inserting in lieu thereof, “(1) Linda Adams-Doheny, Danny L. Boyce, Ann E. Boyce, Janey I. Wigal and Amy B. Thomas\$2,778.48”;

On page 4, section 1, subsection (i), following the word “from”, by deleting “general revenue fund” and inserting in lieu thereof “federal funds”;

On page 26, section 1, subsection (j), subdivision (585), following “Sandra” by striking “K” and inserting “L”;

On page 42, section 1, subsection (k), following the word “from” by striking “general revenue fund” and inserting “state road fund”; and

On page 43, by striking section 2, in its entirety.

On motion of Delegate Householder, the bill was amended on page 35, section 1, by out striking subdivision 802 in its entirety and renumbering the remaining subdivisions.

The bill was then ordered to third reading.

Com. Sub. for S. B. 648, Providing dental coverage for adult Medicaid recipients; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee on Finance, was adopted, amending the bill on page 1, by striking out everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 5. MISCELLANEOUS PROVISIONS.

§9-5-12a. Medicaid program; dental care.

(a) The following terms are defined:

(1) “Cosmetic services” means dental work that improves the appearance of the teeth, gums, or bite, including, but not limited to, inlays or onlays, composite bonding, dental veneers, teeth whitening, or braces.

(2) “Diagnostic and preventative services” means dental work that maintains good oral health and includes oral evaluations, routine cleanings, x-rays, fluoride treatment, fillings, and extractions.

(3) “Restorative services” means dental work that involves tooth replacement, including, but not limited to, dentures, dental implants, bridges, crowns, or corrective procedures such as root canals.

(b) The Department of Health and Human Resources shall extend Medicaid coverage to adults age 21 and over covered by the Medicaid program for diagnostic and preventative dental services and restorative dental services, excluding cosmetic services. This coverage is limited to \$1,000 each budget year. Recipients must pay for services over the \$1,000 yearly limit. No provision in this section shall restrict the department in exercising new options provided by, or to be in compliance with, new federal legislation that further expands eligibility for dental care for adult recipients.

(c) The Department of Health and Human Resources is responsible for the implementation of, and program design for, a dental care system to reduce the continuing harm and continuing impact on the health care system in West Virginia. The dental health system design shall include oversight, quality assurance measures, case management, and patient outreach activities. The Department of Health and Human Resources shall assume responsibility for claims processing in accordance with established fee schedules and financial aspects of the program necessary to receive available federal dollars and to meet federal rules and regulations. The Department of Health and Human Resources shall seek authority from the Centers for Medicare and Medicaid Services to implement the provisions of this section.

(d) The provisions of this section enacted during the 2020 regular legislative session shall only become effective upon approval from the federal Centers for Medicare and Medicaid Services of the provider tax as set forth in §11-27-10a of this code.”

The bill was then ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 601**), and there were—yeas 84, nays 9, absent and not voting 7, with the nays and absent and not voting being as follows:

Nays: Bibby, Butler, Cadle, Fast, Foster, C. Martin, P. Martin, Paynter and Waxman.

Absent and Not Voting: Cowles, J. Jeffries, D. Kelly, Kump, McGeehan, Sponaugle and Wilson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

Mr. Speaker, Mr. Hanshaw, in the Chair

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 602**), and there were—yeas 85, nays 12, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Bibby, Butler, Cadle, Fast, Foster, D. Jeffries, J. Jeffries, P. Martin, McGeehan, Phillips, Porterfield and Waxman.

Absent and Not Voting: Kump, Paynter and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. 648) 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. 660, Regulating electric bicycles; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 664, Adding physician's assistant to list of medical professionals capable of determining if individual lacks capacity; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 670, Amending service of process on nonresident persons or corporate entities; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 690, Permitting street-legal special purpose vehicles on highways; on second reading, coming up in regular order, was read a second time.

An amendment, recommended by the Committee Government Organization, was reported by the Clerk on page one, after the enacting clause, by striking out the remainder of the bill and inserting in lieu thereof the following:

"ARTICLE 13. STREET-LEGAL SPECIAL PURPOSE VEHICLES.

§17A-13-1. Street-legal special purpose vehicles; operation on highways; registration procedures; licensing requirements; equipment requirements.

(a) Except as required in subsection (c) of this section, an individual may operate a "street-legal special purpose vehicle" on a street or highway.

(b) For the purposes of this section:

(1) "Special purpose vehicle" includes all-terrain vehicles, utility terrain vehicles, mini-trucks, pneumatic-tired military vehicles, and full-size special purpose-built vehicles, including those self-constructed or built by the original equipment manufacturer and those that have been modified.

(2) "Street-legal special purpose vehicle" is a special purpose vehicle that meets the requirements of this section.

(c) An individual may not operate a special purpose vehicle as a street-legal special purpose vehicle on a highway if:

(1) The highway is a controlled-access system, including, but not limited to, interstate systems;
or

(2) The county, municipality, or the Division of Natural Resources where the highway is located prohibits special purpose vehicles.

(d) Street-legal special purpose vehicles are prohibited from traveling a distance greater than 20 miles on a highway displaying centerline pavement markings.

(e) All street-legal special purpose vehicles are subject to the certificate of title provisions of §17A-1-1 et seq. of this code.

(f) Nothing in this section authorizes the operation of a street-legal special purpose vehicle in an area that is not open to motor vehicle use.

(g) A street-legal special purpose vehicle may be registered in the same manner as provided for motorcycles pursuant to this chapter.

(h) Upon registration of any street-legal special purpose vehicle pursuant to this section, the Division of Motor Vehicles shall issue a registration plate that is of the same size as Class G special registration plates for motorcycles.

(i) Except as otherwise provided in this section, a street-legal special purpose vehicle shall comply with the Division of Motor Vehicles' licensing, fee, and other requirements pursuant to this chapter.

(j) The owner of a special purpose vehicle being operated as a street-legal special purpose vehicle shall ensure the vehicle is equipped with:

(1) One or more headlamps;

(2) One or more tail lamps;

(3) One or more brake lamps;

(4) A tail lamp or other lamp constructed and placed to illuminate the registration plate with a white light;

(5) One or more red reflectors on the rear;

(6) Amber electric turn system, one on each side of the front;

(7) Amber or red electric turn signals;

(8) A braking system, other than a parking brake;

(9) A horn or other warning device;

(10) A muffler and, if required by an applicable federal statute or rule, an emission control system;

(11) Rearview mirrors on the right and left side of the driver;

(12) A windshield, unless the operator wears eye protection while operating the vehicle;

(13) A speedometer, illuminated for nighttime operation;

(14) For vehicles designed by the manufacturer for carrying one or more passengers, a seat designed for passengers; and

(15) Tires that have at least 2/32 inches or greater tire tread.

(16) When owners of a street-legal special purpose vehicle have ensured that such vehicles are equipped as required by this subsection, and those owners obtain a valid registration card and certificate of insurance for such vehicles, those vehicles are eligible to apply for a motorcycle trailer sticker.

(k) Mini-trucks may not be operated as street-legal special purpose vehicles on highways that have been constructed pursuant to a federal highways program.

(l) The Division of Motor Vehicles shall propose rules for legislative approval in accordance with §29A-3-1 *et seq.* of this code to implement this section."

On motion of Delegates Pushkin and Howell the amendment was amended, on page three, section one, line 56, following the period, by inserting the following: "(l) Low speed vehicles as defined in §17A-1-1 of the code are not considered special purpose vehicles or street-legal special purpose vehicles under this section. However, low speed vehicles may cross state routes at traffic lights when the state route does not have a posted speed limit greater than 40 miles per hour."

And,

On page three, section one, line 57, relabeling existing subsection "(l)" as subsection "(m)".

The Committee on Government Organization amendment, as amended, was then adopted.

The bill was then ordered to third reading.

Com. Sub. for S. B. 711, Relating to juvenile jurisdiction of circuit courts; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 716, Requiring DHHR pay for tubal ligation without 30-day wait between consent and sterilization; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 717, Relating generally to adult protective services; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 719, Imposing health care-related provider tax on certain health care organizations; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 722, Relating to special license plates for public and private nonprofit transit providers; on second reading, coming up in regular order, was read a second time.

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

Com. Sub. for S. B. 738, Creating Flatwater Trail Commission; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 740, Clarifying authorized users of Ron Yost Personal Assistance Services Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 747, Requiring Bureau for Public Health develop Diabetes Action Plan; 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 1, section 20, line 9, by striking, “(h)” and inserting “(g)”;

And,

On page 1, line 10, after the period by inserting the following: “The plan shall be completed and presented to the Legislative Oversight Commission on Health and Human Resources Accountability by January 1, 2021.”

The bill was then ordered to third reading.

S. B. 765, Modifying “Habitual Offender” statute; 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 1 by striking everything after the enacting clause and inserting in lieu thereof the following:

“ARTICLE 11. GENERAL PROVISIONS CONCERNING CRIMES.

§61-11-18. PUNISHMENT FOR SECOND OR THIRD OFFENSE OF FELONY.

(a) For purposes of this section, “qualifying offense” means any offenses or an attempt or conspiracy to commit any of the offenses in the following provisions of this code:

(1) §60A-4-401(i) and §60A-4-401(ii);

(2) §60A-4-406;

(3) §60A-4-409(b)(1), §60A-4-409(2), and §60A-4-409(3);

(4) §60A-4-411;

- (5) §60A-4-414;
- (6) §60A-4-415;
- (7) §60A-4-416(a);
- (8) §61-2-1;
- (9) §61-2-4;
- (10) §61-2-7;
- (11) §61-2-9(a);
- (12) §61-2-9a(d) and §61-2-9a(e);
- (13) §61-2-9b;
- (14) §61-2-9d;
- (15) §61-2-10;
- (16) §61-2-10b(b) and §61-2-10b(c);
- (17) Felony provisions of §61-2-10b(d);
- (18) §61-2-12;
- (19) Felony provisions of §61-2-13;
- (20) §61-2-14;
- (21) §61-2-14a(a) and §61-2-14a(d);
- (22) §61-2-14c;
- (23) §61-2-14d(a) and §61-2-14d(b);
- (24) §61-2-14f;
- (25) §61-2-14h(a), §61-2-14h(b), and §61-2-14h(c);
- (26) §61-2-16a(a) and §61-2-16a(b);
- (27) Felony provisions of §61-2-16a(c);
- (28) §61-2-28(d);
- (29) §61-2-29(d) and §61-2-29(e);
- (30) §61-2-29a;
- (31) §61-3-1;
- (32) §61-3-2;
- (33) §61-3-3;
- (34) §61-3-4;
- (35) §61-3-5;

- (36) §61-3-6;
- (37) §61-3-7;
- (38) §61-3-11;
- (39) §61-3-13(a)
- (39) §61-3-27;
- (40) §61-3C-14b;
- (41) §61-3E-5;
- (42) §61-5-17(b), §61-5-17(f), §61-5-17(h), and §61-5-17(i);
- (43) §61-5-27;
- (44) §61-6-24;
- (45) Felony provisions of §61-7-7;
- (46) §61-7-12;
- (47) §61-7-15;
- (48) §61-7-15a;
- (49) §61-8-12;
- (50) §61-8-19(b);
- (51) §61-8B-3;
- (52) §61-8B-4;
- (53) §61-8B-5;
- (54) §61-8B-7;
- ~~(55) §61-8B-9;~~
- (56) §61-8B-10;
- (57) §61-8C-2;
- (58) §61-8C-3;
- (59) §61-8C-3a;
- (60) §61-8D-2;
- (61) §61-8D-2a;
- (62) §61-8D-3;
- (63) §61-8D-3a;
- (64) §61-8D-4;
- (65) §61-8D-4a;

(66) §61-8D-5:

(67) §61-8D-6:

(68) §61-10-31:

(69) §61-11-8:

(70) §61-11-8a:

(71) §61-14-2: and

(72) §17C-5-2(b), driving under the influence causing death.

~~(a)~~ (b) Except as provided by subsection ~~(b)~~ (c) of this section, when any person is convicted of ~~an~~ a qualifying offense and is subject to confinement in a state correctional facility therefor, and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in the United States of a crime punishable by confinement in a penitentiary, the court shall, if the sentence to be imposed is for a definite term of years, add five years to the time for which the person is or would be otherwise sentenced. Whenever in such case the court imposes an indeterminate sentence, the minimum term shall be twice the term of years otherwise provided for under such sentence.

~~(b)~~ (c) Notwithstanding ~~the provisions of subsection (a) or (c) of this section or any other provision~~ of this code to the contrary, when any person is convicted of first degree murder or second degree murder or a violation of §61-8B-3 of this code and it is determined, as provided in §61-11-19 of this code, that such person had been before convicted in this state of first degree murder, second degree murder, or a violation of section three, §61-8B-3 of this code or has been so convicted under any law of the United States or any other state for an offense which has the same elements as any offense described in this subsection, such person shall be punished by confinement in a state correctional facility for life and is not eligible for parole.

~~(c)~~ (d) When it is determined, as provided in §61-11-19 of this code, that such person shall have been twice before convicted in the United States of a crime punishable by confinement in a penitentiary which has the same elements as a qualifying offense, the person shall be sentenced to ~~be confined~~ imprisonment in a state correctional facility for life: Provided, That prior convictions arising from the same transaction or series of transactions shall be considered a single offense for purposes of this section: Provided, however, That an offense which would otherwise constitute a qualifying offense for purposes of this subsection and subsection (b) of this section shall not be considered if more than 20 years have elapsed between that offense and the conduct underlying the current charge.

§61-11-19. Procedure in trial of persons for second or third offense.

~~It shall be the duty of the~~ A prosecuting attorney, when he or she has knowledge of a former sentence or sentences to the penitentiary of any person convicted of an offense punishable by confinement in the penitentiary, ~~to~~ may give information thereof to the court immediately upon conviction and before sentence. Said court shall, before expiration of the next term at which such person was convicted, cause such person or prisoner to be brought before it, and upon an information filed by the prosecuting attorney, setting forth the records of conviction and sentence, or convictions and sentences, as the case may be, and alleging the identity of the prisoner with the person named in each, shall require the prisoner to say whether he or she is the same person or not. If he or she says he or she is not, or remains silent, his or her plea, or the fact of his or her silence, shall be entered of record, and a jury shall be impaneled to inquire whether the prisoner is the same person

mentioned in the several records. If the jury finds that he or she is not the same person, he or she shall be sentenced upon the charge of which he or she was convicted as provided by law; but if they find that he or she is the same, or after being duly cautioned if he or she acknowledged in open court that he or she is the same person, the court shall sentence him or her to such further confinement as is prescribed by §61-11-18 of this code on a second or third conviction as the case may be: Provided, That where the person is convicted pursuant to a plea agreement the agreement shall address whether or not the provisions of this section and § 61-11-18 of this code are to be invoked.

The clerk of such court shall transmit a copy of said information to the ~~warden of the penitentiary~~ Commissioner of the Division of Corrections and Rehabilitation, together with the other papers required by the provisions of §62-8-10 of this code.

Nothing contained herein shall be construed as repealing the provisions of §62-8-4 of this code, but no proceeding shall be instituted by the warden, as provided therein, if the trial court has determined the fact of former conviction or convictions as provided herein.”

The bill was then ordered to third reading.

Delegate Summers moved to dispense with the constitutional rule requiring the bill to be fully and distinctly read on three different days.

On this question, the yeas and nays were taken (**Roll No. 603**), 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: Kump, Little and Wilson.

So, four fifths of the members present having voted in the affirmative, the constitutional rule was dispensed with.

The bill was then read a third time.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 604**), and there were—yeas 91, nays 7, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Butler, Cadle, Fast, C. Martin, P. Martin, Phillips and Pushkin.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 765) passed.

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

Com. Sub. for S. B. 787, Providing benefits to pharmacists for rendered care; 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 2, section 19, line 22, following “provisions of” by striking “§17C-2-3” and inserting in lieu thereof “§17C-1-1 *et seq.*”; and

On page 3, section 19, following line 52, by striking all of subsection (f) in its entirety and relettering the remaining subsections; and

On page 4, section 6, line 10, by striking "defined" and inserting in lieu thereof "provided"; and

On page 6, following section 1, by striking out all of §30-29-5 in its entirety and inserting in lieu thereof the following:

“§30-29-5. Certification requirements and power to decertify or reinstate.

(a) Except as provided in subsections (b) and ~~(g)~~ (e) of this section, a person may not be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by a hospital or by the Public Service Commission of West Virginia on or after the effective date of this article unless the person is certified, or is certifiable in ~~one of the~~ one of the manners specified in ~~subsections~~ subsection (c) ~~through (e), inclusive~~ of this section, by the subcommittee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article: *Provided*, That the provisions of this section do not apply to persons hired by the Public Service Commission as motor carrier inspectors and weight enforcement officers before July 1, 2007.

(b) Except as provided in subsection ~~(g)~~ (e) of this section, a person who is not certified, or certifiable in ~~one of the~~ one of the manners specified in ~~subsections~~ subsection (c) ~~through (e), inclusive~~, of this section, may be conditionally employed as a law-enforcement officer until certified: *Provided*, That within 90 calendar days of the commencement of employment or the effective date of this article, if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy and that the person satisfactorily completes the approved law-enforcement training academy within 18 consecutive months of the commencement of his or her employment: *Provided, however*, That the subcommittee may grant an extension, one-time only, not to exceed six months, based upon a written request from the person justifying the need for such an extension: *Provided further*, That the subcommittee, in its sole discretion, may grant an additional extension upon demonstration of a hardship warranting it. The person's employer shall provide notice, in writing, of the 90-day deadline to file a written application to the academy within 30 calendar days of that person's commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her employing law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. One year after the effective date of this section, certification as a law-enforcement officer within this state of persons who are not certifiable as provided in subsection (c) of this section, shall, in addition to graduation from an established academy in the state, be based on: Current employment as a sworn law-enforcement officer by any West Virginia law-enforcement agency or any state institution of higher education or the Public Service Commission; and the person's successful completion of an approved entry level law-enforcement examination established by legislative rule of the subcommittee, which shall include, at a minimum, written testing requirements, medical standards, physical standards, and good moral character standards conducted in accordance with such rule. The production of a record of successful passage of the approved entry level law-enforcement examination shall indicate the applicant as qualified under the law-enforcement training and certification standards within this state. An applicant who satisfactorily completes the program and successfully passes the approved entry level law-enforcement examination shall, within 30 days of completion, make written application to the subcommittee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon

determining that an applicant has met the requirements for certification as set forth in this section, the subcommittee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, or who fails to pass the approved entry level law-enforcement examination, may not be certified by the subcommittee: Provided, however, And provided further, That an applicant who has completed the minimum training and examination required by the subcommittee may be certified as a law-enforcement officer, notwithstanding the applicant's failure to complete additional training hours required in the training program to which he or she originally applied. If more than 24 months but less than 60 months have passed since the applicant for certification has successfully completed the approved entry level law-enforcement examination, the person may be certified but must complete the additional training set forth in legislative rules promulgated by the subcommittee addressing the recertification requirements of certified officers. If more than 60 months have passed since the applicant for certification has successfully completed the approved entry level law-enforcement examination, the person must then attend a subcommittee-approved training program and successfully complete a separate subcommittee entry level law-enforcement examination.

~~(c) Any person who is employed as a law enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia State Police cadet training program, or other approved law enforcement training academy, is certifiable as having met the minimum entry level law enforcement training program requirements and is exempt from the requirement of attending a law enforcement training academy. To receive certification, the person shall make written application within ninety calendar days of the effective date of this article to the subcommittee requesting certification. The subcommittee shall review the applicant's relevant scholastic records and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.~~

~~(d) Any person who is employed as a law enforcement officer on the effective date of this article and is not a graduate of the West Virginia basic police training course, the West Virginia State Police Cadet Training Program or other approved law enforcement training academy, is certifiable as having met the minimum entry level law enforcement training program requirements and is exempt from the requirement of attending a law enforcement training academy if the person has been employed as a law enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the subcommittee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law enforcement officer. The subcommittee shall review the application and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.~~

(e) (c) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the subcommittee. To receive certification, the person shall make written application within 90 calendar days following the commencement of employment to the subcommittee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course of instruction in law enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The subcommittee shall review the application and, if it finds the applicant has met the requirements for certification, shall forward to the applicant documentation of certification. The subcommittee may set the standards for required records to be provided by or on behalf of the applicant officer to verify his or her training,

status, or certification as a law-enforcement officer. The subcommittee may allow an applicant officer to participate in the approved equivalent certification program to gain certification as a law-enforcement officer in this state.

~~(f)~~ (d) Except as provided in subdivisions (1) through (3), inclusive, of this subsection, any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state: *Provided*, That if a person is terminated under this subsection because an application was not timely filed to the academy, and the person's employer failed to provide notice or disclosure to that person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person's application to the subcommittee as a private citizen is subsequently approved.

(1) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of hardship and/or circumstance beyond his or her control may apply to the director of a training academy for reentry to the next available academy.

(2) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of voluntary separation from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of voluntary separation from an academy program may not be conditionally employed as a law-enforcement officer for a period of two years from the date of voluntary separation.

(3) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of dismissal from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of dismissal from an academy program may not be conditionally employed as a law-enforcement officer for a period of five years from the date of dismissal and receiving approval from the subcommittee.

~~(g)~~ (e) Nothing in this article may be construed as prohibiting any governing body, Civil Service Commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the subcommittee.

~~(h)~~ (f) The subcommittee, or its designee, may decertify or reactivate a law-enforcement officer pursuant to the procedure contained in this article and legislative rules promulgated by the subcommittee.

~~(i)~~ (g) Any person aggrieved by a decision of the subcommittee made pursuant to this article may contest the decision in accordance with the provisions of §29A-5-1 *et seq.* of this code.

~~(j)~~ (h) The subcommittee may issue subpoenas for the attendance of witnesses and the production of necessary evidence or documents in any proceeding, review, or investigation relating to certification or hearing before the subcommittee."

The bill was then ordered to third reading.

Com. Sub. for S. B. 797, Authorizing governing boards of public and private hospitals employ hospital police officers; 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 2, section 19, line 22, following "provisions of" by striking "§17C-2-3" and inserting in lieu thereof "§17C-1-1 *et seq.*"; and

On page 3, section 19, following line 52, by striking all of subsection (f) in its entirety and relettering the remaining subsections; and

On page 4, section 6, line 10, by striking "defined" and inserting in lieu thereof "provided"; and

On page 6, following section 1, by striking out all of §30-29-5 in its entirety and inserting in lieu thereof the following:

"§30-29-5. Certification requirements and power to decertify or reinstate.

(a) Except as provided in subsections (b) and ~~(g)~~ ~~(e)~~ of this section, a person may not be employed as a law-enforcement officer by any West Virginia law-enforcement agency or by any state institution of higher education or by a hospital or by the Public Service Commission of West Virginia on or after the effective date of this article unless the person is certified, or is certifiable in ~~one of the~~ manner specified in ~~subsections~~ subsection (c) ~~through (e), inclusive~~ of this section, by the subcommittee as having met the minimum entry level law-enforcement qualification and training program requirements promulgated pursuant to this article: *Provided*, That the provisions of this section do not apply to persons hired by the Public Service Commission as motor carrier inspectors and weight enforcement officers before July 1, 2007.

(b) Except as provided in subsection ~~(g)~~ ~~(e)~~ of this section, a person who is not certified, or certifiable in ~~one of the~~ manner specified in ~~subsections~~ subsection (c) ~~through (e), inclusive~~, of this section, may be conditionally employed as a law-enforcement officer until certified: *Provided*, That within 90 calendar days of the commencement of employment or the effective date of this article, if the person is already employed on the effective date, he or she makes a written application to attend an approved law-enforcement training academy and that the person satisfactorily completes the approved law-enforcement training academy within 18 consecutive months of the commencement of his or her employment: *Provided, however*, That the subcommittee may grant an extension, one-time only, not to exceed six months, based upon a written request from the person justifying the need for such an extension: *Provided further*, That the subcommittee, in its sole discretion, may grant an additional extension upon demonstration of a hardship warranting it. The person's employer shall provide notice, in writing, of the 90-day deadline to file a written application to the academy within 30 calendar days of that person's commencement of employment. The employer shall provide full disclosure as to the consequences of failing to file a timely written application. The academy shall notify the applicant in writing of the receipt of the application and of the tentative date of the applicant's enrollment. Any applicant who, as the result of extenuating circumstances acceptable to his or her employing law-enforcement official, is unable to attend the scheduled training program to which he or she was admitted may reapply and shall be admitted to the next regularly scheduled training program. One year after the effective date of this section, certification as a law-enforcement officer within this state of persons who are not certifiable as provided in subsection (c) of this section, shall, in addition to graduation from an established academy in the state, be based on: Current employment as a sworn law-enforcement officer by any West Virginia law-enforcement agency or any state institution of higher education or the Public Service Commission; and the person's successful completion of an approved entry level law-enforcement examination established by legislative rule of the subcommittee, which shall include, at a minimum, written testing requirements, medical standards, physical standards, and good moral character standards conducted in accordance with

such rule. The production of a record of successful passage of the approved entry level law-enforcement examination shall indicate the applicant as qualified under the law-enforcement training and certification standards within this state. An applicant who satisfactorily completes the program and successfully passes the approved entry level law-enforcement examination shall, within 30 days of completion, make written application to the subcommittee requesting certification as having met the minimum entry level law-enforcement qualification and training program requirements. Upon determining that an applicant has met the requirements for certification as set forth in this section, the subcommittee shall forward to the applicant documentation of certification. An applicant who fails to complete the training program to which he or she is first admitted, or was admitted upon reapplication, or who fails to pass the approved entry level law-enforcement examination, may not be certified by the subcommittee: ~~Provided, however,~~ *And provided further,* That an applicant who has completed the minimum training and examination required by the subcommittee may be certified as a law-enforcement officer, notwithstanding the applicant's failure to complete additional training hours required in the training program to which he or she originally applied. If more than 24 months but less than 60 months have passed since the applicant for certification has successfully completed the approved entry level law-enforcement examination, the person may be certified but must complete the additional training set forth in legislative rules promulgated by the subcommittee addressing the recertification requirements of certified officers. If more than 60 months have passed since the applicant for certification has successfully completed the approved entry level law-enforcement examination, the person must then attend a subcommittee-approved training program and successfully complete a separate subcommittee entry level law-enforcement examination.

~~(c) Any person who is employed as a law enforcement officer on the effective date of this article and is a graduate of the West Virginia basic police training course, the West Virginia State Police cadet training program, or other approved law enforcement training academy, is certifiable as having met the minimum entry level law enforcement training program requirements and is exempt from the requirement of attending a law enforcement training academy. To receive certification, the person shall make written application within ninety calendar days of the effective date of this article to the subcommittee requesting certification. The subcommittee shall review the applicant's relevant scholastic records and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.~~

~~(d) Any person who is employed as a law enforcement officer on the effective date of this article and is not a graduate of the West Virginia basic police training course, the West Virginia State Police Cadet Training Program or other approved law enforcement training academy, is certifiable as having met the minimum entry level law enforcement training program requirements and is exempt from the requirement of attending a law enforcement training academy if the person has been employed as a law enforcement officer for a period of not less than five consecutive years immediately preceding the date of application for certification. To receive certification, the person shall make written application within ninety calendar days following the effective date of this article to the subcommittee requesting certification. The application shall include notarized statements as to the applicant's years of employment as a law enforcement officer. The subcommittee shall review the application and, upon determining that the applicant has met the requirements for certification, shall forward to the applicant documentation of certification.~~

~~(e)~~ (c) Any person who begins employment on or after the effective date of this article as a law-enforcement officer is certifiable as having met the minimum entry level law-enforcement training program requirements and is exempt from attending a law-enforcement training academy if the person has satisfactorily completed a course of instruction in law enforcement equivalent to or exceeding the minimum applicable law-enforcement training curricula promulgated by the subcommittee. To receive certification, the person shall make written application within 90 calendar days following the commencement of employment to the subcommittee requesting certification. The application shall include a notarized statement of the applicant's satisfactory completion of the course

of instruction in law enforcement, a notarized transcript of the applicant's relevant scholastic records, and a notarized copy of the curriculum of the completed course of instruction. The subcommittee shall review the application and, if it finds the applicant has met the requirements for certification, shall forward to the applicant documentation of certification. The subcommittee may set the standards for required records to be provided by or on behalf of the applicant officer to verify his or her training, status, or certification as a law-enforcement officer. The subcommittee may allow an applicant officer to participate in the approved equivalent certification program to gain certification as a law-enforcement officer in this state.

~~(f)~~ (d) Except as provided in subdivisions (1) through (3), inclusive, of this subsection, any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified shall be automatically terminated and no further emoluments shall be paid to such officer by his or her employer. Any person terminated shall be entitled to reapply, as a private citizen, to the subcommittee for training and certification, and upon being certified may again be employed as a law-enforcement officer in this state: *Provided*, That if a person is terminated under this subsection because an application was not timely filed to the academy, and the person's employer failed to provide notice or disclosure to that person as set forth in subsection (b) of this section, the employer shall pay the full cost of attending the academy if the person's application to the subcommittee as a private citizen is subsequently approved.

(1) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of hardship and/or circumstance beyond his or her control may apply to the director of a training academy for reentry to the next available academy.

(2) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of voluntary separation from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of voluntary separation from an academy program may not be conditionally employed as a law-enforcement officer for a period of two years from the date of voluntary separation.

(3) Any person who is employed as a law-enforcement officer on or after the effective date of this article and fails to be certified as a result of dismissal from an academy program shall be automatically terminated and no further emoluments may be paid to such officer by his or her employer. Any person terminated as a result of dismissal from an academy program may not be conditionally employed as a law-enforcement officer for a period of five years from the date of dismissal and receiving approval from the subcommittee.

~~(g)~~ (e) Nothing in this article may be construed as prohibiting any governing body, Civil Service Commission or chief executive of any West Virginia law-enforcement agency from requiring their law-enforcement officers to meet qualifications and satisfactorily complete a course of law-enforcement instruction which exceeds the minimum entry level law-enforcement qualification and training curricula promulgated by the subcommittee.

~~(h)~~ (f) The subcommittee, or its designee, may decertify or reactivate a law-enforcement officer pursuant to the procedure contained in this article and legislative rules promulgated by the subcommittee.

~~(i)~~ (g) Any person aggrieved by a decision of the subcommittee made pursuant to this article may contest the decision in accordance with the provisions of §29A-5-1 *et seq.* of this code.

~~(j)~~ (h) The subcommittee may issue subpoenas for the attendance of witnesses and the production of necessary evidence or documents in any proceeding, review, or investigation relating to certification or hearing before the subcommittee."

The bill was then ordered to third reading.

S. B. 843, Supplemental appropriation of funds from Treasury to DHHR Energy Assistance Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 844, Supplemental appropriation from Treasury to DHHR Birth-to-Three Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Com. Sub. for S. B. 845, Supplemental appropriation from Treasury to DHHR, Division of Human Services; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 852, Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Fund; on second reading, coming up in regular order, was read a second time and ordered to third reading.

S. B. 853, Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Authority; on second reading, coming up in regular order, was read a second time and ordered to third reading.

Messages from the Senate

A message from the Senate, by

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

Com. Sub. for H. B. 4001, Creating West Virginia Impact Fund.

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

Com. Sub. for H. B. 4001 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new article, designated §12-6E-1, §12-6E-2, §12-6E-3, §12-6E-4, §12-6E-5, §12-6E-6, §12-6E-7, §12-6E-8, §12-6E-9, §12-6E-10, and §12-6E-11, all relating to creating West Virginia Impact Fund, Investment Committee and Mountaineer Impact Office to invest funds in certain projects with the goal of furthering economic development, infrastructure development, and job creation in the State of West Virginia, generally; providing definitions; creating West Virginia Impact Fund; providing for the transfer of funds to Investment Committee and the purposes for the expenditure of the funds; providing purpose and goal and investment standards; creating Investment Committee and providing for its membership, appointments, terms, removals, vacancies, and quorums; providing for powers and duties of Investment Committee; requiring disclosures of interest; establishing standard of care; creating Mountaineer Impact Office and providing for powers, duties, staffing, management, and processes for proposing and administering investments in projects approved by Investment Committee; providing for audits and reports; providing opportunity for consultation with West Virginia Investment Management Board; providing for immunities and exemptions; prohibiting political activities; and providing for confidentiality of information.”

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. 605**), and there were—yeas 92, nays 5, absent and not voting 3, with the yeas and absent and not voting being as follows:

Nays: Butler, Cadle, Dean, McGeehan and Paynter.

Absent and Not Voting: Kump, Mandt and Wilson.

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. 4001) passed.

Delegate Kessinger moved that the bill take effect its passage.

On this question, the yeas and nays were taken (**Roll No. 606**), and there were—yeas 94, nays 3, absent and not voting 3, with the nays and absent and not voting being as follows:

Nays: Butler, McGeehan and Paynter.

Absent and Not Voting: Kump, Mandt and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4001) 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, to take effect July 1, 2020, a bill of the House of Delegates, as follows:

H. B. 4113, Relating to motor fuel excise taxes.

Delegate Kessinger moved that the House of Delegates concur in the following amendment of the bill by the Senate:

On page three, section nine, line sixty, by striking out the word “when”.

And,

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

H. B. 4113 - “A Bill to amend and reenact §11-14C-9 and §11-14C-30 of the Code of West Virginia, 1931, as amended, all relating to refundable exemptions from tax on motor fuels generally; extending certain refundable exemption from tax to tax on motor fuel used in a power take-off unit on a fuel delivery truck; and expanding certain refundable exemptions from tax on motor fuel claimable by certain taxpayers to include the variable rate component of the tax.”

Delegate Fast moved to postpone action one day.

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. 607**), and there were—yeas 28, nays 68, absent and not voting 4, with the yeas and absent and not voting being as follows:

Yeas: Bartlett, Bibby, N. Brown, Butler, Byrd, Cadle, Campbell, Canestraro, Cooper, Dean, Fast, Hicks, Hornbuckle, Howell, J. Jeffries, Jennings, Lovejoy, C. Martin, P. Martin, McGeehan, Paynter, Rowan, Shott, Skaff, Staggers, Toney, Walker and Zukoff.

Absent and Not Voting: Hamrick, Kump, Miley and Wilson.

So, a majority of the members present and voting not having voted in the affirmative, the motion did not prevail.

The question before the House being the motion by Delegate Kessinger to concur in the Senate amendments, the yeas and nays were taken (**Roll No. 608**), and there were—yeas 79, nays 19, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bartlett, Bibby, Butler, Byrd, Cadle, Canestraro, Dean, Fast, Hicks, Howell, D. Jeffries, J. Jeffries, Lovejoy, C. Martin, P. Martin, McGeehan, Paynter, R. Thompson and Toney.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the House concurred.

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. 609**), and there were—yeas 96, nays 2, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bibby and Cadle.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4113) passed.

Delegate Kessinger moved that the bill take effect July 1, 2020.

On this question, the yeas and nays were taken (**Roll No. 610**), and there were—yeas 95, nays 3, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Bibby, Cadle and P. Martin.

Absent and Not Voting: Kump and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4113) takes effect July 1, 2020.

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. 4409, Relating to transferring remaining funds from the Volunteer Fire Department Workers' Compensation Premium Subsidy Fund.

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

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

“§33-3-33a. Excess moneys of Fire Protection Fund deposited into Volunteer Fire Department Workers' Compensation Premium Subsidy Fund; other funding; special report from State Fire Marshal by December 15, 2015; termination of program June 30, 2022.”;

On page one, section thirty-three-a, line ten, by striking out “2020” and inserting in lieu thereof “2022”;

And,

On page two, section thirty-three-a, line nineteen, by striking out “2020” and inserting in lieu thereof “2022”.

And,

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

H. B. 4409 – “A Bill to amend and reenact §33-3-33a of the Code of West Virginia, 1931, as amended, relating to transferring funds from the Volunteer Fire Department Workers’ Compensation Premium Subsidy Fund to the Fire Service Equipment and Training Fund; and extending the sunset date to June 30, 2022.”

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. 611**), 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: Byrd, Kump and Wilson.

So, a majority of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (H. B. 4409) 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. 4576, Establishing a procedure for correcting errors in deeds, deeds of trust and mortgages.

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

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

“ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; affidavit.

(a) Definitions. As used in this section, unless the context requires a different meaning:

(1) “Attorney” means any person licensed as an attorney in West Virginia by the West Virginia State Bar.

(2) “Corrective affidavit” means an affidavit of an attorney correcting an obvious description error.

(3) "Local entity" means any county, city, town, municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the State of West Virginia.

(4) "Obvious description error" means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where:

(A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat;

(B) The error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and

(C) The deed, deed of trust, or mortgage recites elsewhere the parcel's correct address or tax map identification number.

(D) An "obvious description error" includes:

(i) An error transcribing courses and distances, including the omission of one or more lines of courses, and distances or the omission of angles and compass directions;

(ii) An error incorporating an incorrect recorded plat or a deed reference;

(iii) An error in a lot number or designation; or

(iv) An omitted exhibit supplying the legal description of the real property thereby conveyed.

(E) An "obvious description error" does not include:

(i) Missing or improper signatures or acknowledgments; or

(ii) Any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

(5) "Recorded subdivision plat" means a plat that has been prepared by a professional land surveyor licensed pursuant to W. Va. Code §30-13A-1 *et seq.* of this code and recorded in the clerk's office of the circuit court for the jurisdiction where the property is located.

(6) "Title insurance" has the same meaning as set forth in W. Va. §33-1-10(f)(4) of this code.

(7) "Title insurance company" means the company that issued a policy of title insurance for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

(b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting to convey or transfer an interest in real property may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded. A correction of an obvious description error shall not be inconsistent with the description of the property in any recorded subdivision plat.

(c) Prior to recording a corrective affidavit, notice of the intent to record the corrective affidavit, of each party's right to object to the corrective affidavit, and a copy of the corrective affidavit shall be served upon:

(1) All parties to the deed, deed of trust, or mortgage, including the current owner of the property;

(2) The attorney who prepared the deed, deed of trust, or mortgage, if known and if possible;

(3) To the title insurance company, if known;

(4) To the adjoining property owners;

(5) To the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction;

(6) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy of the affidavit required by this subsection, to the county, city, or town attorney for the local entity, if any, and if there is no such attorney, then to the chief executive for the local entity. For the purposes of this section, the term "party" includes any local entity that is a signatory; and

(7) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice and a copy of the affidavit required by this subsection, to the Attorney General and to the director, chief executive officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

(d) The notice and a copy of the affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected that:

(1) Is admitted to record in the office of the clerk of the county commission of the county in which the property is situate and where the deed, deed of trust, or mortgage needing correction was recorded;

(2) Is contained in the deed, deed of trust, or mortgage needing correction;

(3) Has been provided to the attorney as a forwarding address; or

(4) Has been established with reasonable certainty by other means and to all other persons and entities to whom notice is required to be given.

(e) If no written objection is received from any party disputing the facts recited in the affidavit or objecting to its recordation within 30 days after personal service, or receipt of confirmation of delivery of the notice and copy of the affidavit, the attorney may record the corrective affidavit, and all parties to the deed, deed of trust, or mortgage are bound by the terms of the affidavit.

(f) The corrective affidavit shall:

(1) Be notarized;

(2) Contain a statement that no objection was received from any party within the specified time period;

(3) Confirm that a copy of the notice was sent to all the parties; and,

(4) Contain the attorney's West Virginia State Bar number.

(g) A corrective affidavit recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded.

(h) A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

(i) The clerk shall record the corrective affidavit in the deed book or other book in which deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the corrective affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the corrective affidavit. A corrective affidavit recorded in compliance with this section is prima facie evidence of the facts stated in the corrective affidavit.

(j) Costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party that records the corrective affidavit.

(k) Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to the recordation, including reasonable attorney fees and costs.

(l) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia other than this section.

(m) A corrective affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

This affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be indexed in the names of..... (grantor(s)) whose addresses are..... and..... (grantee(s)), whose addresses are..... The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a West Virginia attorney.

2. That the deed, deed of trust, or mortgage needing correction was made in connection with a real estate transaction in which..... purchased real estate from....., as shown in a deed recorded in the office of the clerk of the county commission of..... County, West Virginia, in Deed Book...., Page...., or as Instrument Number....; or in which real estate was encumbered, as shown in a deed recorded in the office of the clerk of the county commission of..... County, West Virginia, in Deed Book...., Page...., or as Instrument Number.....

3. That the property description in the aforementioned deed, deed of trust, or mortgage contains an obvious description error.

4. That the property description containing the obvious description error reads:

.....
.....

5. That the correct property description should read:

.....
.....

6. That this affidavit is given pursuant to West Virginia Code §36-3-11 to correct the property description in the aforementioned deed, deed of trust, or mortgage, and such description shall be as stated in paragraph 5 above upon recordation of this affidavit in the office of the clerk of the county commission of..... County, West Virginia.

7. That notice of the intent to record this corrective affidavit and a copy of this affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to West Virginia Code §36-3-1 and that no objection to the recordation of this affidavit was received within the applicable period of time as set forth in West Virginia Code §36-3-1.

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

The foregoing affidavit was acknowledged before me

This..... day of....., 20...., by

.....

Notary Public

My Commission expires.....

Notary Registration Number:.....

(n) Notice under this section may be made in the following form, or to the same effect:

Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or mortgage described in the corrective affidavit, a copy of which is attached to this notice, as follows:

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or mortgage recorded as part of your real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record an affidavit to correct such error unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice to the following address:

.....

(Address)

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....
(Telephone number of attorney)

.....
(Bar number of attorney)

And,

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

Com. Sub. for H. B. 4576 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-3-11, relating to establishing a procedure for correcting errors in deeds, deeds of trust and mortgages; providing definitions; establishing that obvious description errors in a recorded deed, deed of trust or mortgage involving the transfer of interest in real property may be corrected by recorded affidavit; requiring that the correction of an obvious description error may not be inconsistent with the recorded property description; requiring notice be sent to specified persons; providing notice delivery requirements; establishing the contents of the corrective affidavit; establishing the effect of the corrective affidavit once filed; requiring a title insurance company to issue an endorsement to reflect the corrective affidavit; requiring the clerk to record and index the corrective affidavit in the deed book; establishing that a recorded affidavit is prima facie evidence of the facts stated therein; requiring associated costs be paid by the recording party; providing that a person who wrongfully records a corrective deed is liable for actual damage, reasonable costs, and attorney fees; providing that remedies under this section are not exclusive; and providing a format for the corrective affidavit and notice of an intent to correct an obvious description error.

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

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

“ARTICLE 3. FORM AND EFFECT OF DEEDS AND CONTRACTS.

§36-3-11. Correcting errors in deeds, deeds of trust, and mortgages; corrective affidavit.

(a) Definitions. As used in this section, unless the context requires a different meaning:

(1) “Attorney” means any person licensed as an attorney in West Virginia by the West Virginia State Bar.

(2) “Corrective affidavit” means an affidavit of an attorney correcting an obvious description error.

(3) “Local entity” means any county, city, town, municipality, public utility, or person, including any individual, firm, partnership, association, not-for-profit corporation, or other corporation organized and existing under the laws of the State of West Virginia.

(4) “Obvious description error” means an error in a real property parcel description contained in a recorded deed, deed of trust, or mortgage where:

(A) The parcel is identified and shown as a separate parcel on a recorded subdivision plat;

(B) The error is apparent by reference to other information on the face of the deed, deed of trust, or mortgage, or on an attachment to the deed, deed of trust, or mortgage, or by reference to other instruments in the chain of title for the property conveyed thereby; and

(C) The deed, deed of trust, or mortgage recites elsewhere the parcel’s correct address or tax map identification number.

(D) An “obvious description error” includes:

(i) An error transcribing courses and distances, including the omission of one or more lines of courses, and distances or the omission of angles and compass directions;

(ii) An error incorporating an incorrect recorded plat or a deed reference;

(iii) An error in a lot number or designation; or

(iv) An omitted exhibit supplying the legal description of the real property thereby conveyed.

(E) An “obvious description error” does not include:

(i) Missing or improper signatures or acknowledgments; or

(ii) Any designation of the type of tenancy by which the property is owned or whether or not a right of survivorship exists.

(5) “Recorded subdivision plat” means a plat that has been prepared by a professional land surveyor licensed pursuant to W. Va. Code §30-13A-1 et seq. of this code and recorded in the clerk’s office of the circuit court for the jurisdiction where the property is located.

(6) “Title insurance” has the same meaning as set forth in W. Va. §33-1-10(f)(4) of this code.

(7) “Title insurance company” means the company that issued a policy of title insurance for the transaction in which the deed, deed of trust, or mortgage needing correction was recorded.

(b) Obvious description errors in a recorded deed, deed of trust, or mortgage purporting to convey or transfer an interest in real property may be corrected by recording a corrective affidavit in the office of the clerk of the county commission of the county where the property is situated or where the deed, deed of trust, or mortgage needing correction was recorded. A correction of an obvious description error shall not be inconsistent with the description of the property in any recorded subdivision plat.

(c) Prior to recording a corrective affidavit, notice of the intent to record the corrective affidavit, of each party’s right to object to the corrective affidavit, and a copy of the corrective affidavit shall be served upon:

(1) All parties to the deed, deed of trust, or mortgage, including the current owner of the property;

(2) The attorney who prepared the deed, deed of trust, or mortgage, if known and if possible;

(3) To the title insurance company, if known;

(4) To the adjoining property owners;

(5) To the property address for the real property conveyed by the deed, deed of trust, or mortgage needing correction;

(6) If a local entity is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the county, city, or town attorney for the local entity, if any, and if there is no such attorney, then to the chief executive for the local entity. For the purposes of this section, the term “party” includes any local entity that is a signatory; and

(7) If the State of West Virginia is a party to the deed, deed of trust, or mortgage, the notice and a copy of the corrective affidavit required by this subsection, to the Attorney General and to the director, chief executive officer, or head of the state agency or chairman of the board of the state entity in possession or that had possession of the property.

(d) The notice and a copy of the corrective affidavit shall be delivered by personal service, sent by certified mail, return receipt requested, or delivered by a commercial overnight delivery service or

the United States Postal Service, and a receipt obtained, to the last known address of each party to the deed, deed of trust, or mortgage to be corrected that:

(1) Is admitted to record in the office of the clerk of the county commission of the county in which the property is situate and where the deed, deed of trust, or mortgage needing correction was recorded;

(2) Is contained in the deed, deed of trust, or mortgage needing correction;

(3) Has been provided to the attorney who prepared the deed, deed of trust, or mortgage as a forwarding address; or

(4) Has been established with reasonable certainty by other means and to all other persons and entities to whom notice is required to be given.

(e) If no written objection is received from any party disputing the facts recited in the corrective affidavit or objecting to its recordation within 30 days after personal service, or receipt of confirmation of delivery of the notice and copy of the corrective affidavit, the attorney may record the corrective affidavit, and all parties to the deed, deed of trust, or mortgage are bound by the terms of the corrective affidavit.

(f) The corrective affidavit shall:

(1) Be notarized;

(2) Contain a statement that no objection was received from any party within the specified time period;

(3) Confirm that a copy of the notice was sent to all the parties; and,

(4) Contain the attorney's West Virginia State Bar number.

(g) A corrective affidavit recorded pursuant to this section operates as a correction of the deed, deed of trust, or mortgage and relates back to the date of the original recordation of the deed, deed of trust, or mortgage as if the deed, deed of trust, or mortgage was correct when first recorded.

(h) A title insurance company, upon request, shall issue an endorsement to reflect the corrections made by the corrective affidavit and shall deliver a copy of the endorsement to all parties to the policy who can be found.

(i) The clerk shall record the corrective affidavit in the deed book or other book in which deeds are recorded in the county and, notwithstanding their designation in the deed, deed of trust, or mortgage needing correction, index the corrective affidavit in the names of the parties to the deed, deed of trust, or mortgage as grantors and grantees as set forth in the corrective affidavit. A corrective affidavit recorded in compliance with this section is prima facie evidence of the facts stated in the corrective affidavit.

(j) Costs associated with the recording of a corrective affidavit pursuant to this section shall be paid by the party that records the corrective affidavit.

(k) Any person who wrongfully or erroneously records a corrective affidavit is liable for actual damages sustained by any party due to the recordation, including reasonable attorney fees and costs.

(l) The remedies under this section are not exclusive and do not abrogate any right or remedy under the laws of the State of West Virginia other than this section.

(m) A corrective affidavit under this section may be made in the following form, or to the same effect:

Corrective Affidavit

This corrective affidavit, prepared pursuant to West Virginia Code §36-3-11, shall be indexed in the names of..... (grantor(s)) whose addresses are..... and..... (grantee(s)), whose addresses are..... The undersigned affiant, being first duly sworn, deposes and states as follows:

1. That the affiant is a West Virginia attorney.

2. That the deed, deed of trust, or mortgage needing correction was made in connection with a real estate transaction in which..... purchased real estate from....., as shown in a deed recorded in the office of the clerk of the county commission of..... County, West Virginia, in Deed Book....., Page....., or as Instrument Number.....; or in which real estate was encumbered, as shown in a deed recorded in the office of the clerk of the county commission of..... County, West Virginia, in Deed Book....., Page....., or as Instrument Number.....

3. That the property description in the aforementioned deed, deed of trust, or mortgage contains an obvious description error.

4. That the property description containing the obvious description error reads:

.....

.....

5. That the correct property description should read:

.....

.....

6. That this corrective affidavit is given pursuant to West Virginia Code §36-3-11 to correct the property description in the aforementioned deed, deed of trust, or mortgage, and such description shall be as stated in paragraph 5 above upon recordation of this corrective affidavit in the office of the clerk of the county commission of..... County, West Virginia.

7. That notice of the intent to record this corrective affidavit and a copy of this corrective affidavit was delivered to all parties to the deed, deed of trust, or mortgage being corrected pursuant to West Virginia Code §36-3-1 and that no objection to the recordation of this corrective affidavit was received within the applicable period of time as set forth in West Virginia Code §36-3-1.

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

The foregoing affidavit was acknowledged before me

This..... day of....., 20...., by

.....

Notary Public

My Commission expires.....

Notary Registration Number:.....

(n) Notice under this section may be made in the following form, or to the same effect:

Notice of Intent to Correct an Obvious Description Error

Notice is hereby given to you concerning the deed, deed of trust, or mortgage described in the corrective affidavit, a copy of which is attached to this notice, as follows:

1. The attorney identified below has discovered or has been advised of an obvious description error in the deed, deed of trust, or mortgage recorded as part of your real estate settlement. The error is described in the attached affidavit.

2. The undersigned will record an affidavit to correct such error unless the undersigned receives a written objection disputing the facts recited in the affidavit or objecting to the recordation of the affidavit. Your objections must be sent within 30 days of receipt of this notice to the following address:

.....

(Address)

.....

(Name of attorney)

.....

(Signature of attorney)

.....

(Address of attorney)

.....

(Telephone number of attorney)

.....

(Bar number of attorney)

And,

The further title amendment sponsored by Delegate Shott, amending the title of the bill to read as follows:

H. B. 4576 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §36-3-11, relating to establishing a procedure for correcting errors in deeds, deeds of trust and mortgages; providing definitions; establishing that obvious description errors in a recorded deed, deed of trust or mortgage involving the transfer of interest in real property may be corrected by recorded affidavit; requiring that the correction of an obvious description error may not be inconsistent with the recorded property description; requiring notice be sent to specified persons; providing notice delivery requirements; establishing the contents of the corrective affidavit;

establishing the effect of the corrective affidavit once filed; requiring a title insurance company to issue an endorsement to reflect the corrective affidavit; requiring the clerk to record and index the corrective affidavit in the deed book; establishing that a recorded affidavit is prima facie evidence of the facts stated therein; requiring associated costs be paid by the recording party; providing that a person who wrongfully records a corrective deed is liable for actual damages, reasonable costs, and attorney fees; providing that remedies provided herein are not exclusive; and providing a format for the corrective affidavit and notice of an intent to correct an obvious description error.”

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

On the passage of the bill, the yeas and nays were taken (**Roll No. 612**), 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: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4576) passed.

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

A message from the Senate, by

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

Com. Sub. for S. B. 240, Requiring hotels and restaurants secure manhole covers of certain grease traps.

Delegate Kessinger moved that the House of Delegates concur in the following Senate title amendment:

Com. Sub. for S. B. 240- “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §16-6-22b; and to amend and reenact §16-6-23 of said code, all relating to requiring hotels and restaurants to secure manhole covers of certain grease traps by a certain date; providing methods for securing the manhole covers; authorizing the commissioner to specify the method of limiting access to the manhole; authorizing the promulgation of emergency rules; and increasing the civil penalty for noncompliance with the requirements of the article.”

Delegates C. Martin and Foster requested to be excused from voting under the provisions of House Rule 49.

The Speaker replied that the Delegates were members of a class of persons possibly to be affected by the passage of the bill and directed the Member to vote.

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. 613**), 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: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 240) 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 concurrence in the House of Delegates amendment, with amendment, and the passage, as amended, of

Com. Sub. for S. B. 339, Authorizing DHHR promulgate legislative rules.

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

On page one, by striking out the following House of Delegates amendment on page three, line thirty-three: “2.36 “Medical cannabis” means cannabis that is grown and sold which is certified for medical use in 64 CSR 110.” and inserting in lieu thereof the following:

“2.36 “Medical cannabis” means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.”;

On page one, by striking out the following House of Delegates amendment on page three, line thirty-eight: 2.36 “Medical cannabis” means cannabis that is grown and sold which is certified for medical use in 64-110-10.” and inserting in lieu thereof the following:

“2.29 “Medical cannabis” means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.”;

On page two, by striking out the following House of Delegates amendment on page four, line forty-three: “2.15 “Medical cannabis” means cannabis that is grown and sold which is certified for medical use in 64 CSR 110.” and inserting in lieu thereof the following:

“2.15 “Medical cannabis” means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.”;

On page three, by striking out the following House of Delegates amendment on page four, line forty-eight: “2.19 “Medical cannabis” means cannabis that is grown and sold which is certified for medical use in 64 CSR 110.” and inserting in lieu thereof the following:

“2.19 “Medical cannabis” means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.”;

And,

On page three, by striking out the following House of Delegates amendment on page four, line fifty-three: “2.7 “Medical cannabis” means cannabis that is grown and sold which is certified for medical use in 64 CSR 110.” and inserting in lieu thereof the following:

“2.7 “Medical cannabis” means cannabis that is grown and sold pursuant to the provisions for certified medical use as set forth in the Act and in a form set forth in the provisions of §64-110-10.”

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. 614**), and there were—yeas 83, nays 15, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barnhart, Bartlett, Bibby, Butler, Cadle, Cooper, Cowles, Fast, D. Jeffries, Jennings, P. Martin, McGeehan, Paynter, Porterfield and Rohrbach.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for S. B. 339) passed.

Delegate Kessinger moved that the bill take effect its passage.

On this question, the yeas and nays were taken (**Roll No. 615**), and there were—yeas 83, nays 15, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Barnhart, Bartlett, Bibby, Butler, Cadle, Cooper, Cowles, Fast, D. Jeffries, Jennings, J. Kelly, P. Martin, McGeehan, Paynter and Porterfield.

Absent and Not Voting: Kump and Wilson.

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. 339) 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

S. B. 727, Relating to disbursement of funds for highway road repair.

Delegate Kessinger moved that the House of Delegates recede from the following amendment:

On page 7, section 11 , line 147, by striking out the number “\$1” and inserting in lieu thereof “\$1.50”.

And, the following title amendment:

S. B. 727 – “A Bill to amend and reenact §22-15-11 of the Code of West Virginia, 1931, as amended, relating to the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund for highway road repair; providing that money from the fund is to be expended within the district where gas field and horizontal drilling waste is deposited; increasing the horizontal drilling waste assessment fee; and updating grammatical style throughout the section.”

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. 616**), and there were—yeas 55, nays 43, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, N. Brown, S. Brown, Byrd, Cadle, Campbell, Canestraro, Caputo, Diserio, Doyle, Estep-Burton, Evans, Fleischauer, Fluharty, Hansen, Hartman, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, Miley, Miller, Pethel, Pushkin, Pyles, Robinson, Rodighiero, Rowe, Skaff, Sponaule, Staggers, Storch, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the motion to recede prevailed.

The question being on the passage of the bill, the yeas and nays were taken (**Roll No. 617**), and there were—yeas 93, nays 5, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Cadle, Doyle, Hott, Howell and Rowan.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 727) 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 further amendment, a bill of the House of Delegates, as follows:

S. B. 849, Relating to military service as factor in certain insurance coverage rates.

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

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

“ARTICLE 6. THE INSURANCE POLICY.

§33-6-40. Military service as factor in insurance rates

With respect to any fire, marine, or casualty insurance contract, no person may deny, refuse to renew, cancel coverage, or charge increased premiums for applicants or insureds solely as a result of a uniformed service member's performance of active military duty in the United States Armed Forces or as a member of a reserve component of the United States Armed Forces, to include the National Guard of a state or territory, because the uniformed service member fails to meet underwriting standards that require continuous coverage unless the failure to maintain continuous coverage existed prior to the applicant's or insured's entry into active duty status and was not related in any way to the applicant's or insured's military service. For the purposes of this section, service in the National Guard includes any full-time active duty for training in the National Guard, active duty operational support, active duty special work, state active duty as a member of a National Guard unit, or any other periods of service pursuant to Title 32 of the United States Code or active service of the state or territory. For purposes of determining premiums, an insurer shall consider such persons as having maintained continuous coverage.”

And,

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

S. B. 849 – “A Bill to amend the Code of West Virginia, 1931, as amended, by adding thereto a new section, designated §33-6-40, relating to military service as a factor in certain insurance coverage rates generally; prohibiting an insurance company from increasing premiums when reinstating an insurance contract or writing a new policy that was previously cancelled or suspended due to active duty military service of the insured; defining terms; and creating presumption of continuous coverage when lapse occurs while insured is on active duty.”

On the passage of the bill, the yeas and nays were (**Roll No. 618**), 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: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (S. B. 849) passed.

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

On this question, the yeas and nays were taken (**Roll No. 619**), 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: Kump, Lavender-Bowe and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (S. B. 849) takes effect from its passage.

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

Conference Committee Reports

Delegate Foster, from the Committee of Conference on matters of disagreement between the two houses, as to

Eng. Committee Substitute for House Bill No. 4275, — Relating generally to Authorizing Department of Military Affairs and Public Safety promulgate legislative rules relating to the Fire Commission.

Submitted the following report, which was received:

Your Committee of Conference on the disagreeing votes of the two houses as to the amendments of the Senate to Engrossed Committee Substitute for House Bill 4275 having met, after full and free conference, have agreed to recommend and do recommend to their respective houses, as follows:

That both houses recede from their respective positions as to the amendment of the Senate on page one, section one, line eight, and that the House and Senate agree to an amendment as follows:

On page one, section one, line eight, after the word authorized by striking out the period and inserting the following:

with the following amendments:

On page four, by striking out all of paragraph 4.1.k.1 and inserting in lieu thereof the following:

“4.1.k.1. For renovations in one- and two- family homes where no new square footage is involved arc-fault circuit interrupter (AFCI) protection shall not be required, except for in bedrooms. For renovations in one- and two- family homes where square footage is added but no electrical service is installed, arc-fault circuit interrupter (AFCI) protection shall not be required.”

And,

That the title as amended by the Senate be adopted.

Eng. Committee Substitute for House Bill No. 4275 — “A BILL to amend and reenact §64-6-1 *et seq.* of the Code of West Virginia, 1931, as amended, relating generally to authorizing agencies of the Department of Military Affairs and Public Safety to promulgate legislative rules; authorizing the rules as modified by the Legislative Rule-Making Review Committee and as amended by the Legislature, authorizing the Fire Commission to promulgate a legislative rule relating to State Fire Code; and authorizing the Fire Commission to promulgate a legislative rule relating to State Building Code.”

Respectfully submitted,

Ryan Weld,
Chair,
Tom Takubo,
Glenn Jeffries,
*Conferees on the part
of the Senate.*

Geoff Foster,
Chair,
Brandon Steele, (*Did not sign*)
Nathan Brown,
*Conferees on the part of
the House of Delegates.*

On motion of Delegate of Delegate Foster, the report of the Committee of Conference was adopted.

The bill, as amended by said report, was then put upon its passage.

On the passage of the bill, the yeas and nays were taken (**Roll No. 620**), and there were—yeas 61, nays 37, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, S. Brown, Byrd, Campbell, Canestraro, Caputo, Diserio, Doyle, Evans, Fleischauer, Fluharty, Hansen, Hicks, Hornbuckle, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Paynter, Pethtel, Pushkin, Pyles, Rodighiero, Rohrbach, Rowe, Sponaugle, Swartzmiller, C. Thompson, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Kump and Wilson.

So, a majority of the members present and voting having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4275) passed.

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

On this question, the yeas and nays were taken (**Roll No. 621**), and there were—yeas 68, nays 30, absent and not voting 2, with the nays and absent and not voting being as follows:

Nays: Angelucci, Barrett, Bates, Boggs, S. Brown, Campbell, Canestraro, Caputo, Diserio, Doyle, Evans, Fluharty, Foster, Hansen, Hicks, Lavender-Bowe, Longstreth, Lovejoy, McGeehan, Miley, Paynter, Pethtel, Rodighiero, Sponaugle, Swartzmiller, R. Thompson, Tomblin, Walker, Williams and Zukoff.

Absent and Not Voting: Kump and Wilson.

So, two thirds of the members elected to the House of Delegates having voted in the affirmative, the Speaker declared the bill (Com. Sub. for H. B. 4275) 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.

In the absence of objection, the House of Delegates returned to the Third Order of Business for the purpose of receiving committee reports.

Committee Reports

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

Your Committee on Rules has had under consideration:

H. C. R. 7, U. S. Navy MM2 Carl E. Keeney, U. S. Navy SN1 Frank Keeney and U. S. Army PFC Carl M. Nicholas Memorial Bridge,

Com. Sub. for H. C. R. 26, Requesting the Division of Highways name a portion of Cannelton Road "In Memory of Fallen Corrections Officers",

Com. Sub. for H. C. R. 31, U. S. Army Air Corp PFC James W. Brown Memorial Bridge,

Com. Sub. for H. C. R. 56, U. S. Marine Corps Lance Corporal Eddie Dean Starcher Memorial Bridge,

Com. Sub. for H. C. R. 69, U. S. Air Force Senior Airman Luke Christopher Wamsley Memorial Bridge,

Com. Sub. for H. C. R. 74, U. S. Army PFC Roger Lee Carpenter Memorial Bridge,

H. C. R. 89, U. S. Army SGT James Shellace Armentrout Memorial Bridge,

Com. Sub. for H. C. R. 98, Delegate Emily Warden Yeager Memorial Bridge,

Com. Sub. for H. C. R. 101, Claude Markle Hill,

Com. Sub. for H. C. R. 108, U. S. Navy PO3 Heath "Scrappy" Shilling Memorial Road,

Com. Sub. for H. C. R. 109, U. S. Airman Thomas Harry Honaker, Jr. Memorial Bridge,

H. C. R. 110, Speaker Clyde M. See, Jr. Exit,

Com. Sub. for H. C. R. 111, U. S. Air Force Major Mary Lafferty Coll, D.O. Memorial Bridge,

And,

H. C. R. 139, U. S. Army TSGT Denver E. Short Memorial Road,

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

Delegate Capito, 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 3rd day of March, 2020, 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 H. B. 2149, Relating to the Farm-To-Food Bank Tax Credit,

Com. Sub. for H. B. 3127, Relating to the Secondary School Activities Commission and participation by home schooled students,

H. B. 4365, Granting of college credit hours for learning English as a second language,

H. B. 4412, Relating to education benefits to members of the West Virginia Army National Guard and West Virginia Air National Guard,

And,

H. B. 4437, Relating to the West Virginia Pay Card program.

Delegate Capito, 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 3rd day of March, 2020, 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:

H. B. 4450, Relating to instruction permits issued by the Division of Motor Vehicles,

Com. Sub. for H. B. 4513, Increasing the replacement costs required of a person causing injury or death of game or protected species,

H. B. 4582, Declaring certain claims against agencies of the state to be moral obligations of the state,

H. B. 4929, Relating to the administrative closing of stale or unprogressed estates,

And,

H. B. 4969, Relating to providing tax credit for the donation or sale of a vehicle to certain charitable organizations.

Miscellaneous Business

Pursuant to House Rule 132, consent was requested and obtained to print the following remarks in the Appendix to the Journal:

- Delegate Steele regarding Com. Sub. for S. B. 692

At 6:34 p.m., the House of Delegates adjourned until 9:00 a.m., Friday, March 6, 2019.

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470

SPECIAL CALENDAR

Friday, March 6, 2020

59th Day

9:00 A. M.

UNFINISHED BUSINESS

- S. C. R. 4 - Urging Congress call convention to propose amendment on congressional term limits
- H. C. R. 7 - U. S. Navy MM2 Carl E. Keeney, U. S. Navy SN1 Frank Keeney and U. S. Army PFC Carl M. Nicholas Memorial Bridge
- Com. Sub. for H. C. R. 26 - Requesting the Division of Highways name a portion of Cannelton Road "In Memory of Fallen Corrections Officers"
- Com. Sub. for H. C. R. 31 - U. S. Army Air Corp PFC James W. Brown Memorial Bridge
- Com. Sub. for H. C. R. 56 - U. S. Marine Corps Lance Corporal Eddie Dean Starcher Memorial Bridge
- Com. Sub. for H. C. R. 69 - U. S. Air Force Senior Airman Luke Christopher Wamsley Memorial Bridge
- Com. Sub. for H. C. R. 74 - U. S. Army PFC Roger Lee Carpenter Memorial Bridge
- H. C. R. 89 - U. S. Army SGT James Shellace Armentrout Memorial Bridge
- Com. Sub. for H. C. R. 98 - Delegate Emily Warden Yeager Memorial Bridge
- Com. Sub. for H. C. R. 101 - Claude Markle Hill
- Com. Sub. for H. C. R. 108 - U. S. Navy PO3 Heath "Scrappy" Shilling Memorial Road
- Com. Sub. for H. C. R. 109 - U. S. Airman Thomas Harry Honaker, Jr. Memorial Bridge
- H. C. R. 110 - Speaker Clyde M. See, Jr. Exit
- Com. Sub. for H. C. R. 111 - U. S. Air Force Major Mary Lafferty Coll, D.O. Memorial Bridge
- H. C. R. 139 - U. S. Army TSGT Denver E. Short Memorial Road
- H. C. R. 141 - Urging the President and Congress of the United States of America take no action to employ military forces of the United States in active duty combat unless the United States Congress has passed an official declaration of war

THIRD READING

- S. B. 51 - Specifying forms of grandparent visitation (SHOTT) (REGULAR)

- Com. Sub. for S. B. 120 - Establishing priorities for expenditures for plugging abandoned gas or oil wells (ANDERSON) (REGULAR)
- S. B. 180 - Relating to Second Chance Driver's License Program (SHOTT) (REGULAR)
- Com. Sub. for S. B. 193 - Setting forth timeframes for continuing purchases of commodities and services over \$1 million (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 195 - Updating powers of personal representatives of deceased person's estate (SHOTT) (REGULAR)
- Com. Sub. for S. B. 213 - Relating to administration of trusts (SHOTT) (JULY 1, 2020)
- Com. Sub. for S. B. 275 - Creating Intermediate Court of Appeals (HOUSEHOLDER) (REGULAR)
- S. B. 278 - Providing various methods to deal with defendant who becomes incompetent during trial (SHOTT) (REGULAR)
- Com. Sub. for S. B. 291 - Requiring PEIA and health insurance providers provide mental health parity (HOUSEHOLDER) (REGULAR)
- S. B. 322 - Relating to prequalifications for state contract vendors (HOWELL) (REGULAR)
- Com. Sub. for S. B. 472 - Providing alternative sentencing program for work release (SHOTT) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 517 - Creating State Parks and Recreation Endowment Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 522 - Relating to compensation awards to crime victims (HOUSEHOLDER) (JULY 1, 2020)
- Com. Sub. for S. B. 547 - Relating to employer testing, notice, termination, and forfeiture of unemployment compensation (SHOTT) (REGULAR)
- Com. Sub. for S. B. 551 - Relating to Water and Wastewater Investment and Infrastructure Improvement Act (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 579 - Changing and adding fees to wireless enhanced 911 fee (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 597 - Relating to judicial branch members' salaries and pensions (HOUSEHOLDER) (REGULAR)
- S. B. 610 - Removing resident manager requirement for Alcohol Beverage Control Administration (SHOTT) (JULY 1, 2020)
- Com. Sub. for S. B. 615 - Declaring certain claims against state as moral obligations of state (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 660 - Regulating electric bicycles (SHOTT) (REGULAR)

- S. B. 664 - Adding physician's assistant to list of medical professionals capable of determining if individual lacks capacity (SHOTT) (REGULAR)
- Com. Sub. for S. B. 670 - Amending service of process on nonresident persons or corporate entities (SHOTT) (REGULAR)
- Com. Sub. for S. B. 690 - Permitting street-legal special purpose vehicles on highways (HOWELL) (REGULAR)
- Com. Sub. for S. B. 711 - Relating to juvenile jurisdiction of circuit courts (SHOTT) (REGULAR)
- Com. Sub. for S. B. 716 - Requiring DHHR pay for tubal ligation without 30-day wait between consent and sterilization (HOUSEHOLDER) (JULY 1, 2020)
- Com. Sub. for S. B. 717 - Relating generally to adult protective services (SHOTT) (REGULAR)
- Com. Sub. for S. B. 719 - Imposing health care-related provider tax on certain health care organizations (HOUSEHOLDER) (JULY 1, 2020)
- Com. Sub. for S. B. 722 - Relating to special license plates for public and private nonprofit transit providers (HOWELL) (JULY 1, 2020) [GOVERNMENT ORGANIZATION AMENDMENT PENDING] [AMENDMENTS PENDING] [RIGHT TO AMEND]
- Com. Sub. for S. B. 738 - Creating Flatwater Trail Commission (HOWELL) (REGULAR)
- S. B. 740 - Clarifying authorized users of Ron Yost Personal Assistance Services Fund (HOUSEHOLDER) (REGULAR)
- S. B. 747 - Requiring Bureau for Public Health develop Diabetes Action Plan (HILL) (REGULAR)
- Com. Sub. for S. B. 787 - Providing benefits to pharmacists for rendered care (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 797 - Authorizing governing boards of public and private hospitals employ hospital police officers (HOUSEHOLDER) (REGULAR)
- S. B. 843 - Supplemental appropriation of funds from Treasury to DHHR Energy Assistance Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- S. B. 844 - Supplemental appropriation from Treasury to DHHR Birth-to-Three Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for S. B. 845 - Supplemental appropriation from Treasury to DHHR, Division of Human Services (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- S. B. 852 - Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 853 - Supplemental appropriation of public moneys from Treasury to Department of Education, School Building Authority (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

SECOND READING

Com. Sub. for S. B. 752 - Relating generally to medical cannabis (SHOTT) (EFFECTIVE FROM PASSAGE)

S. B. 854 - Expiring funds to Division of Culture and History from Auditor's Office, Purchasing Card Administration Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 855 - Expiring funds to State Rail Authority, WV Commuter Rail Access Fund from Auditor's Office, Purchasing Card Administration Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

S. B. 856 - Expiring funds from WV Development Office, Synthetic Fuel, Producing County Fund to Market and Communications Operating Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

HOUSE CALENDAR

Friday, March 6, 2020

59th Day

9:00 A. M.

UNFINISHED BUSINESS

H. R. 3 - Amending the Rules of the House of Delegates, relating to remarks by members

THIRD READING

- Com. Sub. for S. B. 130 - Relating to procedure for driver's license suspension and revocation for DUI (SHOTT) (REGULAR)
- Com. Sub. for S. B. 502 - Relating to methamphetamine criminal penalty (SHOTT) (REGULAR)
- S. B. 509 - Relating to custodial allocation actions independent of divorce (SHOTT) (REGULAR)
- Com. Sub. for H. B. 2663 - Exempting buildings or structures utilized exclusively for agricultural purposes from the provisions of the State Building Code (HOWELL) (REGULAR)
- Com. Sub. for H. B. 4096 - Requiring candidates to live in the state or local election district for the office for which they are seeking (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4746 - Establishing a registry of persons with a communication disability (HOWELL) (REGULAR)
- Com. Sub. for H. B. 4905 - Ban-the-Box Act (SHOTT) (REGULAR)
- H. B. 4953 - Providing the PSC with authority to order the acquisition of failing utilities and a variety of tools to assist distressed and failing utilities (SHOTT) (REGULAR)
- H. B. 4966 - Relating generally to updating the North American Industry Classification System code references (CRISS) (REGULAR)
- H. B. 4970 - Relating to military service as a factor in certain insurance coverage rates (SHOTT) (REGULAR)

SECOND READING

- S. B. 170 - Alleviating double taxation on foreign income at state level (FINANCE COMMITTEE AMENDMENT PENDING) (HOUSEHOLDER) (REGULAR)
- Com. Sub. for S. B. 253 - Providing for fair pay and maximized employment of disabled persons (SHOTT) (REGULAR)

- Com. Sub. for S. B. 625 - Creating one-day annual license to permit charitable auction of sealed rare, antique, or vintage liquor bottles (SHOTT) (REGULAR)
- Com. Sub. for S. B. 710 - Establishing pilot program to evaluate telemedicine health services (HILL) (REGULAR)
- Com. Sub. for S. B. 751 - Removing certain requirements of municipality annexing property within urban growth boundary (HOWELL) (REGULAR)
- H. J. R. 102 - Providing the West Virginia Legislature rulemaking oversight of the board of education (SHOTT)
- Com. Sub. for H. B. 4021 - Budget Bill, making appropriations of public money out of the treasury in accordance with section fifty-one, article six of the Constitution (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 4059 - Increasing access to long acting reversible contraception (HILL) (REGULAR)
- H. B. 4455 - Permitting fees from the Central Abuse Registry to be used for costs relating to information technology support and infrastructure (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4613 - Allowing the Division of Highways use money in the Gas Field Highway Repair and Horizontal Drilling Waste Study Fund (HOUSEHOLDER) (REGULAR)
- Com. Sub. for H. B. 4690 - Relating to solid waste facilities (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4975 - Making a supplementary appropriation to the School Building Authority, Debt Service Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- Com. Sub. for H. B. 4976 - Making a supplementary appropriation to the School Building Authority (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 4977 - Expiring funds to the balance of the Department of Arts, Culture and History, Division of Culture and History, Public Records and Preservation Revenue Account Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)
- H. B. 4978 - Expiring funds to the balance of the Department of Transportation, State Rail Authority, West Virginia Commuter Rail Access Fund (HOUSEHOLDER) (EFFECTIVE FROM PASSAGE)

FIRST READING

- Com. Sub. for H. B. 4485 - Reorganizing and redesignating the Department of Military Affairs and Public Safety as the Department of Homeland Security (SHOTT) (REGULAR)
- Com. Sub. for H. B. 4651 - Clarifying the powers and duties of the Division of Highways in acquiring property for state road purposes (SHOTT) (REGULAR)
- H. B. 4884 - Relating to a charitable or public service organization must submit a certifying statement attesting to its status (HOWELL) (REGULAR)

WEST VIRGINIA HOUSE OF DELEGATES

FRIDAY, MARCH 6, 2020

HOUSE CONVENES AT 9:00 A.M.

**COMMITTEE ON RULES
8:30 A.M. – BEHIND CHAMBER**

HOUSE OF DELEGATES
STEPHEN J. HARRISON, Clerk
Building 1, Room M-212
1900 Kanawha Blvd., East
Charleston, WV 25305-0470